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**Submission on Behalf of Cork Environmental Alliance to Environmental  
Protection Agency Oral Hearing, 14<sup>th</sup> February, 2005**

**Re Determination of Proposed Waste Licence (reg No 186 – 1) Issued to Indaver  
Irl. Ringaskiddy, Co Cork, by the Environmental Protection Agency, October  
26<sup>th</sup>, 2004**

Cork Environmental Alliance wish to avail of the opportunity provided by this oral hearing to make the following submission. This submission should be taken in conjunction with our letter of November 16<sup>th</sup>, 2004 seeking an oral hearing into the proposed determination and the points raised therein.

Article 6 of the European Convention on Human Rights suggest that Hearings such as this one should be operated in a spirit of fairness and that there should exist a measure of equality between the parties. This cannot be said to be the case in this forum when we look to the resources, which the applicant can assign to this hearing and the limited financial abilities of third party objectors. Given the serious nature of the Oral Hearing and the great number of objectors to the proposed incinerator licence who we represent, I would ask that we be provided with an indemnification or other guarantee for the legal costs of this Hearing.

CEA notes that this procedure, under the EPA Act 1992-2003, is not an appeal, which would suggest a hearing by a higher authority, but rather an *objection*. That this objection is to be adjudicated on by the same Agency which made the decision being objected to, seriously offends the legal principle of *Nemo Judex Causa* (no one shall be judge in his own court) and should remind us of that other proverb, *nemo mortalium omnibus horis sapit* (no mortal is wise at all times.)

Despite our strong objection to the legislative basis under which this hearing has been established, CEA is taking part, not to frustrate or impede the planning or

pollution licensing system, but to raise items of public concern which, we believe, should be considered by the Agency in the determination of this licence.

Our concerns are outlined as follows.

**The EPA should be represented at this hearing.**

CEA believes it is essential that the Agency be a participant in these proceedings. The Chairperson's duty as outlined (section 4.4 Aspects of Licensing Procedures: Objections and Oral Hearings) relates specifically, and only, to the conduct of the hearing. He/she cannot therefore be seen to represent the position of the Agency at this hearing.

CEA is of the strong belief that in order for this hearing to be conducted in a fair and equitable manner the Agency must be represented and put itself forward for cross examination like any other party to these proceedings.

How else are we to understand the rationale for the granting of this licence or for any conditions attached therein. Are we expected to accept the applicant's interpretation of the licence in the absence of the EPA to clarify matters where, for instance, conflict on interpretation may arise. It should be remembered that any argument is always right until one hears the other side.

**Human Health**

There is an unresolved dispute between the Dept of Health and the EPA as to which body is responsible, under legislation for monitoring the effects of EPA licensed emissions on human health. Though the Agency does consider species protection, it is notable that the protection of human health is not acknowledged by the EPA as part of its functions.<sup>1</sup>

As stated at the outset, it is not CEA's intention to frustrate or delay this hearing. However, given the widespread public concern relating to the probable impacts of the licensed emissions from the proposed facility on public health, we believe it is imperative to consider at some length the present position regarding the state of, and procedures for, the protection of public health.

To state that one of the purposes of the Environmental Protection Agency is to protect human health is stating the obvious. A close reading of the EPA Act 1992 – 2003 supports that view. See for instance Section 83(5)(v) which sets out pre-conditions to the granting of any licence.

A licence is not to be granted for instance unless any emissions from the activity will not cause "*significant environmental pollution*".

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<sup>1</sup> State of the Environment Report, 1996, EPA, pp 30/33

The definition of environmental pollution in Section 4 of the Act is couched in terms that ultimately refer to endangering human health. (ie, Section 4 (2)c; ...*the holding, transport, recovery or disposal of waste in a manner which would, to a significant extent, endanger human health or harm the environment....*) The Agency's position, vis a vis the impacts of licensed pollution on human health, has been somewhat nebulous.

What is the extent of "*to a significant extent*". Does it mean absolute number of health problems? Does it mean the number of deaths? Does it mean ordinary illnesses such as asthma, respiratory problems, or does it mean that people have to be at death's door before the phrase, "*to a significant extent*" kicks in and the EPA take action?

