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Evidence to EPA Oral Hearing for the Fingal Landfill Facility at Tooman/Nevitt

Waste Licence: Proposed Decision – Register No W0231-01

John Ahern, Managing Director, Indaver Ireland

March 2008

1.0 Introduction

1.1 Personal Qualifications

My name is John Ahern and I am the Managing Director of Indaver Ireland. I am making this objection as a member of the Confederation of European Waste-to-Energy Plants (CEWEP).

I received a degree in Chemical Engineering from University College Dublin in 1980. For the first 15 years of my career I worked in the LPG industry and for the last 11 years I have worked in the waste industry. During my time in the waste industry, I have led a team of professionals who have obtained planning permission for a hazardous waste transfer station, a hazardous waste solvent recovery facility, a non-hazardous waste incinerator and a hazardous waste incinerator. All of these facilities required an environmental impact statement ("EIS").

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1.2 CEWEP

The Confederation of European Waste-to-Energy Plants, or "CEWEP", was founded in 2002 and includes members with over 330 WTE plants across Europe. Our members treat over 45 million tonnes of waste annually with a total turnover of €5 billion and represent 90% of the waste–to-energy market in Europe.

CEWEP's mission is to secure, as part of Government policy, the banning of landfill of untreated combustible waste. This is consistent with the principles of the waste hierarchy, and more importantly, EU and Irish waste management policy.

In Ireland, CEWEP monitors policy and market developments in the Irish waste sector. In 2005, CEWEP observed and reported on the fact that landfill approvals were not all consistent with Regional Waste Management Plans. This has lead to a situation whereby the available landfill capacity exceeds the capacity required for residual waste disposal. Although landfill does have a role to play in an integrated waste management system, excess landfill prevents the development of alternative technologies higher up on the waste hierarchy.

2.0 Grounds for Objection

The grounds on which CEWEP objects to the grant by the Environmental Protection Agency ("EPA") of an operating licence to the proposed facility are set out in detail below. In summary, it is submitted that the proposal contravenes Irish and European waste policy, the facility is not needed (certainly not at the capacity proposed) and it would pose an unnecessary risk to the environment.

As such, the proposed facility does not constitute sustainable development and, if the EPA were to grant a licence, it would not fulfil its statutory mandate pursuant to section 52(2) of the Environmental Protection Agency Act 1992 (as amended) to:

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"have regard to the need. . . to promote sustainable and environmentally sound development."

and to ensure that:

". . .a proper balance is achieved between the need to protect the environment (and the cost of such protection) and the need for infra-structural, economic and social progress and development".

For these reasons, CEWEP urges the EPA to refuse to sanction additional unnecessary landfill capacity and not to grant a licence for this proposed facility.

3.0 Legal and Policy Background

3.1 European Legislation and Policy

Council Directive 99/31/EC on the Landfill of Waste (the "Landfill Directive") aims, as far as possible, to prevent or reduce risks to the public health and the harmful environmental effects caused by landfill disposal. The overall objective of the Landfill Directive is spelt out in Article 1(1) of the Directive which states:

"With a view to meeting the requirements of Directive 75/442/EEC, and in particular Articles 3 and 4 thereof, the aim of this Directive is, by way of stringent operational and technical requirements on the waste and landfills, to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment, in particular the pollution of surface water, groundwater, soil and air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from landfilling of waste, during the whole life-cycle of the landfill."

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To minimise these impacts, the Directive sets out targets for the diversion of biodegradable waste from landfill. In line with these targets, Member States must not consign to landfill any more than:

- 75% of the total amount (by weight) of biodegradable municipal waste produced in 1995 by 2006;
- 50% of the total amount (by weight) of biodegradable municipal waste produced in 1995 by 2009;
- 35% of the total amount (by weight) of biodegradable municipal waste produced in 1995 by 2016.

Ireland has obtained a 4-year derogation on these targets, with the first target set for 2010. I will discuss our progress towards these targets shortly.

It is clear that the Landfill Directive seeks to discourage the landfilling of waste and to reduce the amount of waste that is disposed of by landfill. It also seeks to encourage, instead, waste prevention, and other forms of waste recovery such as waste to energy facilities that are higher in the waste hierarchy than landfill.

It is important to point out that, pursuant to section 40(4)(bb) of the Waste Management Act 1996 (as inserted by section 35 of the Protection of the Environment Act 2003), the EPA cannot grant a waste licence unless it is satisfied that the activity, if it involves the landfill of waste, will comply with the Landfill Directive. For the reasons that are set out below, it is submitted that the grant of a

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waste licence in respect of the proposed facility would not be consistent with the Landfill Directive and, thus, it must be refused.

3.2 National Law

As pointed out above, under the Environmental Protection Agency Act, 1992 (as amended), the EPA must have regard inter alia to:

- the need for a high standard of environmental protection and the need to promote sustainable and environmentally sound development, processes or operations: and
- achieving a proper balance between the need to protect the environment and the need for infrastructural, economic and social progress and development (the *"need"* for the facility as outlined in the EIS).

I will demonstrate below that the proposed landfill capacity is not needed. In those circumstances, the required balance is not achieved and a high standard of environmental protection cannot be realised. It is therefore submitted that it would contravene the Environmental Protection Agency Act, 1992 to grant a waste licence in respect of the proposed facility.

