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Office of Climate, Licensing & Resource Use
Environmental Protection Agency
PO Box 3000
Johnstown Castle Estate
County Wexford

17 December 2007

Dear Sir or Madam:

Re: Objection to proposed decision to grant a licence to Dublin City Council to operate an incinerator at Poolbeg, Dublin 4

Case no: W0232-01


We, the undersigned, wish to object to the Agency's proposed decision in the above case. We enclose payment of €300, to cover the €200 fee for making an objection as well as the €100 fee for requesting an oral hearing.

1. Summary of objection

The Agency proposes to grant a licence to Dublin City Council to operate an incinerator for non-hazardous waste at Pigeon House Road, Poolbeg, Dublin 4. Our primary submission is that the Agency should decide to refuse a licence for this activity. Without prejudice to this submission, we further submit that, should the Agency decide to issue a licence to the applicant, that the conditions attached to this licence should be considerably strengthened.

2. Request for oral hearing

Given the scale and significance of the proposed activity, and the complexities associated with the case, we request that an oral hearing should be held before the Agency makes its final decision.

RECEIVED
Time - 1440
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Signature 
Environmental Protection Agency, HQ. P.O. Box 3000, Johnstown Castle Estate, Co. Wexford.

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"We do not inherit the earth from our parents, we borrow it from our children".

3. Objection to proposed decision to grant a licence

3.1. Inadequate EIS

In his report, the inspector notes that he considers the EIS presented by the applicant is adequate and conforms to the requirements of the EIA Directive. We submit that the EIS cannot be said to be adequate, in particular because it does not contain adequate information on cumulative impacts and interactions.

In the EIS, this matter is addressed with a single table, Table 20.1, "Cumulative impacts and interaction of effects matrix". No further information is provided. This single table cannot be said to meet the requirement to identify cumulative impacts and interactions. The nature of the impacts or their severity is not specified. Therefore they cannot be measured, assessed or compared.

There is therefore no basis on which the inspector can assess that the cumulative impacts and interactions have been adequately covered in the EIS.

The EIS also lacks a Health Impact Assessment (HIA). In his report the inspector notes the information provided in the EIS under "Impact on human beings", and comments:

The application included assessment of the health impact of the proposal from both the perspective of the technology/process including accidents & emergencies, and the specific emissions from the site.

The information provided in the EIS does not constitute a HIA, it is merely an attempt to capture the likely impact of specific emissions from the proposed facility. It should be noted by the Agency that the applicant specifically declined to commission a HIA for the purposes of the application. In particular, the impact of particulate emissions from trucks transporting waste to the site was not assessed.

On this point we would refer the Agency to the input provided by Dr Anthony Staines, who prepared the baseline health study included with the EIS. Dr Staines describes the format of an adequate HIA, and the Agency should readily conclude that the information provided in the EIS cannot be said to

constitute a HIA.

3.2. Air quality

In its assessment of the planning application for the proposed incinerator, An Bord Pleanála commissioned an expert report on the issue of air quality, taking into account existing background levels and emissions attributable to the proposed facility. The Board's inspector states that:

Having regard to the existing air quality any predictions to the effect that when the emissions from the plant are added to background levels air quality limits would not be exceeded, do not reflect reality, as indications are that the limits are exceeded in some cases when considering the background levels alone.

He also states that it would be open to the Board to "refuse to approve the proposed development on the basis of it not having being adequately demonstrated that the proposed development could be operated without leading to exceedances of air quality standards". He further states that

A question arises accordingly as to the likely significance of the impact of the proposed development. I consider that this is an issue which requires more detailed assessment and which ideally should be done in the context of considering the details of the air emission standards which could be imposed.

However, he concludes that such considerations are "essentially a matter for the Environmental Protection Agency in its licensing. It is also possible that the EPA could impose more stringent emission standards than set out in the EU Directive."

However the Board's inspector does consider it necessary to impose by condition a reduction in the capacity of the facility:

I consider however that having regard to the existing environmental carrying capacity of the area including the assimilative capacity of the atmosphere a reduction in the scale of the development, as previously referred to, would be beneficial. Whilst it is unlikely that there would be a direct proportional reduction in air emissions to a reduction in the throughput of the plant it is likely that a reduction in throughput would

result in some reduction in the overall load of pollutants emitted into the area.

This condition, however, was not included by the Board in its final decision. In its direction of 19th November 2007, the Board states:

The Board, therefore, decided to approve the capacity as proposed and considered that any restriction that might be necessary would be more appropriately dealt with by the EPA through the licensing of the activity.

It is clear from the Board's consideration of the air quality issue, and from the expert advice commissioned by its inspector, that the air quality in the area is already compromised, and that the operation of the facility will give rise to further exceedences of air quality limits. It is further clear that the Board considered that "more detailed assessment" of the air quality issue was required, over and above the information provided in the EIS and the Board's own expert report. Further, it is clear that the Board considered that such assessment should be carried out by the Agency in its consideration of the licence application.

