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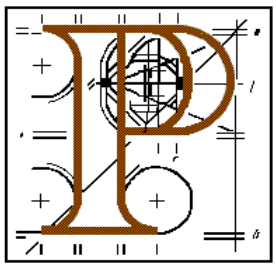

Inspector's Report

PL04.131196

DEVELOPMENT:- Waste Management Facility, comprising a waste to energy facility, waste transfer station and community recycling park and incorporating a main building, turbine building, office buildings, a sampling building, warehouse, storage tanks, security buildings, electricity sub-station, service yards, car parks, roads, landscaping and site works including sewage treatment plants to treat sanitary effluent from the facility at Ringaskiddy, Co. Cork

(The application is accompanied by an EIS)

PLANNING APPLICATION

Planning Authority: Cork County Council

Planning Authority Reg. No: S/01/6215

Applicant: Indaver (Ireland) Ltd

Application Type: Permission

Planning Authority Decision: Refuse, for one reason.

APPEAL

Appellants:

1. C.H.A.S.E. (Carrigaline)
2. C.H.A.S.E. (Cork – Bishopstown)
3. C.H.A.S.E. (Monkstown/Passage/Glenbrook/Rafeen Group)
4. Cork Environmental Alliance
5. East Cork for a Safe Environment
6. Carrigaline Community for a Safe Environment
7. Ringaskiddy and District Residents Association
8. Kinsale Environmental Watch
9. Cobh Action for Clean Air
10. Kate Corcoran and Susan Hackett
11. Ann Maria Russell
12. Dan Boyle TD
13. West Cork Green Party
14. An Taisce
15. The Hope Project
16. The Oysterhaven Centre
17. Crosshaven for a Safe Environment
18. Carrigaline Irish Farmers' Association
19. Growing Awareness Ltd
20. Irish Doctors Environmental Association
21. Dr G. Myrtle Allen and Darina Allen
22. Bertie Cronin
23. Michael and Natasha Harty
24. John and Joan Masson
25. Indaver (Ireland) Ltd.

Type of Appeal:	(A) Third Party - v – Decision (nos. 1- 24) (B) First Party - v – Decision (no. 25)
Observers:	25 no. (see report for listing)
DATE OF SITE INSPECTIONS:	19/8/03, 2/10/03, and 3/10/03.
SENIOR INSPECTOR:	Philip Jones

INTRODUCTION

This is an appeal by 24 no. third party groups and individuals in respect of the decision made by Cork County Council to refuse permission for this development, wherein they support the decision but argue that the refusal should have been made on further grounds, in addition to the single reason for refusal cited by the Council, and a first party appeal against that refusal decision. The third party appeals are supported by observations from 25 no. groups and individuals.

The appeal was the subject of a lengthy and extremely detailed oral hearing, held in Cork between September 22nd 2003 and October 10th 2003. A summary of the proceedings of the oral hearing is included in Appendix 1 to this report, with a number of written submissions presented at the hearing being included in Appendix 2. Appendix 2 also provides a full set of the Closing Statements on the appeal, as submitted by all of the parties present at that time.

The full proceedings of the oral hearing are contained in a package of CD-ROM's, which is appended to this report. Relevant extracts from the Cork County Development Plan, other local policies and Regional and National policies relevant to the development, together with copies of a number of International Conventions and Guidelines (WHO) that were adverted to in some detail during the processing of the application, are included in Appendix 3 to this report. [It is considered appropriate to provide these documents in full, with in some cases the relevant passages highlighted, rather than including extensive quotations from the documents in the body of the text of the report.]

INSPECTION

I inspected this site and its environs on 19th August 2003, and also during the evenings and early mornings of the oral hearing on October 2nd and 3rd 2003. During these inspections, I took a number of photographs of the site and its environs. These are included, together with some location and site key maps, in Appendix 4 to this report.

[Note that there are a large number of further photographs of the site, including some aerial photographs and photomontages in the submitted Environmental Impact Statement submitted with the application, and also attached to a number of the submissions made by third parties and observers during the course of the oral hearing.]

SITE LOCATION AND DESCRIPTION

The site, which has a stated area of 12.3 hectares (30.5 acres), is located at the extreme eastern end of the peninsula of Ringaskiddy, in the southern part of Lower Cork Harbour, and approximately 12 km from Cork City centre. This peninsula is effectively an elevated promontory, with generally steep sides (particularly on the northern (site) side, on the crest of which is a Martello Tower). There are extensive views in all directions from the top of this hill.

Immediately to the **east** of the site is a foreshore/beach (known locally as Gobby Beach), which is generally at a lower level than the site, and the south-eastern corner of the site is separated from the beach by cliffs. Gobby Beach faces the West Channel of Cork Harbour, separating the mainland from Spike Island, to the north-east, which is currently used as a prison. The beach is accessed from the public road via a small public car park (known locally as Paddy's Point), from which there is a public footpath to the foreshore.

To the **south** of the site, at a higher level on the top of the hill, is open farmland, containing a Martello Tower and associated moat. This is accessed by a footpath from the west, and also appears to be accessed through the subject site (I was unable to ascend the full length of this footpath during my inspections, due to the amount of undergrowth on the site). Beyond this farmland, on the lower ground below the hill, and adjoining another inlet of the Harbour, is a large industrial complex (Pfizer Loughbeg).

To the **north** of the site is a poorly surfaced public road, the LP2545, which connects with the village of Ringaskiddy and the N28 National Route from Cork City. Beyond this road is open land, partly used for the storage of motor vehicles, partly for a warehouse complex, and partly a construction site for the National Maritime College of Ireland (see planning history section, below). The road fronts the site and then turns northwards towards Haulbowline Island, in the Harbour, which is connected to the mainland via a succession of two bridges, with Rocky Island in between the bridges. Haulbowline Island contains the Headquarters of the Irish Naval Service, including Dock facilities, and also the unused and apparently semi-derelict Irish Steel / Irish ISPAT Complex (part of which is also on Rocky Island). Beyond this, at a distance of approx. 2 km, is clearly visible the town of Cobh.

To the **west** of the site is open ground, including a large field with a dwellinghouse within it, and beyond this is the housing and limited retail/commercial properties of Ringaskiddy village. To the north of the village is the Deep Water Port, which includes the Ferryport for passenger ferries to the UK and France, as well as commercial berths.

The site encompasses and surrounds a separate property, which is known as the Hammond Lane Foundry complex. This appears to be a scrap steel and vehicle dismantling and materials recovery facility. It involves a number of large industrial plant type machinery and buildings, some lower service buildings, and a very large mound or "slag heap" of waste materials from its processes, some of which appears to have encroached onto the subject site. The Hammond Lane facility is accessed from the public road via a large industrial gate.

The site itself is generally rectangular, with the exception of the central inlier of the Hammond Lane facility. Along the front (close to the northern boundary) the site is low lying, virtually at road level, with some evidence of water lodging (the ground was very soft when I inspected it in August after many weeks of dry and sunny weather). Beyond this lower level, the site extends sharply upwards towards the top

of the hill, with a distinct escarpment. The lower parts of the site are generally in grass, with the upper parts in rough scrub woodland.

The **general area** is a mixture of rural farmland and industrial/residential development. There are a number of very large industrial complexes in and around the village of Ringaskiddy, and an adjoining village, Shanbally, also on the N28. The N28 itself, which begins in Ringaskiddy village at the entry to the Ferryport, runs generally westwards, with a number of roundabouts at various points, including at the entrances of some of the large industrial plants, and also at Shanbally village (where it immediately adjoins a public house, shop, Church and primary school). It then turns northwards at a large roundabout (known locally as the Shannonpark roundabout), which also takes the road from the developing Cork Satellite town of Carrigaline, to run towards the southern suburbs of Cork City. It by-passes Douglas village and then links in with the Southern Ring Road around Cork, and the Link Road to the Jack Lynch Tunnel. Within Ringaskiddy, the N28 is generally a wide single carriageway road, but north of Shannonpark roundabout, along Carr's Hill, it is quite narrow and rural in character.

There are a number of more minor roads off the N28, some of which serve the industrial plants and others the farmsteads in the vicinity. There is a significant local road, the R610, coming off the N28 at Rafeen Bridge, which leads to the towns of Monkstown and Passage West and (via a ferry) to Cobh. This is a narrow winding rural road. The town of Carrigaline is accessed not only from the N28 beyond Shannonpark roundabout, but also by a regional route, the R613, which runs generally south-westwards from Ringaskiddy. This road runs past some of the industrial plants, and the smaller hamlet of Currabinny, and approaches Carrigaline from the east. With the exception of some local widening near industrial plants, this road is also a narrow and winding rural road, with a significant level of one-off ribbon development of housing.

PROPOSED DEVELOPMENT

The proposed development is set out in the published notices. The details are given in submitted drawings, in the responses to the planning application form, and in the outline specification. Essentially, the development involves the construction of a mixed hazardous and industrial non-hazardous waste management facility, and many be conceptually split into three sections, as follows:-

A. Community Recycling Park

This is proposed in the western portion of the site, and involves the construction of a paved area, laid out in a roughly oval shape, with vehicular access from the public road through the waste transfer station/storage facility. Off this paved area are proposed a number of separate waste receptacles, intended to provide a facility for the general public to bring waste for recycling. It is stated that this facility would be similar to the conventional "bring-bank" or "civic amenity" site, but would accept a wider range of recyclable material. The items deposited in the recycling park would subsequently be sent off-site to "suitable recycling facilities". It is proposed to

landscape this recycling park, with berms and trees/shrubs. A 2 metre high palisade fence is proposed around the external perimeters of the site, and a chainlink fence where it borders the Hammond Lane facility. It is indicated, on site layout drawing no. C05/APP/92/100, that the route of the N28 realignment (see below) will run along the western perimeter of the site.

B. Waste Transfer Station and Storage Facility

This waste transfer station and storage facility is proposed along the site frontage, directly in front of (to the north of) the Hammond Lane complex. It would comprise a warehouse (109 metres long, with a height of 11 metres over a raised ground level of 2.65 metres), and a storage compound for industrial hazardous and non-hazardous waste. Industrial waste would be stored at the transfer station, and would be then prepared either for shipment overseas, or for incineration on-site. Liquids for incineration on site would be bulked up and transferred to the proposed incinerator.

It is stated that there would be covered storage for 1800 drums of waste at any one time (although the drawings show space for 1960 drums). The bulk liquid waste tanks would have a capacity of 100 cubic metres, and there would be space for the parking of 10 to 12 trucks (holding solid wastes) on the hardstanding. The transfer station incorporates drum washing and tanker loading/unloading facilities, and sampling/testing buildings. A single vehicular access, which is shared with the community recycling park, is proposed to the public road, located to the west of the existing Hammond Lane entrance. A 2 metre high palisade fence is proposed along the site frontage, and along its eastern perimeter, with a chainlink fence separating the rear from the Hammond Lane facility (with the exception of a short stretch of "fire wall"). Apart from a low berm with planting along the frontage, it is not proposed to landscape this aspect of the development.

Between the waste transfer station/storage facility and the recycling park is proposed an administration/office building, with associated car parking. This is a two storied flat-roofed cladded building, with additional plant storey on top.

C. Waste Incinerator and Associated Energy Production Facility

The third, and major, part of the development is the proposed waste incinerator and association energy production facility. This is proposed in the eastern part of the site, and effectively running for the full depth of the site, from road edge to the top of the hill. It is proposed to excavate large parts of the sloping hillside in order to provide the main incinerator building, which would be accessed from the front (north) via a direct vehicular access from the public road. There would also be a second (emergency) vehicular access further to the east). The main building is proposed to be 35 metres in height, over a ground floor level of c. 5.77 metres O.D., with underground bunker and storage areas which would involve excavation up to 5 metres below ground level. In addition, a stack is proposed which is stated would be 55 metres in height, over a ground floor level of c. 5.77 metres O.D.

The proposed **incinerator building** is effectively L-shaped, with the long section running parallel to the public road, though at a higher level, and 55 metres back from the road. It would be 190 metres long, with 45 metres depth. The bunker area and reception hall would project behind the western section of the building, forming the end to the "L" shape, and enclosing a service yard to the rear.

Due to the slope of the site, and the proposed excavation and ground modelling, it is proposed that the vehicular access would run through the site, from the entrance to the west, with a climbing truck access around the front of the building, then along its eastern side, up a sloping roadway, and thence into either the service yard (for discharge of liquid wastes) behind (to the south of) the main building, or by a further access route to the rear of this to the reception hall where other wastes would be discharged by gravity into the waste bunker (see Drg. No. C05/APP/92/100). The EIS (Chapter 3) contains fuller details of the description of the process, including a process flow diagram.

To the south-east of the main incinerator building is proposed the **energy facility** (turbine building with turbines and condensers), which is effectively a stand alone building between the two access routes for waste trucks. It would be 35 metres long and 30 metres deep, with a parapet height of 24 metres above a ground floor level of 5.77 O.D. Between this building and the reception hall is a further bulk tank storage area, (described on the submitted drawings as a "tank farm" with a number of tanks for holding waste solvents etc. At the eastern extremity on the upper level of the site are smaller buildings for gas storage and nitrogen generator (as the process involves the use of natural gas for heating/starting).

It should be noted that the main process building, and the other associated buildings in this part of the site, have all been designed, and sized, to cater not only for the proposed mixed hazardous and non-hazardous waste facility, of 100,000 tonnes capacity, which is the subject of the present planning application, but also for an additional incinerator and process stream for a further 100,000 tonnes of municipal waste. It is stated that this latter incinerator will be the subject of a future planning application. The present proposal is described in the EIS as Phase 1, with the municipal waste facility being described as phase 2.

The proposed incinerator facility, as described in the EIS, involves two separate items – firstly a fluidised bed incinerator, with an expected working temperature of c. 850 degrees, and a capacity for 60,000 tonnes of solid and other wastes, and secondly a post combustion chamber (mainly for liquid wastes), with an expected working temperature of c. 1100 degrees and a capacity for c. 40,000 tonnes. In addition, there are flue gas cleaning systems and a stack sized to take two flues, from Phases 1 and 2.

This part of the site is proposed to be extensively landscaped, with berms and dense tree planting. (The evidence given by M. Hallinan during the oral hearing, in response to questions from the parties, sets out the rationale for the landscaping approach).

It is indicated that the energy that is to be produced by the proposed development, after allowance for on-site demand, would provide 8MW to the national grid. The connection to the national grid is not included with the present application, and there

were differing interpretations, during the course of the oral hearing, of the term "subject of a separate application", that was used by the applicants on the planning application form, as to whether this related solely to permission from the Commission for Electricity Generation to discharge electricity to the grid, or also to a future application for planning permission for transmission lines to link the development to the existing network (there are pylons nearby on the top of the hill).

It is stated that natural gas would be used to start-up the incineration process following a shutdown period and to boost the incineration temperature if the temperature within the furnace/boiler falls below a minimum value. There is an existing gas main running through the site, which is proposed to be relocated clear of the new buildings.

According to the planning application form, the total gross floorspace proposed would be 23,169 sq. metres, with the process building accounting for 17,430 sq. metres of this total.

External Appearance

The waste storage warehouse and administration buildings are proposed to be cladded, in single coloured proprietary cladding (in the case of the warehouse a dark green colour, and in the case of the administration building a colour to be agreed with the Council). The proposed turbine building is proposed to be finished in a blue cladding, as is the reception hall to the rear of the main process building. All of these buildings are relatively conventional in appearance and form.

The main process building, by contrast, is proposed to be curvilinear in shape, with inclined planes and sloping roof, which seeks to mimic the shape of the hill behind it. However, due to its height, the building at its crest will rise considerably above the top level of the hill behind it, and hence would be visible from areas to the south of Ringaskiddy (Crosshaven, Currabinny etc.) as it breaks the skyline of the hill.

The proposed finishes for this building involve the use of different panels of cladding, using five colours (light and dark green, mid and dark blue and silver), in addition to louvered aluminium ventilation vents . It is stated on the drawings and in the application documentation that these panels will be provided in a random mix, but the coloured elevations (see Drg no. C05/APP/92/112) appear to indicate a colour shift in the pattern, with predominantly blue colours towards the western end, and predominantly green and silver towards the eastern end. On top of this cladding on the south, eastern and western elevations, it is proposed to have a translucent cladding, through which the mix of colours would be seen, but muted from a distance.

The basis for this approach is outlined in general terms in the EIS (section 5.8). It is argued that this "disruptive pattern" is most suitable to minimise the impact of the very large process building. (The basis for this theory was the subject of questions at the oral hearing to Mr D. Deasy – the Council's Architect – who indicated that he was not aware of any building using this approach anywhere else in the Cork Harbour area, and of Mr Frank O'Mahony, the applicants' architect, who indicated that the approach had been used on Merck Sharpe and Dohme in Co. Tipperary and in Blarney business park).

Services

It is proposed to discharge **surface water** from the community recycling park directly to the Council's combined sewer on the public road at the front of the site In the case of the waste transfer station and the waste to energy facility, storm water is proposed to be discharged, following storage in storm/firewater retention tanks and testing (for compliance with whatever limits are set in the EPA license), into the public combined sewer on the public road. It is indicated that any contaminated surface water would be either incinerated or sent off site for "alternative treatment".

It is proposed to discharge **sewage** effluent from the staff on site (a total employment of 57 is envisaged) into a package sewage treatment plant on site, and then discharged into the Council's combined sewer on the public road. Effluent from the processes, including wastes from drum washing and run off from unloading areas is proposed to be collected in sumps and tested, and if within EPA license limits, to be discharged to the public sewer. If outside these limits, it is indicated that the effluent would be incinerated or taken off site for "alternative treatment".

It is indicated that **water** supply would be taken from the Council mains in the public road, for both potable and firewater purposes. In the case of process water, it is indicated that this would partly come from the Council watermains and partly by the recycling of storm water drained from the roof areas of the main building. It is indicated that total water demand is likely to be, on average, 16 cubic metres per hour.

ENVIRONMENTAL IMPACT STATEMENT

The planning application was accompanied by an Environmental Impact Statement, in two volumes, which sets out the applicants' estimation of the significant impacts of the proposed development on the environment. It should be noted that this EIS relates to both the Phase 1 development (which is the subject of this planning application) and also the Phase 2 development of the municipal solid waste incinerator (which it is stated would be the subject of a potential future application). In addition, the EIS looks at issues relating to the risk of environmental pollution from the activity, such as air emissions, which are matters that the Board is precluding from considering in dealing with the application (see the "Legal Provisions" section of this report, below).

The Structure of the EIS is as follows:-

1. Non-Technical Summary
2. Project Background
3. Site and Scheme Description
4. Planning and Policy Context
5. Landscape and Visual Impact
6. Roads and Traffic
7. Construction Activities
8. Noise and Vibration
9. Air Quality/Emissions

10. Flora and Fauna
11. Soils, Geology, Surface Water and Groundwater
12. Material Assets
13. Archaeology and Cultural Heritage
14. Impact on Human Beings
15. Climate
16. Other Impacts and Interactions
17. Summary of Mitigation Measures and Residual Impacts

It is stated that the EIS was prepared in accordance with the draft "Guidelines on the Information to be contained in Environmental Impact Statements" and with "Advice Notes on Current Practice in the Preparation of Environmental Impact Statements", published by the EPA in 1995.

It is submitted by the applicants' consultants that the proposed development would not, overall, have significant adverse impacts, following mitigation measures as outlined by them, and subject to compliance with the conditions of the future Waste License.

In the case of **visual impact**, it is predicted by the applicants' consultants (see chapter 5) that there would be residual significant impacts, following mitigation, on views from the public road adjacent to the site, from the West Channel of Cork Harbour to the east, and from the southern side of Haulbowline island, and moderate impacts from Monkstown and Rushbrooke, from Ringaskiddy village and from the Martello Tower. (Note that this analysis is based on a number of assumptions, including that the proposed landscaping will reach the heights predicted within the time periods predicted, as shown on the photomontages, and also on the ameliorative effect of the proposed external appearance of the main process building. These issues are considered further in the Assessment later in this report.)

In terms of **traffic impact**, it is predicted by the applicants' consultants that there would be percentage increases in traffic during the construction phase of the development (expressed in numbers of vehicles) during the morning peak period (6 am to 7 am) of +81% to +553% (over expected levels in 2004 without the development) on the N28 at Rafeen Bridge and as one approaches Ringaskiddy village itself, and +37% on the N28 north of the Shannonpark roundabout (see Table 6.24). In terms of the operational traffic, the corresponding percentage increases during the morning peak period, assumed to be 7 45 am to 8.45 am, would be +2% to +7% over expected levels in 2004 without the development, but would be +7% to +20% during the 1 p.m. to 2 p.m. period, and +3% - +15% during the 4.30 p.m. to 5. 30 p.m. evening peak. However, it is argued that all of the roadways in the vicinity of the development will have sufficient capacity to cope with the projected volume, except the N28 north of the Shannonpark roundabout. In addition, it is accepted that a number of the junctions and roundabouts will experience increased congestion, over existing congested conditions, as a result of the development, leading to increased queues and delays, particularly on the Shanbally roundabout. It is concluded that the amelioration of these problems will be facilitated by the proposed NRA Ringaskiddy Bypass Scheme. (Note that the assumptions used, and some of the survey data provided for baseline purposes, was questioned during the course of the oral hearing,

and the conclusions reached under traffic impact were seriously undermined. These issues are considered further in the Assessment later in this report.)

In terms of **construction impacts**, it is predicated by the applicants' consultants that, with "proper construction management", there will not be any negative impacts arising from the proposed development, following mitigation. (Note that this analysis is based on a number of assumptions, and data that is not included within the body of the EIS, but was later partly provided in evidence at the oral hearing, and partly not provided at all. These issues are considered further in the Assessment later in this report).

In terms of **noise impacts**, it is predicted by the applicants' consultants that there would be "some small impact" on nearby residential properties during the construction phase, but that this would not be excessively intrusive in the light of the existing background levels, including from industrial sites in the vicinity. In relation to the operational phase, it is predicted that noise levels would not exceed EPA recommendations of 55 dB(A) $_{leqT}$ and 45 dB(A) $_{leqT}$ for daytime and night-time periods respectively.

In terms of **air pollution/air quality**, it is predicted by the applicants' consultants, based on air quality and air dispersion modelling, that all substances that would be emitted from the development would be at levels that would be below relevant air quality standards and guidelines (see Chapter 9). It is argued in the EIS that the worst case scenario has been taken, based on various assumptions regarding operation and meteorological conditions. However, there was extensive criticism of the baseline meteorological data used by the applicants by third parties, both in written submissions and during the oral hearing, and these were not significantly refuted by the applicants. This issue is further considered in the Assessment. (Note that the issue of air quality and air pollution, apart from the issue of the adequacy of the EIS, is a matter that falls to be determined in the Waste License application, by the EPA, as outlined in the "Legal Provisions" section of this report, below.)

In terms of **impact on flora and fauna**, it is predicted by the applicants' consultants that there would not be any significant adverse impacts arising from the construction of the proposed development, other than some reduction in the use of the site by birds and a cessation of use of the site by foxes, due to the loss of habitats where buildings are proposed. However, it is contended that the existing badger sett on the site would not be disturbed, and could be protected to prevent cessation of use of the undeveloped portions of the site by the existing badgers. No bat survey was undertaken, nor was there any survey of any flora and fauna outside the boundaries of the site. (This issue was the subject of considerable comment and criticism during the course of the oral hearing – see Mr G. Morgan's evidence and questions for Mr Morgan in Appendices 1 and 2 to this report).

In terms of the **impact on geology/soils/surface water and groundwater,** it is predicted by the applicants' consultants that, with the implementation of construction management, and mitigation measures such as the provision of bunded storage and stormwater retention tanks, there would not be any significant negative impacts on geology, soils, surface water and hydrogeology. (Note that this chapter of the EIS is

based on a detailed soil and hydrogeological investigation carried out for the applicants at the time of purchase of the subject site, but the data from this investigation is not given in the EIS. This lack of data was criticised by parties during the course of the oral hearing, particularly in relation to evidence given by a noted geologist. It was stated, by the applicants, that the investigation report, by Messrs K.T. Cullen & Co. Ltd, was included in the Waste License Application to the EPA. The matter is covered further in the Assessment later in this report)

The chapter on **material assets** deals only with services and inputs/outputs of materials from the development, including the electricity generation envisaged.

In relation to **archaeology and the cultural heritage**, it is predicted by the applicants' consultants that there would be no impact on the Martello Tower, as no work is proposed within its designated zone of Archaeological Potential, indicated on the relevant Sites and Monuments Record. Archaeological monitoring is recommended as mitigation, and it is suggested that the remains of the pathway, which is shown on Ordnance Survey maps as running from the shoreline to the Tower through the site of the proposed development, might be uncovered during site works. It is stated that the development will have an impact on some views of the Martello Tower, particularly from the public road and parking area beside the shoreline.

The chapter on **impact on human beings** deals with socio-economic issues. It also deals with dioxins (which were also dealt with in more detail in chapter 9 under air quality/air pollution), where it reviews a number of published studies on the issue. It is predicted by the applicants' consultants that there would not be, after mitigation, any significant impacts on residential amenity arising from the development, but that there will be some impact on recreational amenity of the site and its environs due to the change in character to industrial. It is predicted that the impact on tourism would be negligible, and that the impact on agriculture will not be significant, as the emissions of dioxins would be "approx. one-tenth of the EU directive limit". It is contended that there may be a perception of a risk to human health or contamination of farm produce (see para 14.8.6), but that there is "no evidence of food companies or outlets boycotting food produce from locations close to modern incineration plants". It is contended that the impact on property values would be expected to be minor and that prices would be expected to recover once the plant is operational. (Note that no data is given to support this contention, other than a small quotation from a UK report on the public acceptability of incineration. The full report was later provided by the applicants in their response to written appeals and is on file.)

In relation to **impacts on climate**, the applicants' consultants predict that there will not be any significant impacts on global climate, nor on Ireland's commitments under the Kyoto Protocol, from the development, and that, with the energy recovery for the two phases of the overall development, there may be a net, if slight, improvement over landfilling. However, this chapter does not break down the conclusions clearly as between Phase 1 (the subject of the present application) and Phase 2 (which is not). (Note that the analysis depends on a number of assumptions, including that the electricity proposed to be generated would otherwise come from fossil fuel burning power stations, and that the CO_2 emissions from the waste proposed to be incinerated would otherwise be landfilled (in the case of non-hazardous waste) and hence produce methane.)

Chapter 16 of the EIS (which is a little over one page in length) is stated to deal with other impact headings and **interactions**. In relation to other impacts, it is stated that, where these have not been included, the "authors have concluded that no potential for impact exists". In relation to interactions, there is a descriptive text, but no analysis, matrix table or other weighting carried out.

PLANNING AUTHORITY REPORTS

There were a number of internal technical reports on the application, and also some external submissions from Prescribed Bodies. The file indicates that there was also a very large number of submissions/objections from interested parties, the great bulk of which (over 20,000 in number) were objections against the proposed development.