Furthermore, in making decisions on waste licence applications, the EPA is obliged, pursuant to section 40(2)(iv) of the Waste Management Act 1996 (as amended by section 35 of the Protection of the Environment Act 2003) to have regard to:

> *"the policies and objectives of the Minister or the Government in relation to waste management for the time being extant"*

As explained in the next section, it is submitted that the development is not in line with current Irish waste policy.

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3.3 Irish Waste Policy

Landfill has a role to play in Ireland's waste management system. However, as outlined in the Department of the Environment's *Changing Our Ways* policy document, a heavy reliance on landfill has *"limited the development of integrated waste management approaches"*, and *"inhibited waste recovery and recycling options"*. It has also *"contributed in large measure to the problems now faced by local authorities who lack alternative disposal routes"*. This is largely because reliance on landfill, in many cases with uneconomic charging policies, creates an adverse economic environment for the development of alternative treatment technologies. This policy document set out targets to be achieved by 2014 for a reduction in the amount of household and biodegradable waste going to landfill.

Subsequent Government/Department policy documents including:

- Preventing and Recycling waste – Delivering Change (2002)
- Waste Management - Taking Stock and Moving Forward (2004)
- National Overview of Waste Management Plans (2004)
- National Strategy for Biodegradable Waste (2006)

These all recognise that, as a critical element of the national waste policy, there is a requirement to eliminate reliance on landfill, divert waste away from landfill, and develop prevention and minimisation initiatives together with recycling, biological treatment and thermal treatment facilities.

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In 2007, the Agreed Programme for Government set a more ambitious target for landfill diversion, aiming for less than 10% of waste to be consigned to landfill in the future. It also looks to restrict landfill capacity by ensuring that the landfills currently provided for under regional waste management plans should be the last to be constructed for a generation.

In addition to waste policy, other Irish policy documents and international reports reinforce the importance of diverting waste away from landfill. These include:

- **The Bioenergy Action Plan,** which seeks to maximise the recovery of useful materials and energy from residual waste, where thermal treatment with energy recovery is the preferred option, followed by mechanical biological treatment with energy recovery and mechanical biological treatment of fully stabilised residue to landfill as a last resort.
- **The National Climate Change Strategy,** which recognises that diverting waste from landfill will reduce greenhouse gas emissions from the waste sector. Looking forward, it seeks increased diversion of biodegradable waste from landfill and the maximum recovery of useful materials and energy from residual waste.
- **The Climate Change Mitigation Report** by the Intergovernmental Panel for Climate Change (IPCC) which focuses on alternative strategies to landfill for greenhouse gas avoidance, and concludes that emissions could be largely avoided by controlled aerobic composting and thermal processes.
- **The EPA 2020 vision**, which recognises that Ireland is over-reliant on landfilling waste and is a long way from meeting targets for diverting biodegradable waste from landfill. It highlights the requirement to meet these landfill diversion targets, and to develop the necessary key infrastructure for the management of waste and recovery of resources.
- **The National Development Plan 2007-2013**, which recognises that even with improving recycling rates, increasing waste generation is having an ongoing impact on landfill rates. It reinforces the strategy to thermally treat residual waste as a preferred option.
- **The National Waste Report 2006**, which warns that, due to increasing amounts of municipal waste going to landfill, Ireland may not meet its EU landfill diversion obligations. The report urges the full implementation of the National Strategy for Biodegradable Waste, and consideration of instruments such as an increase of the landfill levy and a landfill ban for biodegradable waste. It also notes that incineration is a possible diversion technology and is included in the National Strategy.

In January 2008, the EPA published a Discussion Paper on *"Hitting the Targets for Biodegradable Municipal Waste: Ten Options for Change"*. This acknowledges that compliance with the targets set in the Landfill Directive and the National Strategy for Biodegradable Waste is behind schedule and suggests ten possible public policy interventions to encourage changes in management practices. These include a ban on the landfill of untreated municipal waste and an increase in the landfill levy from the current E15 levy per tonne. The latter suggestion has been publicly endorsed by the Minister for the Environment, Heritage and Local Government ("the Minister").

It can, thus, be seen that Irish waste, energy, climate and planning policy demonstrates a commitment to dramatically reducing our reliance on landfill, in

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favour of a range of waste treatment options that better reflected the waste hierarchy and the need for environmental sustainability. Accordingly, it is clear that Irish Government policy (to which the EPA is statutorily obliged to have regard) dictates that development consent should not be granted for a landfill in circumstances where there is no clearly demonstrated need for the landfill, particularly having regard to the adverse effects on the environment of doing so.

4.0 Need for the Scheme

4.1 Excess Capacity and Waste Plans

CEWEP has been monitoring the development of landfill capacity in Ireland since 2006 and has found that the amount of approved landfill capacity currently exceeds the capacity requirement for residual waste. This is the result of landfill developments that were not in line with the targets and strategies set out in Regional Waste Management Plans or Irish waste policy. For example:

- the Ballynagran landfill in County Wicklow was approved for a capacity of 150,000 tpa, making available 50,000 tpa to the Dublin Region. This contravened the Wicklow Region's Waste Management Plan, which envisaged a capacity of just 25,000 tpa (or one sixth of the approved capacity).
- three landfill decisions for the Kildare Region which could[1] see the total capacity in Kildare increase to over 500,000 tpa. These were approved on the basis that waste would be accepted from the Dublin area, and have lead to a significant excess landfill capacity in Kildare.