In January 1995 one of the country's Health Boards, the Southern Health Board, (SHB) was sufficiently concerned about this issue that it wrote to the EPA under Section 85(2) of the Act. The Board in question expressed concern that an application for an IPC licence by Schering Plough (Irl), Brinny, Co Cork, had neither identified nor specified the health implications, if any, of the proposed development. The Health Board noted a further concern that no provision appeared to have been made for the biological monitoring of human health of the pollution affects, or potential affects, of the processes to be undertaken.

The SHB made the very practical request that the EPA's Pollution Licences would therefore include an obligation on the licensee to monitor human health. The reply from the EPA was not reassuring. The Agency stated that it considered that biological monitoring of human health was a matter for the "*relevant Health Authority*". It is certain that it would not be '*appropriate*' for the Agency to impose conditions that were the responsibility of another authority. The Agency's reply went on to place reliance on standards and emission limit values which would be imposed and further claimed that monitoring after the licence was granted would "*establish the risk imposed to the environment and by extension public health.*"

There is no legal basis for the Agency's assertion that biological monitoring of human health is a matter for the relevant health authority. These powers given to Health Boards nowhere specify the type of health monitoring suggested by the EPA. Health Boards, as they are more properly known, are established by statute and their powers are limited by statute. Therefore, for the EPA to attempt to avoid imposing these conditions on the basis that they are the responsibility of the Health Boards is legally questionable, morally reprehensible and indefensible in view of their statutory role to protect the environment.

The second element of the EPA argument is similarly questionable. The EPA appears to have taken the view that it can adopt standards or emission limit values adopted in political bodies, such as the EU, and apply them to Irish conditions regardless of whether or not they are appropriate to local needs. The weakness of this approach is readily apparent when it comes to licensing the additional imposition of bio-accumulative toxins,

such as dioxins, furans etc into an area whose population's current body burden of that substance has never been measured.<sup>2</sup>

The legislation is sufficiently clear on the EPA's responsibilities in this area but given that the Agency does not appear to have reached the same conclusion then it may be desirable to place an amendment making the responsibility unavoidably that of the Agency. Such an amendment should further provide that the Agency equip itself with appropriate medically and toxicologically qualified personnel to assist it in properly discharging that responsibility.

This is particularly relevant in the context of the current positions adopted by both the EPA and the Department of Health.

In a statement issued in May 1998 the EPA stated that, "*Serious animal and human health problems will in future be reported to the relevant State Agencies as soon as possible.*"

In May 1999 the Minister for Health, in a letter to CEA, stated that.... "*where the EPA are concerned over the level of a particular discharge or emission from a licensed source they would bring this to the attention of the Director of Public Health with the local Health Board with regard to the possible impact on human health in the area.*"

Given that the Agency has no expertise available to it with which to identify such problems, the question arises as to what criteria the Agency would employ which would trigger the concerns identified in the Minister's statement?

Furthermore it is stretching the credulity of the public somewhat to suggest that the EPA, despite their immunity from prosecution, would on the one hand licence a source of pollution and then turn around and inform the Director of Public Health that the pollution licensed by the Agency is impacting negatively on public health.

In March 2003 the Director General of the EPA, Dr Mary Kelly, again outlined the Agency's position in a letter to the Secretary General of the Dept of Health and Children....

*"The issue of baseline health data and adequate health information systems is a matter appropriate to the Dept of Health and Children and the Health Boards."*

It is clear from the above that the Agency's position, vis a vis, the impacts of licensed emissions on public health has remained consistent, i.e, it is not the Agency's concern!

This situation raises an interesting legal question. What body would address liability for an emission outside of the licence terms which results in harm to public health or property?

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<sup>2</sup> See Case Study Irish Ispat/Irish Steel

Unless and until the EPA and the relevant health protection authorities get together and sort out this difference of opinion then no further new pollution licences should be issued. An agreement in relation to the responsibilities for public health must be put in place as an integral element of environmental protection in these pollution cases.

**The EU Treaty at Article 174 which is the first article in Title XIX (The Environment) states the following:-**

*Article 174*

1. Community policy on the environment shall contribute to the pursuit of the following objectives:

- ⌚ preserving, protecting and improving the quality of the environment,
- ⌚ **protecting human health,**
- ⌚ prudent and rational utilisation of natural resources,
- ⌚ promoting measures at international level to deal with regional or worldwide environmental problems.