The following internal reports are on file:-

Heritage Officer (S. Casey) (4/12/01) This report dealt only with Chapter 10 of the E.I.S. 5 conditions recommended. Noted that the ecological assessment in the E.I.S. dealt only with the impact of construction of the plan, and not of emissions from the plant on ecology.

Sanitary Services (M. Lavelle)(5/12/01) No objection, subject to conditions. Water demand could be accommodated from mains, subject to conditions. Domestic sewage to be treated in on-site package plant and discharged to council sewer. Details of disposal of process effluent, scrubbing liquors (s. 3.8 of E.I.S.) not clear.

Archaeological Officer (C. Power)(6/12/01) Conditions, including stipulation that the development take into account the visual impact of any structures on the Martello Tower, and that the development should not obscure the outline of the monument.

Environmental Officer (D. Daly) (10/12/01) This report outlined the legal position re exclusion of environmental pollution issues (see Legal Provisions section of this report, below). Considered that the development was in conformity with EC Directive 75/442/EC (on self-sufficiency of waste disposal), with National Hazardous Waste Management Plan and with National Waste Policy. No conflict seen with 1996 County Development Plan. A later report from this section (K. Walshe 14/5/03) indicated that there were sufficient quantities of hazardous and non-hazardous industrial/trade wastes and sludges to justify the construction of a plant with a capacity of 100,000 tonnes per annum.

Roads (D. Ryan)(7/1/02) No objection in principle, subject to mitigation measures referred to in E.I.S. being imposed, and subject to financial contributions towards upgrading of N28.

Architect (D. Deasy)(24/5/02) No objection in principle, subject to condition re external treatment and landscaping details to be agreed prior to commencement.

Co. Planning Officer (B. Kelleher) – various versions are on file. The final report, dated 15/5/03, outlined the content of the application, and dealt with the legal position, the Development Plan policy and planning issues generally, the impact on amenities, traffic issues, infrastructure, community levy and financial contributions. He summarised and commented on the submissions and observations that had been received. He concluded that the proposal would materially contravene the Development Plan, but recommended that it be put to the elected Council. He prepared a schedule of conditions to be used in the event that the members decided to grant permission.

The following reports are on file from external consultees:-

Duchas (archaeology) (17/12/01) Archaeological monitoring conditions.

Duchas (nature conservation) (10/1/02) Noted that no designated areas or protected plants are affected. No bat survey had been undertaken, and this was recommended, due to the presence of suitable foraging and possibly roosting habitats. Conditions recommended.

Duchas (architectural) (22/4/02) Submitted E.I.S. fails to include information on the effect of the development on the "architectural heritage", as required by 1999 EIA (Amendment) Regulations. However, considered that there might be little effect on the architectural heritage in the locality. (Note: further correspondence on file indicated that this issue had been resolved.)

Duchas (underwater archaeology)(5/6/02) No objection.

Health and Safety Authority (7/3/02, received 8/3/02) This report indicated that the Authority did not advise against the granting of planning permission in the context of Major Accident Hazards. It noted that the applicants had made a number of commitments, which the HSA felt should be considered as planning conditions in the grant by the Council. The HSA indicated that, if the development were to be constructed, a consultation distance would be set around the site, as indicated on a map that was attached to the letter.

PLANNING AUTHORITY'S DECISION

The Planning Authority decided to refuse permission for the development, for the following reason:-

> *"The proposed development would contravene materially a development objective indicated in the County Development Plan 2003, I-15 which specifies the lands as being suitable for large stand alone industry with suitable provision for landscaping and access points and provision for buffer planting, minimum 15 metre wide open space buffer to the Martello Tower and its associated pedestrian access, for use solely for Industrial purposes"*

This decision was made following a meeting of the Council, as the application would have involved a material contravention of the County Development Plan, held on 26th

May 2003, where 13 members voted in favour of a grant of permission and 30 members voted against a grant of permission, with two abstentions. (A copy of the minutes of that meeting are on file.)

LEGAL PROVISIONS

The legal provisions relating to the treatment of this application and appeal were a significant issue during the course of the oral hearing. For this reason, in my report on the oral hearing proceedings, in Appendix 1 to this report, I have generally kept in, as closely to verbatim as possible, the legal submissions made by the parties on the matter, and my responses thereto, for the information of the Board.

The legal position, as I understand it, is that this planning application was submitted to the Planning Authority on 13th November 2001. Hence, under the provisions of the 2000 Planning and Development Act's transitional provisions (Section 265(4)), the application and appeal falls to be determined under the 1963 – 1999 Acts.

On this basis, and as the proposed development comprises an activity which requires a waste licence under Part V of the Waste Management Act, 1996, the Board is precluded, by reason of Section 54 of the Waste Management Act 1996, from considering the appeal, or any submissions or observations made to the Board in relation to the appeal, in so far as the appeal, or the submissions or observations, relates or relate to the risk of environmental pollution from the activity. All of the parties were formally informed of this fact by letter issued by the Board prior to the oral hearing. Section 5(1) of the Waste Management Act, defines the term "environmental pollution" as follows:-

> *" 'environmental pollution' means, in relation to waste, the holding, transport, recovery or disposal of waste in a manner which would, to a significant degree, endanger public health or harm the environment and in particular-*
>
> *(a) create a risk to waters, the atmosphere, land, soil, plants or animals'*
> *(b) create a nuisance through noise, odours or litter, or,*
> *(c) adversely affect the countryside or places of special interest.*

There was an extensive debate, not surprisingly in view of the subject matter of the proposed development, of why the Board was unwilling to permit discussion of matters relating to public health and damage to the environment from the proposed incinerator. This mainly revolved around the issue of airborne emissions, including dioxins and other substances, and their effect on human beings and the environment. As noted in the oral hearing proceedings, I took careful note of the various legal submissions made, both verbal and written. (There is a very detailed typed submission from CHASE Carrigaline (Third Party Group 1), which sets out the essential basis of this view, and includes the texts of the various statutory provisions involved. This is included in Appendix 2 as item Group 1 - A).

A number of the parties sought that the oral hearing be adjourned (and in one case "abandoned") until the Board obtained a legal ruling from the High Court/European Court, by way of case stated, or, until the matter had been judicially decided under

cases which were currently underway, on the basis that the Irish legislation had not adequately transposed the requirements of the EIA Directives, and as the division of responsibilities between the Planning Authority/Board and the EPA prevented a proper Environmental Impact Assessment being carried out in accordance with those Directives.

Other legal submissions questioned whether the 2000 Planning and Development Act, in Article 257 (where it amended the Waste Management Act to permit a Planning Authority or the Board to refuse permission on environmental grounds) was subject to the transitional provisions of Section 265 in terms of the date of the making of the planning application. It was further submitted that, even if the Board were precluded from considering the risk of environmental pollution from the activity, the term "activity" meant the operation of the development that would be the subject of the waste licence from the EPA under the Waste Management Act, and hence dealt only with routine emissions from the proposed development. On this basis, and since the Board has a responsibility under the Seveso II Directive to deal with matters relating to the control of major accident hazards involving dangerous substances, it was appropriate that the Board should consider the issue of the impact of the development on health and the environment in the event of a major accident or incident at the proposed development.

In order to ensure orderly running of the oral hearing, I contacted (by telephone) the offices of An Bord Pleanala on a number of occasions during the course of the hearing (generally in the evenings or in the early mornings before the opening the day's proceedings), and spoke to the Chief Officer and the Planning Officer. On the basis of those telephone contacts, I was informed that the Board would not alter its position, as had been outlined in its written notifications to the parties, in relation to consideration of matters relating to the risk of environmental pollution from the activity, but would consider matters relating to major accident hazard. On the latter point, it was agreed that a module of one day (10th October 2003) would be set aside to provide an opportunity to hear evidence from the HSA concerning its advice to the County Council of 7th March 2002, and to permit parties to ask questions of the HSA on that matter. I further indicated that, as the Board has to have regard to national policy on waste management, I would hear submissions on this policy (although the applicants' planning witness, Dr Meehan, argued against this as being inappropriate at an oral hearing).

The Board's view on the "separation of jurisdictions" issue was the subject of a large number of complaints from participants at the hearing, some of whom stated that their continued participation was without prejudice to any legal proceedings that they might take in due course. A number of parties asked for written evidence of the Board's decision in response to the legal submissions made on the first day of the hearing. Following further telephone contact, I was instructed that this would not be given to the parties. Some third party representatives, P. Sweetman and G. Casey, complained that, when they went to the Board's offices, they also were refused such written confirmation. Mr. J. Noonan, solicitor, representing CHASE Carrigaline, asked for the Board's legal advice supporting its refusal to accept issues relating to the risk of environmental pollution from the activity, which I refused him on the basis that any legal advice given to the Board would, in the normal course, be privileged.

In the light of these legal provisions, and following the instructions given to me at the hearing, I will not be dealing, in my assessment, nor in my summary of the issues raised by the parties, with matters relating to the risk of environmental pollution from the activity.

PLANNING HISTORY

There is no record of any previous application having been made in respect of the subject site. However, a number of planning decisions in relation to adjoining sites were raised in the appeal, and summary details of these are set out below.

A. Site Immediately to the West of the Subject Site.

This site, which is a rectangularly shaped field of 4.8 acres immediately to the west of the subject site, surrounding a dwellinghouse known as Rock Farm, was the subject of an application (Ref. **S/01/1806**) in April 2001 for a development of 5 no. two storey and 10 no. single storey industrial service buildings, access roads and services by Howard Holdings Plc. The application was refused by Cork County Council on 31st May, for three reasons, relating to conflict with zoning (part of the site was unzoned), to prematurity pending the determination by the Planning/Road Authority of a road layout for the area, and to serious injury to the amenities and depreciation of the value of residential property in the vicinity.

(Note – it was established, during questioning of the County Planning Officer, Mr. B. Kelleher, at the oral hearing that the second reason for refusal, relating to prematurity, related to the fact that the site could be affected by an NRA proposal to realign the N28, which was likely to involve a new road coming directly through part of the site.)

B Hammond Lane site adjacent to, and surrounded by, the Subject Site

This property, which effectively is surrounded on three sides by the subject site, is the site of the Hammond Lane Foundry/Metal Recovery facility. This development obtained planning permission under reg. ref. **S/770/90** on 21st June 1990 as a "fragmentation plant", subject to 26 conditions, granted to Hammond Lane Metal Co. Ltd. (It would appear that there was a first party appeal against condition 11 of that permission 13 – Bord ref. **83390**)

C. National Maritime College of Ireland site (directly opposite the Subject Site, to the North)

This site, which is directly opposite the subject site, on the northern side of the public road, is the site for the development of the National Maritime College of Ireland, the foundation stone for which was laid by Minister Noel Dempsey on Friday 26th September, while the oral hearing was in progress.

Outline permission was granted for the construction of this National Maritime College to Cork Institute of Technology/Irish Naval Service under file ref. **S/00/5570** on 30/10/2001. The Council's decided to grant permission, subject to conditions, but that decision was the subject of an appeal by the Port of Cork (**Bord Ref.**

PL04.125809), which was later withdrawn. Condition no. 1 of the Council's grant of outline permission specified that the college was not to include buildings for residential use.

A subsequent application for approval was submitted by Focus Education (NMC) Ltd under file reg. ref. **S/02/1867**, and was granted on 13the August 2002, subject to 27 conditions. The developer was the successful bidder for a design, build, finance and operate agreement for the development under a PPP (Public-Private Partnership) under the aegis of the Department of Education and Science, which is the owner of the site. It is indicated on the file that the development would involve 750 students (full-time equivalent), together with 70 staff, of which 250 would be Naval Service personnel.

(Note:- It was established, during questioning of the County Planning Officer, Mr. B. Kelleher, at the oral hearing (10/10/03 – Track OO), that the condition preventing residential accommodation in the outline permission had been included because of the potential for problems in relation to industrial uses on adjoining sites, as well as potential difficulties for the subject (Indaver) application, which, though it had not been submitted at the time of the outline permission, was known by the Council officials to be imminent.)

[Details of these planning files, which were obtained from the Planning Authority, are included in separate folders, labelled by file reference number and description, in the box files containing the drawings for the present application.]

APPEAL SUBMISSIONS

1st PARTY APPEAL

The first party appeal is against the Council's single reason for refusal. The grounds of appeal may be summarised as follows:-

- The proposed development is classified as an industrial use, and is proposed to be located in an area zoned for industrial use. It is contended that the proposed site is zoned for large stand-alone industry, and is particularly appropriate for the proposed use, which constitutes such large industry.

- The proposed development is consistent with the proper planning and (sustainable) development of County Cork.

- The proposed development is consistent with the objectives of the Cork County Development Plan 2003 for industrial development and waste management, and is not in material contravention of the Plan.

- The Council's Chief Planning Officer had no difficulty with the proposed development other than its alleged non-compliance with an objective of the County Development Plan.

- The proposed development will promote the objectives of the national waste management policy framework and strategies and of the National Hazardous Waste Management Plan.

- The proposed development is in compliance with all relevant EU and national policies.

- The proposed development is of strategic and national importance, as Ireland is currently dependent on the facilities of other EU countries for the disposal of hazardous waste and none of the EU countries that currently accept Irish hazardous waste is obliged to do so.

The grounds of appeal also include comments on the draft conditions proposed by the County Planning Officer and in particular, in relation to proposed conditions 3 and 4, requests that there be no limitation on the importation of hazardous waste from Northern Ireland, and that the development not be limited to a 100,000 tonnage per annum capacity limit, but by a calorific value limit. However, as both of these requests were withdrawn by the applicants during the course of the oral hearing (see Appendix 1), they are no longer before the Board for determination.

There are also some comments on the financial contribution conditions recommended by the Planning Officer. This aspect of the written appeal was not expanded upon by the applicants during the course of the hearing, nor was the response from the County Planning Officer on this aspect at the appeal (see Appendix 2 – PA – 2b) questioned nor refuted by the applicants at the hearing. It is therefore not clear what the status of this aspect of the appeal now is.

[The submission includes a number of appendices, including a copy of the judgement in *McEvoy & Smith v Meath County Council*, and a copy of a UK consultation paper on the Management Plan for Imports and Exports of Waste. There is also a partial photocopy of the NRA's N28 Route Options for Ringaskiddy, a complete colour copy of which is appended to the evidence submission given by Mrs J. Masson at the oral hearing (see Appendix 2 – Group 24 – 2).]

3rd PARTY APPEALS

As noted on the title page, there were third party appeals from 24 different groups and individuals. All of these support the Planning Authority's refusal decision, but argue that the planning application should also have been refused for other reasons. The third parties state that they are cognisant of the fact that the application is before the Board for a de-novo consideration, and outline their grounds of appeal on that basis.

Given the very large number of parties and the level of detail in their submissions, I propose to outline, in brief, the points raised generally, without attributing any particular point to any particular third party. This outline also includes the points made by the third party groups in response to the first party appeal. This is for reasons of brevity, to assist the Board, and not on any grounds of inequality of treatment as between the first party and any third party. The full texts of the third party submissions are on file nos. 1, 2 & 5 and run to over 400 pages.

Many of the grounds of appeal from third parties relate to the implications of the development on human and animal health and the environment, in terms of potential pollution from the activity. In addition, a very large amount of the accompanying documentation includes copies of research documents and reports on the health effects of dioxins and similar pollutants that come from incineration plants internationally. For the reasons outlined above under "Legal Provisions", I have not summarised these points.

(Note that the numbering of the third party groups used for the appeal in this report, and used for the order of appearances during the oral hearing, is different from the numbering used in file no. 1, which was merely based on date of arrival/filing in the Board's offices of the submissions. Accordingly, all references to Third Party Group Nos. 1, 2, 3, - 24 etc., is based on the order used on the title page of this report and during the oral hearing, and not that in file no. 1)

The main points raised by the third parties in their grounds of appeal may be summarised as follows:-

Need (Principle)

- The proposed development is not of strategic or national importance as there is no crisis in toxic waste disposal at present, and as there is no indication of any imminent or widespread ban on the acceptance of Ireland's hazardous waste by EU countries currently accepting such waste for disposal. The crisis that does exist is in landfill capacity, and the proposal would increase demand for such

capacity, due to need to dispose of ash residues (30% by weight of the 100,000 tonnes proposed to be treated by the development), which cannot be disposed of by any other means.

- Building the proposed development could precipitate other EU countries making a decision not to accept importation of Irish hazardous waste for disposal in the future – under the Basle Convention, the lack of treatment capacity in a member state is a reason not to prevent the import of waste from that state.

- There is insufficient hazardous waste from within the State to feed the proposed development, as the amounts of such waste are being decreased, in line with national policy, under IPC license requirements, especially in the pharmaceutical and chemical industries. To maintain commercial viability, the applicants would then have to import waste, and hence contradict their "self-sufficiency" justification argument for the proposed development.

- The proposed development will hinder and undermine waste minimisation and recovery of wastes where they are generated (i.e. at plant level), and would therefore be contrary to the proximity principle, as for commercial reasons, contracts with waste suppliers will dictate fixed amounts of waste tonnage to be supplied, and hence operate as a financial disincentive on supplying industries to re-use, re-cycle and minimise their waste amounts in the future.

- The proposed development would inhibit the development of safer and more economic alternative methods of waste disposal, currently under examination (some of which are outlined in "Changing Our Ways" national policy document).

- The proposed development would render Toxic Use Reduction techniques (which have been successfully applied in the US and Canada) less likely to succeed, based on published research (which research is appended to the third party submissions).

- The proposed development would create "a market for waste" in Ireland, (as this is the commercial basis for the proposal), where no such market currently exists, and the very existence of this market would put back the drive to develop waste minimisation, prevention, re-use and recycling in the industrial sector in particular, by providing a "quick-fix".

Need (Location in Cork/Ringaskiddy)

- Lack of centrality. The site location is on a cul de sac at the end of a peninsula in the extreme south of Ireland, with no rail access. This is not a central location for Ireland's national hazardous waste incinerator.

- No site selection process, using objective criteria, including transport routes, tonnes of waste per km travelled etc, was undertaken on a national basis by the

applicants, nor analysis by location on a national basis, of waste arisings that are exported for disposal, rather than simply generated.

- The claimed justification for the location of the development in Cork is based on flawed data, and incorrect assumptions. Over half of the hazardous waste generated in Cork is treated on-site, and only half of the remainder, which is exported, is exported for disposal (the remainder being exported for recovery).

- Existing industries in the area generating hazardous waste already treat most of this waste in-house (5 incinerators already in place, with Pfizers (the largest producer) currently proposing their own in-house facility, which would amount to 33% of the potential local market for the proposed development).

- None of the local industries have indicated any intention of using the proposed development, nor have made submissions in favour of the planning application.

Economic Dis-benefits

- The proposed development will inhibit waste recovery, and would distort and interfere with the operation of the EU waste recovery market, since industries would tend to send some of their wastes, that are currently send abroad for recovery, to the proposed development for disposal by incineration.

- The proposed development would produce no economic benefit to the area, and would stifle the recycling and reclamation industries that would otherwise provide far more jobs than the 57 jobs proposed for the overall development (Phases 1 and 2).

- The development would make the task of attracting new industries to the Ringaskiddy and Harbour area (which is both local and national policy) more difficult, as few new clean industries would wish to be located beside a toxic waste incinerator. This would apply whether or not there would be any deleterious effect, as perception is an important factor in industrial location.

- The development could injuriously affect and put at risk adjoining health-care industry, which requires clean air for its processes, and would inhibit its future expansion in Ringaskiddy.

- It is submitted (based on an EU commissioned report by Coopers and Lybrand) that incinerators are the most costly method of waste treatment and of least economic value. It is also stated that the energy produced from waste-to-energy plants is merely a secondary benefit, and is an extremely inefficient, and expensive, means of generating electricity.

Incompatible Land-Use/Improper Use of a Scarce Land Resource for Port Development

- The site is one of only three sites suitable for large-scale stand-alone industry in Ringaskiddy, which is the main location designated for the development of, and

relocation of, the functions of the Port of Cork. It is submitted that the development of the site for an incinerator, as proposed, would constitute an incompatible land use, and the loss of a potential valuable site by a use that does not require to be port-located (unless it is for the importation of waste by sea, which is specifically denied by the applicants).

- It is submitted that the proposed development involves "an improper use" of a port-related site that should be reserved for such use. CASP notes that available land in Ringaskiddy for port-related use is becoming scarce and should generally be reserved for port-related or complementary uses (ref. p. 125), which the proposed development is not. Hence the proposed development would limit future employment prospects for the area.

Conflict with National Policy (National Hazardous Waste Management Plan)

- The proposed development would conflict with the National Hazardous Waste Management Plan, which provides for thermal treatment and hazardous landfill capacity together (priority no. 7), and not separately. In the absence of a landfill for hazardous ash residue that would be generated by the incineration of both hazardous and non-hazardous waste, it is submitted that the development is contrary to the Plan and also contrary to the proper planning and sustainable development of the area. (It is noted that Cork County Council does not propose to accept hazardous waste into its proposed Bottlehill landfill facility.)

- It is submitted that the development is <u>premature</u> pending provision of a hazardous landfill facility in Ireland (as otherwise ash from the development would have to be exported, contradicting the applicants' justification argument regarding the alleged unwillingness of other EU countries to accept the importation of waste for disposal from Ireland).

Conflict with County Development Plan

- The proposed development would conflict, in a material way, with the provisions of the County Development Plan, as it constitutes "contract incineration", which is specifically excluded in zoning objective ZON 3-13, and as it is not a large-scale stand alone port-related industry, contrary to specific objective I – 15. It is also contrary to many of other objectives and policies of the Plan.

Conflict with Cork County Waste Management Plan

- The proposed non-hazardous incinerator is in conflict with the Waste Management Plan, which does not envisage mass-burn incineration as a means of disposal of industrial wastes.

- The proposed community recycling park is in conflict with the Waste Management Plan, which states that such facilities should be located <u>within</u> residential communities, for ease of access and to encourage frequent use.

- The proposed development is in conflict with the Sludge Management Plan, which does not envisage incineration as the appropriate method of dealing with sludges.

Conflict with Cork Area Strategic Plan (CASP)

- The proposed development would conflict, in a number of material ways, with the provisions of CASP, which indicates that the lower Harbour area should be developed for tourism, recreational and amenity use, and clean industry, based on its natural assets.

- CASP states that industrial lands in Ringaskiddy are to be reserved for port-related and complementary uses, which the proposed development is not.

Granting Permission Would Undermine the Democratic Process

- It is submitted that, even though An Bord Pleanala has the legal power to over-rule the Development Plan, to do so would undermine democracy, as 20,000 people had objected to the development, and the elected Council, by a very significant majority (30 votes to 13) had refused the material contravention.

- Granting permission would undermine the legitimacy of the County Development Plan process, which had been adopted only 6 weeks before the planning application was determined by the Council. The chronology of events indicate that the new Plan was adopted in full knowledge of the proposal, and did not make provision for it. The Plan is a "contract" between the Council and the people, and granting permission would breach this contract.

- It is submitted that any over-riding by An Bord Pleanala of the democratically-adopted County Development Plan, which permits thermal treatment of waste on an in-house industry basis, but excludes contract incineration, should only be done on "grounds of significant public need". It is submitted that no such public need exists in this case.

Breaches of International Conventions

- The proposed development would breach Ireland's international commitments, under the Kyoto Protocol on Climate Change, in that it would increase the amount of greenhouse gas emissions (however well monitored and controlled by EPA licensing), by releasing an additional 100,000 tonnes of CO_2, as well as other substances. The EIS statistics on this issue are not credible and are full of false and unreliable assumptions.

- The development would breach Ireland's international commitments under the Stockholm Convention, which seeks to phase out and eliminate the release of persistent organic pollutants. Even if the development met EPA license conditions, it would still be emitting such pollutants.

Breach of Government Agreement / Government Policy

- It is submitted that the proposed development would breach a long-standing Government commitment, formally agreed following controversies in Ringaskiddy in the 1970's arising from asbestos dumping in the area, that there would be no waste disposal site in the area in the future. It is noted that the IDA, also a party to that Agreement, refused to sell any land to the applicants. It is submitted that, as An Bord Pleanala has a duty to have regard to Government policy, it should honour this Government Commitment.

Inadequate Infrastructure - Roads

- The existing road network in the area is already overloaded, with major traffic congestion on the approach roads and junctions at peak times. This is recognised by the NRA, which has proposals, at an early stage of development, to provide a By-Pass on the N28 of Ringaskiddy and Shanbally villages, and the Shannonpark roundabout. The proposed development would exacerbate this already unsatisfactory situation, and cause traffic hazard and obstruction of road users.

- It is submitted that, in order to avoid existing and predicted congestion on the N28, traffic (including HGV's carrying hazardous waste), would use the R610 and R613, hence running through residential areas such as Rochestown, Monkstown and Passage West, where the road infrastructure is unsuitable to take such traffic, and where there would be further potential for accidents.

- It is submitted that the applicants' proposed mitigation measure, of starting construction work at 7 a.m., is not an acceptable solution, as it would cause noise nuisance and disturbance to residential areas in Shanbally and Ringaskiddy villages.

- The proposed development would be premature until the road safety deficiencies have been rectified by the completion of the N28 NRA Scheme. It is submitted that construction traffic, in particular, would cause major traffic congestion and that therefore it was not appropriate that the development should be permitted to commence, if granted, until the By-Pass was already fully in place, so that it could be used by such traffic.

Inadequate Infrastructure – Sewerage/Surface Water.

- It is submitted that the proposal to discharge surface water from the development into the existing combined public sewer would lead to overloading of this sewer and hence backing up of sewage into residential properties in Ringaskiddy. The Council has long term plans to provide proper sewers in Ringaskiddy. The development is therefore premature by reference to this existing deficiency in the provision of sewerage facilities in the area.

Site Issues (Climate)

- The site is located within the bowl of a steep sided valley, where wind conditions and meteorological conditions are not the same as elsewhere in the Cork area, with more frequent temperature inversions in winter, and wind turbulence in other seasons, due to the presence of hills and open water.

Site Issues (Ownership/Title/Right of Way)

- The applicants' title to the subject site is questioned, on the basis that the vendors (Irish ISPAT) had been in breach of contract with the Irish Government and therefore may not be in a legal position to sell the site to the applicants.

- It is submitted that the proposed development would involve interference with the maintenance of an existing and legally established public right-of-way running diagonally through the site from the Martello Tower to the foreshore, which has not been extinguished by the Local Authority under the necessary statutory procedures.

Site Issues (Site Selection)

- There is inadequate evidence of any rational approach to site selection by the applicants, as they mistakenly limited their selection process to areas zoned for industrial use, with which the proposed development is in material conflict.

- The site selection process carried out by the applicants was seriously flawed and non-objective. The applicants have not put forward objective data on which to assess the validity of the selection process. Assertions unsupported by evidence are made about the source, availability and quantities of waste arisings in the area and these assertions underpin the application.

Site Issues (Geology/Hydrogeology)

- There are serious geological constraints on the site, with bedrock near the surface and the potential for contaminants entering ground water and discharging into the harbour. There is no data presented on the possibility of fissures, nor how ground water / sea water infiltration is to be dealt with in the construction of the development.