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As a result of the approvals referred to above, excess landfill capacity is now available in Ireland, and more importantly (for this project) in the Greater Dublin Area and neighbouring regions.

The excess landfill capacity developed in the Kildare and North East regions has undermined the contents of the Dublin Region Waste Management Plan 2005-2010. This Plan envisaged a requirement for landfill capacity for Dublin's waste. However, a significant quantity of excess capacity has become available since that Plan was drawn up which has negatived this anticipated need. Therefore, even if the proposed landfill facility is considered to be in line with the Dublin Region Waste Management Plan 2005-2010, this is insufficient justification for the project (see Section 40 (4)(cc) of the Waste Management Act 1996 as amended by the Protection of the Environment Act 2003) given the excess capacity now arising in neighbouring regions.

To follow the Dublin Waste Management Plan and approve the proposed Fingal Landfill, despite excess landfill capacity being available in neighbouring regions, would contravene:

- the policies and objectives of the Minister or the Government, contrary to the Waste Management Act 1996 and the Protection of the Environment Act, 2003 which require a reduction on reliance on landfill to be for residual waste only and therefore,

[1] Approval for Usk is currently under revision

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- the Planning and Development Acts 2000-2006 and the Environmental Protection Agency Act 1992 as amended in assessing the balance between the need for the facility and the need to protect the environment.

It will also have an adverse effect on Ireland's ability to comply with the Landfill Directive.

It is also important to emphasise that excess landfill capacity inhibits the development of alternative treatment methods that would ensure that only residual waste is sent to landfill. Without alternative treatment methods, it will not be possible to meet landfill diversion targets or the objectives of national waste policy as outlined above. Indeed, An Bord Pleanála recently refused to grant permission for a landfill to serve the Cork region on precisely this basis.[2] The Board stated in its decision that it was:

> *"not satisfied that it has been demonstrated that there is a need for additional landfill capacity to serve the Cork Region or the adjoining waste management regions. The provision of such a facility where such a need has not been adequately demonstrated will be contrary to the National Waste Policy as set out in "Changing our Ways" (1998), "Waste Management: Taking Stock and Moving Forward" (2004) and the National Strategy for Biodegradable Waste (2004) all of which seek to reduce the amount of waste going to landfill in accordance with the principles of the Waste Management Hierarchy EU Landfill Directive where landfill disposal is the least favoured option. The proposed development in the region would create a disincentive to recycling and other more favoured waste options in the waste hierarchy and would, therefore, be contrary to National Waste Management strategies. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area."*

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4.2 National Excess Landfill Capacity

At present, it is estimated that the total capacity approved by the EPA amounts to approximately 4 million tonnes per annum compared with a total approved capacity by An Bord Pleanála of approximately 3.5 million tpa. However, less than 2 million tpa is currently required for residual waste according to EPA figures published in the *National Waste Report 2006*. Therefore, today Ireland already has over 1.5 million tonnes per annum of excess approved capacity.

4.3 Excess Capacity in the Dublin Region

The capacity of the proposed Fingal Landfill facility was decided upon in early 2006, prior to a number of key landfill capacity approvals in the Greater Dublin Area. It was the perceived lack of capacity at that time which it was contended justified the need for the facility in line with the Dublin Region Waste Management Plan 2005-2010. It is apparently currently planned to reduce the 500,000 tpa capacity to 300,000 tpa once the Poolbeg Incinerator is operational and this should be conditioned in any licence granted by EPA.

However, even that proposed reduced capacity cannot be justified as being needed. The capacity potentially available to Dublin can now be estimated at up to 683,000

[2] An Bord Pleanála decision reference no. PLO4.222987 of February 2008.

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tpa by 2008 and up to 654,500 available thereafter, or approximately the same capacity as that initially proposed for the Fingal Landfill facility.

This is shown in Table 1.0 below, which has been updated from the proposed Fingal Landfill EIS Table 1.4. This updated table reflects:

- A corrected capacity for the Meath incinerator as Indaver has received planning permission for a 200,000 tpa facility.
- a corrected capacity for the Knockharley landfill in Meath (which is currently under appeal for an extension on this capacity)[3].
- a revised capacity for the Kerdiffstown landfill facility.
- the approval of the Usk and Drehid landfills, amounting to a total of 300,000 tpa (although the approval of the Usk facility is currently under review).
- the inclusion of Rampere, Whitestown, Corranure and Scotch Corner landfills which are also in "neighbouring regions" (the North East) as specified in Table 1.4 in the Fingal Landfill EIS.

The Council took some of these additional capacities into account during an Oral Hearing held by An Bord Pleanála in October 2006. Subsequent to revisions to Table 1.4 of the EIS and an acknowledgement of some of the additional capacity in adjacent regions by the Council, an estimated available landfill capacity of 440,000 tpa was identified for Dublin. However, despite these revisions, the overall capacity of the proposed Fingal Landfill (at 600,000 tonnes) was not adjusted until this hearing was told that the capacity would be reduced to 300,000, excluding 150,000 tpa of ash from the Poolbeg incinerator however.