Every Member State must consider its obligations under the EU Treaties when drafting legislation. Furthermore these Treaty provisions also oblige a body such as the EPA to bear these provisions in mind when interpreting or applying legislation such as the EPA Act. Therefore it would seem that the EPA must bear the protection of human health in mind when considering a Licence application or a Licence objection.

**Knowledge on the State of Public Health in Cork Harbour**

In order to comply with the current domestic and EU legislation under which this licence has been proposed the Agency, clearly, must satisfy itself that emissions will not endanger human health. The problem for the Agency is that it simply does not know the present state of human health in the Cork Harbour area.

There is much anecdotal evidence of public health problems in Cork Harbour; from clusters of eye cancers in one town to birth defects in another; respiratory problems in one community, brain tumours somewhere else. The anecdotal evidence presented over the past 25 years was deemed strong enough at one stage, that the then Minister for Health, Rory O'Hanlon TD ordered the carrying out of an epidemiological study in July, 1991. Unfortunately this study was never commenced, owing, we were informed, to budgetary constraints, thereby allowing official ignorance of public health matters in our community to continue. Many residents remain deeply worried about these very real health issues in their community. The fact that Indaver and the EPA does not see, or appreciate, this widely held fear is deeply disturbing indeed.

We already play host in Cork Harbour to a variety of toxic industries, including two companies operating both toxic and municipal type incinerators. Added to the existing incinerator emissions there are many highly toxic compounds being discharged from the

various licensed emission points throughout the Harbour. These are discharged to the air we breathe and to the harbour waters. Nor should we forget the hundreds of, euphemistically titled, *fugitive emissions*, which by definition are 'any gas, liquid, solid, mist, dust or other material that escapes from a product or process and is not routed to a pollution control device'. In other words they go, unattenuated, straight into the air and waters of Cork Harbour.

Into this soup of emissions, Indaver, with the permission of the EPA, now propose to add more dioxins, furans, chromium, mercury, lead, arsenic, cadmium, hydrogen chloride, hydrogen fluoride, sulphur dioxide, etc, all the while insisting there is no possible chance of negative impacts on public health. And the emissions identified are only a fraction of those which will be emitted.

Speaking in Cobh in May, 2003, Dr Paul Johnson, a toxicologist who heads the Greenpeace Research Laboratory at Exeter University, UK explained,

*"We run two GPC mass specs in our own laboratory back in Exeter and when we are faced with an industrial effluent we are very lucky to be able to characterise 10% of the chemicals that we find."*<sup>3</sup>

In other words, 90% of industrial emissions remain unidentified.

Residents of Cork Harbour are no strangers to proponents of the toxic and dirty industries attempting to detoxify their emissions by slick PR presentations. Indaver are just the latest in a long line of dirty industries to appear in Cork Harbour stretching back to the 70s and the infamous toxic dumps of Raybestos Manhattan. All of these industries had two elements in common; the ability to cause pollution and the propensity to spend a fortune on glossy PR. Residents remain even more cynical of these twin evils now than they were almost 40 years ago. We have been assured before that incinerators emit nothing more dangerous than water and carbon dioxide.

This is absolute nonsense of course. The US EPA has said as much when they stated that,

*"The complete combustion of all hydrocarbons to produce only water and carbon dioxide is theoretical and could only occur under ideal conditions. Real world combustion systems, however, virtually always produce PICs, (Products of Incomplete Combustion) some of which have been deemed to be highly toxic. (US EPA 1990)*

So what the communities of Cork Harbour are being asked to accept here is, not whether we will be poisoned or not, but the dose of those poisons, which the Agency propose to sanction, and Indaver will administer.

The Agency in issuing this proposed licence has not and cannot address the issue of PICs (products of incomplete combustion) present in the emission gases, simply because, no one knows the number of PICs in incinerator emissions, but thousands are presumed to be present. Among the PICs identified in incinerator emissions are chloroform, vinyl

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<sup>3</sup> Burning our future. Video diary of Public Meetings, 2003. Deora Dé

chloride, benzene, tetrochloroethane, 1,1-dichloroethylene, phenols, methyl bromide etc, etc, etc.