Public Safety and Emergency Planning

- It is submitted that the proposed development would be too close to stationary populations that would be at risk in the event of an accident or emergency, and in particular the National Maritime College, local schools and the Spike Island prison. This would be in breach of WHO Guidelines.

- There was no adequate risk assessment included in the EIS.

- It is submitted that the location of the subject site is unsuitable as it is at the end of a cul-de-sac, with one road in or out, and this would make evacuation, in the

event of a fire or other major accident problematical. The local Emergency Plan makes no provision for the evacuation of the residents, nor the occupants of Spike Island prison or the personnel of the Naval Base (raising an issue of national security).

- The emergency infrastructure in the area is inadequate, with no fire station in Ringaskiddy and only a part-time station in Carrigaline. The Chief Fire Officers Association has publicly indicated a serious lack of capacity and equipment to deal with potential incidents in the area already.

- It is submitted that any favourable decision on the proposed development would be premature pending a full analysis of major accident hazards from the proposed development. This is particularly necessary given the proximity of other Seveso II sites in the immediate vicinity of the subject site.

- It is submitted that the site is contaminated, and that no proposals have been made by the applicants to deal with this issue.

Impacts of the Development on Visual Amenity/Heritage

- It is submitted that the proposed incinerator building and stack, because of its huge bulk, scale and appearance, its height above the adjoining hill, and its siting at a sensitive location at the entrance to the Harbour, would be visually obtrusive and have an unacceptably detrimental impact on the visual amenities of the area.

- The proposed development would impinge on views of the Martello Tower from the north, including Cobh and the local road/foreshore, and be obtrusive when seen from scenic routes designated in the County Development Plan, thereby breaching the County Plan policy to preserve views from such routes.

- The proposed development would interfere with the visual setting of the Martello Tower, a protected structure in the County Development Plan, and a registered Archaeological Monument. (It is noted that the ground level of the Martello Tower is at 43 m O.D, while the main process building is at 40.8 m O.D. and the stack is at 60.7 m O.D.)

Impacts of the Development on Residential Amenity and Diminution of Property Values

- It is submitted that the development, both in construction stage and in operation, will lead to noise nuisance to the local residential area and disturbance from the additional traffic and construction activity. It is noted that the applicants' proposal to commence construction work at 7 am, in order to allegedly avoid traffic congestion, would be unacceptable on grounds of nuisance.

- It is submitted that there is a recent precedent for a refusal (Howard Holdings) by the Council, on grounds of residential amenity, in relation to an industrial development on the adjoining site that was much smaller in scale, and with much less harmful effects, than the proposed development.

- The proposed development, because of its nature and function, and its location in close proximity to high density housing development at Ringaskiddy, Cobh, Monkstown and other settlements, would be injurious to residential amenity, and would be likely to depreciate the value of residential property. (It is submitted that, whether real or imagined, if people have a perception of dangers to health and safety from the development, this will cause depreciation of property values, since perception is vital to property valuation and sales of residential property.)

Impact of the Development on Recreational Amenity

- The proposed development would adversely impact on local recreational amenities, such as the Gobby Beach and foreshore and the Martello Tower, which are extensively used by local residents and day trippers for walks and fishing. These amenities are one of the few remaining for the village of Ringaskiddy.

Impact of the Development on Tourism

- The proposed development, because of its nature, and the perception on the part of tourists of its nature, would damage tourism in the area, particularly the tourism industry in Kinsale and East Cork, and the cruise liner business and visitor centre in Cobh.

- It is submitted that the development, because of its location at the ferry entry point to the Cork area and South of Ireland, would damage tourism, by giving an unfavourable first impression.

- It is submitted that the proposed development would cause damage to Ireland's image for tourists as a "clean green" area, which is a key part of Ireland's international marketing effort.

Impact of the Development on Agriculture

- Emissions from the proposed development, even if within EPA limits and license conditions, tend to bio-magnify and accumulate in the food chain, and the development would be a threat to farming and food supply in the area. There have been examples (cited by the parties) of incidents involving incinerators operated by the applicant company and others, which led to accidental releases of contaminants, well in excess of permitted levels.

- Ireland's agriculture depends on exports, and this export drive is supported by the country's image of clean wholesome and safe food. This image is validly based (as research has shown that Ireland has lower dioxin levels than other European countries). It is submitted that the proposed development would threaten this image, which is part of Ireland's marketing "brand" (Bord Bia's policy of promotion of Ireland as "the food island".)

- Major importers of Ireland's produce, including Danone and Cadburys, will not accept milk from a 40 km radius of incinerators, because of fears of contamination.

Precautionary Principle / Prematurity (Policy re Incineration)

- It is submitted that, as there is no conclusive scientific evidence as yet on the impacts of incineration on public health and the environment (reference HRB report), as a matter of policy the Board should apply the precautionary principle and refuse permission.

- The development is premature pending the provision of baseline human health surveys of the Cork Harbour area (there are some surveys for cows but not for humans), as otherwise it would be impossible to afterwards determine the impact on health of the development if permitted. (This is not considered to be a matter for the EPA, since it would deal with emissions only once operational, when such a survey should already have been carried out.)

- The development is premature until there is a full review of alternative technologies for dealing with the disposal of hazardous waste, and until waste reduction and waste minimisation have already taken place (as per the priorities set out in the National Hazardous Waste Management Plan and in Changing our Ways/Delivering Change.)

- The development is premature until adequate provision is made in Ireland for controlling the handling, transport and labelling of toxic and hazardous waste (per complaints to EU Commission, of which details are supplied).

Applicants' Record/Experience

- It is submitted that the applicants are not "a fit and proper entity" to receive permission for a development of this nature. The applicants have no experience of the proposed incinerator type (fluidised-bed), a type which has had serious problems in Dundee in the UK

Invalidity of the EIS / Inadequacies in the EIS

- It is submitted that the application for planning permission and the EIS are not the same, since the EIS is for Phases 1 and 2 (which is what is sought in the Waste License application), and that the EIS does not contain all the likely significant effects and mitigation measures of the proposed development. It is also submitted that the submitted site and newspaper notices "do not reflect the actual proposed development", and that therefore the application is invalid.

- It is submitted that the EIS does not conform with the mandatory requirements of the EIA Directive, nor the EPA Guidelines currently in force. This is based on the lack of a accident risk assessment, no current human health data, no groundwater testing, no assessment of interactive pollutant effects, no description or assessment of "worst case" scenarios, no account of noise/vibration effects during construction.

- It is submitted that the flora and fauna baseline survey was flawed, as it was limited to the site boundaries and did not cover all species (e.g. bats and sentinel species). It was not carried out for a long enough period (seasons were missed and hence potential flora and fauna not identified). The flora and fauna analysis was restricted to the impact on flora and fauna of the physical construction of the development, not the operation of the development.

- The noise survey was flawed, as it was only for a period of 24 hours, and did not include ferry traffic. There was no analysis of noise from rock removal.

- The traffic surveys and resultant analysis was flawed, as the surveys were taken on only one day in the week, with no evidence that the traffic patterns were typical. No traffic from the ferries was surveyed. The survey was for 18 hours only, despite some existing industrial plants in the area operating shift working. The analysis did not include traffic from ash landfill removal (implying that this ash is to be exported by sea)

- There was misinterpretation of EU Directives and Euro Waste Categories, and use of different figures and limit standards, which prevented fair comparisons.

- The air modelling was based on unrepresentative meteorological conditions, based on data at Cork Airport. No adequate data was used for modelling climatic conditions adjacent to the proposed site, nor was any such data collected at the site.

- The proposed developments in Phases 1 and 2 were mixed in the EIS, and their impacts were not properly distinguished from one another, making meaningful analysis difficult.

- No baseline study or data was provided for ground water, nor geology.

- The site selection process was deeply flawed and did not conform to WHO Guidelines, in that the analysis went from the particular to the general, as the location of the site had already been chosen. There was the use of different criteria for different sites without any objective basis or explanation.

- There was inadequate information regarding the waste streams that were proposed to be accepted/treated by the proposed incinerator. Vague statements such as "industrial hazardous waste" and industrial non-hazardous waste" were used. (It is noted, from the information given in the EPA Waste License Application, that the applicants propose to burn a wide range of wastes, including meat and bonemeal and infectious hospital wastes.)

Further Particular Points

- One third party group, CHASE (Carrigaline) also makes a detailed submission in relation to the processing of the application by the County council's Management. It is submitted that the Council, as both planning authority and waste management authority, was in an inherent conflict of interest position. It

is contended, based on documentation obtained under Freedom of Information, that the Council management did not maintain a proper balance between these conflicting roles in dealing with the planning application, in that it showed bias towards the applicant company. On this basis, the Board is asked to entirely disregard the County Manager's recommendation for a material contravention, and the County Planning Officer's report recommending that permission be given, subject to such material contravention.

- It is submitted that the submitted site and newspaper notices were invalid, as they did not refer to the fact that the proposed development would be a Seveso II establishment.

OBSERVATIONS

There were 25 written observations, in support of the third party appeals and against any granting of permission in this case, from the following groups and individuals:-

1. Richard Wood
2. Liz Kenny and Joan Hayes
3. Carrigaline Country Market
4. Richard and Carol Daly
5. Norcott Roberts
6. Monica Conway
7. Walterstown National School
8. Aghada Branch of the Irish Farmers' Association
9. Andries de Bout
10. Killeagh Branch of the Irish Farmers' Association
11. Paul and Sally Hudson
12. Monkstown Amenity Association
13. Councillor Jo Kelleher
14. Midwives Association of Ireland
15. Jean Vaughan
16. Orla O'Connell and Noel Murtagh
17. Peter Fitzgerald & ors.
18. Universal Health and Safety co. ltd
19. Ann Kirwan
20. Jonathan, Hazel and James Fleury
21. Monkstown Bay Sailing Club Ltd
22. Marcia D'Alton & ors.
23. Dr Philip Michael & ors.
24. Ballymore Community Association
25. Ballymacoda Branch of the Irish Farmers' Association

The content of these observations closely follows that of the third party submissions, and expresses similar concerns. For this reason, and also because many of the observers gave formal witness statements, either on their own account or as witnesses for a number of the third party groups during the oral hearing (which are included in Appendices 1 and 2 of this report), it is not proposed to itemise the content of the submissions here. All of the written observations are included in file no. 4, should the Board wish to read them in fuller detail.

RESPONSES

1. Third Party Responses to First Party Appeal

As noted above, there was a number of response by third parties to the first party appeal. These generally re-iterated the points raised in the grounds of appeal. In addition, some of the responses dealt, in some cases in considerable detail, with the applicants' proposal to import waste from Northern Ireland. However, as this matter has now been withdrawn by the applicants, and therefore is no longer before the Board, it is not necessary to summarise these points.

Responses from the following third parties were received (and are in file no. 5)

East Cork for a Safe Environment (Group 5)	received	23/7/03
M. & N. Harty (Group 23) (with petition)		25/7/03
Ringaskiddy & District Residents (Group 7) (with petition)		25/7/03
CHASE (Monkstown) (Group 3)		25/7/03
Cobh Action for Clean Air (Group 9)		28/7/03
J. & J. Masson (Group 24)		28/7/03
Dan Boyle T.D. (Group 12)		29/7/03
CHASE (Carrigaline) (Group 1) (with petition)		29/7/03
Carrigaline Community for a Safe Environment (Group 6)		30/7/03

First Party Response to Third Party Appeals

There was a detailed response to the third party appeals, submitted by the applicants (which is in file no. 5). This seeks to refute the grounds of appeal and generally refers to aspects of the EIS dealing with the matters. As much of what is set out in this response was set out in somewhat greater detail in the submissions by the applicants' witness during the course of the oral hearing, and also discussed during cross-examination, and are therefore on tape, and set out in the oral hearing proceedings (Appendices 1 and 2), it is not proposed to summarise the responses here.

Planning Authority Response to Appeals

There was a short response to the appeals by the County Planning Officer, B. Kelleher. This made a few comments on the third party appeal references to the HRB report, and on Objective INF 3 – 1. He also addressed, in some detail, the applicants' proposals in relation to the importation of waste from Northern Ireland. The County Planning Officer also noted that the sole reason for refusal by the Council referred only to I – 15, and should also have referred to ZON 3 – 13, which clearly excludes contract incineration and by which the development materially contravenes the County Development Plan. He stated that ZON 3 – 13 is "the over-riding objective that governs the site specific objective 1 – 15".

Further Responses by Third Parties following publication of EIS Notice by Board.

There were further responses by a few third parties following publication by the Board of the statutory notice inviting submissions on the EIS. These responses generally repeated points already made in the initial grounds of appeal and earlier responses, and therefore it is not proposed to summarise them. (They are included in file no. 5). They are from the following parties:-

Cork Environmental Alliance (Group 4)	received	27/8/03
East Cork for a Safe Environment (Group 5)		27/8/03
Carrigaline Community for a Safe Environment (Group 6)		28/8/03
Cobh Action for Clean Air (Group 9)		29/8/03

DEVELOPMENT PLAN

The operative Development Plan is the Cork County Development Plan 2003. Under this Plan, the subject site is zoned for "Industry / Enterprise", which is indicated in the written statement as Zoning Objective ZON 3-13. This objective states as follows:-

a) *"It is an objective to promote the development of industrial areas as the primary locations for uses including manufacturing, repairs, warehousing, distribution, open-storage, waste materials treatment and recovery, and transport operating centres. The development of inappropriate uses, such as office based industry and retailing will not, normally, be encouraged.*

b) *It is an objective that industrial areas that are not used mainly for small to medium industry, warehousing or distribution are considered to be generally suitable for waste management activities (including the treatment and recovery of waste materials* ***but not including*** *landfill or* ***contract incineration facilities****). In the interests of clarity,* ***contract incineration facilities comprise those whose primary role is to manage wastes which are not generated by the company itself****.*

c) *It is an objective that subject to local considerations, civic amenity sites and waste transfer stations may be suitable on industrial sites with warehousing and / or distribution uses."*

The Plan outlines, in paragraph 9.3.6, the basis of the industrial zoning provisions, and the uses that are considered appropriate in industrial areas, as follows:-

"Uses appropriate to Industrial Areas include activities that include manufacturing, repairs, warehousing, distribution, open-storage and transport operating centres. These types of use often, necessarily, result in standards of amenity that would not be acceptable in other areas. They can inadvertently cause bad neighbour problems for uses with higher amenity expectations that are inappropriately located in these areas. With certain exceptions as set out in the objectives below, primarily industrial areas are

also generally suitable for waste management activities (including the treatment and recovery of waste materials but ***not including landfill or incineration of waste generated elsewhere****)."*

The relevant land use zoning map is the Ringaskiddy Zoning Map (one of a number of such zoning maps, covering a large number of settlements in the county). This shows that lands comprising the sites of existing industrial plants are zoned ""Primarily Industry / Enterprise" and those new areas intended for industrial use are zoned "Industry / Enterprise".

Lands to the east and west of the subject site are similarly zoned to the "Industry / Enterprise" zoning of the site. while lands to the north are partly zoned "Primarily Industry / Enterprise", and partly zoned "Educational / Institutional / Civic". Lands to the south are also zoned "Industry / Enterprise", apart from a small area around the Martello Tower, which is zoned for "Primarily Open Space / Sports / Recreation / Amenity" purposes.

In addition to the zoning objective, which applies generally to industrially zoned lands, the subject site (and immediately adjoining landholding, comprising a total of 42.8 hectares – the site being 12.5 hectares) is one of fifteen specific sites in the Ringaskiddy area that is covered by specific objectives. This objective states as follows:-

"I-15 Suitable for large stand alone industry with suitable provision for landscaping and access points and provision for buffer planting, minimum 15 metre wide, open space buffer to the Martello Tower and its associated pedestrian access."

The written statement of the County Development Plan has a number of policies and objectives that also have relevance to the proposed development, but these are more general in application than the particular location-specific zoning and site-specific objectives. They include policies in relation to housing, tourism, waste management, employment, infrastructure, heritage and environmental matters. Among the sections referred to by the parties, in addition to general aims at the start of various chapters, are the following:-

INF 1–21 (preservation of rights of way)
INF 1-22 (Infrastructure policy re role of ports and harbours)
ECO 2–3 (Industrial/Enterprise policy re port related development)
INF 3-1 (Waste Management Plan)
RCI 2-2 (Coastal Zone Management)
ENV 3-4, 3-5 and 3-6 (Scenic routes / views and prospects)
ENV 4-1 (Safeguarding sites, features and objects of archaeological interest)
ENV 5-2 (Protection of protected structures)

The Martello Tower, on the crest of the hill behind the site, is a Protected Structure (ref. 00575) There are a number of other protected structures in the general vicinity, on Haulbowline Island and on Spike Island.

The Development Plan identifies a number of "Scenic Routes", the locations of which are identified on the "Heritage and Scenic Amenity" maps. In relation to the proposed site, there are two of particular relevance – that around western and southern sides of Great Island (ref. A53), from Belvelly Bridge to the town centre area of Cobh (at the waterfront/quays) – and that around the eastern side of the West Passage (ref. A54), along the harbour frontages of Passage West and Monkstown and then on to Ringaskiddy, terminating at Paddy's Point. The policy in relation to these Scenic Routes, views from which are to be protected, is set out in ENV 3-4 and ENV 3-5.

[I am enclosing, in Appendix 3 at the end of this report, extracts from the written Statement of the Plan, highlighted where relevant to the issues in this appeal, together with a copy of the Heritage and Scenic Amenity map and Ringaskiddy zoning map, with the location of the subject site indicated.]

OTHER LOCAL POLICY

Waste Management Plan for Cork County

This Waste Management Plan was adopted by the Council in May 1999, following on from the 25-year Waste Management Strategy for the Cork Region, adopted jointly by Cork Corporation and Cork County Council in 1995, and in accordance with the requirements of the Waste Management Act, 1996, and of national policy ("Changing Our Ways 1998 – see below).

[I am enclosing relevant extracts from this Plan in Appendix 3 at the end of this report.]

REGIONAL POLICY

Cork Area Strategic Plan (C.A.S.P.)

CASP is the relevant Regional Strategy (Regional Planning Guidelines under the 2000 Planning and Development Act) for the Cork City and Hinterland area. It sets out the overall longer term strategy of the two local authorities for this area, and is the successor to the former LUTS, which guided the development of the area for many years. CASP is noted in the National Spatial Strategy as being the appropriate means by which its objectives are to be applied for this geographical area.

Key sections of relevance to the appeal are at pages 32, 57, 119, 120 and 125 – 127.

[I am enclosing a full copy of this document in Appendix 3 at the end of this report.]

NATIONAL POLICY

As the proposed development involves co-incineration of both hazardous and non-hazardous waste, it is necessary to examine national policy in relation to waste management for both aspects.

"Changing our Ways" (1998)

General national policy in relation to waste management is set out in the document "Changing our Ways", published in September 1998. This sets out the requirement for an integrated approach to waste management. Major elements of the policy refer to the need to reduce the reliance on landfill. In accordance with EU policy, a waste management hierarchy is put forward, with prevention at the top of the hierarchy, followed by waste minimisation, re-use, re-cycling and recovery, with waste disposal at the bottom of the hierarchy. Waste disposal is specifically stated as only being acceptable in the future in respect of "waste that cannot be prevented or recovered".

The document advocates "the development of waste recovery facilities employing environmentally beneficial technologies, as an alternative to landfill, including the development of composting and other feasible biological treatment facilities". Public/private partnerships in waste management provision are advocated as a means of delivery. It also advocates the need to give effect to the "polluter pays principle" in relation to waste disposal, and to the "proximity principle", that waste should be treated as close as possible to its source of generation. While stating that, in general, composting or materials recovery are preferable to incineration, the document states that waste to energy incineration "could prove to be a beneficial option". However, it warns that it is necessary to ensure that the "development of waste to energy incineration capacity does not militate against long term investment in materials recycling" (para 7.7.4).

The document also looks at alternative thermal processes which, it states, "offer a better environmental performance than waste to energy incineration", such as thermolysis (gasification and pyrolosis), in that less atmospheric emissions are produced, containing lower levels of contaminants. It states that these technologies, currently under investigation, could provide "plants of the order of 20,000 to 80,000 tonnes per annum that would be viable and merit consideration" (see para 7.8.2).

The document advocates that local authorities should prepare regional waste management plans for their areas, under the Waste Management Acts, as a matter of urgency.

"Preventing and Recycling Waste – Delivering Change" (2002)

A further policy document on waste management was issued by Government in March 2002, following on from the adoption of all of the waste management plans and the enactment of the Waste Management (Amendment) Act 2001, which goes into further detail on the national priorities of preventing and recycling waste, and sets out methods by which all sectors of society can contribute towards this aim. It focuses on waste prevention and minimisation (section 2), Re-use (section 3), recycling (section 4), producer responsibility (section 5), biological treatment of organic waste (section 6) and public service waste management programming (section 7). It reiterates that, under the waste hierarchy, landfilling should only be used as a last resort after all of the other higher options have been exhausted – so that "only material that cannot be prevented, re-used, recycled or otherwise treated should be landfilled".

National Hazardous Waste Management Plan (2001)

This document, which had been in draft form public consultation during 2000, was published by the EPA in 2001. This Plan has statutory recognition under the terms of the 1996 Waste Management Act, Section 26 of which requires the EPA to draw up such a Plan:-

> *"The Agency shall…make a national plan (in this Act referred to as 'the national hazardous waste management plan') with regard to:-*
>
> *(a) the prevention and minimisation of hazardous waste.*
> *(b) the recovery of hazardous waste*
> *(c) the collection and movement of hazardous waste, and*
> *(d) the disposal of such hazardous waste as cannot be prevented or recovered".*

Section 26 (5) states:-

> *"A Minister of the Government, a local authority and any other public authority in whom are vested functions by or under any enactment in relation to the protection of the environment shall have regard to….recommendations contained in the hazardous waste management plan"*

On this basis, I consider that the Plan represents National Policy, and one to which the Board is obliged to have regard. This view is borne out by the speech of the Minister of State at the time of the launch of the Plan (5th July 2001), and also by the letter to the Planning Authority from the Department of the Environment and Local Government during the course of consideration of the application (this is on file no. 3). [A full copy of the Minister of State's speech is included in Appendix 3, with the copy of the National Hazardous Waste Management Plan.]

The Plan discusses the rise in hazardous waste arisings as between 1996 and 1998, and provides a large number of statistics in relation to these. It indicates that, without corrective measures, the amount of hazardous waste generated in Ireland is likely to increase by 48% up to 2006. On this basis, its key recommendation – what is described in the Plan as "the cornerstone" - is waste prevention, with a target to reduce hazardous waste disposal over a seven-year period to 1996 levels. A number of measures are outlined in order to achieve this key recommendation, including the establishment of a dedicated prevention team to implement the prevention programme, regulatory instruments, economic pressures such as charges and taxes, awareness raising, training and technical assistance. The prevention programme is costed at £43.5 million.

In relation to recovery and disposal of hazardous waste, the Plan indicates that it is desirable, to apply the proximity principle and to ensure security of hazardous waste disposal by reducing reliance on export and achieving self sufficiency, that hazardous waste landfill capacity and thermal treatment for hazardous wastes requiring disposal should be developed. It is noted that there are questions regarding the viability of a thermal treatment facility (see chapter 6). A number of thermal treatment options are outlined (Table 6.1) to give an indication of the levels of expenditure likely to be

required, but the EPA does not come down in favour of any particular option, because of its regulatory role. It states that the provision of these facilities "must not be allowed to interfere with the potential to prevent or minimise the generation and disposal of hazardous waste" (para 8.5).

[These documents are included, in full, in Appendix 3 to this report]

INTERNATIONAL POLICIES/DOCUMENTS/GUIDELINES

A number of International Conventions and Policies were adverted to during the course of the Oral Hearing, as follows:-

KYOTO Protocol on Climate Change.
This Agreement, to which Ireland is a signatory, commits State to limit its discharge of greenhouse gases to a level which is no greater than 13% above the State's 1990 levels by 2012. (It was noted that Ireland is already well over this limit, and that it may be shortly facing fines at EU level for non-compliance).

Stockholm Convention on Persistent Organic Pollutants
This Convention, to which Ireland is a signatory, commits the State to reducing and eliminating from the environment persistent organic pollutants (including dioxins and furans), and to cease the manufacture and use of certain specified chemicals.

Rio Convention on Biological Diversity
This Convention, to which Ireland is a signatory, commits the State to agree on the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits from the use of genetic resources. This is translated into Irish national policy through the National Biodiversity Plan

Guidelines on Site Selection
Two Sets of Guidelines were put forward by the applicants in the EIS as sources for site criteria used by them for the Site Selection. These were the subject of considerable questioning of the applicants' witnesses during the oral hearing. In the absence of national guidelines on the siting of |Hazardous Waste treatment Facilities and Incinerators, I consider that the Board should have due regard to their content (this was also the conclusion of the Inspector in the Kilcock Hazardous Waste Incinerator case, which was the subject of Board decision in 2000 under file ref. PL09.112536)

World Health Organisation (WHO): Site Selection for New Hazardous Waste Management Facilities (1990)

Basel Convention:- Technical Guidelines on Incineration on Land (1997)

[Copies of the Guidelines, and of the Stockholm Convention, are included in Appendix 3 to this Report. Details relating to the Biological Diversity Convention are included with witness statement of F. Duff (Appendix 2 – Group 1 – 5). Also included in Appendix 3 is a copy of the Cork Joint Major Emergency Plan, which was supplied by the Council during the course of the hearing.]

ASSESSMENT

Under the statutory provisions for a planning application and appeal of this type and complexity, there are two distinct and separate processes that have to be carried out by the Board in relation to this development. The first is the EIA of the proposal, and the second is the planning consideration of the proposal. I propose to deal with each in turn.

ENVIRONMENTAL IMPACT ASSESSMENT OF THE DEVELOPMENT

Since the proposed development is of a type and scale that puts it within Annex 1 to the EIA Directives and applicable Irish Regulations, the submission of an Environmental Impact Statement by the applicants was required. It is incumbent on the Board, as the Competent Authority under the Directive and Regulations, to assess the adequacy of the EIS that was submitted and to assess the environmental impact of the development.

This assessment of adequacy has two parts – firstly, whether the EIS that was submitted was **legally** adequate, in that it met the statutory requirements in relation to the topic areas to be covered and the content to be included – and secondly whether the **content** of the submitted EIS, if legally adequate, adequately described the likely significant impacts of the proposed development, so that a judgement could be reached as to its acceptability or unacceptability.

A) LEGAL ADEQUACY OF THE EIS

It is a requirement, under Section 58 of the 1994 Planning Regulations, for the Board to consider, in dealing with this appeal, whether the EIS complies with the mandatory requirements as to its adequacy. The relevant statutory criteria to assess this matter are set out in the EIA Directives and the implementing Irish Regulations. The EU Directives (1985, as amended in 1997) define the minimum content of an EIS. Article 3 of the Directive (as amended) states:-

> *"The Environmental Impact Assessment shall identify, describe and assess in an appropriate manner in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project, on the following factors:-*
>
> - *human beings;*
> - *fauna and flora;*
> - *soil, water, air, climate, and the landscape;*
> - *material assets and the cultural heritage*
>
> *and the interaction between the factors mentioned in the first, second and third indents"*

Article 5 (3) states:-

"The information to be provided by the developer, in accordance with paragraph 1, shall include at least…

(3) the data necessary to identify and assess the main effects which the project is likely to have on the environment..