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Also of note is the decision of An Bord Pleanála to grant permission for the Poolbeg incinerator. At para. 5.3 of the Non Technical Summary of the EIS accompanying this application, under the heading *"Waste Types"*, it is stated that *"Bottom ash from non Hazardous Waste to Energy Plants"* would be accepted and the Council have accepted at the hearing that it intends to take 150,000 tpa non hazardous ash from Poolbeg (on a *"temporary storage"* basis) and wants 150,000 tonnes of extra capacity (over and above the 300,000 once Poolbeg is operational) to handle it. The planning permission for the Poolbeg facility which was granted on 19 November 2007[4] authorises the treatment of 600,000 tonnes of waste from the Dublin Region. Condition 13 of that permission stipulates that *"All mitigating measures proposed and recommended in the Environmental Statement and which are set out in summary in Chapter 21 of the Environmental Impact Statement shall be implemented as part of the development"*. In the Mitigating Measures chapter, at page 21-11 it is stated as follows: *"The proposed locations for the removal of Bottom Ash and FGT residue have been selected to minimise disruption to the local road network and provide safe and efficient exportation of the residue by boat."* In other words, all ash is to be exported and none of it can be sent to the proposed landfill at Nevitt. **Therefore the Nevitt landfill should not be given any capacity to deal with that ash - there is no need to do so.**

[3] To be verified – this remains under appeal

[4] Board reference 29.EF2022.

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Table 1.0 : Table 1.4 as presented in Fingal Landfill Project EIS with Updates

Facility Details			Potential Capacity (tonnes/annum)			Capacity Available to Dublin Region (in 2008) (as authorised in Planning)		Potential Capacity Available to Dublin Post-2008
Landfill	County	Operator	Total	Waste Type	Total Updated Figures as of October 2006	Tonnes / Annum	Tonnes / Annum Updated Figures as of October 2006	Tonnes/Annum Updated Figures as of October 2006
Carranstown WTE	Meath	Indaver	150,000	Municipal	200,000	0	0[5]	Operational [5]
Knockharley	Meath	Greenstar	150,000, reducing to 88,000 (2007)	Municipal	132,000 reducing to 88,000 (2007)[7]	0	0	30,000 [6, 8]
Ballynagran	Wicklow	Greenstar	150,000	Municipal	150,000	50,000	50,000	50,000
Kerdiffstown	Kildare	Neiphin	100,000	C/I	235,000 [9]	100,000	235,000	235,000
Usk[10]	Kildare	Greenstar	180,000	Residual	200,000	0	200,000[11]	200,000
Calf Field	Kildare	Thornton	0	Municipal	0	0	0	0
Drehid	Kildare	Bord na Mona	120,000	Municipal	120,000	0	60,000[11]	60,000

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[5] Not expected to be operational by 2008
[6] The Carranstown facility will free up landfill capacity that could service the Dublin Region. Thus landfills in the NE will become available to Dublin.
[7] Actual approved capacity is 132,000 and not 150,000 as noted in Table 1.4 in EIS
[8] Recently obtained permission to receive waste from Dublin
[9] Recently received Waste Licence for increased capacity
[10] Planning decision is currently under review with a decision due early April
[11] Approved since March 2006

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Facility Details			Potential Capacity (tonnes/annum)			Capacity Available to Dublin Region (in 2008) (as authorised in Planning)		Potential Capacity Available to Dublin Post-2008
Landfill	County	Operator	Total	Waste Type	Total Updated Figures as of October 2006	Tonnes / Annum	Tonnes / Annum Updated Figures as of October 2006	Tonnes/Annum Updated Figures as of October 2006
Whitestown	Wicklow	Brownfield Restoration Ireland	0	C/I, Municipal, C&D	0	0	0	0
Rampere[12]	Wicklow	Wicklow County Council	0	Municipal	50,000	0	50,000	0[13]
Whiteriver[14]	Louth	Louth County Council	0	Municipal	30,000	0	30,000[15]	40,000[6]
Corranure[14]	Cavan	Cavan County Council	0	Municipal	90,000	0	58,000[15]	0
Scotch Corner[14]	Louth	Monaghan County Council	0	Municipal	39,500	0	0[15]	39,500[6]
Subtotal			**0.85 M**		**1.2645 M**	**0.15 M**	**0.683 M**	**0.6545 M**

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[12] Not included in Table 1.4 in EIS but lies within GDA so included here
[13] Rampere to close est. 2011
[14] Not included in Table 1.4 in EIS but lies within "other neighbouring regions" as does Carranstown and Knockharley, so included here
[15] Excess capacity derived from approved capacity less waste deposited (based on 2005 figures)

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5.0 Impacts of Excess Capacity

5.1 Local Impacts

The Dublin Waste Management Plan and the EIS submitted in respect of the proposed landfill facility predicted a short term capacity deficit in the Dublin Region. It is on this basis that the need for the proposed landfill and its capacity were justified. However, the 1998 Government policy document *Waste Management - Changing Our Ways* clearly states that landfill should not be developed to resolve a short term capacity shortage. It highlights the importance of avoiding compromise of long term sustainability for short term gain. This is emphasised in Section 5.5.1 which states:

> *"There may be situations where local authorities face an imminent shortage of disposal capacity, with some situations so acute as to require action in advance of the outcome of the current strategic planning process. A commitment to the provision of new landfill facilities, in isolation from the broader issues which require to be addressed, should as far as possible be avoided.* ***Every effort should be made to develop interim solutions which do not prejudice the outcome of long-term strategic solutions.****"* (Emphasis added.)