Neither has the Agency, in issuing this proposed licence, considered the synergistic effects of the mixture of the emissions from the Indaver incinerators with all these other known and unknown chemicals in the air we breathe, the water we swim and fish in, and the land we graze livestock on and grow vegetables in here in Cork Harbour.

Not only is the Agency unaware of the nature and identity of the newly formed compounds floating about the Harbour, they, like the rest of us, have no idea what impact the mixing of these licensed and unlicensed emissions are having on public health in the area.

This unavoidable ignorance was explained to a public meeting in Cork in June 2004 by Dr Vivyan Howard, an internationally respected toxicologist attached to the Liverpool Royal Infirmary when he explained....

*"If you give me a single compound and say, go away and work out the toxicology of that, I'll be able to make a reasonable stab at it. If you give me two, there are methods where I can attempt to do that, but now, I am having to work very much harder. If you give me three, I'm rapidly getting lost. Now, we are talking about hundreds here. (incinerator emissions) We don't have the tools to characterise this soup we've managed to inflict upon ourselves."*<sup>4</sup>

Scientists at the US National Toxicology Programme agree with Dr Howard. They have calculated,

*'that in order to study the effects of exposure to a mixture of 25 common toxic chemicals, it would require 33,554,432 experiments at a cost of \$3 trillion, using a very conservative estimate.'* (Yang, 1987)

Though this assessment is 18 years old and technology, may, by now, have reduced the cost and number of experiments needed, we include it here to demonstrate the enormous complexities and difficulties encountered by anyone trying to assert incinerator and other toxic emissions are harmless.

Dr Sandra Steingrabber, a biologist and author, lecturing at Harvard University, told a public meeting in Cork in the summer of 2003,

*"Because we don't measure miscarriages and spontaneous abortions, there is no registry of these things in most countries that I've taken a look at the data, the way there is a cancer registry or a birth defect registry for example. It's very hard to be able to say if you build an incinerator here in Cork, how many foetal lives will be lost. It will be an immeasurable number. We don't know if it will be a thousand. But we do know that there are chemicals that will come out of the stack of the incinerator that in laboratory tests with animals, and some occupational tests with human women, show signs of being able to interfere with the process of implantation and thereby trigger a miscarriage."*

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<sup>4</sup> Burning our future

*The organic persistent pollutant, and there will be plenty coming out of any incinerator built here, eventually finds it's way into the milk of nursing mothers. Because fat, human fat, is like a vacuum for persistent organic pollutants. These things are fat soluble. They roam about in the environment until they get, essentially, sucked up by a fatty organism, like a human mother, and those toxins go right for fat.*

*A human woman has ten to a hundred times more dioxin in her milk than a cow has.<sup>5</sup>*

Little wonder then, given the above information, that the communities of Cork Harbour are concerned about the possible impacts, of these incinerators, on their health and that of their children and on the general environment.

It was precisely such a situation which led to the establishment of the EPA in the first instance, with the specific intention of remedying the environmental conflict and uncertainty relating to emissions throughout the Harbour area.

The evidence to date shows that many of the emissions, licensed and unlicensed in the Harbour area are highly toxic and that most emissions remain uncharacterised. The synergistic effect of the thousands of compounds discharged hourly in the harbour has not been established. There has never been an independent health or comprehensive environmental study in the harbour area. Why was the promised health study in 1991 never pursued by the government? In light of the concerns regarding the lack of baseline data on public health raised by the Agency's Director General, Dr Mary Kelly in her letter of March 25<sup>th</sup>, 2003.....

*"A recent report commissioned by the Dept of the environment and Local Government and carried out by the Health Research Board concluded, inter alia, that Irish health information systems cannot support routine monitoring of the health of people living near waste sites, and points to a lack of baseline human health data at national, regional and county level.*

CEA contends that no new licenses should issue pending the establishment of the state of public health in Cork Harbour.

The EPA cannot therefore establish the impacts on public health, be they benign or malignant, and consequently, taking Section 4(2)c of the EPA ACT 1992 - 2003 into consideration, cannot issue this waste licence when uncertainty relating to the dangers to public health remain.