(4) A non-technical summary of the information mentioned in the previous indents."

These provisions have, as the Board is aware, been transposed into Irish legislation by means of the EIA Regulations of 1989 and 1999. Article 25 and the Second Schedule to the 1999 Regulations are the relevant points to be considered here.

The 1992 EPA Act empowers the EPA to prepare and publish Guidelines on the Information to be Contained in Environmental Impact Assessments, and provides that, where such Guidelines have been published, those preparing **and evaluating** EIS shall have regard to the Guidelines (A copy of the Guidelines are included in Appendix 3)

Having examined, in full detail, the EIS, and considered the points put forward by the public (as required by Article 8 of the Directive) through the written submissions and proceedings of the oral hearing, I have come to the conclusion that the submitted EIS is legally inadequate and fails to conform to the mandatory requirements of the Directive/Regulations in the following areas:-

1. Data.

The data required to **identify and assess** the main effects which the proposed development is likely to have on the environment (section 1 (c) of the Second Schedule to the 1999 Regulations) has not been provided in respect of the following areas:-

Geology/Hydrogeology.

Although data was in fact obtained by the applicants, by way of what is described as a "due-diligence" investigation of the site, in a report prepared by K. T. Cullen & Co, which carried out borehole and trial hole tests, this report was not submitted as part of the EIS, and the data in this report was not provided within the EIS. (The report was, apparently, provided to the EPA in the Waste Licence Application.)

This lack of data is vital to a proper assessment of the likely significant impacts of the development on the environment, in my view, as the site is identified by the applicants as having "groundwater affected by seawater influences", and "flooding can occur in winter months due to closeness of bedrock" (see Table 2.10). In addition, there is a generalised textual description in the EIS of the depth of overburden over this bedrock as being "from 1 m to 9m", yet no maps showing the locations of these depths were provided in the EIS (against which the locations of the proposed buildings could be judged). It is noted that the development drawings indicate excavation below ground level of up to 5 metres at certain locations.

It was learned (through detailed questioning at the oral hearing) that the construction works envisaged excavation of up to 4 metres deep into the bedrock. There is no data in the EIS (merely unsubstantiated statements) on the composition of the bedrock, nor

is there any data at all on whether or not there are fissures or caverns below the site (if the underlying strata is limestone or water soluble), nor whether the bedrock is permeable or non-permeable. There is no data as to whether the soil and/or groundwater is already contaminated (as was suggested at the oral hearing) arising from its previous use by Irish ISPAT and from the spillover from the adjoining Hammond Lane facility. There is no data on the level of the groundwater within the site, by reference to the levels of excavation proposed, nor is there any data on what portions of the site are "flooded during the winter months" or "affected by seawater influences".

It is clear to me that a likely significant impact of a development such as this (a hazardous waste storage, transfer and incineration operation) might legitimately be contamination of groundwater, through spillages or failure of stormwater retention proposals, or indeed through accidents. Without knowledge of the underlying geology and hydrogeology, it is not possible to assess the resultant severity of such occurrences on the ground water, nor on whether this ground water is naturally contained by rock, or would seep or otherwise travel into the adjoining harbour waters, thereby causing pollution and potential danger to the environment and/or water users. Without such knowledge, it is not possible to assesses the adequacy of the proposed mitigation measures proposed by the applicants to contain such spillages, nor indeed whether it is appropriate to permit the development to connect to the public combined sewer, or alternatively to require enlarged and/or augmented storm water retention provisions, additional bunding, or perhaps the construction of the building at a higher level, by reducing the amount of excavation. These factors would bear directly on matters that are within the remit of the Board, such as the physical construction of the building, its size and shape, and its visual impact.

If there is contamination on the site, it is quite likely that it would be necessary to remove material from the site and dispose of its elsewhere. Quite apart from the licensing aspects of this, this would cause significant effects of a planning nature, such as noise/ disturbance and traffic levels, that would have to be considered by the Board.

(Note that an attempt was made by the applicants, during the course of the oral hearing, to hand me in a copy of the K.T. Cullen report. However, on legal grounds relating to fair procedures, and the fact that it had not originally been included in the EIS (and therefore could not be introduced at that late stage in the process, as this would deprive the public of an opportunity to comment on it in accordance with EIA Directive requirements (Article (6(2) refers)), I was persuaded that it would not be appropriate to accept it into evidence.)

<u>Noise data</u>

No noise data has been provided in relation to construction activities from rock breaking of the bedrock. As noted above, it became clear during the oral hearing in cross-examination of the applicants' witness, Mr J. O'Mahony (see 8/10/03 tracks ZZ, AAA, BBB and CCC), that there would be extensive excavation of the bedrock, up to 4 metres deep, using (probably) rock breakers. There is no data on the noise impacts that this would have on nearby residential property, not on the occupants of the National Maritime College, Naval base or Spike Island. Nor was there any data on which to judge the impact of such rock breaking on the badger sett, which in the fauna

and flora section of the EIS the applicants had predicted would be retained on site. Nor was there any assessment of the impact which rock breaking, and hence vibration, would have on the Martello Tower. Hence, any assessment of the utility of any mitigation measures to deal with this noise and vibration (which themselves were not specified) could not be made. Noise from construction activities is, of course, entirely a matter within the remit of the Board, and not the EPA.

Traffic data

The traffic data is inadequate and unrepresentative, as the baseline surveys were carried out only over a single 18-hour period, on one day in February 2001, when the car ferries were not in operation, and as the Secondary Schools in the area were closed for mid-term break. In my view, this lack of data makes the prediction of the likely significant impacts of the development problematical, especially as the evidence that was produced showed that the road network in the area is already heavily overloaded at certain critical junctions and times, and there is no information on whether this overloading would have continued into other locations on the network, and/or at other times, when the ferry traffic is taken into account. Accordingly, the efficacy of the proposed mitigation measures cannot be established. The issue of traffic impacts are entirely within the remit of the Board, and not the EPA. (Note – there are other problem areas with the traffic assessment, involving inappropriate or unclear assumptions, use of confusing and inappropriate terminology, which are more a matter of poor content than legal inadequacy, and these will be dealt with below).

Climatic/Meteorological data

Data used in the EIS for air modelling/air dispersion modelling was based on readings taken at Cork Airport, and not from the location of the site. No adequate data was provided to prove that the Cork Airport data was representative of conditions obtaining at the site, which is in a markedly different topographical situation. This issue is of crucial importance in view of the coastal location of the site, in a valley, and makes the assessment of the accuracy and hence the reliability of the resultant model outputs impossible. If the model results are incorrect or unreliable, this could impact not only on the EPA's assessment of the effects of the activity on the environment, but also on the location and height of the proposed stack, for example, which is clearly within the Board's remit.

Fauna & Flora data

No data whatever has been provided in relation to bats, despite the specific comment from the relevant Prescribed Body (Duchas) that such a survey should be carried out (It is entirely unreasonable to promise that such a survey would be carried out as a condition of any planning permission, since the impacts of a proposed development have to be assessed as part of the EIA process before consent can be given to the project.) Accordingly, it is not clear whether the development would, or would not, have a significant adverse impact on bats (a protected species), and hence it is not possible, in the absence of survey data, for the Competent Authority to come to a conclusion on the matter, or even for the applicants to propose mitigation measures to deal with any such impact.

There was no survey of any fauna or flora outside the immediate site boundaries. The reason for this, as given by the relevant expert witness, Mr Morgan, at the oral hearing, was because the brief he had been given by the applicants was to look only at

the impacts, on fauna and flora, of the ***construction*** of the buildings on the site, and not of the ***operation*** of the development. There is therefore no baseline data on aquatic fauna nor flora, despite the site being within a few metres of the harbour waters (Mr. Morgan is Manager of the Aquatic Services Unit at UCC, so would have been well qualified to conduct such a survey). (If it is argued, as Mr Morgan did, that the impact on aquatic species is an issue for the EPA and not the Board, then one has to question whether or not there is any legal entitlement, under the EIA regulations, for the applicants to exclude, in their EIS submitted with a planning application, any information on the likely significant effects on the environment of the operation of the development, so that this information only needs to be included with the EPA Licence Application. I am not aware of any such legal exemption. In any event, if this was the case, why then did the applicants include in the EIS a very detailed air modelling and sir dispersion section, as this evidently covers matters relating to the risk of environmental pollution from the activity? I have to conclude that the lack of data on aquatic species is a material omission from the EIS.

Waste Inputs data

Inadequate data was provided on the waste streams that were proposed to be accepted into/treated in the development. Fuller data, including characterisations of waste streams to include meat and bone meal (including specified risk material), and infectious hospital waste, was provided to the EPA in the Waste Licence application, even though the EIS is supposed to cover all significant environmental effects. There was therefore no analysis in the EIS on the impact of odours (from the MBM) – either in terms of residential amenity during transport/storage or in terms of the incineration process - nor on the efficacy of the proposed pollution control processes in dealing with biological or virus emissions. Nor was it possible – until the actual oral hearing process commenced and the information about this matter came to light – to assess the policy justification for the location of the development in Ringaskiddy by reference to the proximity principle in relation to such waste streams. (It is noted on the last day of the oral hearing that the HSA did not model for these impacts either, implying that it was not informed of such waste streams in the EIS nor in the HAZID risk assessment document supplied by the applicants under the SEVESO II process.)

Erosion

Evidence was put forward at the oral hearing that the site had, for many years, been subjected to erosion from the seaward side (the cliff face being regularly undermined and "eaten into" by high tides). It was stated that the original owner of the land had had to periodically replace fences that had fallen into the sea. It was also stated that other industries in the vicinity, which are on a foreshore location (e.g. Pfizer Loughbeg) had had to put in rock barriers to protect their perimeters. However, no data was included in the EIS on this issue, which was not dealt with at all. In my view, on the basis of the evidence, this was a likely impact that should have been considered, since if part of the cliff face (which is proposed to be immediately beside the truck access route to the bunker hall, and the gas and Nitrogen compounds) were to fall, there would be significant impacts on the environment. It would appear that local knowledge was not used (as is advised in the EPA Guidelines) on this matter.

In relation to the provision of data generally in EIS's, it is stated in the EPA Guidelines that "data must be sufficient to allow the competent authority to make a decision" and "this data must not have been withheld" (see p. 20). It is evident to me

that, on this count, the submitted EIS is legally inadequate, since it fails to provide the necessary data, some of which was in the possession of the applicants but was withheld from the EIS (for whatever reason), but was subsequently provided to the EPA.

It is argued, by the applicants (see closing submission by P. Gardner in Appendix 2) that the EIS adequately describes, and gives data for, the likely significant effects of the development on the environment, and that it is not necessary to deal with non-likely and non-significant impacts. However, this pre-supposes that the choice of what is likely and significant should be limited to what the applicants and their consultants consider to be likely and significant. That choice, under the EIA process, is not reserved to the proposers of a development, but is a matter for the Competent Authority (in this case the Board) to determine, having considered the views put forward by the applicants, the comments and observations of the public, and its own assessment of the documentation and proposal. As outlined above, I consider the matters that I have enumerated above to be both significant and likely, and that the data to support a proper analysis and determination of their impacts has not been adequately provided.

2. Assessment of the Interactions

A critical part of the legal requirement for the content of an EIS is that it should deal with the interactions between the likely significant effects of a proposed development and the various headings set out (what is described in Article 2 (b) of the 1999 Regulations as "the inter-relationship between the above factors", and in the Directive as "the interaction between the factors mentioned in the first, second and third indents."

This aspect of the EIS submitted by the applicants in this case is covered by 16 lines of text in Chapter 16 of the EIS. This can not, in any meaningful way, be described as complying with this mandatory requirement. No analysis, matrix table or other weighting of the relevant interactions has been provided (as would be normal practice in EIS, in my experience), and there is no evidence that any actual assessment of the interactions was in fact carried out by the applicants or their consultants. It is stated that the interactions are covered in the relevant subject chapters, but in fact this is not the case on any consistent basis. For example, even the known construction impacts, such as from the plant noise, and the locations of the car parking for site workers, were not considered in relation to the retention of the badgers on site, nor was the duration of the construction period (see my questioning of Mr O'Mahony, where he admitted that it might be necessary to phase construction if no car parking space could be found on site for construction workers) considered in relation to the traffic analysis.

On this basis also, I consider that the EIS fails to comply with the mandatory requirements of the Directive/Regulations.

3. Non-Technical Summary

It is a legal requirement that a non-technical summary be provided. A summary was provided with this EIS. The EPA Guidelines state that this non-technical summary should be provided so as to enable the public to be aware of the environmental implications of the development. It specifically states that "technical terms,

abbreviations, references or jargon" are to be omitted. It was suggested by a number of the third parties, and in my view correctly, that the inclusion, in the non-technical summary of noise measurements and predictions, expressed solely in $dB(A)_{Leq}$ and dB(A), without any explanation of these terms, is inappropriate.. (I note that other terms are used, such as chemical formulae (e.g. PM_{10} , CO_2 etc), but these are first explained in simple language, whereas the noise measurements are not.) I am forced to agree with the third parties that, without such explanation, the noise section of the non-technical summary would be unintelligible to the average reader for whom it is supposed to be intended. Mr Ahern of the applicants, under questioning at the oral hearing, was unable to define what these figures meant in layman's terms (and there was no noise expert offered up by the applicants as a witness at the hearing who could do so).

On this basis also, I conclude that the submitted EIS is legally invalid.

Conclusion

My finding that the EIS is legally inadequate, and hence invalid, has a number of potential responses. It is open to the Board to request, as part of a further information request, a new EIS, which will cover the matters that have not been adequately provided. This would require a lengthy process of further data gathering, new public notices, provision for public comment, and a re-opening of the oral hearing. It is also open to the Board to determine that, as the planning application was invalid, since it was not accompanied by a legally adequate EIS, the application can be declared as having been withdrawn. Alternatively, the Board could decide to determine the application as now presented, and to refuse permission on the basis, inter alia, that the information supplied does not satisfy it that the proposed development can be permitted.

It is my recommendation, in the light of my further Assessment below, wherein I conclude that the application should be refused on other grounds, that the Board should not decide to seek further information and a revised EIS, as the supply of such information and EIS would not solve all of the issues upon which I base my recommendation for refusal, nor alter the general unacceptability of the development, on planning and policy grounds. However, in fairness to all parties, it should not declare the application to be withdrawn, as this would merely invite a re-application, which would still have to be refused for other, planning and policy related, reasons.

B) ADEQUACY OF CONTENT OF THE EIS

Apart from legal adequacy problems with the EIS, the parties have submitted that there are many other inadequacies with the submitted EIS, which (though not strictly legal requirements), nevertheless call into question many of the conclusions that are reached by the applicants' consultants in relation to the impact of the proposed development.

I have considered these points, and the applicants' responses to them, and have also noted a number of points myself in my assessment of the EIS. I do not agree with all of the points put forward, but the following points do appear to me to be inadequacies and difficulties that raise doubts as to the some of the conclusions reached in the EIS.

1. Site Selection. I propose to deal with this issue later in my Assessment, as it relates to planning considerations and to the suitability of the site.

2. Visual Analysis. The visual analysis, though it included a very large number of photomontages, gave no indication of the impact of the development at night (it was noted by parties at the hearing that most of the industries in the lower Harbour Area light up their plants at night). In addition, there was absolutely no photomontage view of the development from the road in front of the site, nor from the site of the National Maritime College opposite, even though it should have been obvious that these locations would be most significantly affected by the huge bulk and size of the proposed process building (The excuse for this omission, that was given by the visual consultant, Mr Hastings, was that this was a matter for the applicants' architect. I do not accept this, since the same consultant has provided close-up views of large scale development from adjoining public roads in appeals with which I have been involved during the last year.)

There was no properly explained rationale for the "dazzle painting" approach advocated for the external treatment of the main process building, nor even references to the "research" that had underpinned this approach. This was compounded by different outlines of the colours to be used, as between the EIS, the outline specification and the submitted drawings with the application. (The photomontages, for example, showed a grey/green colour, while the drawings showed the use of extensive areas of blue cladding.)

3. Noise Analysis. Baseline noise measurements (chapter 8) were carried out at the roadside gate of the nearest sensitive receptor (a dwelling), rather than at the dwelling itself, despite the fact that the applicants were seeking to use noise standards that are based on noise levels at the nearest residential receptor. No attenuation/correcting factor was applied to account for distance effects between the gate and the dwelling. This had the effect of maximising existing baseline measurements, and hence under-estimating the impact of the noise impact of the development on the dwelling.

4. Traffic. The traffic surveys were flawed, in addition to the points mentioned above, in that they did not deal with one of the roundabouts on the N28 in the network between Shanbally and Ringaskiddy, did not adequately account for the traffic generation from a number of major industrial developments planned for the area, and misinterpreted the data from the planning applications of others (notably the National Maritime College). In addition, all of the measurements were given in vehicles per hour, rather than p.c.u's, and hence equated a very large HGV with a private motor car, despite their obvious differences in size and extent of road coverage in congested conditions. This had the effect of underestimating the impact of HGV traffic (which would represent a significant proportion of the traffic that would be generated by the development). Mr Coughlan, the applicants' traffic consultant, when queried about this issue at the oral hearing, was unable to give any convincing explanation for his choice of measurement unit.

5. Mixing of Phase 1 and 2 Impacts. Throughout the EIS, there is reference to both phases of the development – the present application for a 100,000 tonne

hazardous and non-hazardous incinerator, and the potential future application for a 100,000 tonne municipal waste incinerator. The impacts of these are combined, both in textual and tabular form, and in a number of the chapters, they are not separated out (e.g. Chapters 9 and 15). This makes an objective assessment of the present proposal almost impossible. The applicants' justification for this is that they are seeking to show all the direct and indirect impacts of the development. However, I do not accept that this is reasonable, since the data and impacts are not separated out into direct and indirect, as suggested, and since the proposed Phase 2 development will, presumably, have its own EIS in due course.

Conclusion

On the basis of the above analysis, I consider that it is appropriate to advise the Board that it would not be prudent to accept the conclusions reached by the applicants in the submitted EIS in relation to the likely significant impacts of the proposed development.

PLANNING CONSIDERATIONS

I consider that the main planning issues for consideration in this appeal are as follows:-

1. Compliance with Policy
    a. National Policy
    b. County Waste Management Plan 1993
    c. County Development Plan 2003
    d. Regional Policy (CASP)
    e. Government Commitment
    f. International Policy / Commitments

2. Proper Planning and (Sustainable) Development
    a. Site Selection
    b. Site Suitability
    c. Impact on Economy/Employment
    d. Impact on Visual Amenity
    e. Impact on Residential Amenity
    f. Impact on Recreational Amenity
    g. Impact on Protected Structure/Cultural Heritage
    h. Inadequate Infrastructure – Roads
    i. Inadequate Infrastructure – Sewerage/Storm Water
    j. Inadequate Infrastructure – Emergency Planning / Public Safety

3. Additional Points
    a. Site Ownership
    b. Public Right of Way
    c. Costs

1. COMPLIANCE WITH POLICY

a) National Policy

There are two national policies that have to be considered in relation to this application, since it proposes to deal both with hazardous wastes and with non-hazardous wastes. The former is governed by the National Hazardous Waste Management Plan, while the second is the subject of "Changing our Ways" and "Delivering Change" policy documents. I propose to deal with each in turn.

Before doing this, it is necessary to make a general point. It should be noted that, in relation to this application, the Board is required to "have regard to" policies and objectives of "the government or any minister of the government in so far as they may affect or relate to its functions". This statutory obligation has been judicially decided in the Supreme Court in the case of *Glencar Exploration plc v Mayo County Council* in 2002, and by the High Court in the more recent case of *McEvoy and Smith v Meath County Council* in 2003. In the *Glencar* case, the Chief Justice expressly decided the issue in his judgement when he stated:-

> *"The fact that they [Mayo County Council] are obliged to have regard to policies and objectives of the government or any particular minister does not mean that, in every case, they are obliged to implement the policies and objectives in question. If the Oireachtas had intended such an obligation to rest on the planning authority in a case such as the present it would have said so".*

I consider that the same legal stipulations apply to the Board, which has the same responsibilities in relation to national policy under the 1963 – 1999 Planning Acts as do Planning Authorities.

It is my professional opinion that, even if the proposed development in principle does conform to national policy, as set out in the National Hazardous Waste Management Plan and in "Changing our Ways/Delivering Change" – for the hazardous and non-hazardous aspects, respectively (which, as outlined below, I do not accept), it is nevertheless open to the Board to conclude that the proposed development should not be permitted on other grounds, relating to the proper planning and (sustainable) development of the area, the particular unsuitable characteristics of the site and its environs, and other factors, as outlined below. I do not consider that any purported compliance with national policy, even if true, should over-turn other considerations to which the Board is also required to have regard.

There is a further point that needs to be considered in relation to the statutory requirement of "having regard" to national policy, and one that was strongly put forward by the applicants during the course of the oral hearing – that if the County Development Plan does indeed prohibit "contract incineration" anywhere within its functional area, the Plan is therefore in breach of national policy and should be disregarded by the Board in reaching its decision. This was, essentially, the content of the submission (no 3214) made to the Council in 2002 during the drafting process of the County Development Plan by Indaver. Detailed evidence was given by Councillor Peter Kelly in relation to this matter (and a copy of the County Manager's proposed amendment, in response to the Indaver submission, was provided by

Councillor Kelly and is with his oral hearing submission – see Appendix 2 – Group 6 - 2). (The text of the Indaver submission to the draft Development Plan was also handed in during the course of the oral hearing and is on file – see Appendix 2 – IND - 11). Councillor Kelly's evidence was that the Council members, in deciding to retain the prohibition on "contract incineration" and hence not to accept the County Manager's proposed amendment and to reject Indaver's submission on the draft Plan, made a conscious and deliberate decision to do so, after debate and explanation by the officials of the issues involved.

This issue of the requirement of "having regard" to national policy was extensively discussed during the course of the oral hearing, particularly in questioning by both the Planning Authority's barrister, Mr Sreenan, and by myself as Inspector, of the applicants' planning witness, Dr Brian Meehan, and of my questioning of the County Planning Officer, Mr Kelleher. Under such questioning, Dr Meehan accepted that the development does indeed constitute "contract incineration", as defined in the County Development Plan. He also admitted that it was in material conflict with the zoning provisions of the Development Plan. Dr Meehan accepted that the Council members had fulfilled their legal obligation of "having regard" to national policy when they adopted this provision in the Plan, and also when they voted, by a 70% majority (30 votes to 13), not to materially contravene the Development Plan in relation to the present planning application, since they took note of the advice from the Council officials before coming to their decisions on each of these. Mr Kelleher also accepted this point on behalf of the Planning Authority.

National Hazardous Waste Management Plan

It is submitted by the applicants that this development, of an incinerator for hazardous waste, is in conformity with this Plan. They point to the recommendations of the Plan, which include, as item 7 in the priorities for the years 2001 – 2006, the following:-

> *"The development of hazardous waste landfill capacity and thermal treatment for hazardous waste requiring disposal to achieve self sufficiency and reduce our reliance on export"*

The third parties, on the other hand, argue that this view is based on a selective misreading of the Plan. They point out that the Plan does not specify what type of thermal treatment should be employed, and that there are a number of potential thermal treatment alternatives, some of which do not involve incineration as proposed. They point out that the recommendation quoted links the provision of thermal treatment with the provision of hazardous landfill capacity, and not separately, and that, since the applicants are not proposing such capacity, and since there is no such capacity in Ireland at present, the proposal is, at best, premature. They submit that, without such landfill capacity, ash residues from the proposed development (which would be hazardous and could not be landfilled in Ireland), would have to be exported for disposal, thereby breaching the proximity principle and self-sufficiency argument used by the applicants as justification for the proposed development.

More crucially, the third parties argue that a full reading of the entirety of the Plan shows that the main priority of the Plan is for hazardous waste prevention (described as "the cornerstone" in the text of the Plan), and that the provision of the proposed incinerator, when the other priorities of the Plan, and particularly the waste reduction measures, have not yet commenced, would be inappropriate, premature, and contrary to the objectives of the Plan.

As this is such a crucial issue in this case, I have carried out a detailed examination of the National Hazardous Waste Management Plan (and have included the full text of the Plan in Appendix 3 for the Board's consideration). I find that the main thrust of the Plan is, as suggested by the third parties, waste prevention. A Prevention Programme is to be established, which is described as "the cornerstone" of the Plan (p. 85). The Objectives of the Plan are set out clearly on page 1, which states:-

> *"The primary objective of the National Hazardous Waste Management Plan is to prevent the production of hazardous waste and to minimise the effect of hazardous waste on the environment. The secondary objective it to manage hazardous waste that cannot be prevented in such a manner as to ensure that environmental pollution is minimised and not transferred from one environmental medium to another: in other words to bring about a qualitative reduction in the quantity of hazardous waste requiring management"* (para 1.3 - my emphasis)

In noting the increases in hazardous waste arisings between 1996 and 1998, the Plan states that it is the intention that these should be reduced, by a combination of measures, as follows:-

> *A 'standstill' scenario for hazardous waste disposal shall be adopted as a target with 1996 as the base year for that target" (para 4.4).*

A number of methods are proposed in order to help achieve this target. It is proposed to establish an Implementation Committee, to oversee a Prevention Team which would implement the Prevention Programme. The Programme would achieve this reduction target by a combination of measures such as regulatory instruments, economic pressures (charges and taxes), awareness raising, training and technical assistance. The costs of the prevention programme are estimated to be £43.5 million. The Plan states:-

> *"in the short term, the key to reducing dependence on disposal options for hazardous waste is the segregation and re-use, recycling or recovery of that waste. Recovery options may provide financial benefits to companies and reduce waste disposal costs."*
>
> *"Medium to long term measures may include material (raw or intermediate) substitution and the adoption of cleaner technologies, both of which should prevent the generation of hazardous waste in the first place."*
>
> *In order to provide the necessary assistance to industry to implementing practical changes, the work of the prevention team (section 4.7.5) should be commenced without delay"* (ref. page 44)

The urgency in relation to prevention is echoed in the speech of the Minister of State at the launch of the Plan (see marked sections of the text of this in Appendix 3).

Chapter 6 of the Plan does with "Recovery and Disposal of Hazardous Waste". It outlines that the main emphasis of the Plan is on making recommendations for the prevention of hazardous waste, but recognises that the Prevention Programme "will not reduce waste quantities much below 1996 levels," and that therefore that it is important to ensure that "adequate and suitable recovery and disposal outlets exist for the hazardous waste that will continue to arise". After dealing with recovery, both in Ireland and abroad, it notes that there is a need for the State to be self-sufficient in relation to hazardous waste disposal, since there cannot be continued long-term reliance on export to other countries. A number of potential thermal treatment options are outlined, based on an analysis of the data for 1996 and the quantity remaining to be exported (18,880 tonnes) (Figure 6.1), as follows:-

a. Continued export
b. Small all purpose kiln, capacity 15,000 tonnes, capable of handling all hazardous waste types
c. Two kilns, one for municipal waste and the second a liquid injection kiln with capacity of 8,000 tonnes
d. Other technologies (such as gasification, pyrolosis and high temperature melting.)