The construction of additional landfill capacity to address a perceived short term capacity shortage would contravene that policy and would be unsustainable. Furthermore, as demonstrated above, there is sufficient landfill capacity in Ireland to cater for any short to medium term perceived deficit within the Greater Dublin Area. Either an extension can be developed to an existing landfill, or waste can be diverted to existing landfills with excess capacity available within the Greater Dublin Area or neighbouring regions as illustrated in Table 1.0. The proximity principle is not a bar to this. Indeed, at Section 5.5.2 of the *"Waste Management - Changing Our Ways"* document it states:

> *"Where immediate landfill capacity problems exist, action to extend the life of existing landfill facilities, rather than to provide new landfill sites, should be a priority. This can be facilitated by:*
>
> - *diverting as much waste as possible to composting and materials recovery;*
> - *diverting water treatment and sewage sludges for use in agriculture and forestry, as set out in the 1993 National Sludge Strategy Study; and*
> - ***seeking access to landfill capacity available in neighbouring local authority areas.***
>
> *Where a local authority determines that it has no option but to provide additional landfill capacity in advance of completion of the strategic planning process, consideration should first be given to the phased development of small scale cells, on or adjacent to existing facilities, rather than the acquisition and development of large green-field landfill sites for new landfill with a lengthy lifespan."* (Emphasis added.)

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5.2 National Impacts

The problem of excess landfill capacity is not a local or even a regional problem, but an ***issue of national importance***. It is crucial that planners and policy makers restrict landfill capacity on a national scale in order to prevent the negative consequences that come with a lack of alternative treatment technologies.

By contributing to the already considerable excess of landfill capacity in Ireland, the Nevitt development will have negative implications for Ireland's entire waste management system, including:

- Reducing the cost of landfill and so encouraging the use of landfill, which in turn:
    - inhibits the development of waste treatment options higher in the waste hierarchy
    - leads to the export or landfill of valuable materials
    - leads to an overall *increase* in the cost of waste management
- Adversely affecting Ireland's ability to meet biodegradable waste diversion targets as outlined in the EU Landfill Directive.
- Unnecessarily impacting on the environment, by increasing greenhouse gas and other emissions from the waste sector.

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Figures published by the EPA in the *National Waste Report 2006* indicate that excess landfill is already having these impacts. The report found that municipal waste consigned to landfill increased by 8% between 2005 and 2006, continuing an upward trend begun in 2004. The report notes that:

> *"There are several possible reasons put forward (in this report) for the increase. Decreasing landfill gate fees are a likely contributor."*

More importantly, as a result of this increase:

> *"...there is a growing risk that Ireland will not meet its first diversion-from-landfill target for biodegradable waste in 2010, with the potential financial penalty and loss of reputation and standing in the European Union that this will bring"*

Low cost landfill compromises the development of alternatives like composting, as confirmed in the EPA report, which states that declining landfill prices are:

> *"... reducing the economic incentive to collect source-separated materials for composting"*

This is clearly against European and Irish waste policy.

The EPA *National Waste Report 2006* and its recent discussion paper *Hitting the Targets for Biodegradable Municipal Waste* (January 2008) strongly urge immediate action to divert waste away from landfill and this has been endorsed by the Minister and indeed by An Bord Pleanála in its recent decision referred to above. Building more landfill capacity will only exacerbate the excess landfill situation and will act to counter any such action.

5.3 Residual Waste

CEWEP recognises that the proposed waste licence attempts to restrict the amount of biodegradable waste being consigned to the landfill, by stipulating in condition 8.1 that only *residual* household and commercial waste (348,000 tonnes per annum) can

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be accepted. However, CEWEP is concerned that condition 8.1 as drafted will not be effective to ensure this important objective is achieved.

In the licence, *residual waste* is defined as

> *"...waste that has been subjected to pre-treatment (including, inter alia, pre-segregation of recyclables and of the biodegradable fraction, mechanical-biological treatment, energy recovery) to extract, to the maximum practical and available extent having regard to BAT, the recyclable/reusable components and energy benefit, in order to contribute to the objectives of the Landfill Directive as set out in Article 1 of the Directive"*

It is submitted that, as drafted, condition 8 cannot be adequately monitored or enforced given the mixed application of pre-treatment across the collection region for this landfill. In the absence of mechanical-biological treatment (MBT) or energy recovery (the development of which CEWEP would argue is being inhibited by excess landfill capacity) the landfill will be entitled to rely merely on pre-segregation of recyclables and of the biodegradable fraction. This requires that households and commercial premises have access to brown bin collection services or other outlets for biodegradable waste. Should the landfill commence operation before the catchment area for the landfill has access to such outlets, the landfill could not be considered to be receiving residual waste. However, monitoring and enforcing this would be extremely difficult.

The draft licence requires (at Condition 8.1.2) that the licensee submit a proposal outlining how the pre-treatment condition will be met. However, this raises a number of important and unanswered questions. How in practice will this operate? What criteria will the EPA consider in reviewing such a proposal? Is there to be a geographical limit on how far from source waste might have to travel to avail of pre-treatment? What is MBT for the purposes of this hierarchy? How is *"to the maximum practical and available extent"* to be interpreted? Are BAT Guidance Notes being prepared? On what basis is MBT being effectively prioritised ahead of energy recovery when this does not form the basis of government policy?

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CEWEP consider that whilst the objective of ensuring that only residual wastes are landfilled at the proposed facility is laudable, condition 8 of the proposed decision, together with the definition of residual waste, needs substantial amendment to have the effect intended. A suggested revision to Condition 8 is attached for consideration at Annex 1.