There is no evidence in the Agency's inspector's report, or in its proposed decision, that any such detailed assessment has been carried out. It appears that the Agency has considered it sufficient to state limits for various classes of emissions, without assessing the capacity of the applicant to meet these emissions limits, or the likelihood that the operation of the plant will give rise to exceedences of limits in the area.

In fact, the Inspector understates the legal obligation on the Board in relation to compliance with air pollution standards. Where a development would be likely to lead to a breach of EU air pollution standards, the Board, the EPA and any other emanation of the state are legally obliged to refuse permission.

This kind of passing of the buck is symptomatic of the difficulties which the European Commission has raised in its criticism of Ireland's split system of EIA for activities requiring both planning and EPA approvals.

This instance represents a serious failure of the Board and the Agency to undertake an integrated assessment.

3.3. Capacity of applicant to meet conditions of operation

The Agency should note that the applicant operates a major wastewater treatment plant at a site proximate to the site of the proposed incinerator. The Agency will be aware that in the case of this treatment plant, the applicant has proved incapable of meeting its own stated standards in terms of odour control. Four years after its opening, the local community are still dealing with a serious ongoing odour problem. The applicant has given the community repeated assurances that this problem would be resolved by specified dates, each of which has passed without resolution.

These circumstances should lead the Agency to decide that the applicant cannot credibly claim to be competent to meet the conditions of operation proposed.

3.4. Impact on land values

We understand that the Dublin Port Company which owns much of the adjacent land is concerned about the potential impact of the proposed development on land values. The same concern is shared by many local residents. We wish to point out that it is not possible to assess the impact on land values without a reliable assessment of the air pollution impact of the proposal. It is accepted by ABP that such an impact of the air pollution impact has not yet occurred. Therefore, should EPA succeed in a reliable assessment of the air pollution impact, it would fall to it to carry out also an assessment of the impact on land values before it would be in a position to make a decision under the EIA Directive.

Fundamentally, the EIA directive requires that the Irish consent system consider all impacts in an integrated fashion. ABP apparently hasn't done so. This demonstrates the lack of compliance of the Irish legal system with the requirements of Directive 85/337 as amended.

4. Conditions of licence

Without prejudice to our submission that the licence should be refused, we further submit that, should the Agency decide to confirm its decision to grant a licence, the conditions in this licence should be considerably strengthened.

4.1. Strengthening pre-treatment condition

The proposed licence contains a condition (11.11.1) requiring that the licensee to prepare a report setting out its waste recovery proposals to be submitted to the Agency for its agreement. These proposals must include the pre-treatment of imported residual waste. The inclusion of such a condition is very welcome, but it should be stated in more explicit terms. The licensee only should be permitted to treat residual waste from which all recyclable and reusable components have been removed. As the condition stands, the licensee could choose to interpret it in such a way as to allow the entire contents of the residual waste collection (black bin) to be incinerated, without any further pre-treatment. However it is clear that the contents of the black

4.2. Emissions monitoring in the community

The Agency should impose a condition requiring the licensee to install emissions monitoring stations in the local community. All emissions data should be available in an easily accessible format to local residents on an ongoing basis. Given the probability of exceedences in air quality limits, it is not unreasonable to require the licensee to provide such information to the community.

4.3. Stipulation of technology to be used

The proposed licence does not stipulate any particular technology to be used in the proposed facility. The Agency should impose a condition requiring the applicant to state what technology will be used.

4.4. Reduction in capacity

In light of the Board's inspectors' report, it is clear that the proposed facility, operating at its planned capacity, will give rise to exceedences of air quality limits. We submit that the Agency must, at a minimum, reduce the proposed capacity by condition.

5. New Government policy

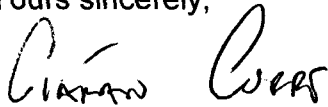
The EPA in making its decision must consider the implications of Government policy. The new Government has made it clear that waste management policy and practice must move up the hierarchy. The Department of the

Environment has also released figures showing that the required capacity for thermal treatment nationally will be well below the proposed capacity of this one facility, which is supposed to treat waste from the Dublin region only. In this context the Agency should consider that the plant and its proposed capacity are not in line with national policy.

6. Conclusion

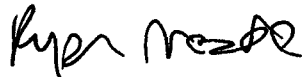
In conclusion, we submit that the Agency should refuse this licence for the above reasons. We further submit that an oral hearing be held on the issue. Finally, should the Agency persist with its proposed decision to grant a licence, it should include conditions as suggested above.

Yours sincerely,



Ciarán Cuffe TD – Dun Laoghaire

Cllr Bronwen Maher – Dublin City Council



 Ryan Meade – Dublin South East Greens

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