The Plan does not come down in favour of any particular option, due to the EPA's licensing role, but states that the selection would have to be contingent on the option representing "best available technology (BAT), as required by the IPPC Directive 96/61/EC".

It concludes as follows:-

> *"on the face of it, the quantities of hazardous waste exported for incineration between 1996 and 1998 would appear to justify the establishment of a high temperature thermal treatment facility for the disposal of hazardous waste in Ireland…However, there are uncertainties in regard to future quantities of hazardous waste and also in regard to the types of waste that can be expected to arise as collection rates improve. In addition, the impact or success of prevention programmes can only be determined when they have been in place for a number of years. It is important that the establishment of a thermal treatment facility does not inhibit the success of prevention programmes"*
> (p. 66 – my emphases)

Evidence was given, during the course of the oral hearing, that the Implementation Committee had only just been established (in July 2003), and that the Prevention Team and Prevention Programme had not yet commenced. No information was presented as to the availability of funding for the Programme.

From my examination of the Plan, I am fully satisfied, contrary to the contention of the applicants, that the recommendations of the Plan are intended to be carried out in sequence, and in particular that the Prevention Programme is intended to be put in place as a priority, before other aspects of the Plan are implemented. Given that this has not happened, and in view of the very clear warnings in the Plan that the

establishment of the thermal treatment facility would tend to inhibit the success of the prevention programme, I do not consider that the development of a thermal treatment facility at this time can be justified as being in accordance with national policy. Indeed, it is my firm view that its development at this time, in the absence on progress with prevention, and some progress towards the target of 1996 hazardous waste disposal levels, would be premature.

In addition, from the context in which it was used (and particularly Figure 6.1 and the text of the Plan at page 65), I am satisfied that the term "thermal treatment for hazardous waste", as used in the Plan does not, as contended by the applicants, equate with an incinerator such as is proposed in this case. The Plan discusses other types of thermal treatment, which it acknowledges have not been applied to the treatment of hazardous waste on a commercial scale, but which it feels "subject to further research, present real alternatives to incineration" and "have a number of reported advantages", which "should be considered". In this regard, I feel that the selection of the proposed development to treat hazardous waste at this stage, when it is not justified on the basis of the need to proceed with prevention first, would also militate against the consideration of such alternative thermal treatment technologies.

There is also the issue of the scale of the thermal treatment facility envisaged by the Plan. The Plan clearly intends that the amount of hazardous waste that it is appropriate to dispose of by way of thermal treatment is 18,880 tonnes per annum, as outlined in its target of achieving reduction to 1996 levels (see Table 6.1 and also the introduction to Chapter 6 on p. 61, as quoted above).

I am fully satisfied that the scale of the proposed development, which is intended to treat 50,000 tonnes of hazardous waste out of the total of 100,000 capacity, would be well in excess of what is envisaged in the National Plan. It is evident, from the comments of Mr Ahern during the oral hearing, and from the closing statement of Mr Gardner, that the reason for the size of facility proposed is the "economic viability of the proposed development". I do not consider, on policy grounds, that the economic viability for the applicant company is something that the Board should give any weight to, as it is not a material planning consideration in an appeal, but only a private financial matter.

I also note that the statutory basis for the making of the National Hazardous Waste Management Plan, in Section 26 of the 1996 Waste Management Act, dictates that the Plan should put forward proposals for "*the disposal of such hazardous waste as cannot be prevented or recovered."* Since anything above the 1996 levels is seen by the Plan as being capable of being prevented or recovered, to permit a thermal treatment facility with a greater capacity could be seen as going against the very statutory basis of the Plan itself. Accordingly, there is not only a policy reason against accepting a facility that is grossly over-sized for the purpose intended in the Plan, but also a statutory reason.

Finally, I accept the contention put forward by the third party appellants that the Plan specifically links the provision of thermal treatment to deal with hazardous waste for disposal with the development of hazardous landfill capacity. This is clear from the linking of the two within the one recommendation, and also from the context in which they are discussed in Chapter 6 of the Plan. Since it is evident that, at present, there is

no such capacity, either in the Cork area or nationally, and since the proposed development would produce hazardous ash residue (from both the burning of hazardous waste and non-hazardous waste – even if the quantities of such ash are in dispute), I consider that the proposed development would be premature. The stated justification of the development lies in the need for self-sufficiency and to reduce reliance on export of waste for disposal, due to concerns that other EU countries will prohibit such importation in the future. This justification falls if there would be a continuation of export of resultant hazardous ash for disposal.

Accordingly, for all of the above reasons, I consider that the proposed development, at this time, of a hazardous waste incinerator would be in material conflict with the provisions of the National Hazardous Waste Management Plan, and would also be premature pending achievement of waste prevention and reductions in the quantities of hazardous waste arisings for disposal, as envisaged in that Plan. It would also be premature pending the provision of hazardous landfill capacity to deal with hazardous waste residues from thermal treatment.

Changing our Ways/Delivering Change

The main focus in these policy documents, as with the hazardous waste plan, lies in waste prevention, re-use, recycling and recovery. However, the documents also focus on the proximity principle, that waste should be treated as close as possible to its source of generation. They indicate that waste to energy incineration "may prove" to be a beneficial option for "residual waste" that cannot otherwise be minimised, recovered, re-use or recycled. They indicate that the method of waste management planning is through the adoption of regional waste management strategies by Local Authorities. The later 2002 document (Delivering Change) notes that these are now all adopted, as a result of the enactment of the Waste Management (Amendment) Act 2001.

In the context of the present development, half of which is stated to be for non-hazardous industrial waste, the key points to determine are firstly, whether thermal treatment for residual non-hazardous industrial waste is envisaged in the Waste Strategies adopted by the Local Authority, and secondly whether there is justification, on the basis of the proximity principle, for this aspect of the proposed development. In my judgement, the non-hazardous aspect of the development can only be allowable, under national policy for non-hazardous waste, if it is provided for by the local Waste Strategies/Plans, since these are the implementing mechanisms prescribed in non-hazardous national waste policy.

b) County Waste Policy

I have carefully examined the relevant Waste Policies that apply to County Cork – which in this case are the 1995 Joint City and County Waste Management Strategy and the 1999 Cork County Waste Management Plan. In the case of the 1995 document, evidence was given during the hearing that three scenarios were examined, and that scenario two, which specifically excluded thermal treatment, was the chosen strategy.

In the case of the 1999 County Cork Waste Management Plan, the evidence of the Planning Authority's witness in this area, Declan Daly (see Appendix 2 – PA – 3) was that there is an Action Point (no. 46) which commits the Council to "examining the results of feasibility studies being carried out into the possibility of employing thermal waste to energy treatment for residual municipal waste". He also stated that there is no commitment in the Plan to adopt scenario 3 of the 1995 Joint Waste Management Strategy (which provided for thermal treatment). He concluded that the Waste Management Plan "does not indicate that incineration facilities will be required for either hazardous or non-hazardous industrial waste or for residual municipal waste."

In the case of the proximity principle, evidence was given that Cork generated a high level of industrial non-hazardous waste, and was one of the highest in the State in percentage terms, if the wastes from particular industries in three other counties were excluded. However, there was no analysis provided as between the types of industrial waste generated in County Cork and the types of such industrial waste that was proposed to be dealt with by the proposed development. The only waste streams discussed in any detail during the course of the oral hearing in relation to this aspect of the development were industrial sludges and meat and bonemeal. In the case of sludges, evidence was given by Ms D'Alton (CHASE Monkstown) that the policy of the Council (for whom she had worked in this area) was that these should be treated by non-thermal treatment technologies, such as anaerobic digestion etc. In the case of Meat and Bonemeal (MBM), Mr Ahern provided figures, at my request, from the Department of Agriculture on the location of rendering plants producing this material (see Appendix 2 – IND – 13). This showed that there were, in fact, no rendering plants in Cork at all, and that, of the four in the Munster area, two were in Co. Tipperary, one was in Limerick and one was in East Waterford. This present site could hardly be described as being "proximate" to those sources of waste.

However, there is no analysis in the submitted documentation put forward to the Board on the need for thermal treatment for residual industrial non-hazardous waste, nor of the quantities of such waste requiring disposal, nor is there any analysis, in the EIS or submitted documentation, that Ringaskiddy would be the optimum location for such a facility. In fact, the non-hazardous aspect of the proposed development was merely an adjunct to the hazardous aspect of the development, in respect of which all of the site selection and justification was based. Accordingly, if the hazardous aspect were to fall (as I am recommending, since it is not appropriate nor in accordance with the national and county plans), then there is no evidence nor analysis available to the Board to justify the non-hazardous waste incinerator aspect.

On the basis of this analysis, and in particular since there is no provision, currently, within the Cork Waste Management Plan for the implementation of thermal treatment to deal with residual non-hazardous industrial waste, any development of a non-hazardous industrial incinerator at this location would not be justified and would, at the very best, be premature pending future reviews of the Waste Management Plan.

(It should be noted that there is no provision, in the Cork Waste Management Plan 1999, for hazardous waste, since that Plan was adopted before the adoption of the National Hazardous Waste Management Plan. However, there is, in section 2.2.2.14, a statement that it is intended that the Council will incorporate the recommendations of the National Hazardous Waste Management Plan into the County Waste

Management Plan as an amendment. The evidence of Mr Daly, for the Planning Authority, was that, to date, that amendment has not yet been made. Mr Daly also noted that, in any event the National Plan does not "indicate that Cork would be the preferred or only location for a hazardous waste incinerator".

c) County Development Plan 2003

The applicants argued, both in written submissions and during the oral hearing, that the proposed development did not constitute a material contravention of the County Development Plan, and that, when read as a whole, the proposed development would be in conformity with the objectives of the Plan. In the alternative, as contended by Dr Meehan and Mr Gardner, if the development conflicts with the zoning objectives of the Plan, but not with other objectives, the Board is entitled to over-rule the plan on grounds that there are conflicting objectives in the Plan (as provided for in Section 37(2) of the 2000 Planning and Development Act).

The Planning Authority's position, as put forward in the written submissions and at the oral hearing, is that the proposed development constitutes "contract incineration" and hence is specifically excluded under the terms of the relevant zoning objective. In addition, as the development does not constitute "large stand alone industry", it is in material conflict with the specific site objective applying to the subject site.

The third parties agree with the approach taken by the Planning Authority, but also submit that the development would not only conflict with the zoning and site specific objectives of the Plan, but also with other objectives and policies set out in the Plan.

I have carefully considered all of these submissions, and have reviewed all of the sections of the Plan referred to by the parties to the appeal. It is my considered professional opinion that the proposed development materially contravenes the statutory Development Plan in the following areas:-

1. The proposed development constitutes "contract incineration" (as defined in Zoning objective ZON 3- 13 and paragraph 9.3.36). This definition is clear – it refers to facilities whose primary role is to manage wastes that are not generated by the company itself (i.e. the industrial company) - to "the incineration of waste generated elsewhere". As noted earlier, following extensive cross-examination, the applicants' planning expert, Dr Meehan, conceded that the proposed development constituted contract incineration. On this basis, and under the terms of ZON3 –1 3(b), which is the applicable zoning objective, the proposed development is not considered to be suitable in such areas. (In this regard, I find the applicants' argument that, because the words "generally suitable" are used, rather than "appropriate" that this somehow means that the proposal is permissible, to be entirely specious and without merit.)

   It will be noted (see Appendix 1- oral hearing proceedings for 8/10/03 tracks G, H and J) that I closely questioned Dr. Meehan on his interpretation of the Development Plan, and that he accepted that, in interpreting development

Plans, one goes from the general to the specific, and where there is conflict, one favours the specific, in this case the zoning objective. He accepted that the development materially contravened ZON3 –13, but still contended that the development was in accordance with national policy, which (in his view) took precedence. (For the reasons outlined above, I do not agree with this last opinion of Dr. Meehan.)

2. The proposed development is not a "large stand alone industry", in the sense that the term is used in Specific Objective I – 15. While I accept that the use involved is "industrial", in the Use Class sense – in that it constitutes heavy or special industrial use (and in this regard I disagree with Mr Sreenan on the matter) – I do not accept that, by any reasonable definition, the proposed development could be classified as either "stand-alone" (since it depends for its whole existence on the waste products of other industries), nor as a "large industry". I note that, in the site selection process, the applicants' consultants themselves accepted that the development was not a "medium/large stand alone industry due to the number of potential jobs", when they dismissed the suitability of an industrially-zoned site in Charleville on this basis (see para. 2.6.6 of the EIS). It is evident from this that the term "large", as used in the County Development Plan, relates to the amount of employment that is likely to be generated by an industrial development, and not to the physical size of the actual buildings concerned. At a total, for both Phases 1 and 2, of 57 jobs, on a site of over 30 acres, the proposal could by no means be described as "large". This view is entirely consistent with the objectives of the County Development Plan of encouraging employment in industrial and enterprise areas.

3. The County Development Plan indicates, at objective 1-22, that it is an objective to "safeguard lands in the vicinity of ports and harbours against inappropriate uses that could compromise the long term potential (including access) of the port and harbour". I note, from Dr. Meehan's submission, that the subject lands form part of only three plots of land in Ringaskiddy (itself designated in the plan as a "strategic industrial area") earmarked in the Plan for large stand alone industry. Since Ringaskiddy is the chosen location by the Port of Cork for the continued development and expansions of Port activities (in accordance with its Strategic Plan – details of which are included in the history documents relating to file ref. S/00/5570 (Bord ref. PL04.125809)), I consider that it is reasonable and appropriate to ensure that such an important site, which is directly opposite the National Maritime College and close to other sites owned by, and in the case of the other Irish ISPAT landholding, recently purchased by, the Port of Cork, should be reserved for industries that are genuinely port-related. (In this context, it was accepted by Mr Ahern that the proposed development was not port-related.) This issue of port related uses is further outlined in the Cork Area Strategic Plan (see below)

4. The County Development Plan also specifies a number of scenic routes around the Harbour Area, and lists a number of protected structures, including the Martello Tower. It states that it is the objective to preserve the character of all important views and prospects, particularly sea views (Objective ENV 3-4), and to preserve the character of those views and prospects obtainable from

scenic routes (Objective ENV 3-5). Two such scenic routes are the route around the south side of Great Island, looking southwards across the Harbour towards Ringaskiddy (A53), and the route through Passage West and Monkstown and on to Ringaskiddy (A54), looking towards the Harbour and Haulbowline. In my judgement, the proposed development, because of its bulk and scale, would impinge of these scenic views and certainly would alter their character. (It is argued by the applicants that, as the subject site is zoned for industry, this character would be altered in any event. However, the size and scale of the proposed development, which was characterised by Mr Deasy, the Council's architect, as the biggest building that he had encountered in the Harbour area, would clearly have a much greater impact than other industries that might be located there (especially given the site's topographical constraints).

There were a number of other points made by the parties in relation to the County Development Plan, as outlined in the submitted documentation, wherein they argued that the development would conflict with other objectives and policies. I do not accept that, in those cases, the development would be such as it would contravene in a material way, the objectives and policies referred to. For example, I am satisfied that the development would not interfere with the visual setting of the Martello Tower to such an extent as to amount to a material contravention of the Plan. Neither do I consider that the development, as suggested by some parties, would conflict with the policies on integrated coastal zone management, nor be premature pending the carrying out of such ICZM for Cork Harbour.

My judgement in relation to the contravention of the Development Plan is limited to the four instances mentioned above. However, in each of those instances, I consider that the proposed development is not only in conflict, but is in Material Conflict with the relevant provisions of the Development Plan. Accordingly, I would support the Planning Authority's reason for refusal, but would considerably add to it.

However, this is not the end of the matter, since the Board has the power to grant a planning permission, even if the development in question materially contravenes the Development Plan.

It was strongly argued by a number of the parties at the oral hearing, and by Mr Sreenan (for the Planning Authority), that the Board, although it has the power to over-rule a Planning Authority and grant a permission which is in material conflict with the provisions of a Development Plan, would have to have very significant and overwhelming reasons for over-turning such a very deliberate and conscious decision of the elected councillors. Such an over-ruling was described as injurious to democracy. It was argued – and in my view correctly - that no such overwhelming or significant reasons can be adduced for this particular development, at this particular location, at this particular time.

Another third party made the point that the adopted Development Plan should only be overturned in such circumstances by the Board on the basis of a "pressing public need". It is evident from the foregoing that the proposed development is neither a "pressing need", as it is not urgent in the context of the National Hazardous Waste Management Plan, nor is it a "public need", but is rather a private sector development,

designed for commercial reasons to a scale and purpose that has little public benefit. Neither it is a "necessary public utility" as the proposed incinerator in Carranstown was determined to be by the Board in file ref 126307, since the proposed development is not justified nor permitted under the terms of the County Development Plan nor the Cork County Waste Management Plan (as noted above).

d) Regional Policy - Cork Strategic Area Plan (CASP)

As Regional Guidelines recognised in the National Spatial Strategy (section 4.7, p. 85), and given statutory recognition under Sections 21 - 27 of the 2000 Act, the Board is obliged to have regard to this policy document, just as it has to have regard to national policy. It is submitted by the third party appellants that the proposed development would conflict with CASP, essentially under two main headings. Firstly, CASP makes particular reference to the need to use the Harbour Area as a natural asset in the further development of employment, and in the development of amenity, recreation and tourism. Secondly, CASP makes particular reference to specific areas, including Ringaskiddy, and sets out Regional Guidance in relation to certain major activities with regional significance, including the development of the Port of Cork.

In relation to the first issue, while I recognise that the Strategic Plan seeks to build on the harbour as an asset, it also recognises the continuation of the long-standing trend for the development of industry in the harbour. While tourism, recreation and amenities are given due regard, the Plan is essentially a settlement and employment strategy, and seeks to re-direct residential expansion of Cork towards the north of the City, and in a linear fashion eastwards towards Midleton, and seeks to curb the current market-led growth of housing towards the south suburbs and southern satellites. It also emphasises the value of continued industrial and enterprise development in Ringaskiddy. In this regard, therefore, I do not think that the third parties can take much solace from the Strategic Plan, in principle, although there are particular policy statement with which they would agree, and which they have emphasised (including the potential longer term use for the redundant Irish Steel/Irish Ispat complexes).

In relation to the second issue, however, I consider that the third parties are on firmer ground. Even more than is covered in the County Development Plan, the Strategic Plan (Chapter 7) emphasises the importance to the future economic development of the Cork region of the further expansion of Port activities in the harbour, and the eventual relocation of Port activities downstream from the City to the harbour. In this regard, the following statement are most relevant to the present application:-

> *"The Port of Cork has commissioned a study of port operations and the Port of Cork Strategic development Study….Port operations at City Quays are in decline and are likely to reduce significantly over the coming years. This represents a major City-wide regeneration opportunity. Thus the future focus of activities for the Port of Cork will be at Tivoli and Ringaskiddy".*
>
> *"Ringaskiddy benefits from deep water berthing, but suffers from a mixture of roles which constrains current operations….Much of the land requirements for the protected port development at Ringaskiddy will be from land reclamation. This is likely to be of the order of 30 hectares at both the Curlane Bank and Oyster Bank, and 10 acres for a Common User Berth. Despite the proposed*

reclamation, development in the Ringaskiddy area should be limited to port-related industry, other industry, port back-up or other activities that complement the port."

"Land supply in Ringaskiddy is becoming scarce. As described previously, the Port's plans for expansion include land reclamation; however, land in the area should generally be reserved for port-related or complementary uses".

I am satisfied that the proposed development is not port-related, nor is it complementary to the port (unless it is argued that the reason the development is proposed is in order to avail of the port for the export or import of hazardous or non-hazardous waste, and such a scenario would entirely contradict the stated reason for the proposed development that has been advanced by the applicants – and also conflict with national policy.)

I consider that, on grounds of rational planning and the orderly future development, not only of Ringaskiddy but the general area as a whole, the use of the proposed site for a non-port-related purpose, in a position where there is a definitive future need for such land to facilitate the future development of the Port (with the spin-off benefit of urban regeneration in Cork City), would be entirely unacceptable and inappropriate. It should be refused on that basis also.

e) Government Commitment

There is a further aspect, which is peculiar and particular to the Ringaskiddy area, and that might well legitimately be described as Government policy. This relates to the formal written agreement between local residents and the Cork County Council, the IDA and the Government, as represented by then Ministers Gene Fitzgerald and Des O' Malley. This formal Agreement, which was in writing and signed by the parties, came about following controversies in the area in the 1970's, which came to a head when asbestos waste was dumped on a site at Barnaheely. It was agreed that no further waste disposal sites would be developed in the future in the Ringaskiddy and Monkstown areas. (The details of this Agreement are included in the site documentation.)

From my examination of this documentation, and from hearing the large number of oral submissions from residents of the Ringaskiddy area during the oral hearing, including a former County Councillor for the area, Mr B. Brennan, as well as the comments of Deputy B O' Keeffe, who is one of the Dail representatives for the area currently, I am satisfied that the residents have a legitimate expectation that there should not be any further waste disposal developments in their area.

I am convinced, from hearing this testimony, that the opposition on the part of the residents of the area to the proposed development could not be characterised as a NIMBY response, but as a strong feeling that the Ringaskiddy residential community has been willing to accommodate, over many years, a disproportionate level of industrial development, in the general economic interest of the region, and that the development of a hazardous waste incinerator is seen as a clear breach of this Government Commitment and is an unfair imposition on this community.

I consider, in the circumstances, that it would be reasonable for the Board to conclude that the Government Commitment represented by the 1970's Agreement should be given the status and weight of Government policy, to which the Board should have due regard in reaching its decision on the proposed development.

f) International Policy / Commitments

It is submitted by a number of the third parties that the proposed development would represent a breach of International Policies, to which the Government, by way of International Agreements, is a consenting Party. These include the Stockholm Convention on the reduction and Elimination of Persistent Organic Pollutants (POP's), the Rio Convention on Biological Diversity, and the Kyoto Protocol on Global Warming.

They submit that, in a hierarchy of policies as between local, national and international, greater weight should be given to international policies, to which Ireland is bound by international agreements, freely entered into, than to national policies, which can change at the whim of a government. It is submitted that the net implication of compliance with these international policies is that Ireland should not permit incineration of waste, in principle.

The applicants contend that it is not the role of the Board to seek to re-write Government policy through the medium of an oral hearing and planning appeal, and that, as incineration is part of accepted national policy, any arguments against it, in principle, are not a matter for the Board. In addition, it is contended (see Mr P. Gardner's closing statement) that national waste management policy has been adopted subsequent to these international treaties and commitments, and so has to be assumed to have taken them into account. In the case of the Stockholm and Rio Conventions, it is also argued by Mr Gardner that, in order to be seen to breach them, the development has to be assumed to be causing environmental pollution (through the release of Dioxins and other persistent organic polluting substances etc.), and the issue of environmental pollution from the activity is reserved to the EPA, and is not the province of the Board, under the current legislative provisions.

I find that, in the current legislative situation, it is not possible for me to accept the contentions made by the third parties. I accept that it is not the function of the Board to "second guess" national policy, as it has to accept that the policy of the day is the national policy, and that it has (as is outlined above) to "have regard" to that policy, whether or not it may agree with the content of such policy. It cannot seek to balance one national policy against another, but merely examine whether, in any particular case, a proposed development is in conformity with that policy. This is what I have done, in some detail above, and have concluded that the proposed development is not in conformity with national policy, as expressed in the National Hazardous Waste Management Plan. I do not consider that it is for me, as the Inspector dealing with this appeal, to give an opinion on whether the national policy in question is right or wrong – that is essentially a political matter.

Accordingly, I have no recommendation on the issue of international policy.

2. PROPER PLANNING AND (SUSTAINABLE) DEVELOPMENT

In addition to compliance, or otherwise, with national, local and regional policy, the proposed development also falls to be determined in relation to general principles of proper planning and sustainable development. This may be conveniently covered under a number of closely related headings, as set out below.

a) Site Selection

I have carefully considered the points raised by the parties in relation to the site selection process undertaken by the applicants in choosing this site, and the applicants' responses, particularly the responses given by Ms L. Burke of Indaver to very detailed questioning by Mr J. Noonan (CHASE Carrigaline) on the matter during the oral hearing.

I feel that, in the absence of national guidelines on the siting of hazardous waste facilities such as this, or indeed incinerators generally, it is appropriate (and indeed essential for objective analysis) to use internationally-accepted site selection guidelines such as those issued by the WHO.

For dealing with what is a national hazardous waste facility, I consider that the necessary and logical first step should have been the identification of the appropriate geographical region in the State in which to locate such a facility. This should be based on objective and verifiable criteria, including the sources of the waste to be treated, the cost-benefit in terms of transportation and property/site costs, and the environmental and social factors listed in the WHO Guidelines. It cannot be left to the judgement of a firm of consultants employed by an applicant to determine what criteria should be used to determine the siting of such a complex and significant development.

However, the applicants' choice of Cork appears solely to have been based on the use of the statistic that 60% of the hazardous waste generated in Ireland is generated in the Co. Cork. Even this criterion was not fully appropriate, as the applicants did not go further than this and determine what percentage of the national quantities of hazardous waste that are exported for disposal are in fact generated in Co. Cork. This is highly relevant because, of course, the intended purpose of the proposed incinerator is not to deal with hazardous waste that is generated *per se*, but only with that portion of the waste which is exported for disposal (approx. one quarter of the amount generated) and which (to use the terminology in the Waste Management Act, "cannot be prevented or recovered". While Cork has the highest concentration of pharmaceutical and chemical industries, this industrial sector is the one that is probably the most efficient at reducing its waste arisings, or treating them on site, and which has the greatest potential for further reduction, due to IPC licensing requirements (a point acknowledged by the EPA in the National Waste Database). I consider this lack of further analysis of the statistics to be regrettable, and the lack of consideration of any other criterion and hence of any other location within Ireland on that basis, to be most unfortunate. In my view, for a national hazardous waste facility, such as is proposed, this represents a very serious flaw in the process.

Within Co. Cork, the site selection process undertaken by the applicants was also seriously flawed. As was clearly evident from the cross-examination of Ms. Burke during the oral hearing, the applicants did not follow the successive step by step procedure set out in the WHO Guidelines, (see pages 26 – 27) of first applying exclusionary factors to screen or filter out unsuitable sites, then secondly applying suitability factors to the areas not excluded so as to highlight potentially promising areas, then thirdly applying community impact criteria and additional environmental criteria to identify a number of candidate sites for consideration and exclude unsuitable sites from the potentially promising areas, and then fourthly using more detailed criteria to rank the remaining candidate sites so as to obtain the preferred site for the development. Nor, evidently, did the applicants involve the public, in any meaningful way whatever, in the site selection process, as the evidence of Mr Ahern at the hearing was that the public consultation process was engaged in after the project was fixed, and the site had been chosen. The public consultation process, in fact, was a public notification process, and was not designed to, nor apparently intended to, alter the selection of the site. (It should be noted that public "involvement" is specified in the WHO Guidelines for both the "voluntary" and "technical" site selection models.)