It is important to stress that the points raised above in relation to condition 8 and the definition of residual waste are entirely without prejudice to the central argument made by CEWEP which is that there is no demonstrable need for additional landfill capacity for the Dublin region at all - in other words, there is no need to grant any permission for this facility and EPA should not do so. By not granting the licence there will be no need to be concerned about the definitions of residual waste and the conditions applying to such a facility.

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6.0 Additional Environmental Impacts

6.1 *Impacts of landfilling biodegradable waste*

The diversion of biodegradable waste is not just important for meeting EU diversion targets. Landfilling such waste impacts on public health and the environment. The National Biodegradable Strategy states that:

> *"Landfilling of biodegradable waste creates **negative impacts on the environment**, such as: production and release of landfill gas, a potential global warming gas, which is also odorous; generation of leachate which must be collected and treated; slow rate of degradation – management of landfill gas and leachate must continue for many years after a landfill is closed."*

These impacts would be greatly reduced by implementing waste management options higher in the Waste Hierarchy.

A 2006 review by the EPA[16] found that 58% of all public complaints in 2005 about IPPC licensed facilities related to waste facilities. The majority of these complaints were odour-related, principally regarding landfill or non-hazardous waste transfer stations. Almost 500 complaints were made in 2005 regarding odour from waste management facilities compared with less than half of this in 2004. This is illustrated in Figure 1.0.

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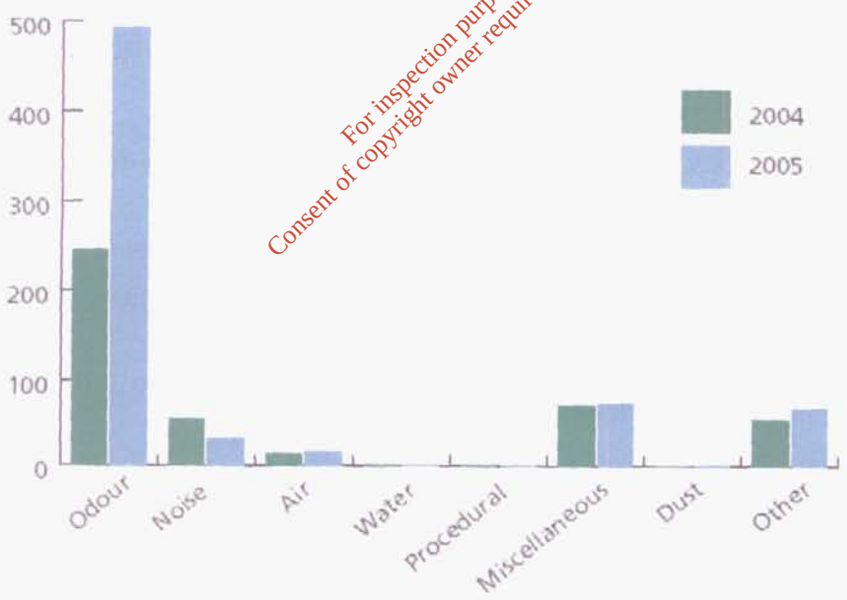

Figure 1.0 Complaints received by the EPA relating to waste facilities by category

Of the above, 16.5% of complaints received by the EPA regarding waste licensed facilities related to landfill odour. According the review:

> *"10 landfills were responsible for 90% of these complaints: it is of concern that these include the most **recently opened landfills**, which have engineered lined cells in place, and some older landfills containing engineered lined cells in recent years."*

[16] EPA Publication, *Focus on Environmental Enforcement*, 2006, available from www.epa.ie .

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This further demonstrates the importance of diverting biodegradable waste away from landfill according to the National Biodegradable Waste Strategy.

6.2 Transport Impacts

The proximity principle for the treatment of waste is often cited as a reason to develop regional landfill capacity. This principle is invoked in order to minimise the cost and environmental impact of waste transportation. However, it is submitted that in terms of the proximity principle there is no net transport, and thereby, environmental, gain from choosing to construct and operate a 500,000 tpa facility at Tooman/Nevitt when there is sufficient capacity already available in the Dublin area.

The proximity principle is assessed through a *"centre of gravity"* analysis, which looks at the total distances travelled to transfer waste from the source to the disposal site. CEWEP Ireland has conducted this analysis for the proposed Fingal Landfill by comparing the distances between existing/proposed baling stations in Dublin and the proposed Fingal landfill with the distances between the same baling stations in Dublin and existing landfills in the greater Dublin area (Wicklow, Kildare and Meath). This considers the *"centre of gravity"* as where waste is **going to**, which is most representative of how waste movements impact on traffic.

The assessment in the proposed Fingal Landfill EIS considers where waste is **coming from** (namely the city centre). However, in reality, much of Dublin waste departs for final disposal from baling stations. These are in fact located in South and West Dublin and are more proximate to landfills in Wicklow and Kildare that they would be to Fingal. For example Dun Laoghaire waste leaves from Dun Laoghaire and is more proximate to Ballynagran that it is to Tooman, Tallaght waste leaves from Tallaght and is more proximate to Usk, and so on (See Map 10 Dublin Regional Waste Management Plan).

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Tables 2.0 to 4.0 illustrate a typical scenario of waste movement based on baling stations and final destinations. The figures in the tables were derived by the following means:

- Distances were obtained from Microsoft Auto Route Planner software.
- The baling/transfer stations in Dublin were assigned as the points of departure of waste in the county.
- The distance was calculated between each baling station and the closest existing landfill using main roads and motorways.
- Then the distance was calculated from each baling station to the proposed facility at Tooman/Nevitt.
- The tonnage of waste handled at each baling station was based on available capacity at the baling stations and the landfill
- Please note that for calculation purposes a weight of 20 tonnes per load was assumed.