The EPA, if it was honest for once, would admit this and take some steps to minimise and reduce the toxic loads of industries. Yet it continues to issue licences which have no effect other than to give legal immunity to pollute to anyone that applies for these permits. Has the EPA ever refused to issue a licence and turn away a polluting industry? Less than half a Km from the present incinerator site, the EPA presided over Irish Steel/Ispat, one of the most polluting of all industries in the harbour area for almost 10 years and did absolutely nothing to limit its emissions. How can we have any confidence in this body which is not even here today to listen to our fears and concerns.?

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<sup>5</sup> ibid



It is indeed ironic that in a society so obsessed of late with the effects on public health of the inhalation of passive cigarette smoke, our Environmental Protection Agency has consistently failed to consider the health implications of whole communities passively inhaling a combination of thousands of chemicals, many of which are known to be highly toxic.

### **Enforcement Policies of the Environmental Protection Agency**

In order to be effective as an enforcement body the EPA must enjoy public confidence in its capability and willingness to carry out its enforcement duties. That it does not enjoy that public confidence is understandable in light of the various fiascos it has been embroiled in since its inception.

In Cork Harbour we are tired of the oft repeated mantra that every new industrial project will be *State of the Art* and that *the strictest environmental and emission standards will be imposed* this time. The present application is no exception. It must always be borne in mind that monitoring of pollution is not control of pollution. Monitoring only alerts us, after the event, that an exceedence of a licence condition has occurred.

Historically, when the Agency seeks legal redress for any breach of licence conditions it is invariably through the District Courts, where maximum fines do not reflect the seriousness of the licence breach. Nor can one be assured that these fines cause much of a ripple in the profit and loss accounts of the polluters.

The modus operandi of the EPA would appear to promote the misguided logic that pollution licences issued by the Agency are aspirational rather than legal and enforceable documents. The theory behind this would seem to be that the non-conforming pollution licence holder is cajoled rather than compelled to comply with the conditions of the pollution permit.

This *compliance first* strategy adopted by the Agency emphasises working co-operatively with violators to obtain compliance, eschewing penalties in favour of persuasion.

This discretion goes far beyond the spirit of the legislation.

The EPA Act clearly identifies the Agency as the sole body, which is entitled to initiate prosecutions and contains clear lists of penalties that are available to the EPA to prosecute offenders. The Act was designed to be a deterrent-based enforcement statute. This model of enforcement accepts that a licensed industry would be a rational actor whose *raison d'être* would be to maximise profits. As such, decisions by a pollution licence holder, regarding compliance would be based on a determination of self-interest. In short, businesses will comply where the cost of non-compliance outweighs the cost of compliance. The prosecutions initiated to date, all in the District Court, clearly promote, in economic logic, non-compliance by the pollution licence holder.

Canadian Law Professor, Bruce Welling, put it another way in his book, *Corporate Law in Canada*, (Toronto; Butterworths, 1991), p165

*'The practical business view is that a fine is an additional cost of doing business. A prohibited activity is not inhibited by the threat of a fine so long as the anticipated profits from the activity outweigh the amount of the fine multiplied by the probability of being apprehended and convicted. Considering the amount of the average fine, deterrence is improbable in most cases.'*

To make this point as simply as possible, let me put it this way; if the fine imposed for not taxing one's car was substantially less than the cost of taxing the car, it would be reasonable to assume that few in the state would tax their cars.

Bearing this in mind, the 2003 prosecution by the EPA in the District Court of local pharmaceutical company, Smithkline Beecham, for burning in their incinerator, Dimethyl Sulphate (a prohibited substance under their licence conditions) will have done little for public confidence in the Agency. The derisory fine, €2,400, imposed on the company is unlikely to act as a deterrent to the future activities of that company.

In light of these facts it would be difficult to convince the communities of Cork Harbour that they are unreasonable in expecting a similar approach by the EPA when breaches by Indaver of the proposed licence occur.

### **Public Confidence in the Environmental Protection Agency**

In order to be successful as an environmental protection body, the EPA must enjoy public confidence and trust. As in any other situation in life such respect cannot be bought, legislated for or invented by bluster and PR. The Agency's history of releasing 'bad news' during periods of least media attention (during the silly season in August and at Christmas) has so far successfully pulled the wool over the nation's media as regards the Ballymagash type activities they have engaged in. But the people of Cork Harbour, Askeaton, Silvermines, Killorglin, and elsewhere have learned the hard way that environmental protection, as practiced by the Agency, is nothing more than a legal camouflage which allows dirty and polluting industries operate at will.

