



28.8.2013

NOTICE TO MEMBERS

Subject: Petition 1342/2011 by Rosmarie Hennecke-Gramatzki (German), on behalf of Black Stork Ornithological Collective (*Colectivo Ornitológico Cigüeña Negra*), on breaches of the Water Framework Directive, the Environmental Liability Directive and the Aarhus Convention in San Bernabé, Algeciras (Cádiz)

1. Summary of petition

On behalf of the Black Stork Ornithological Collective, the petitioner criticises the fact that the Regional Government of Andalusia is in breach of the Water Framework Directive, Directive 2000/60/EC, in respect of work carried out in the ‘Huerta de las Pilas’ wetlands and the area known as Cortijo San Bernabé, in Algeciras (Cádiz). The petitioner also claims that the company Albero de la Bahía S.A., which is carrying out an open-cast mining project, is in breach of Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, in that it has not complied with the environmental impact assessment (EIA) drawn up in 2003 for this project. The petitioner states that the site has become an illegal and uncontrolled waste dumping site. Lastly, the petitioner explains that the organisation which she represents was denied access to documentation regarding the EIA for the project, a breach of the Aarhus Convention.

2. Admissibility

Declared admissible on 26 March 2012. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 27 June 2012

‘The petitioner expressed concern about the negative environmental impact of the open cast mine known as San Bernabé. The project, which is run by the company ‘Albero de la Bahía, S.A.’, is in the municipality of Algeciras in the province of Cádiz in the Autonomous Region

of Andalusia, Spain.

The Commission's comments

The Commission services have examined the arguments and information submitted by the petitioner as regards the project in question in the light of the EU environmental law that applies in this case.

The case file shows that the project in question was subject to an environmental impact assessment procedure prior to its authorisation. However, according to the petitioner, various conditions laid down in the Environmental Impact Statement (EIS), in particular with regard to environmental monitoring of the project and land restoration following mining operations, were not observed by the developer.

The petitioner objects to poor management of waste and possible pollution of the 'Huerta de las Pilas' aquifer. In addition, it should be noted that a form of wetlands area was established as a result of this open cast mining operation. It should be noted that the Commission received parliamentary question E-3082/2011 on the issue raised by this petition.

Further to that written question, the Commission asked the Spanish authorities for their comments regarding the complaints and for information regarding the implementation of EU environmental law in this case.

In reply, the Spanish authorities forwarded to the Commission copies of the reports drawn up by the Autonomous Region of Andalusia and Algeciras municipal council, along with supporting documentation.

Conclusions

The reply from the Spanish authorities is currently under consideration.'

4. Commission reply (REV), received on 28 August 2013

'The petition has been the subject of various exchanges of information between the Commission and the competent Spanish authorities.

In reply to the Commission's latest request, the Spanish authorities forwarded the new reports drawn up by the Autonomous Community of Andalucía and the Office of the Mayor of Algeciras.

Following a final analysis of the issue, the following points should be made:

The petition refers to the potential negative environmental impact of the open cast mine known as San Bernabé. The project, which is run by the company Albero de la Bahía, S.A., is in the municipality of Algeciras, in the province of Cádiz in the Autonomous Region of Andalusia.

In accordance with Law No 7/1994 on environmental protection of the Autonomous Community of Andalucía, the project underwent an initial environmental impact assessment before it was given the green light. At the time Law No 7/1994 was the regional law transposing Directive

85/337/EEC (environmental impact assessment), which is now Directive 2011/92/EU. The project in question is covered under Annex II to the directive. At the end of the impact assessment procedure, an environmental impact statement (EIS) was adopted by decision of 2 June 2003 of the Cádiz Provincial Delegation of the Regional Department for the Environment. Said decision was published in the Official Gazette of the Province of Cádiz No 154 on 5 July 2003.

The decision lays down a number of conditions for the restoration of the land affected by the mining operations. Furthermore, a restoration plan was approved by the regional authorities in November 2003. However, the petitioner maintains that various conditions laid down in the EIS, in particular with regard to environmental monitoring of the project and land restoration following mining operations, were not observed by the developer. The petitioner also maintains that the waste from the mining has been badly managed.

According to the regional authorities, the authorisation for the mining operation concerned expired in March 2011. The only authorised activity is therefore the restoration of the area, which is apparently under way. The authorities have also stated that no administrative steps are being taken with a view to turning the mining area into an authorised waste dumping site.

The regional authorities maintain that EU nature protection directives 2009/14/EC (Birds) and 92/43/EEC (Habitats) do not apply in this case, as the project involved does not have any adverse effects on the Natura 2000 Network. The area concerned is indeed situated on urban development land, outside the Natura 2000 Network. The regional authorities also maintain that the kind of wetland area established as a result of the open cast mining operation is an artificial habitat which does not have the appropriate conditions to accommodate waterfowl of interest in a viable manner.

The municipal authorities pointed out that following a number of inspections, disciplinary proceedings were brought against the company concerned with a view to bringing to an end and restoring the area after the mining operation, which appeared not to have been carried out in line with the restoration plan.

Furthermore, the prosecutor responsible for environmental matters has looked into this case after receiving a number of complaints about the company concerned.

The documentation on this case therefore demonstrates that the Spanish authorities have taken the necessary steps to ensure compliance with the relevant EU directives.

Conclusions

The Commission has considered the arguments and information supplied by the petitioner concerning the mining project at hand in the light of EU environmental law and the replies from the Spanish authorities.

The Commission's analysis of the case has led it to conclude that the project which is the subject of this petition does not infringe applicable EU environmental law.

There is therefore no reason for the Commission to take further action in this case.'