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Table 2.0 - Total kilometers travelled delivering waste from baling stations to landfill

Point of Departure -No Tooman	Destination	Tonnage Delivered by Dublin Authorities	Number of Loads	Kilometers	Load Kilometers
Ballyogan	Ballynagran	60,000	3,000	42.4	127,200
	Kerdiffstown	100,000	5,000	42.0	210,000
Oxygen Ballymount	Kerdiffstown	70,000	3,500	26.9	94,150
	Usk	70,000	3,500	44.7	156,450
SDCC Ballymount	Usk	70,000	3,500	44.7	156,450
	Drehid	20,000	1,000	52.3	52,300
Thorntons Ballyfermot	Usk	40,000	2,000	43.5	87,000
	Drehid	20,000	1,000	51.6	51,600
Kilshane Cross	Knockarley	30,000	1,500	43.8	65,700
	White River	20,000	1,000	64.4	64,400
Total		500,000			1,065,250

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Table 3.0 - Total kilometers traveled delivering waste from baling stations to proposed Fingal Landfill

Point of Departure - With Tooman	Destination	Tonnage Delivered by Dublin Authorities	Number of Loads	Kilometers	Load Kilometers
Ballyogan	Tooman	160,000	8,000	54.2	433,600
Oxygen Ballymount	Tooman	140,000	7,000	39.1	273,700
SDCC Ballymount	Tooman	90,000	4,500	39.1	175,950
Thorntons Ballyfermot	Tooman	60,000	3,000	38.4	115,200
Kilshane Cross	Tooman	50,000	2,500	25.9	64,750
Total		500,000			1,063,200

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Table 4.0 - Capacity for Dublin waste in the greater Dublin area.

Landfill	Capacity of Landfill	Tonnage Delivered by Dublin Authorities	% Landfill Capacity Used by Dublin	Capacity Remaining for Host County	Waste Region	Status For Own Needs
Ballynagran	150,000	60,000	40%	90,000	Wicklow	Excess Capacity Available
Kerdiffstown	235,000	170,000	72%	65,000	Kildare	Excess Capacity Available
Usk	200,000	180,000	90%	20,000	Kildare	Excess Capacity Available
Drehid	120,000	40,000	33%	80,000	Kildare	Excess Capacity Available
Knockarley	88,000	30,000	34%	58,000	North East	Excess Capacity Available
White River	92,000	20,000	22%	72,000	North East	Excess Capacity Available
Total	885,000	500,000	56%	385,000		

These show that the total amount of kilometers traveled (1,065,250) calculated in Table 2.0 is similar to the total amount of kilometers traveled (1,063,200) calculated in Table 3.0. Further, the figures in Table 4.0 show that there is excess landfill capacity in existing facilities in Kildare, Wicklow and Meath after each waste management region has met it's own needs. Therefore in terms of the proximity principle and transport impact there appears to be no net gain from choosing to construct and operate a 500,000 tpa (or even a 300,000 tpa) facility at Tooman/Nevitt when there is sufficient capacity already available in the Dublin area.

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It is also important to note that the three landfills in Kildare (Kerdiffstown, Usk [17] and Drehid) were awarded planning permission with a view to accepting waste from the Greater Dublin Area. As one can see from Table 4.0 there is the possibility of disposing of 390,000 tonnes of Dublin waste into the three existing Kildare landfills, while still serving Kildare's needs.

This demonstrates that there may be no net environmental benefit in terms of transport in constructing additional landfill at the proposed Tooman/Nevitt site.]

The site selection and treatment of *"centre of gravity"* for waste in the Nevitt EIS is deficient. The Non-Technical Summary states at page 6 that the site chosen is *"well positioned in close proximity to the main centre of waste generation"* ie the Dublin Region. However this is a different matter as to where the waste is coming from. The vast majority of the waste traveling from the Dublin Region will be coming from the Ballyogan, Ballymount and Ballyfermot transfer stations each of which are located on or close to the M50 close to west Dublin. The waste is not therefore traveling from the city centre. RPS (who prepared the EIS for the Poolbeg incinerator) found that the centre of waste gravity for the Dublin Region was close to Poolbeg. One or other EIS must be wrong. CEWEP contend that in fact, due to the nature of the waste transfer stations already existing as planned, the centre of gravity (taking into account the distance the waste must travel as well as where it is currently located) must mean that the centre of waste gravity is in fact in west Dublin for the

[17] Although planning permission for this facility is currently under review

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Dublin Region. Nevitt cannot in fact be in or close to the centre of gravity for waste in the Dublin Region and the EIS is deficient in that respect.