As an example of how the Agency has failed as an environmental Protection body in the past I will outline, as briefly as I can, events surrounding three cases of industrial pollution on the EPA's watch, so to speak.

### **Ringaskiddy**

Significant dioxin contamination of soil was discovered during limited baseline studies in the Ringaskiddy area in 1991. One of the hot spots discovered was on the very site on which it is proposed to build this incinerator. It subsequently seems to have been wiped from the collective memory of official Ireland. Obviously it will come as no surprise to many that the EPA in its deliberations, prior to the issuing of this proposed licence, also joined the throng and failed to address the long established dioxin contamination of the proposed incinerator site.

Furthermore, it was established in the mid 90s that unregulated dioxin emissions from the Irish Steel/Ispat site in Ringaskiddy were ~~to~~ over 100 times the EU standard emission level of 0.1Ng/M3. Though the Agency were informed of this situation by CEA they took absolutely no action to impose a licence on Irish Steel/Ispat until after CEA had

lodged a European Complaint and the EU Commission sought an explanation for their lack of action on the matter.

### **Askeaton**

A baseline study of animal health on 25 farms in the Askeaton area by An Foras Talúntais commenced in 1979. The study was published in April 1984. The most reassuring aspect of its conclusions was that *'fertility and calf viability were as good as, or better than, the national average.'*

During the period of this study the Shannon Estuary, on which Askeaton is located, was rapidly industrialised. By 1988 local farmers, who had been given a clean bill of health by the Foras Talúntais report a few years earlier, began to experience problems among their livestock. Many also began to notice human health problems in their own families. The problems on the farms included reduced milk yields, chronic ill-thrift, infertility, spontaneous abortions and inexplicable fatalities in their herds.

The farmers believed the problems were likely to be attributable to industrial pollution, the only new factor in the region since they had been given a clean bill of health.

After much political campaigning by the farmers, the EPA, who initially refused to involve itself in the situation, was *invited*, in 1995, by the Minister for Agriculture, to coordinate a study into the problems in the area.

The Agency concentrated their study programme on two of the three most affected farms. The owners of the other farm refused to cooperate because of the failure of the EPA to agree that all scientific sampling carried out be on a split test basis with the owners own scientific consultants.

In the course of the study, human blood samples and animal tissue, destined for analysis, went missing without explanation.

After a 3 year study the Agency's final report was inconclusive, merely stating that there had been animal health problems in the area, these were no longer occurring and that it had not been possible to establish the cause/s. This was in stark contrast to the situation on the other farm which had refused to cooperate with the EPA led study. The Irish Equine Centre had carried out detailed post mortems on eleven horses who had died there in 1996 and found as the cause of death, granulomatous. This disease had previously been found only in individual animals. This was the first cluster of the disease anywhere in the world. Yet, literally over the hedge, the EPA led study team detected no problems.

Even this fatuous conclusion does not reflect reality. Recently I spoke to two farmers in Askeaton who told me that problems with human and animal health continue in the area.

## **Nenagh/Proctor & Gamble**

In the summer of 1996 the people of Nenagh in Co Tipperary began to notice an unusual taste in their drinking water. Investigation quickly established that the Gortlandroe well, which supplied the town's drinking water had been contaminated by a leak from the nearby Proctor & Gamble factory.

The EPA duly prosecuted the company and secured convictions on two counts in the District Court, resulting in a maximum fine of £1,500.

Had the Agency pursued this case in the High Court, the penalties would have reflected the serious nature of the offence. The High Court could have imposed a fine of £25,000 and also has the power to order the guilty party to pay for the cost of the cleanup and associated remedies.

Why the EPA failed to prosecute in the High Court is known only to the Agency themselves and it is a matter for conjecture whether they were subject to political pressures or otherwise.

While the population and business community of Nenagh suffered a huge amount during the summer of 1996, Nenagh UDC, Tipperary North Riding, and the Dept of the Environment were forced to fund the provision of an alternative water supply. This cost in excess of £10 million, yet the cost to Proctor & Gamble, one of the world's biggest corporations, who were found guilty of causing damage of such enormous magnitude, escaped with a mere £1,500 fine.