Instead, it would appear that the applicants limited their search, as a first step, only to industrially-zoned lands under the Cork County Development Plan. Having initially selected Ringaskiddy as the preferred location and selected four sites within this area, they then looked at other lands in the Cork Harbour area, and then further afield in Co. Cork, using their own criteria, and consultation with the Planning Department of the Council. They then appear to have applied some (but not all) of the WHO criteria from Step 4, in a comparison of the four favoured sites in Ringaskiddy. Even these selection criteria were not ranked in order of significance or importance, and no weightings were given as between the stated criteria.

There is some reason to believe, based on the chronology of the project as outlined in this case, that the location of Ringaskiddy, and possibly the subject site itself, had already been chosen before the applicants even became aware of the WHO Guidelines. Ms. Burke's answers on this matter were, at best, evasive (see oral hearing proceedings for 8/10/03 – tracks NN – VV). It was suggested by third parties during the hearing that the site selection process outlined in the EIS, based on a combination of WHO Guidelines criteria and the applicants' own criteria, selectively used, was subsequently prepared to retrospectively justify the already chosen site. While there is no specific concrete evidence of this supposition either way, I consider that such an inference is reasonable on the basis of the evidence put before me at the oral hearing.

In my view, the initial decision to use industrial zonings as the key selection criterion, apart from this decision not being in compliance with the process of site selection set out in the WHO Guidelines, also has to be questioned. While I accept that the proposed development type would be classified as industrial (a point accepted by the Board in the Kilcock and Carranstown incinerator appeals), it does not follow that it could only be considered on lands zoned for such purposes. Indeed, in both Kilcock and Carranstown, the lands concerned were not zoned at all. There was evidence submitted at the oral hearing by Mr Ahern and Ms Burke that Indaver's initial search began at about the time of the Kilcock oral hearing (January 2000). In addition, there

was evidence given by Mr Ahern during the Carranstown oral hearing that he had looked, for that facility, at both industrially-zoned and non-industrially-zoned lands, and had concluded that the non-zoned lands were more suitable.

This fact becomes of much more crucial significance when it is remembered that the applicants were aware that the industrial zonings proposed in the draft Co. Cork County Development Plan specifically excluded "contract incineration", and that therefore there was at the very least the potential that there would be a presumption against the proposed development being permitted in industrial zones. There is clear evidence that they did know this, as they made a formal submission arguing against the adoption of just such a zoning stipulation, during the processing of the Plan.

On this basis, I consider that the applicants have not given the Board (and the public) sufficient evidence to justify the choice of the subject site for the building of the proposed national hazardous waste incinerator.

b) Suitability of the Subject Site

Of course, all of this relates to the accuracy of statements made, and analysis used by the applicants in the EIS and their lack (or alleged lack) of transparency in their justification for the choice of this particular site. The Board must also look at the resultant choice, to see whether, notwithstanding these flaws in the process of site selection, and the subjective use of criteria by the applicants, the site is objectively suitable for the proposed use.

In this regard, there are a number of factors:-

Location at the end of a peninsula, with only one road access.
This factor relates to the fact that the site is not readily accessible from the national road network, and requires that all traffic serving the site, whether for construction materials in the initial stage or hazardous and non-hazardous waste in the operation phase, has to travel in the one direction past residential areas, and return the same way.

I consider that the type of development proposed in this case, which is intended to treat waste that would have in almost all cases to travel some distance (particularly since no local industries have given any indication that they intend to use the facility – and if they had, the applicants would doubtless have indicated so) is not located in a site that is readily accessible to all areas of the State. Even if Co. Cork were to have been the correct location, it is surely the case that a site north of Cork City, with ready access to the national road network, and with access to rail, would have been more suitable.

This single road access also has implications for public safety and emergency planning, which is covered below.

Topography/climate
As noted earlier, the site is located on a north-facing hillside, within a steeply sided valley, and on steeply sloping ground. This has implications both because of the climatic/meteorological conditions, with much more frequent temperature inversions

(estimated by Mr Hession, the Council's Fire Officer with extensive experience of the area, at c. 5% of the time), and also turbulent wind conditions, and also because the available area for building on is quite restricted. This restriction is compounded by the presence, in the centre of the site, of the Hammond Lane facility. The net effect is that the main process building is crowded onto the eastern portion of the site, with quite limited room for buffering planting, particularly to the rear (a point acknowledged in cross-examination of Mr Hallinan, the applicant's landscape contractor).

In relation to topography, the contrast with the criterion used by the same applicants in respect of site selection for the Carranstown incinerator in Co. Meath is stark. There, a site that was flat was considered to be a favourable criterion for selection. Here the site is one side of a hill.

Geology/hydrogeology / lack of natural containment

The geology and hydrogeology of the site appears to be such that there is inflow of seawater into the ground water (so stated by the applicants in the EIS). There is also some evidence of flooding of the site in the winter months, due to a combination of poor drainage on the flat land to the front, and the minimal overburden/soil cover on parts of the site. This factor is listed as one of the prime exclusionary factors in site selection by the WHO Guidelines.

The significance of this for the suitability of the site is that the site may not have any natural containment, so that, in the event of a spillage of hazardous chemicals, or waste of some kind from loading and unloading operations (and human error cannot always be mitigated against) there is the very real possibility that there would be contamination of ground water and hence pollution of the harbour waters. The evidence given by Mr Huw Jones, who operates one of two major oyster fisheries, under Government licence, in the harbour, indicates that, were to be such contamination, there would be significant economic implications for his business and employees. In such circumstances, the precautionary principle would dictate that the site is objectively unsuitable and should be excluded from consideration for this type of development.

Risk of erosion

I am satisfied, from my inspection of the area, and the evidence given by the parties, (and in particular by Mrs O'Driscoll) that there is a very real danger of erosion of the eastern side of the site in storm conditions. Reference was made, during the oral hearing, to the recent EPA document "Climate Change: Scenarios and Impacts for Ireland", published in July 2003. This advised that development should be curtailed in areas that are at risk of such erosion, arising from more frequent storm weather conditions that could cause erosion occurrences and flooding. Cork Harbour was specifically identified as being under threat. In my view, this is an objective site suitability problem with the proposed development.

Proximity to High Density Residential Housing Areas

It is stated by the applicant that the proposed development is not proximate, in terms of WHO guidelines, to residential areas. In fact, the WHO criterion that is quoted by the applicants relates not to the text of the guidelines, but rather to an example of the use of such guidelines for a landfill facility in the U.S. And in any event the analysis

that was carried out by the applicants in the E.I.S. (Table 2.10), using this criterion, gave a negative rating.

I consider that, with the presence of Ringaskiddy village less than one km away, and Cobh, directly across the harbour water 2 km away, which already has a sizeable residential population, it was objectively inappropriate to locate a development that had the *potential* to cause at best bad neighbour effects and at worst public safety implications. In this regard, the testimony given at the oral hearing in relation to the 1993 Hickson fire was revealing, where a large plume of smoke from the fire travelled across to Cobh, and later, when the wind changed, over to Crosshaven to the south, before eventually dispersing over the East Cork countryside

It seems to me that, objectively, a development such of the type proposed in this instance should be located as far away from high density housing as possible. The contrast, again, with Carranstown, is illuminating, since one of the site selection criteria used at that time was location away from high density residential areas.

Proximity to sensitive land uses/users

Possibly the most obvious evidence of the unsuitability of the proposed site from this development lies in its proximity to the National Maritime College of Ireland. This development, which has national Government backing via the Department of Education and Science (under a Public-Private Partnership), and involvement by the Department of Defence (via the Naval Service) is located immediately opposite the site, and would be less than 100 metres from the proposed development.

The unsuitability of the proposed site can be readily understood by looking at the issue in reverse – had the proposed development already been erected, whether the Departments involved would have sponsored the development of the National Maritime College on the site in which it is now located. It should be noted that, at the time that the applicants stated that they purchased the subject site, in December 2000, the outline planning permission for the College had been lodged, but not granted. However, it had been long granted by the time the present planning application was submitted. Since it was therefore a *fait accompli*, an objective examination of the situation should surely have cautioned against proceeding.

The criterion of proximity to sensitive receptors and stationary populations, such as educational establishments and prisons, is specifically included in the WHO Guidelines on Site Selection.

Overall, it seems to me that the proposed site, on all these grounds, is objectively unsuitable to accommodate the proposed development. It should, in my judgement, be refused on this ground also.

c) Impact on Economy / Employment

It is submitted that the proposed development would have adverse impacts on other economic sectors in the area, and on employment, including farming, tourism and existing pharmaceutical industry.

These impacts all depend on an argument that it is the perception of the proposed development, rather than necessarily its reality, that causes the impact. For this reason, it is submitted by a number of the third parties that irrespective of whether or not the development complies with any EPA Waste Licence requirements, the perception that it causes health impacts would be sufficient to detrimentally impact on the "clean green image" of Ireland in terms of tourism and agricultural exports, and hence the matter is a material consideration for the Board to consider.

The applicants argue that there is no evidence before the Board that would support this contention, merely supposition and assertion on the part of the appellants.

While I am aware that perception is a real issue, and that a key part of marketing any commercial enterprise is the creation and maintenance of a "brand image", I have to conclude that most potential tourists, and most potential buyers of Irish agricultural exports, would not be aware of the existence of the proposed development, in its normal operation, unless there was an incident or major accident. To a tourist entering the harbour, the proposed development – big and visually objectionable as it would be – would simply be another ugly modern industrial building, of which there are, regrettably, too many already in the harbour area (a point echoed by Mr Deasy, the Council's architect, from his experience of the area). I do not consider, for example, that the current state of Irish Ispat/Irish Steel, with its rusting and ugly buildings, and its slag heaps of (apparently) radioactive and toxic waste, is causing any particular problems for the tourism industry in the area, despite the fact that it lies in direct view of the frontage of Cobh, where cruise liners dock, and opposite the Cobh heritage centre.

In relation to the existing pharmaceutical industry, it is less a matter of perception and more a matter of reality. Such industry typically requires clean air as part of its process, and would not welcome a neighbouring land use that would cause pollution. However, as the applicants validly comment, this assumes that the development would cause environmental pollution, and that is a matter to be considered by the EPA.

d) Impact on Visual Amenity

The issue of visual amenity is, however, entirely a matter for consideration by the Board, and not the EPA. I have given careful consideration to the submissions from the parties in relation to this matter, and assessed the site from a number of viewpoints within the harbour area. I have examined the photomontages, and the submitted drawings.

In my judgement, the proposed main process building is grossly excessive in scale and bulk, and would be seriously visually obtrusive in the area. Because of its size, and height, it would extend above the level of the hill, and hence would read as a discordant feature in the landscape, especially when viewed from designated scenic routes, as at Cobh and Monkstown.

I am not convinced that the proposed landscaping and mounding would be successful in mitigating the impact of the development. While I accept that, in closer-up views from Ringaskiddy village to the west, the landscaping, and intervening smaller

buildings, would be likely to have some mitigation effect, this would not be the case from the east, as the area is too elevated and exposed to onshore coastal winds to have much chance of extensive landscape growth, and as the available space for planting, because of the congested nature of this end of the site, would be limited. I am fully satisfied that the development, when viewed from the West Channel, from Haulbowline Island, and from Cobh and Monkstown, will be seriously detrimental to the maintenance and enhancement of the character of the area.

It is contended by the applicants that, as the site is zoned for industrial purposes, the visual character of the area will be affected in any event, As outlined above, I do not accept this premise. The extreme height and bulk of the proposed process building is a function of its purpose, and most industrial buildings would be much less bulky, and most would not be as high. In any event, with the presence of the Hammond Lane facility, I think that it is likely, in practical terms, that the land area covered by Objective I –15 (which is over 40 hectares of which the subject site is only 12) would be developed for large scale industry on the southern side of the hill, which is a much more gentle slope and gives greater freedom of space. In such circumstances, the industry would not be visible from Cobh or Haulbowline, nor from the scenic routes referred to earlier.

I am also not in any way convinced by the proposed external treatment of the building. I have looked at the research cited by the architect in answer to my questions at the oral hearing, and in my opinion, (and experience of dealing with many of the largest industrial buildings in the State), the approach will not serve to mitigate the building's impact, but will rather tend to accentuate it and draw the eye to the building. In fact, it seems to me that the use of this treatment is more a matter of architectural theory and "fashion" than any realistic attempt of camouflaging and mitigating the very extensive bulk and scale of this building. The process is not helped by the proposal to differentiate the reception hall area from the rest of the building by the use of a single colour treatment (blue) for reasons of architectural differentiation.

Overall, I consider that the proposed development, by reason of its bulk, scale and design, would be visually obtrusive and injurious to the visual amenities of the area, particularly when viewed from designated scenic routes within the harbour area, which it is an objective of the Development Plan to preserve.

e) Impact on Residential Amenity

The issue of residential amenity relates to two aspects – pollution from the development in operation, and impact during construction. As noted earlier, I can only address the latter item. On this basis, the key concerns are noise and disturbance from construction activities, including rock breaking, and traffic noise.

I am satisfied that the proposed construction activities, which are merely proposed to be mitigated by starting before 7 a.m., and implementation of (somewhat vague) agreements with contractors, would seriously interfere with the enjoyment of the reasonable amenity of adjoining and neighbouring housing. On this basis, I consider that the development should be refused.

f) Impact on Recreational Amenity

The impact on recreational amenity arises in relation to the continued use of Gobby Beach, Paddy's Point car park, and the Martello Tower. Notwithstanding the points raised by the parties, and the evident lack of amenities in the village, I am not convinced that the proposed development, per se, would have a detrimental impact on residential amenity. There may well be an issue of perception, in that people may not wish to use these facilities when an incinerator is in operation, due to fears for human health relating to environmental pollution from the activity. As outlined above, this is not a consideration that is within the remit of the Board.

g) Impact on Protected Structure/Cultural Heritage

As noted earlier, I am not satisfied that the proposed development would have a deleterious impact on the nearby protected structure of the Martello Tower, which represents the sole issue of cultural heritage on the site. I note the opinion of the Council's Conservation Officer, given at the oral hearing, and also the submissions of the Archaeological Officer / Heritage Officer and of Duchas. I do not consider that, apart from the general problems of visual amenity caused by the development (see section (d) above) that there is any justification for a refusal based on impact on cultural heritage/protected structures.

h) Inadequate Infrastructure – Roads

As already noted, I consider that the EIS, in dealing with traffic, was seriously flawed both in its baseline surveys and in the conclusions reached on the basis of these surveys.

It is evident to me that the existing traffic situation in the area, and in particular in Shanbally and Ringaskiddy, and along the N28 from the Shannonpark roundabout, is extremely congested, and is of a standard that could not justify further development without improvement. As noted by Mr D. Ryan, the Council's roads engineer, the Level of Service on the N28 at present, and as projected up to 2007, is well below acceptable levels. Junctions that are 119% and 445% over capacity are not, in my judgement, merely below ideal levels of service, but are, in fact, hazardous, with very serious congestion. To add any further traffic to this, and especially significant numbers of HGV's, would be to compound this hazard.

This problem of inadequate infrastructure is acknowledged by the National Roads Authority, in its proposals for a new road/realignment of the N28. I consider that, irrespective of the percentage increase on this already unacceptable situation that the development would generate (and the figures may run up to 15 – 20% during construction, with perhaps half that in the operating period), the proposed development is premature pending the provision of this road realignment project. It should therefore be refused on that basis.

i) Inadequate Infrastructure – Sewerage/Storm Water

The issue of inadequate infrastructure was raised by a number of parties, particularly in relation to the proposal to discharge storm water from the development into the

public combined sewer. It was also noted that there is no sewerage treatment currently in operation in Ringaskiddy, except for individual treatment at industrial plant level, and an IDA sewer that is separate to the public combined sewer.

In the light of the answers that I obtained from Mr Lavelle, of the Council, during the course of the hearing, I am satisfied that any concerns about inadequate services infrastructure are groundless, or – where they relate to the adequacy of stormwater retention provision and surface water attenuation provision - could readily be dealt with by condition.

j) Inadequate infrastructure – Emergency Planning / Public Safety Issues

The final area of inadequate infrastructure relates to emergency planning, and the implications on public safety of the proposed development, in the event of a major accident hazard.

It became evident, during the course of the oral hearing, and particularly following the evidence of Mr Hession, that there is no evacuation plan for the people or area of Ringaskiddy, in the event of a major accident such as a fire or explosion. This problem is compounded by the physical situation of Ringaskiddy, located on a peninsula with effectively only one way in and out. A similar problem arises, on a larger scale, for the town of Cobh, which is connected to the mainland by only a very narrow bridge, Belvelly Bridge. In addition, there is no public fire service whatever in Ringaskiddy, and only a part-time "retained" service in Carrigaline, the nearest such service. Cork City is 12 km away.

In this context, I was most concerned about the presentation, and the responses to questions given, by the representatives of the Health and Safety Authority on the last day of the hearing. As noted in Appendix 1, the analysis of the risks from the proposed development was based on statistical modelling, using information provided by the applicants' consultants. It would appear that this analysis is merely an interim analysis, or outline assessment, and that a more detailed assessment is given six months before the proposed development is due to commence (i.e., in the context of this development, perhaps a year and a half to two years after the commencement of construction works.).

Under the Seveso II Directive, the HSA is obliged, when requested, to give land –use planning advice to the Planning Authority. This advice, given to Cork County Council on 7th March 2002, did not advise against the granting of planning permission. However, there was a significant number of points that were apparently not covered or examined by the HSA in carrying out its risk assessment of the proposed development, and in providing this advice. These included the fact that there was no modelling of off-site impacts of fires in waste containing biologically active pharmaceutical waste or specified risk material (MBM) (see 10/10/03 track N), and no modelling of the impacts of hot fires in the tank farm on the adjoining Gobby Beach and foreshore (tracks BB and CC). The modelling of bunker fires was based on municipal waste, not industrial waste (as it used data and modelling for a Municipal Waste Incinerator (which is Phase 2, and hence not part of the present application))(see tracks M, W and Z). The HSA was not aware of the existence of the natural gas main within the site when carrying out its assessment (track WW), nor of

the groundwater conditions where there is inflow of seawater (track AA). No evidence was collected about the hazard record of the proposed incinerator type, the fluidised-bed incinerator, nor information from this type of plant in Dundee, which has had a number of fires since it started operation (tracks Q & R).

It is my judgement, based on the evidence given by the HSA at the oral hearing, that it would not be prudent for the Board to rely on the land-use planning advice given to the Planning Authority in relation to the safety of the proposed development in the event of major accident hazard, since that advice was based on incomplete and inaccurate information, and incorrect assumptions. On this basis, I consider that the Board should include, in its reasons for refusal, that there is not sufficient evidence before the Board to satisfy it that the proposed development would not pose risks to public safety in the event of major accident hazard, particularly in view of the proximity of the National Maritime College, and the other nearby Seveso II establishments, and having regard to the inadequacy of emergency infrastructure in the area.

3. ADDITIONAL POINTS

Three further points were raised by the parties that require comment and that do not conveniently come within the other headings.

a) Site Ownership.

I have considered the submissions made by the parties in relation to the applicants' title to the proposed site. The applicants state that they are the owners of the site, and that the necessary papers etc are in the Land Registry for registration. Some of the parties have questioned this, and have also questioned the right of the vendors, Irish Ispat, to sell the site to the applicants, on the basis of alleged non-performance of the contract conditions by which it obtained the lands from the Irish Government

In my judgement, the key question for the Board is whether the applicants have passed the "Frascati test" – i. e. whether that have sufficient interest in the site in question to apply for permission, such that, if permission were granted, they would be able to carry out the development. Both Dr Meehan and Brendan Kelleher (the only professional planners present at the hearing, other than myself) agreed that this was the applicable test.

On this basis, I consider that the applicants have sufficient interest in the site to enable them to have this planning application processed. Any alleged incapacity on the part of Irish Ispat, which is apparently to be investigated by a Parliamentary Committee, is outside the Board's remit and, unless proven, cannot be seen to vitiate a planning application made in good faith.

b) Public Right of Way

It was strongly argued, by a number of the parties, that there is a subsisting public right of way, running from the foreshore at Gobby Beach/Paddy's Point up through the site for the proposed incinerator building, to the Martello Tower. This is a right of

way that has been, it is submitted, in use for many years, and therefore, even if not registered, is established by usage. There was some evidence of such usage submitted, via Mr. Cronin of Group no. 6, from a long-time local resident. The pathway, or right of way, was shown on old editions of the Ordnance Survey maps as running diagonally across the site, but not on the most recent maps, since the Ordnance Survey have changed their mapping criteria. It is submitted that, until the Local Authority has extinguished the public right of way by statutory procedure, it is not possible for the Board to grant a permission for a development that would have the effect of removing the right of way.

The applicants deny the existence of any such public right of way, pointing out that the contours of the site changed "sometime in the 1970's", thereby removing the diagonal path. They submit that there is no evidence of any public right of way in existence, and that they propose to provide such a path around the proposed development, as a part of their landscaping works.

In my judgement, this issue is not one to be determined through the medium of a planning appeal, but falls to be determined at law. On that basis, and since the Planning Acts specifically provides (under Section 26 (11)) that planning permission, if granted, does not entitle someone to proceed, the Board is not constrained as suggested by the appellants. I am unable to accept the contention made by Mr J. Noonan, in his closing statement (see Appendix 2) that, simply because the Board is aware of the issue, that this invalidates the use of Section 26 (11).

c) Costs

The issue of the awarding of costs was raised by a number of the third parties.

I have considered these points, which generally are on the basis that, although the Council refused the application, it should have done so for more than the single reason given. There was also the suggestion, made by CHASE (Carrigaline) in the written submission, that the Council Management acted *male fides* in relation to the processing of the application. However, this suggestion was not further pursued by the relevant party at the hearing, nor by any other party.

I do not consider that it would be appropriate for costs to be awarded in this case. Although the content of the decision by the Council was criticised, it was a refusal decision, and it was notable that, during the course of the hearing, the viewpoint put forward by the Council was that of defending that decision.

On this basis, I do not consider that it would be correct for the Board to consider awarding costs. In the event that it may wish to do so, I would draw the Board's attention to the specific request of the County Council's barrister, Mr. Sreenan, in his closing comment on the last day of the hearing (see the penultimate page of Appendix 1), that the Council be given an opportunity to address the issue specifically (which could presumably be in writing, which could then be circulated to the parties, rather than a re-opening of the oral hearing).

CONCLUSION AND RECOMMENDATION

In the light of the above Assessment, I consider that the proposed development should be refused, for the reasons set out in the Schedule of Reasons below.

SCHEDULE

1. By reason of:-

   a) Lack of sufficient date necessary to identify and assess the main effects of the proposed development,
   b) Inadequate consideration of the interactions between the factors, and
   c) Inclusion of technical terminology within the non-technical summary,

   it is considered that the Environmental Impact Statement submitted with the application is inadequate and fails to comply with the mandatory requirements as to content, contrary to the provisions of the 1999 European Communities (Environmental Impact Assessment) (Amendment) Regulations, and applicable European Directives, and the Board is not satisfied, on the basis of the information provided in the submitted E.I.S., than the proposed development would not be likely to have significant adverse impacts on the environment.

2. It is considered that the proposed development of a hazardous waste incinerator facility, prior to any progress on the achievement of the waste prevention targets set out as a priority and first step in the National Hazardous Waste Management Plan, would be premature and, because of its scale, which is considerably in excess of the scale envisaged for thermal treatment in that Plan, would tend to inhibit the achievement of the Prevention Programme as provided for in the Plan. The proposed development would therefore be contrary to national policy in relation to hazardous waste management and disposal.

3. It is considered that the development of a hazardous waste incinerator facility, in the absence of the concurrent or prior provision of hazardous landfill capacity, would be premature, and would conflict, in a material way, with the provisions of the National Hazardous Waste Management Plan, in that no provision would be made for hazardous waste generated by the proposed development.

4. It is considered that the development of an incinerator facility for the treatment of non-hazardous industrial waste is contrary to the provisions of the Cork Waste Management Plan 1999, which makes no provision for thermal treatment to deal with this type of waste.

5. Having regard to its nature and location, it is considered that the proposed development would contravene materially the development objective ZON 3 – 13, indicated in the Cork County Development Plan 2003, for the use of the site primarily for the development of industry/enterprise, but not including the

development of "contract incineration", in that the proposed development constitutes contract incineration.

6. Having regard to its nature and limited employment content, it is considered that the proposed development would contravene, in a material way, the development objective I –15, indicated in the County Development Plan 2003, which specifies the lands, of which the site forms part, as suitable for large stand alone industry.

7. Having regard to its nature and purpose, and its location adjacent to Cork harbour and to port-related activities in Ringaskiddy, it is considered that the proposed development would contravene, in a material way, the development objective I-22, indicated in the County Development Plan 2003, which states that it is an objective to safeguard lands in the vicinity of ports and harbours against inappropriate uses that could compromise the long term potential of the port and harbour. It is considered that the proposed development is not port-related and hence is an inappropriate use that would be inconsistent with the Council's policy of promoting Ringaskiddy as the appropriate location for the future development and expansion of the Port of Cork, and uses that are complementary to that purpose.

8. It is considered that the proposed development, by reason of its bulk, scale, height, design and location, would be visually obtrusive and seriously injurious to the visual amenities of the area, would constitute a visually discordant feature within the harbour landscape, and would detrimentally impact on the preservation of views and prospects obtainable from scenic routes nos. A53 and A54 indicated in the County Development Plan 2003, which it is necessary to preserve. The proposed development would, therefore, be contrary to the proper planning and development of the area.

9. Having regard to the scale, nature and purpose of the proposed development, it is considered that the site, by reason of its topography, its climatic conditions, its geological and hydrogeological characteristics, and the risk of erosion and flooding of parts of the site, would be fundamentally unsuitable to accommodate the proposed development, and the applicants have not demonstrated that the proposed site is suitable, on the basis of objective criteria in a rational site selection process based on international best practice.

10. The proposed development, because of its nature and function, its location in close proximity to high density housing development at Ringaskiddy, and the resultant noise and disturbance arising from its construction and operation, would be seriously injurious to residential amenity, and would be likely to depreciate the value of residential property. The proposed development would, therefore, be contrary to the proper planning and development of the area.

11. Having regard to the location of the proposed development at the end of the peninsula of Ringaskiddy, with a single road access and no rail access, on the southern coast of the State, and to the scale of the development which is designed to source waste from all parts of the State, it is considered that the proposed development would involve excessive movement of vehicular traffic

through urban areas, and hence would give rise to conditions that would be prejudicial to public safety and amenity. The proposed development would therefore be contrary to the proper planning and development of the area.

12. The existing road infrastructure in the vicinity of the site, particularly along the N28 national primary route at Carr's Hill, the Shannonpark and Shanbally roundabouts, and along the LP2545 local road within Ringaskiddy, is currently the subject of serious traffic congestion, and is inadequate to accommodate the extra volume of traffic and traffic movements that would be generated by the proposed development, both during construction and operational phases, particularly the significant H.G.V. content. It is considered that the proposed development would endanger public safety by reason of a serious traffic hazard and obstruction of road users.