7.0 Environmental Impact Assessment

Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC (*"the EIA Directives"*) (as transposed into national law) require Member States to put in place a consent procedure that ensures that the environmental impact of projects is adequately assessed. The European Court of Justice has held that Articles 2, 3 and 8 of the EIA Directive *"unequivocally impose on national authorities responsible for granting consent an obligation to carry out an assessment of the effects of certain projects on the environment".* [18]

In this jurisdiction, the responsibility for carrying out an environmental impact assessment of a waste facility is shared between An Bord Pleanála and the EPA. It should be noted that the division of functions between the Board and the EPA is the subject of a complaint by the Commission against Ireland. On 17 October 2007, the European Commission decided unanimously to institute proceedings against Ireland under Article 226 of the EC Treaty arising from alleged deficiencies in the manner in which the EIA Directives had been transposed here. In a statement published at the time, the Commission stated that it considered:

> *" ..that because of weaknesses in Irish legislation splitting decision making between Irish planning authorities and Ireland's Environmental Protection Agency, there are risks that outcomes required by the [EIA Directive] will not always be achieved. When decisions are being taken on proposed incinerators or other industrial projects, for example, Irish rules do not guarantee that interactions such as those between pollution control measures and the landscape will be adequately assessed and taken into account. ....."* (emphasis added).

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CEWEP is unaware whether such proceedings have yet been instituted and strictly reserves its rights in the event that that the division of functions between the Board and the EPA is found not to comply with the EIA Directives, including its right to challenge any decision of the EPA on that ground.

The anticipated proceedings against Ireland underline the necessity for an integrated environment impact assessment to take place. It is submitted that the EPA has a responsibility to consider the adequacy of the EIS submitted even if this has also been considered by An Bord Pleanála. In that regard, it is submitted that the EIS submitted to accompany the application for a waste licence is seriously deficient in a number of respects. In particular, there has been a manifest failure to consider the need for the project and alternatives to it. Article 94 and Schedule 6 of the Planning and Development Regulations 2001 (which gives effect to the EIA Directives) stipulates that an EIS must contain:

> *"An outline of the main alternatives studied by the developer, and an indication of the main reasons for his or her choice, taking into account the effects on the environment."*

Consideration by a developer of alternatives to a project advances the precautionary principle which underpins EU environmental law and policy, because it helps to

[18] Commission -v- Germany, case C-431/92 [1995] ECR I-2189 at para 39-40.

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highlight alternatives, (whether in terms of the location or process to be adopted), which would have fewer and/or less significant adverse impacts on the environment. The importance of the consideration of alternatives is evident from the EPA Guidelines on Information to be Contained in Environmental Impact Statements (2002) which state that:

> *"The consideration of alternative . . . sites, layouts, processes, designs or strategies, is the single most effective means of avoiding environmental impacts. The acceptability and credibility of EIA findings can be significantly affected by the extent to which this issue is addressed . . . for many infrastructural projects the intrinsic suitability of the site is the principle amelioration strategy".*[19]

It is evident that inadequate consideration has been given in the EIS to alternatives for the provision of this landfill (on the basis that there is already sufficient landfill capacity to cope with Dublin's waste) and relative to alternative locations for any such facility, as well as consideration of its capacity. The alternatives section of the EIS fails to consider the need to have such a facility and the impact of not providing this landfill capacity has not been assessed. The most important alternative available, that of not constructing the facility, has not been considered or assessed at all. It is, therefore, clear that the EIS and the examination of alternatives is seriously deficient and it is submitted that the application for a licence should be refused on that basis.

It is further submitted that the EPA is obliged, when carrying out its part of the environment impact assessment, to have regard to any new information that has come to light which was not before An Bord Pleanála. In that regard, the EPA is required to take into consideration, when deciding to grant a licence and as part of its environmental impact assessment, the significant developments referred to above including the change in available waste infrastructure in the Dublin area (e.g. the granting of approval by An Bord Pleanála for permission for the Poolbeg incinerator).

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[19] Paragraph 2.4.3.

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8.0 Summary

CEWEP contends that the negative environmental and legal impacts of the proposed landfill facility, as outlined in this submission, outweigh the any potential benefits associated with constructing the landfill. This submission has demonstrated that the facility is not needed, contrary to the justification in the EIS provided for the project as required according to the EIS Directives, and the Planning and Development Acts 2000-2006. Therefore, it does not achieve the balance between the *need to protect the environment* and the *need for infra-structural, economic and social progress and development* as required in the Environmental Protection Agency Act 1992 and should not be given an operational licence.

EU and national waste policy require a movement away from landfill towards waste management options that are higher in the waste hierarchy. However, decisions made that were inconsistent with regional waste management plans have led to national landfill capacity exceeding national landfill requirements. This excess capacity fails to reduce Ireland's reliance on landfill, and will have a significant and negative impact on the development of alternatives such as recycling and recovery of waste.

As demonstrated, over 600,000 tpa can be considered available in the Greater Dublin Area and neighbouring regions to cater for the short, medium and long term requirements of Dublin. The proposed waste to energy facility at Poolbeg alone has capacity for 600,000 tpa to be treated in the waste to energy facility. Much of this capacity was not available or not taken into consideration at the design stage of the proposed landfill.

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Finally, the landfill cannot be justified in terms of the proximity principle and reduced environmental impacts from transport, as total distances travelled by waste will not necessarily be reduced. As such, the proposed facility is not consistent with sustainable development, and would not attain the:

> *"proper balance... between the need to protect the environment (and the cost of such protection) and the need for infra-structural, economic and social progress and development"*

referred to in Environmental Protection Agency Act, 1992. The adverse environmental impacts that are associated with the construction and operation of the facility cannot be justified in terms of a need for the landfill capacity. A decision to approve the facility would be incompatible with both European and National policy, would prejudice the outcome of longer-term strategic solutions and would contravene the EPA's obligation to grant permission only for sustainable development and to have regard to Government policy.

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