### **Failure to Allow Private Prosecutions**

In any of the situations outlined above it would be reasonable to assume that private citizens would be entitled to seek legal redress for injury caused. This was the case under the Local Government (Water Pollution) Act 1977 and the Air Pollution Act 1986 there exists a general principle whereby any citizen may take a prosecution under the Act. These private prosecutions could proceed without the permission of any other party.

This is not the case *viv a vis* pollution permits issued by the EPA. Private prosecutions are forbidden. Given the Agency's record as regards enforcement and control of these permits, it is a major flaw in the EPA Act that a provision was not made which would similarly empower private citizens to initiate private prosecutions against the Agency for damage suffered as a result of an activity licensed by the Agency.

The Act gives significant powers to the EPA in terms of their interpretation and prosecution of environmental law. However little was done to address the democratic deficiency, which has resulted from the concentration of such power in the hands of one 'Super Agency'.

## **Immunity of the Agency**

Section 15 of the EPA Act grants immunity to the Agency, or any body acting on behalf of the Agency, from legal action arising from any failure to perform, or comply with, any of the duties conferred on the Agency or its agents.

One can assume that it could be successfully argued that a body nominated by the Agency to carry out monitoring as condition of a pollution licence who subsequently reported false monitoring data, which resulted in personal injury or damage to property, would be immune from prosecution.

This immunity effectively removes the Agency's legal accountability in the event of negligence on its part as a result of which people are injured, property is damaged or loss caused. This is unlikely to be in accordance with natural or constitutional justice. The EPA is entrusted by law with the protection of the environment. However if it fails to carry out its legal duty, an injured party cannot sue the Agency. This is unprecedented in Irish law in that public authorities can be, and have in the past, been sued following negligent planning decisions causing personnel injury.

Staff of the agency however, should bear in mind that immunity from prosecution is preconditioned on their acting in a bona-fide manner in matters relating to all their activities on behalf of the Agency. (Section 16 of the EPA Act '92 - '03)

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## **Summary**

The Environmental Protection agency has proven itself capable of issuing permits to pollute.

The Environmental Protection Agency has proven itself incapable of enforcing pollution permit conditions.

Because of it's record on enforcement of previous pollution permits and it's refusal to consider impacts on human health, the Agency has proven itself an unfit body to issue any further pollution permits

Under Domestic and European law, the Environmental Protection Agency has a duty to ensure no danger will arise to public health from it's activities.

The Environmental Protection Agency cannot carry out this duty, to ensure no adverse effects to public health, by exposing members of the public to highly toxic industrial emissions which remain uncharacterised.

Though the state of public health in the Cork Harbour area has not been established, there is significant anecdotal evidence of ill effects, which suggest these anecdotal problems may be attributable to licensed and unregulated industrial emissions.

The Environmental Protection Agency should advise the government immediately that until a proper epidemiological study is carried out in Cork Harbour, which would establish the state of public health there, no new pollution licences, including the permit under consideration here, can be granted.

## **Conclusion**

Judging by the Agency's past record with regard to Oral Hearings, (an objection against the issue of a pollution permit that was granted an Oral Hearing has never been upheld) it seems clear that the Agency will issue this licence, regardless of the evidence presented to it at this hearing.

Indaver may ultimately leave this Hearing beaming like a lotto winner, with a licence worth hundreds, if not thousands, of millions of Euros, simply because, that bit of paper gives them the right to use our community as a dump They then can charge handsomely anyone who is prepared to pay them, from all corners of Ireland and probably further afield, to dispose of every bit of filth, toxic and hazardous waste into the atmosphere over Cork Harbour. Because, after all, incineration is primarily a business, not a science.

But even a child knows that what goes up, must come down. As Jerry O Callaghan, author of *'The Red Book'*, dealing with the John Hanrahan incinerator poisonings in Co Tipperary, put it...

*...they go up into the air as benzene, toluene, monochlorobenzene, chloroform, PCBs, furans and dioxins; they come down as lung cancer in NY, bladder cancer in NJ, a brain tumour in Michigan, a cleft pallet in Illinois, bronchitis in Bhopal, a child with small eyes in Bonny bridge, a poisoned duck in Pontypool, a calf with no head in South Tipperary.*

No doubt we will soon be adding Cork Harbour to that list should this pollution permit be granted.

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