13. The proposed development would be premature by reference to the existing deficiencies in the road network serving the area of the proposed development, which it is not likely will be rectified within a reasonable period.

14. The Board is not satisfied, on the basis of the evidence submitted to it and heard at the oral hearing, that the proposed development would not pose significant risks to public safety in the event of major accident hazard, particularly in view of the proximity of the site to the National Maritime College, and to nearby Seveso II establishments, and having regard to the inadequacy of emergency infrastructure in the area and to the location of the site at the end of the peninsula, with limited road access.

Philip Jones,
Senior Planning Inspector,
5/1/04

An Bord Pleanála

Inspector's Report

APPENDIX 1 - ORAL HEARING PROCEEDINGS

Introduction

The Oral Hearing in this case took place, firstly in the Neptune Basketball Stadium in Cork City, and subsequently at the Rochestown Park Hotel, Cork, from September 22nd to October 10th, 2003. The entire proceedings were recorded, and a set of CD-ROM's have been provided with this report. These provide the full proceedings of the Oral Hearing and may be listened to by the Board to ascertain the details of any particular aspect of the hearing. These CD-ROMs are internally divided between each date of the Oral Hearing and within each date are set out in "tracks" which are periods of ten minutes each which overlap by approximately 20 seconds in each case. For each day these tracks are numbered consecutively A, B, C, D and so on to the end of the alphabet and then AA, BB, CC and so on, and in the case of one Oral Hearing day, which lasted until 11pm at night, subsequently to AAA, BBB, CCC, and so on.

I have provided, in respect of each days' hearing, a spreadsheet showing the content of each track. This may be used in order to locate the evidence of a particular witness or cross-examination of that witness during the hearing.

What follows is a précis of these proceedings. I have excluded from the record, where possible, any reference, particularly in questions, to matters relating to environmental pollution from the activity, as these are excluded from the Board's consideration of the appeal.

Model and Visual Displays

It should be noted that the applicants had brought to the oral hearing a number of display boards, and a small scale model of the development, for illustrative purposes. However, these were not used by the applicants in their presentations, and were strongly objected to by a number of the third parties, both on the basis that they were not representative of the proposed development and the existing buildings in the vicinity, and also because the model had not been before the Planning Authority as part of the planning application. It was submitted to me, as Presiding Inspector, that it would be a breach of fair procedures to permit the model to be included with the Board's documentation at this late stage in the proceedings. Having checked with the County Planning Officer, Mr. Brendan Kelleher, that the model and displays had not, in fact, formed part of the application, I instructed the applicants to take away these items with them at the close of the hearing.

ORAL HEARING PROCEEDINGS

22ND SEPTEMBER, 2003.

COMMENCEMENT OF HEARING

At the opening of the hearing, the Inspector outlined the content of the planning appeal and indicated that he had been appointed by the Board to hear the Oral Hearing. He stated that he would, in due course, following the Oral Hearing, be providing to the Board a detailed report of the proceedings of the hearing, together with a report on the documentation already received in writing. He stated that he would also be making a recommendation to the Board as to what decision it should make on the application. The decision on the appeal would be made by the Board itself.

The Inspector stated that the purpose of the Oral Hearing was essentially to gather information to assist him in preparing this report and for the Board. He noted that the hearing was not a court of law, but an Oral Hearing. This had a number of implications. The first implication, he stated, was that legal arguments in relation to matters that are before other bodies, such as the EPA, are not of great assistance to the Board. The Board was aware of the legal position in relation to the appeal, and of matters outside the remit of the Board. He accepted that these matters, while of considerable concern to the people in attendance at the Oral Hearing, were not, under the provisions of the relevant legislation, to be considered by the Board. He was aware of this from the written submissions that many of the parties had made. He stated that the Board's view, as noted in writing to all of the parties on 20th August, 2003, was that the Board was precluded from considering matters relating to the risk of environmental pollution from the proposed activity.

The Inspector went through the agenda which had been received by all parties before the hearing and indicated that he would be seeking to operate in accordance with this agenda. In the case of the first party (the applicants), the Planning Authority (second party), and the third parties, there would be provision for cross-examination of the other parties. In the case of observers, there would be no provision for cross-examination but every observer who was on file would be entitled to make a submission towards the end of the hearing and could at that point make comment on anything they had heard during the course of the hearing. At the end of the hearing the Inspector stated that he would have closing statements from all of the parties which would allow for any responses they wished to give following cross-examination of any witnesses. These closing statements would be taken in reverse order of the third parties.

IDENTIFICATION AND REGISTRATION OF APPEARANCES BY THE PARTIES

The next item on the agenda was the identification and registration of appearance by the parties and observers and provisional estimation of the duration of the Oral Hearing. The Inspector asked each party in turn to outline their expected number of witnesses and the length of time that these witnesses would be likely to take, so as to enable him to get an indication of the likely duration of the Oral Hearing.

At the start of this process, the acoustics in the venue turned out to be less than ideal. At the request of a number of the parties, an adjournment was arranged for a period of an hour so as to improve these acoustics.

Following the adjournment, with the acoustics considerably improved, the parties set out their witnesses and the estimated duration of the time which they expected to take for such witnesses. There was a further procedural issue raised by the third parties, in respect of the layout of the hall. They argued that there should be equality as between all the parties - the applicants, the Planning Authority, and each of the third parties. A number of third party groups felt that they were not being fairly treated with this layout, and asked the Inspector to make changes to the layout so that each person would have a fair opportunity to make themselves heard. In response, the Inspector indicated that he would take the matter under advisement, and would seek to make changes overnight.

PRELIMINARY SUBMISSION BY J. NOONAN (SOLICITOR FOR CHASE, CARRIGALINE - THIRD PARTY GROUP NO. 1)

Mr. Noonan stated that he wished to address the issue of the Board's view as to what it can and cannot hear. He submitted a short memorandum, with appendices, which he spoke to. (This was circulated to the parties in attendance at the hearing and was given to the Inspector - see Appendix 2, Group No. 1-A).

At this point Mr. Greg Casey, for An Taisce, asked when it was anticipated that a representative of the Health and Safety Authority would attend, as there was mention of them on the agenda. The Inspector replied that the Board had not invited the HSA to attend the hearing.

Mr. Casey asked whether there would be no consideration of health and safety by the HSA, that there would be no fact gathering exercise before the hearing, of the role of the HSA in relation to the Seveso II Directive. The Inspector stated that anything that was on file from the HSA would be considered by the Board. The Board had not invited the HSA to make a submission.

Mr. Casey stated that he considered the failure of the Board to invite the HSA to be unacceptable. He stated that the Board had received substantial written submissions from him over the preceding week, as had the HSA, which had refused to furnish information, which should be made available to the public on the basis that it is commercially confidential information, and after the period required for furnishing this information. He stated that the Board appeared to be relying on a letter which was sent by the HSA to the County Council in March 2002. He submitted that the Board, in a *de novo* hearing, was not entitled to rely on anything in that letter. He contended that the Board, as the national consent authority in relation to land use and planning, is in direct contravention of the Seveso II Directive in failing to consider the matters which the HSA had before them, and in failing to ensure that the public are consulted and that all of the information which the HSA have available, is made available to the public. He understood that the Board did not have in its possession information which he had received from the HSA on the previous Thursday evening. He asked the Inspector to ask the Board whether it intended to comply with the requirements of European Law and the Directive.

The Inspector stated that he had noted Mr. Casey's comments. He asked whether it was Mr. Casey's request that the hearing be adjourned (which he understood to be the import of an E-mail that he had sent to the Board) until the HSA information he referred to is available to the Board, or was he asking that his points regarding the HSA and the information which he got, and which he would presumably be putting before the Oral Hearing, be available to the Inspector.

Mr. Casey stated that he was not in a position to put the information he got from the HSA before the hearing. This information was furnished to him by the HSA under the provisions of 90/313/EC (Directive on Access to Information on the Environment). Neither Cork County Council nor An Bord Pleanála had received that information and he stated that the information which the HSA had had been withheld from the public. His submission was that the Board should ensure that the requirements of the Directive are complied with, as an emanation of the State to which European Law provisions directly apply. He asked that the information be demanded by the Board and then be made available to the public. Any consideration of health and safety issues in relation to Seveso II should be adjourned for further consideration.

Mr. Casey stated that it appeared that this development was a second tier Seveso II site, and that there are two other second tier establishments and one first tier establishment within a 2.5 kilometre radius of the site. He considered that the Board was obliged to consider the domino effect, where an accident in one establishment could lead to a chain reaction.

The Inspector stated that Mr. Casey was free to make a substantive point in relation to Seveso II at the appropriate time in the agenda at the hearing. He stated that he understood Mr. Casey's position to be that the Board should obtain information from the HSA, make it available and allow time for comment. He stated that he would report this in due course to the Board, which had the power to seek information formally, and to reopen the hearing if it felt it to be necessary. In the meantime he intended to proceeding with the hearing, as many people had come along for this purpose, and all of the other issues could be dealt with. He ruled that he would not adjourn, as Mr. Casey had requested.

Mr. Peter Sweetman stated that Mr. Casey had been acting for him on this matter. He had made a request of the HSA for the information on which its decision had been made, but he had not been furnished with this. He was informed by the Board (per Ms. Mary Kelly) that the Board would take into account the letter of the HSA to Cork County Council. Hence the Board was taking into account the HSA's opinion. What happened in this case was that after the HSA's letter was sent to Cork County Council, a book was made available to the public which did not contain the information on which the HSA's decision was made. On the basis of Seveso II, Mr. Sweetman argued that the Oral Hearing was fundamentally flawed.

Mr. Sweetman also contended that, under the EIA Directive, an EIS had to contain all the likely significant effects on the environment. In his view, the applicant's EIS was flawed and could not be remedied, as it did not contain any mention of the Seveso I plant within the consultation distance of this site. He also submitted that, under the EIA Directive, and 1999 Regulations, it was incumbent on the Board to consider "the

interaction of the foregoing". He wanted to address the interaction between human beings, including his client, and the Seveso requirements and chemical pollution that may affect him. It was his view that Section 98 of the EPA Act, relevant to the amendments to the 2000 Planning Act, is before the European Commission.

Mr. Sweetman stated that the hearing had no standing in European Law, and the Oral Hearing should be abandoned while the Board takes a reference to the European Court on the matter of the implementation of the Directive into Irish Law.

Mr. J. Noonan (Group 1) commenced his submission by querying the Board's prohibiting others recording the proceedings. He stated that it was possible that the outcome of the proceedings would be challenged in court, and in such event the Board would be in a privileged position in having the only record of the proceedings. He asked that all parties be given copies of the proceedings overnight. He stated this also on the basis that many parties would have people coming and going, and would have to inform their witnesses of what had been going on. He stated that it was a matter of resources and fairness, since the applicants had resources to have their witnesses attend throughout, as did the Planning Authority, at public expense. If the Board was not prepared to do this, he asked that it lift the barrier to the applicants and appellants making their own recordings of the proceedings.

Mr. Noonan then read through his initial submission as per the text supplied by him (see Appendix 2 – Group 1 – A).

The Inspector invited any submissions on Mr. Noonan's submission.

Mr. Casey stated that An Taisce had made these points in its written submission. He drew the Board's attention to Justice Finlay's judgement at paragraphs 85 to 87 of *O'Connell -v- EPA (Supreme Court 21/2/03)*. (He stated that he would provide a copy of this judgement. He also quoted an extract from a July 2001 Reasoned Opinion of the European Commission (paragraph 3.21 and 3.22) against Ireland. This refers to Section 98 of the 1992 EPA Act, which is analogous to Section 54 of the Waste Management Act, 1996. The Reasoned Opinion states that the Irish implementing legislation fails to comply with Article 3 of the Directive, in that there is no provision for consideration of the interactions between the factors mentioned in the first and second indents and the first, second and third indents, as amended, and fails to comply with Article 8 of the Directive. (He undertook to provide a copy of this also).

Mr. Casey stated that the Board had not replied to An Taisce's initial request in its third party submission to state a case to the High Court or to the European Courts of Justice. He asked that the Board should reply to this letter of 25th June, 2003, especially in view of Justice O'Caoimh's judgement in the *Aidan O'Brien* case, which covers this issue in some detail, and which accepted that there were substantial grounds for judicial review.

Mr. A. Navratil (East Cork for a Safe Environment - Group 5) agreed with the points raised by Mr. Noonan and Mr. Casey. He stated that he had also written to the Board on 25th August on the matter. He asked that these proceedings be abandoned until a different legal basis is adopted. The exclusion of environmental matters is in breach of the EIA Directive, he stated. He felt that, by not replying, the Board had accepted his view. He noted that the Board had not indicated in writing what aspects of the EIS were not considered to be admissible. He felt that any exclusion would be contrary to the common good.

Mr. Sweetman stated that An Bord Pleanála was injuncted by the High Court from proceeding with that case, and submitted that it should not be necessary to go into the High Court in the present case to state the exact same case again.

Mr. Oliver O'Leary (Carrigaline IFA - Group 18) felt that it was unjust that issues relating to the environment could not be considered.

Mrs. Joan Masson (Group 24) asked that Indaver's visual aids be taken down when the room was being rearranged.

Other parties - Paul Hogan (Ringaskiddy and District Residents Association - Group 7) and Pat Allen (Universal Health and Safety Ltd. - Observer) stated that they agreed with the points raised by Mr. Noonan, and they considered that health issues should be permitted.

Mr. P. Sreenan, BL, for the Planning Authority, said that the issue was a matter for the Board to decide.

Mr. P. Gardner SC (Indaver) stated that he agreed that Section 54 of the Waste Management Act, and Section 98 of the EPA Act, are of the same effect. Indaver's application is for a waste licence. He said that the Board was a party to the O'Brien case and that it was apparent that the Board, in its letter of 24th August had, he assumed, taken into account that case. In that case Mr. Justice O'Caoimh did not find there were substantial grounds, but recorded that the parties agreed that there were such grounds. The Board's letter of 24th August made it clear that it was not going to consider matters relating to environmental pollution. This was essentially a matter for the Board.

The Inspector stated that he had heard all the submissions and would consider them overnight and give his ruling on Mr. Noonan's preliminary point at the start of the following day's proceedings.

ORAL HEARING PROCEEDINGS

23rd SEPTEMBER, 2003.

The Inspector opened the day's proceedings by outlining the rearrangement of the layout of the venue for the hearing, with 50 individual tables for all participants, and one set of mikes and a witness table. He felt that this provided for greatly improved acoustics and also equality of treatment of all of the parties.

The Inspector stated that he had considered the submissions made the previous day by Mr. Noonan and by Mr. Casey, and the comments on these submissions by other parties. He stated that the recording of the hearing was an aide-memoire to him and subsequently to the Board. This would not be made available to the parties at the hearing, and nor would the Board change its normal policy of not permitting recording by parties at the hearing. He said that he had checked this with the An Bord Pleanála office, and the official position was that the recording would be available, in the normal way under Public Access, once the Board had completed its determination of the appeal, in the same way as his report.

The Inspector noted that the more substantive case made yesterday related to the interface between the planning legislation and the environmental legislation, and the situation regarding the transposition of EIA Directives into Irish Law. He said that his instructions from the Board were that it would not be considering in the appeal, and hence he would not be permitting at the Oral Hearing, matters in relation to the risk of pollution from the activity proposed. He said that he had checked these points that morning with the Chief Officer of the Board for confirmation, and that that is the Board's position.

The Inspector stated that the same applied in relation to the Seveso Directive submissions, raised by Mr. Casey and Mr. Sweetman, and that the Board would consider the documentation available to it in respect of the submitted application and would not be calling the HSA to give evidence at the hearing.

Mrs. Joan Masson (Group 24) stated that she wished the displays produced by Indaver to be removed as they were selective and outdated. The other parties were not permitted to bring visual aids.

The Inspector stated that he would permit the model, so that the proposed development could be outlined by the applicants at this stage in the agenda. However, any submissions as to the accuracy of this model would be noted by him, and communicated to the Board. He stated that models were not unusual at Oral Hearings where presentations were given.

Mr. Noonan (Group 1) stated that he wished to record and convey to the Board his dissatisfaction with the Board's ruling, and noted that it had failed to respond to the simple question as to whether it was carrying out an Environmental Impact Assessment or not. He also disagreed with the ruling and the recording. He wished to know what matters it was prepared to take submissions on.

The Inspector replied that he had quoted directly from the legislation – "the risk of pollution from the activity". The development is a building, for example, but the activity within it (i.e. incineration) is excluded. He stated that he would rule on the admissibility or otherwise as issues arose during the hearing. He stressed that these were his instructions from the Board and that he had recorded fully Mr. Noonan's submissions and would report on them to the Board.

Mr. Noonan asked that it be noted that his, and his client's, continued presence at the hearing will be without prejudice to any action that they would have to take on the Board's interpretation of the law, and under the most severe protest.

Mr. A. Navratil (Group 5) objected strongly to the Board's ruling and noted that he had never received any response to his letters to the Board. He felt that the ruling was an after-the-fact variation of the public notices that had invited parties to state, in full, the grounds of appeal. He stated that he felt that excluding environmental matters was a negation of his rights, and asked that it be noted that any further participation on his part would be without prejudice to his legal rights to have the entire process set aside in a higher court.

Mr. Sweetman asked whether the Board's decision to proceed had been communicated to the Inspector in writing and whether it would be on the file. He had never seen such a decision in writing before. He reiterated that in his view the Oral Hearing was in breach of European Law and the EIA Directive, and also the Seveso II Directive. He asked what the ruling of the Board had been on his submission that had taken reference to the European Court.

The Inspector replied that his instructions were to continue the hearing and not to adjourn or abandon the hearing on this basis. If Mr. Sweetman was unhappy with this ruling, he was free to go to another place to take whatever legal proceedings his wished. The Board had not provided him (the Inspector) with a written instruction.

Mr. Casey asked about the issue that he had raised on Seveso, and how the Oral Hearing intended to deal with human health and safety and groundwater pollution. He also asked the Inspector, in relation to issues that crossover between environmental pollution and planning, to allow evidence to be given and to let the Board decide on its relevance. He stated that he would not have expected its decision in writing, but noted that it is the decision of the Board, which is reviewable. The least the Board could have done is to put it in writing, he said.

Mr. Casey noted that the application before the EPA is for a hazardous waste facility and a municipal waste facility, but that the planning permission is only for the hazardous waste facility. He submitted this constituted "project splitting" under the EU Directives, which issue is also before the European Courts.

The Inspector stated that he had noted what had been said. In relation to Seveso II, he said that the Board would not be asking the HSA to come before the hearing, and would be considering the application under the pre-2000 Act legislation. The Board would consider the HSA letter to the Planning Authority. In relation to the issue of health, this relates to the risk of a pollution from the activity and so was excluded

from consideration. He stated that his instructions on the Seveso II issue had been obtained the previous week, in response to the E-mail circulated, and not overnight.

Mr. Casey stated that he remained unhappy on this matter, and noted that the HSA were asked to attend the Corrib Gas appeal, under the same legislation. The Board reconvened that hearing, inter alia, on issues related to public health and safety.

Mr. Noonan submitted that the Board did not realise the importance of doing a full EIA. Excluding health as an issue would prevent a full assessment, and he wished this to be put on the record. He felt that if the Board was not taking responsibility for health, then this was disturbing. He felt that the Board was seizing on a technical "out" in avoiding its responsibilities. He felt that problems of acoustics experienced the previous day were symptomatic of the Board's attitude to the consideration of the appeal.

The Inspector rejected this assertion on Mr. Noonan's part, and his linking of the Oral Hearing arrangements with any alleged attitude of the Board in relation to the legal position, and to its attitude to the appeal and application.

AGENDA ITEM 3 - BRIEF OUTLINE OF APPLICATION

Laura Burke (Indaver) spoke to a text which had been circulated to all of the parties in attendance at the hearing (see Appendix 2 - IND-1).

Following a question from Marcia D'Alton (Chase Monkstown - Group 3), it was clarified by the Inspector that the application before the Board was only in respect of Phase 1 and he requested the applicants to confine their presentations to this only. Phase 2 (municipal waste facility), while part of the applicant's waste licence application before the EPA, was not part of the application before the Board, and should not therefore be referred to.

AGENDA ITEM 4 - FIRST PARTY APPEAL SUBMISSION

John Ahern (Indaver) read out a text, which had been circulated to the parties in attendance at the hearing (see Appendix 2 - IND-2). During this process, it was noted that a section of the text related to public health, and the Inspector asked Mr. Ahern to desist from talking about the health impacts of the development in terms of pollution. The Inspector stated that he would permit discussion of national policy, and views on whether it was an appropriate method of waste management to use incineration, but would not deal with issues relating to the health effects of incineration per se.

Subsequently, at a later stage in the Oral Hearing (29th September, 2003 - Tracks Z and AA), it was stated that the applicants were withdrawing their appeal in relation to the issue of importation of waste to the proposed facility from Northern Ireland

(Condition 3 of the Planning Officer's draft condition - pages 12 and 13 of Mr. Ahern's written text).

Ms. Laura Burke (Indaver) then read out a text which had been circulated to the parties in attendance at the hearing (see Appendix 2 - IND-3).

The Inspector asked, in relation to the content of Section 4 of the text (page 5) on risk assessment, when the applicants had submitted their detailed risk assessment to the HSA.

Ms. Burke replied that Indaver had submitted an initial document in January 2002, and the HSA came back with a request for additional information and further modelling on 31st January, 2002. Indaver met the HSA in February 2002 and gave the information at that meeting. Indaver submitted a composite document in March 2002, containing all the information in advance of the HSA letter to the Planning Authority.

Mr. Frank O'Mahony (Indaver) then read out a text, which had been circulated to the parties in attendance at the hearing (see Appendix 2 - IND-4).

Mr. Bill Hastings (Indaver) then read out a text, which had been circulated to the parties in attendance at the hearing (see Appendix 2 - IND-5).

The Inspector asked Mr. Hastings why the photomontages post-development assume growth of vegetation, since the Board had to consider the impact of the building after construction, rather than when the planting had grown by 5-10 metres. He requested that photomontages be produced later in the hearing without the presence of the vegetation.

Mr. Paul Coughlan (Indaver) then read out a text, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - IND-6).

Ms. Sheila Lane (Indaver) read out a text which had been circulated to the parties in attendance a the hearing (see Appendix 2 - IND-7).

The Inspector asked Ms. Lane about the maps that were attached to her text. Ms. Lane replied that the first map (marked Fig. 13.2) was from the Record of Monuments and Places, and was based on the 1934 ordnance survey map. The second map (marked Fig. 13.3) was the 1997 ordnance survey map. The third map is similar to the first, but with contours and a cliff symbol added by the applicants.

The Inspector stated that he would need some information later in the hearing as to when the modifications to the site, as represented by the contours, actually took lace, so as to advise the Board when the pathway crossing this area had been removed.

Mr. Gerard Morgan (Indaver) read out a text which had been circulated to the parties in attendance at the hearing (see Appendix 2 - IND-8).

Mr. Noonan objected to Mr. Morgan's evidence on the basis that it dealt with matters outside the Board's remit, based on the Inspector's ruling that morning.

A number of other parties queried further the exclusion of health impacts from the development. The Inspector clarified that the Board could not consider the impacts in pollution terms arising from the proposed activity, as opposed to the impact of the building itself. There was an extensive discussion of these matters, and conflicting interpretations were given as to the interpretation of the applicable legislation. The Inspector gave examples of the type of impacts that could not be considered and those that could. For example, the impact on the environment of what would come out of the proposed incinerators stack was not admissible.

Mr. Gardner, for the applicants, read out Section 54 of the Waste Management Act, 1996, and the definition of "waste". He stated that, while the third parties had some difficulty in understanding the legislative ruling, his clients did not have any such difficulty. He stated that the evidence that had been submitted had stayed within that ruling.

Dr. B. Meehan (Indaver) read out a text which had been circulated to the parties in attendance at the hearing (see Appendix 2 – IND-9). At the start of his presentation Dr. Meehan outlined his qualifications and his experience in relation to planning studies in the Cork area. He went through the figures at the back of his text, which comprise extracts from the written statement of the County Development Plan, and in respect of which he had made specific conclusions in each case, and some comments on national policy documents.

The Inspector asked Dr. Meehan to clarify the inclusion in his evidence of reference to Section 37 of the Planning and Development Act, 2000 (page 8 and Fig. 12 of his text). He asked him to confirm that this reference was not relevant to the appeal, as the application falls to be determined under the 1963-1999 Acts.

Dr. Meehan confirmed this was the case.

The Inspector asked Dr. Meehan to clarify whether his statement which stated that the principle of incineration versus non-incineration (page 8 of his text) was not relevant, was meant to mean that the Board was precluded from considering this principle, or simply that there was no point in considering the principle, since it was Government policy.

Dr. Meehan replied that he did not mean that the Board was precluded from considering the issue, bur rather that the Board had to have regard to Government policy, which in his view was in favour of the principle of incineration as part of national waste management policy.

The hearing then closed for the day

ORAL HEARING PROCEEDINGS

24th SEPTEMBER, 2003.

The Inspector, in opening the day's proceedings, stated that he would be taking a couple of submissions from witnesses for some third party groups, who would not be available later in the hearing.

Submission by Martin Key (Group No. 5)

Martin Key read through a text, copies of which had been circulated to those in attendance at the hearing (see Appendix 2 - Group 5-1).

Pierce Sreenan BL, for the Planning Authority, asked Mr. Key about his view that "the sizing of the incinerator should be subject to a mass or volume throughput constraint" (point 2, page 4 of his submission). He asked whether Mr. Key had experience in the UK of similar types of applications.

Mr. Key responded that it is common in all EU Regulations to limit incineration on the basis of tonnage waste throughput, in effect the waste quantities. The energy value (MW) criterion suggested by the applicants would not allow controls on the volume/throughput, as the energy values are different for different types of waste. He suggested that any planning permission should include a limitation on the tonnages to be allowed on an annual basis, as otherwise you would have no control over transport, numbers of vehicles, the adequacy of the waste storage areas, ash handling, etc. All incineration should have controls on its tonnage, and he stated that he was not aware of any incinerator permitted in his experience which did not have such a limitation/control.

Mr. Sreenan asked whether there is a difference between waste for recovery and waste for disposal.

Mr. Key replied that there was such a difference. The waste hierarchy starts off with avoidance. If this is not possible, then the aim is to reduce, recycling or recover. Recovery includes the separation of materials for future re-use. Disposal is taking the materials and burying them, or burning waste. Incineration with energy recovery is the second least favourable after landfill, but it is less environmentally friendly than for example taking the waste solvents and recovering them for re-use as a waste solvent again.

In determining whether a waste is to go for recovery or disposal, Mr. Key stated that there are several levels beginning with the producer. Mixed solvents are more difficult to recover. If the producer separates the waste solvents, then they are easy to recover.

