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Air Quality

My submission to the Oral Hearing deals with the issue of 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 exceedences 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 Boards' 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.

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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 of 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.

I would now like to draw the hearing's attention to the following issues:-

Paragraph 4.2.43 – EIS. The EC highlights as important to avoid locating an incinerator up-wind of residential area in enclosed air-basins or in areas where air quality is already poor.

Dublin City is in such an air-basin, due to the shape of Dublin Bay, surrounded by the Dublin mountains and Howth peninsula. Furthermore not only are the residential areas of Ringsend and Irishtown already experiencing poor air quality but will be further effected. So also will the northside areas of Clontarf, Fairview and Beaumont in the constituency I represent, and also the Howth/Sutton area.

Paragraph 8.2.5 – EIS. Indicate that levels of N.O 2 and PM 2.5 approach limit values, and that levels of PM 10 exceed limit values.

This shows that at the time of the EIS, pollution limits were reaching, or were over their limit values, even before the incinerator is built, and all the increased traffic volumes associated with the operation of the incinerator further impact on the air quality in the area.

Nanoparticle analysis. The Evidence on nanoparticle analysis delivered by Prof. Montanari and the potential of possible financial redress being sought from the city is also of concern for me in my position as Dublin City Councillor because of its impact on the finances of the city.

Impact on land value

I 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.

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 An Bord Pleanala 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. An Bord Pleanala 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.

How should the EPA address the air pollution risks from the proposed incinerator?

An Bord Pleanála's inspector noted that vehicle emissions from trucks travelling to the incinerator would increase air pollution concentrations in a situation where EU limits are already being breached. He recommended that a limit be placed on total intake of waste into the incinerator in order to limit truck movements and thereby emissions from trucks. An Bord Pleanála explicitly decided this matter should be dealt with by the EPA.

The EPA has an obligation to make the EIA process effective. If the EPA has any doubt in respect of its obligations to make sure that the EIA process is fully effective, I would refer you to the European Court of Justice judgement in Case C-210/02 *Wells*. This is not just a theoretical legal point. EIA is a process directed at making impacts on the environment including human health, explicit in advance of the decision whether or not to give consent for a development. Failure to do a proper assessment would make the EPA's decision procedurally illegal.

EU law sets ambient air pollution limits in order to protect human health. Note they are not scientific "safe levels", but legal limits which have to be met. A grant of consent for a development which would lead to breaches of EU limit values would be substantively illegal. The European Commission raised this issue in relation to a previous development consent for the Sonas casino proposal which in the end was not proceeded with.

The EPA is required by the EIA Directive to assess all air pollution impacts including the indirect and cumulative impacts of the development. This means it must consider the impact of air pollution, from the incinerator itself, from associated elements of the proposed overall development such as the truck traffic, and the cumulative impact of these additional pollution loads together on the existing pollution load in the affected areas. Furthermore, the EPA must address the impact on human health which is the relevant element of the environment in this instance. In making its decision, the EPA must implement the Precautionary principle. This means that the burden of proof is on the applicants to show no impact on human health rather than on Dublin residents to show that it would have an impact. The Precautionary principle is implemented in s. 40 of the Waste Management Act 1996 which requires that the Agency shall not grant a licence unless it is satisfied, *inter alia*, that the activity will not cause environmental pollution and will not breach any relevant standard or limit.

Monitoring

The license proposes quarterly monitoring of PM10 and PM2.5 by an unspecified method. It should require continuous monitoring of these parameters, and also continuous monitoring of PM0.1 (nanoparticles).

Monitoring should be on a health-based approach, identifying locations where humans are at most risk of total pollution exposure.

The applicants have identified rates of reduction of particulate pollution in the papers they have submitted to the hearing by Zürcher, Brunner and Burtscher and by Burtscher, Brunner, Zürcher, Kasper and Kasper. These papers detail the efficiency of different flue gas treatment technologies. I understand some of the parties to the hearing may be contesting elements of these papers. Nonetheless, they stand as the applicant's case for the efficiency of their technologies, and therefore provide a standard to which the applicant must be held. Therefore the waste licence, should the EPA decide to grant it, needs to be revised to provide for the following:

- emission limits for fine particles across the size spectrum, requiring the applicant to meet the emission rates described as achievable in the papers submitted by the applicant
- at a minimum, and subject to the Agency's own analysis revealing more effective technologies, the most effective flue gas treatment technologies studied in the papers submitted by the applicant are required to meet the BAT test
- monitoring using the monitoring techniques used for the studies in the papers submitted by the applicant

Anything less is not consistent with the EPA's obligations under s. 40 of the Waste Management Act.

Ends

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