Mr. Sreenan asked whether the proposed development constitutes waste for disposal or waste for recovery.

Mr. Key stated that incineration is not a final disposal option, but a waste treatment technology, reducing the volume and weight of the material. Final disposal of the ash residue is disposal. So the development is a waste treatment technology with energy

recovery. It certainly is not a waste recovery operation. It is not as environmentally acceptable as waste recovery.

Mr. Sreenan stated that the National Hazardous Waste Management Plan seems to indicate there can be no prohibitions in EU Law on an importation of waste for recovery. He asked Mr. Key whether he agreed with this.

Mr. Key replied that there are extensive EU regulations on the trans-frontier shipment of hazardous waste and a complete ban on export of hazardous waste to non-EU states. If the waste was recoverable, it could be moved. EU policy in the medium term is going to prevent transportation of hazardous waste from states that have their own treatment facilities. The Member State has the power to object to the importation of hazardous waste.

Mr. Sreenan stated, therefore, that the general principle of the EU is that States should be self-sufficient, and if they have the incineration capacity, they should not be exporting it. He asked whether any waste from Northern Ireland needs to be imported into Ireland if the UK is self-sufficient. Mr. Key stated that this was a political question. Much of Northern Ireland waste, especially difficult waste, goes to the British mainland currently. He stated that this is an internal movement of waste, not a trans-frontier issue. Under EU rules, trans-frontier shipment of waste from Northern Ireland to Ireland would not normally be allowable. However, political issues might intervene in this matter.

The Inspector asked Mr. Key about limitation by tonnage rather than by energy, and whether it would be appropriate that a Planning Authority would limit the input in tonnage terms to the plant. Is this an enforcement issue, he asked, in that it is easier to measure tonnages directly, rather than using an indirect measurement of the calorific value of the waste in terms of energy coming out.

Mr. Key said that there were two reasons, the first of which was indeed regulatory/enforcement. The second is that the facilities at a plant have to be sufficient for the volumes/quantities of waste handled, and that these could only be assessed for each type of waste. Either a waste or a volume limit should be imposed or both.

The Inspector asked that, as the EIS gives figures on the number of vehicles servicing the plant, it has to be assumed that the applicants have a volume/tonnage in mind since, as noted on page 5 of his text, Mr. Key noted that there are 11 incinerators in seven facilities treating their own waste, and that these are likely to be pharmaceutical/chemical plants, it is likely that the waste going to the proposed development would have lower calorific value waste and hence have high levels of tonnage.

Mr. Key stated that it depended on the calorific value of the waste involved. Solvents have high calorific value. The 11 incinerators are in-house facilities, primarily on pharmaceutical or solvent-using industries, and primarily burning liquid and/or vapour waste from the processes. Some pharmaceutical plants have not such facilities, so the applicants could have some high calorific value inputs.

The Inspector asked whether, if the Board were to grant permission, it would be appropriate to specify the types of waste permitted to use the facility, so as to exclude the lower calorific value wastes and hence fitting within the parameters of traffic levels, storage size, etc.

Mr. Key stated that he would expect to see a limitation on throughput, and also a degree of specification of the types of waste. The latter might be a matter for the EPA, which would deal with process controls under the waste licence. The planning decision could put a generalised tonnage (for solid waste) and volume limitation (for liquid waste).

The Inspector asked Mr. Key whether there are any trans-frontier requirements on waste between the UK mainland and Northern Ireland. It was suggested in written submissions that, if waste from Northern Ireland were permitted, there would be no controls that could ensure that only waste generated in Northern Ireland would come to Ringaskiddy.

Mr. Key stated that there are only internal notes between parts of the UK, and so the Trans-Frontier Shipment Regulations would not apply. One could move waste from Surrey to Northern Ireland and then ship it directly to Ringaskiddy.

The Inspector asked, in this context, whether the EPA could, under EU waste controls, preclude waste from one part of the UK, and how it would know. Mr. Key answered that the power was there to refuse shipments, but in practice it would be most difficult to do so, since they would not know where the waste came from.

Mr. Noonan (Chase Carrigaline - Group 1) asked Mr. Key to refer to the planning application in the context of the energy recovery suggestion that is in the EIS. The planning application form, at Question 20, asks about "energy/power supply, give details", and the applicant's answer was "*primarily by electricity generated by the process on-site. During shutdown periods, electricity will be imported from the National Grid. 10MW of electricity will be generated, of which 2MW will be required to run the site. 8MW will be exported to the National Grid, which will be the subject of a separate application*". As the application is only for Phase 1, the Board could not consider the electricity generation aspect. Mr. Noonan asked Mr. Key, on the basis that the energy recovery will be the subject of a separate application, wasn't it a case that the Board could not consider the application other than incineration for disposal, rather than incineration for energy recovery.

Mr. Key replied that the application included a boiler and a power-generated facility. Without these, it would be disposal and hence would be little better than landfill. The development would certainly discourage other methods of waste treatment and handling that would come along if that facility was not there.

Mr. Noonan asked, on the areas of trans-frontier shipment regulation and practice, whether it was a condition that would allow another EU Member State to decide to ban importation of hazardous waste from Ireland, if Ireland has an incinerator to burn such waste - effectively it is a disqualifying condition.

Mr. Key responded that the EU Waste Framework Directive says that if a Member State does not have sufficient adequate disposal capacity for a waste stream, it can be exported to another Member State. If the proposed development went ahead, then the UK authorities could refuse importation of Ireland's hazardous waste.

Mr. Noonan referred to the map attached to Mr. Ahern's evidence, which showed waste transportation routes to Rotterdam and to other places, but that the UK was not shown as a recipient of waste. He asked Mr. Key whether he agreed that there was a large international trade within the EU of all forms of waste streams and this is because there are commercial recipients - firms who make profits from receiving wastes.

Mr. Key said this was the case. It was an industrial operation and a business, and the EU is a single market in terms of non-hazardous waste. In the case of hazardous waste, trade is only for countries that are not self-sufficient.

Mr. Noonan stated that the impression is given in the EIS that Ireland is in peril of having its hazardous waste refused. He asked Mr. Key whether he was aware of any basis for that assertion.

Mr. Key replied that, in the UK waste strategy, there was reference to a review of the permitted routes for importation of hazardous wastes for the Member States that were currently allowed to export such wastes, Ireland being one of them. However, no decisions have yet been made on this. But under the EU Waste Framework, the EU Member States that do not have such facilities are being pressurised to make provision in their own countries for them.

Mr. Noonan asked whether it was true to say that, as part of the consultation process in the UK, one of the main lobby groups in favour of continuing the importation was the body representing the disposers, the recovery plants in the UK.

Mr. Key stated that he assumed so.

Mr. Noonan then asked about health and safety issues. He noted that Indaver relies on the HSA letter to the County Council, and asked what were the factors that the HSA should take into account in concluding that it has no objection to planning permission being given in this case.

Mr. Key stated that he would expect the HSA to have carried out independently a risk assessment of the proposal, or to have reviewed a risk assessment by peer review, if provided by the applicants. He would have expected them to consult with other bodies, including local community groups. Such a risk assessment would be a detailed analysis of all the proposed operations on the site - the incinerator, waste

transfer and storage, etc. - and the types of materials proposed, the company's risk management to avoid accidents, and an impact assessment of the extent of any incident on site.

Mr. Noonan asked if the HSA would be looking at worst-case scenarios, and if its remit would go much further than considering the shape and size of the construction of the building.

Mr. Key replied that the HSA would be looking at worst-case scenarios, both in terms of the processes and the risk in terms of emergency planning, as this is required under Seveso II, on the locality of the site. At some stage in the development of the emergency plan, there must be involvement with the public and with third parties, such as the police, fire services, etc. Mr. Key stated that it was not likely at this stage, but maybe at a later stage in the process.

Mr. Noonan noted that Indaver had stated that the site location meets the WHO site selection criteria for new incineration plants. He asked Mr. Key what is the purpose of the WHO laying down such guidelines?

Mr. Key replied that the intention behind such higher level guidelines was to focus on the general issues that have to be considered from a strategic point of view when they are determining a possible location for a facility, as part of a preliminary planning assessment for a hazardous waste facility.

Mr. Noonan asked Mr. Key about the hierarchy of waste treatment - the use of the word 'recovery' in general - whether it was deemed to indicate recovery by way of salvaging solvents, or other materials, so that they could then be re-used.

Mr. Key replied that it depended on the context in which it was used. Most waste strategy documents differentiate between recovery of materials and recovery for energy, with energy recovery being lower in the hierarchy.

Mr. Noonan asked Mr. Key whether he had any views on further waste reduction or elimination measures being implemented in Cork or Ireland which could reduce or negate the necessity for this facility at this location.

Mr. Key replied that there are two issues, firstly in municipal waste, seven to eight years ago there was little recycling. This had improved over time with the right degree of incentive. But there were barriers to this, technical as well as financial. The key point was that, if you made the disposal of a waste stream easy for a waste producer, at a cost that they could bear, they would be less likely to recycle or look at alternative methods. In a waste strategy, the important thing was to implement pressure on a producer to recover and to recycle. If there was an easy way out, they would take it. Mr. Key stated that the introduction of a facility like this would stop any further development of waste minimisation, and minimisation has to be the first priority in any waste management hierarchy.

Declan McGrath B.L., for the applicants, stated for the record that there is energy recovery in Phase 1, which is clearly signalled in the EIS. 10MW will be generated in Phase 1. An application would have to be made to the Commission for Energy Regulation in order to export this energy to the National Grid.

The Inspector asked about Phase 1, in that it was proposed essentially to have a burner that would produce steam through a turbine to make electricity. He asked Mr. McGrath whether the subsequent application he referred to would be a planning application for connection to the grid, from the turbine to the grid. He notes that Mr. McGrath had used the term "consent".

Mr. McGrath stated that it may or may not be necessary to make a planning application for the physical connection to the grid, because it might be exempted development.

Submission by Deputy Batt O'Keeffe (Group No. 7)

Deputy Batt O'Keeffe stated that he was not opposed in principle to incineration, but that he wished to state a strong concern, as a member of Cork County Council since 1985, about this proposal. This was on the basis that commitments made to the residents of Ringaskiddy had not been honoured. He went through the history of development at Ringaskiddy, which had been troubled and controversial on many occasions. He stated that he had been at a meeting with the IDA and the County Manager, where it was agreed that there would be liaison with local residents, and where a commitment had been given that there would be no incinerator sited on IDA lands at Ringaskiddy. This spirit of liaison between residents and local industry was proven by the building of housing and the new Maritime College, as well as industry.

Deputy O'Keeffe stated that the County Development Plan and the County Waste Strategy both excluded incineration. The site was zoned for port-related activities, and the councillors and County Manager determined that the Indaver proposal would not comply with this. At the same time as the present application was lodged, the review of the new Development Plan was underway. Submissions were made on the plan, and this included a suggestion that the zoning for this site be changed. The elected members were adamant that it would not be changed and that the site would remain for port-related activities. All 48 councillors on the Council agreed on this point.

Deputy O'Keeffe stated that, if the County Development Plan was to have meaning to the public, it had to apply to big business as well as to the individual. To grant a permission here would create a most unfortunate precedent, and set the local community back years. It would re-ignite the turbulence and lack of trust that had been a feature of Ringaskiddy in the past. Deputy O'Keeffe said that it would be seen that big business could ride roughshod over commitments given to the people of Ringaskiddy, and that the County Development Plan did not apply to them.

Deputy O'Keeffe asked what number of industries already in the harbour area were going to use the proposed incinerator. Many of these industries had their own in-house incinerators and waste reduction facilities. Pfizers, among others, had publicly announced that it would be installing its own facility. He stated that he took the view that the present proposal would be premature if there is no need locally for the development.

Mr. Sreenan, for the Planning Authority, quoted the zoning objective ZON3-13. He asked how the statement excluding "contract incineration" had come about.

Deputy O'Keeffe replied that, in the formulation of the Waste Management Plan, it was clear to the elected members that incineration was not intended nor envisaged. The issue was the subject of a debate at the Council chambers and was agreed by all.

Mr. Noonan, for Group 1, asked the witness whether we needed to learn from our experience and that what might be allowed in the past, in planning terms, might not be allowed now.

Deputy O'Keeffe stated that this was so, and this was what had been done in the recent Development Plan.

Mr. Noonan asked the witness what he had meant by granting permission "would set us back years".

Deputy O'Keeffe replied that, in the past, local people had major concerns about emissions and that this had led to a lack of trust of new industry. At present, after some effort, there was trust between the local community and industry. Granting permission for this development would lose this trust. He said that he had never seen so much concern in the harbour area on anything as had been the position with this case. He felt that people were angry because of the commitments entered into, that the IDA kept its word, but that another site could be bought and the County Development Plan breached. He stated that he was in favour of industry and was concerned that industrial development in the area would be harmed if this local trust was lost.

Mr. Noonan asked Deputy O'Keeffe whether he felt that it is appropriate for the Board to exclude evidence on health issues from its consideration.

Deputy O'Keeffe replied that the Council had the same problem and he wondered if we had gone too far with the legislation. He stated that, as an Oireachtas member, it was his view that this was something that we needed to look at, at a national level.

Mr. A. Navratil (East Cork for a Safe Environment - Group 5) asked the witness whether he agreed that there is no need for a hazardous waste incinerator, since the Cork Harbour Industries had their own incinerators which were effectively dioxin-neutral in emissions and hence had no intention to use a centralised incinerator (which information was the subject of a survey by his group).

Deputy O'Keeffe replied that he was not anti-incineration, and that he had no wish to comment outside this area of competence on this issue, which is the planning process and what he knows to have been the reality during that process.

Ms. A. Hogan (Group 7) asked the witness, when they were putting the plan together, what the Councillors meant by the strategic significance of Ringaskiddy for industry with limited housing and provision for amenities and not commercial mass-burn incineration.

Deputy O'Keeffe replied that at no state did the elected Councillors feel, in the preparation of the County Development Plan, that there would be incineration in Ringaskiddy.

Deputy Dan Boyle (Group 12) asked the witness whether he considered that the feelings of Councillors are never adequately recorded in local authority minutes, as these are only records of decisions rather than statements made at meetings. So they missed the intensity of feelings and passions. In addition, Deputy Boyle felt that the views of officials of Cork County Council should not be represented at the hearing but that the view of the Council members who refused to grant a material contravention should be put forward.

Deputy O'Keeffe stated that minutes are accepted by members at subsequent meetings and so are approved, but that it is true that they do not reflect the flavour of the debates. He agreed that the Council refuse permission in this case. He said that he came to the Oral Hearing to represent the reality of the County Development Plan process, and the views of the members. It was a clear decision of Cork County Council that the development was not appropriate on this site, which has to be retained for port-related use.

Ms. J. Masson (Group 24) asked whether the Councillors wondered why there was to be two furnaces and one stack, not only the toxic waste incinerator.

Deputy O'Keeffe stated that the Councillors saw the site and an application for a toxic waste incinerator, and felt that the site was not right for this.

The Inspector asked Deputy O'Keeffe whether, in the Development Plan process, there were submissions from the applicants, or only suggestions from Planning Authority officials.

Deputy O'Keeffe replied that, from his memory, the applicants did not make a direct submission on the Development Plan, but that the Development Plan officials had made recommendations for changes to the plan to facilitate incineration. These recommendations had not been accepted by the members.

The Inspector asked Deputy O'Keeffe whether he accepted, as a legislator, that the Board is a statutory body and that in the light of the current legislation applying to this case, has no option but to comply with that legislation and hence cannot make its own choice as to how it complies with it.

Deputy O'Keeffe responded that he accepted that An Bord Pleanála has to go with the legislation. However, he stressed that the Board had to take very serious account of the current Development Plan and of the intentions of the statutory authority, and particularly the zoning as the pre-eminent issue. Until the legislation is reconsidered at national level, he accepted that the Board had to conduct its affairs under the present legislation.

LUNCH BREAK

The questions for Martin Key continued at this point. A. Navratil (Group 5) noted the witnesses' statement that waste incineration in most waste hierarchies was only one step up from disposal. He asked Mr. Key to comment on alternative technologies, such as chemical recovery, chemical deconstruction, vis-à-vis hazardous waste.

Mr. Key responded that there are plenty of alternative methodologies, starting with waste minimisation and elimination, etc. In recovery and recycling, especially in the pharmaceutical sector, there are many options of segregating wastes more carefully, so that they can be recovered and recycled. There are many thermal treatments other than incineration. Many waste strategies highlight a preferred hierarchy, but do not say that any one technique is the way forward.

Mr. Navratil asked, on energy recovery, whether there was energy embedded in waste.

Mr. Key stated that, in incineration, there would be a range of recovery from 30% to 85%, depending on the waste stream. Liquid solvents would have a higher percentage. With good levels of recycling, there is less embedded energy left in the waste, but with lower recycling levels, there is more embedded energy to be released.

Mr. Navratil asked how it was possible to know the character of waste on a daily basis, and how this would affect the operation of the proposed development.

Mr. Key replied that thermal treatment was generally forgiving in relation to varieties of waste, as it was usual to monitor waste inputs. The main problem was in bulking up waste, to ensure that the mix did not lead to problems such as reactions, etc.

Mr. Navratil asked about economies of scale, and if the Irish industrial sector was adequate in size to give a necessary critical mass to allow chemical deconstruction as opposed to incineration.

Mr. Key stated that many technologies allow small scale operation. Economies of scale are usual, but cost effective solutions can be reached, even at smaller levels.

However, he felt that it was questionable whether Ireland had the necessary drivers for technologies other than incineration.

Mr. Navratil asked Mr. Key to comment on the argument that Irish industry would be constrained without this type of development, as had been suggested by the applicants.

Mr. Key responded that he would not agree with the proposition that the absence of this facility would constrain the development of industry. However, its presence would tend to stop any development of alternative technologies of waste treatment. The main thing is to have an appropriate waste management strategy, he said.

Mr. Navratil asked Mr. Key whether he considered this specific application to be of key national importance to deliver a sustainable waste strategy for Ireland on this specific site.

Mr. Key said that he did not think so. The proposal delivered one solution to the disposal of hazardous waste, but in his view it was not the key to the solution of the hazardous waste problem in Ireland.

Ms. A. Hogan (Group No. 7) stated that there are already incinerators in Ringaskiddy. She asked Mr. Key whether there was a fundamental difference between the present proposal and those existing incinerators.

Mr. Key stated that there was a clear difference. The incinerators in the industrial plants were generally burning liquid waste or air from a process, taking emissions from manufacturing and oxidising them. This was completely different to the proposed development.

Sarah O'Hara (Cobh Action for Clean Air - Group 9) asked whether the witness accepted the applicant's claim that bottom ash was non-hazardous under EU classifications.

Mr. Key replied that, in his view, the majority of the ash is potentially hazardous and would have to be disposed of to a specialised hazardous waste landfill.

Ms. O'Hara asked, in terms of energy recovery being preferential in the waste hierarchy to landfill, whether incineration was the only means of energy recovery, and if not what the alternatives are.

Mr. Key replied that there were other forms of thermal treatment which were not incineration and which could lead to the release of energy, such as gasification or, with some types of waste, evaporation. Gasification and pyrolosis technologies were generally accepted as being a higher level and more controllable technology than a mass-burn incinerator.

Deputy Dan Boyle asked, on energy recovery, if the witness had any comparative figures on the cost per unit of electricity generated by this process, as compared to renewable sources or conventional sources of electricity generation.

Mr. Key replied that generally the experience was that this type of energy was more expensive to generate than primary energy from a power plant, and hence often has a subsidy in some form to try and make it more competitive.

Deputy Boyle noted that the application as presented was as a waste to energy plant, which implied waste was being used as a raw material. He asked the witness whether it was not really a euphemism for incineration since this is not its primary purpose.

Mr. Key felt that waste to energy was a fair description of what the process was doing.

Dominick Donnelly (West Cork Green Party - Group 13) referred to Laura Burke's presentation, where she gave the percentages of the five ash types from the process. He asked whether Mr. Key agreed with those percentages.

Mr. Key stated that the proportions seemed typical for an industrial incinerator. The amount of bottom ash depended on the materials to be treated. If there was sewage sludge, the percentage of bottom ash will be higher, but if there was a significant portion of solvents and liquid waste, then the percentage will be lower.

Mr. Donnelly noted that the proposed stack height was 55 metres, and asked how this related to the heights of stacks and other incinerators in Mr. Key's experience.

Mr. Key replied that the stack height was one of the questions that he had himself raised in his evidence. The height is usually a function of the amount of secondary emissions and the type of area the incinerator is located in. Heights vary generally. He stated that there was nothing in the applicant's documentation to indicate the basis for the applicants' choice of the height of the proposed stack.

Mrs. K. Sinnott (Hope Project - Group 15) noted that the public now has been provided with Iodine tablets, under the National Emergency Plan, and in the case of an emergency at this plant, would we be wise to take them now. Mr. Key replied that he could not answer this as he was not a doctor.

Mr. Chris Ransome (Chase Monkstown - Group 3) asked about the issue of the ash, and whether or not it was hazardous. He asked how regular the analysis of the ash should be to determine this.

Mr. Key stated that the normal method was to analyse in the first few months and then on a regular basis thereafter, to look for variations in waste materials. The sampling parameters would be determined by the waste licence.

Joe Kelleher (Group 3) asked about in-house incineration, and whether the EPA authorised plants were taking full responsibility for their own waste management.

Mr. Key said that the plants were incinerating a large portion of their liquid and vapour hazardous wastes, but perhaps not their solid wastes.

Mrs. J. Masson (Group 24) asked Mr. Key to comment on the Dundee incinerator, which was similar to the proposed incinerator and had had two fires during its first 13 months of operation and emissions that were uncontrollable. Mr. Key stated that he had no information on this.

Evidence of Dr. G. Myrtle Allen (Group 21)

Dr. Allen outlined the history of her family farm and farmholding. She stated that the main income comes from tourism through the Ballymaloe Restaurant, Cookery School and Hotel. This enterprise gives employment and income locally. It is based on an image of fine clean food. Visitors to Ballymaloe from other countries have heard about the proposed incinerator and have advised her that it should not be allowed to proceed.

Dr. Allen stated that in her view the proposed incinerator would be bad for the image, which was the basis of the business that she had and hence she feared for the future of this business.

She stated that she objected to the legal constraints at the hearing which prevented her and other appellants from considering health and environmental pollution issues. She felt that the old legislation was wrong, and that the application should be refused and then re-submitted under the new legislation.

Mrs. A. Hogan (Group 7) asked Dr. Allen whether it was her opinion that the proposed development would be detrimental to her business and livelihood.

Dr. Allen stated that this was indeed her family's view.

Deputy Dan Boyle (Group 12) noted that Dr. Allen's business uses sustainable means of minimising waste and disposing of it. He asked if there was a facility in existence which easily got rid of waste, how could this impact on her philosophy.

Dr. Allen replied that to bring in an incinerator was a very easy way out for our Government to deal with waste and to get away from its responsibilities. They were shifting a great deal of trouble and sadness onto future generations. Our generation is shirking its responsibilities to future generations. We don't think of real sustainability for the world of 50 to 100 years in the future. Dr. Allen stated that these factories get old and get dangerous and they depend on human fallibility. We need to realise that we are on a planet that has taken thousands of years which were dare not damage.

Dominick Donnelly (Group 12) noted that the witness has a small food retail business and asked whether she would envisage problems in selling her product widely in five to ten years hence if this project goes ahead. Dr. Allen replied that she did not known as her daughter runs this business.

Mrs. K. Sinnott (Group 15) asked whether the witness would stay in business if she ignored the concerns of her customers.

Dr. Allen replied that she would not, and that she would find it difficult to keep as high a quality of product if this development went ahead.

Mrs. J. Masson (Group 24) asked whether tourists that Dr. Allen deals with object to the visual, noise or smells or incinerators in their own countries. Dr. Allen replied that the visitors were not specific in expressing their concerns, but said that Ireland should keep clear of incinerators generally.

Evidence of Dr. David Santillo (Chase Carrigaline - Group No. 1)

Dr. Santillo spoke to a text, copies of which were circulated to the parties present at the hearing (see Appendix 2 - Group 1-1).

In addition to the text, Dr. Santillo made a number of additional comments, set out below (which are referenced as Notes 1, 2, etc. in the text).

Note 1: "I have read in detail the application and the EIS and appeals and appeals responses. From this reading there are many aspects of the proposal which remain unclear, due to lack of information and in terms of some of the judgements and conclusions drawn from this information. However, there are two things that are clear. The first issue is whether this is a suitable site for the location of a facility of this nature. On the basis of the totality of the information presented, I conclude that, in my opinion, this is not a suitable location."

Note 2: "The second issue is whether there is a justification for this facility at this location or elsewhere. On the evidence, I am clear that there is not, at this time, a justification for this nature of facility, in the light of the volumes of waste that would be directed to the facility. There is a danger in permitting this plant to be built which would set a precedent for the future implementation of the National Hazardous Waste Management Plan."

Note 3: "There is nothing in the proposed development that deals with energy policy in terms of climate change and Kyoto targets. There is no

evidence in the EIS that Phase 1 will deal with biodegradable wastes that would otherwise contribute to global warming."

Conclusion: Dr. Santillo's conclusion, which also was not in the text of the circulated submission, stated: "A unifying theme of my evidence is the need for the application of the "precautionary principle" - a principle to which Ireland as an EU Member State is bound. This principle aims to ensure that decision-makers have a responsibility to avoid, where possible, harm or the potential for harm in advance. In this case, such an advanced judgement can be made. Often we have to deal with issues that have already occurred or the consequences of previous bad decisions. That precautionary principle must extend, not only to the protection of the environment and human health, but also to the potential impacts on the implementation of other policies, such as regional or national plans. If there is uncertainty as to whether that would be the case, then it is too early to decide on the suitability of, and the need for, this type of plant.

"A decision to grant permission would have a number of significant impacts. You would be allowing the creation of a major accident hazard of an area that is not remote from housing, the new Maritime College, etc., and you would open the door to other industries that would see this as an opportunity to handle hazardous waste streams, rather than minimising or preventing them. It would also compromise the National Hazardous Waste Management Strategy for focusing at the lowest point in the hierarchy, before the other points in the hierarchy are in place, and it would remove the incentive to develop these higher levels. A decision to grant permission would give the green light, not to the risk of environmental pollution, but to the reality of such pollution. If a permit is granted, the residents cannot rely on the EPA to protect their environment, nor on the Health Board to protect their health."

Most parts of Section 6 of Dr. Santillo's submission were excluded as they relate to the risk of environmental pollution from the proposed activity, and hence are outside the Board's purview of the appeal. (These parts are marked as "excluded" in the text).

Mr. Sreenan, for the Planning Authority, asked in relation to hazardous wastes by road whether this was covered by the Seveso Directive. Dr. Santillo replied that this Directive related to the facilities themselves and not to the Seveso Directive. Transportation by road of wastes in general comes under other legislation.

John Russell (Group No. 2) asked Dr. Santillo whether the proposed development would provide an incentive to dirty industries to come to Cork. Dr. Santillo replied that it would act as an incentive for existing industries not to deal fully with waste prevention, re-use and recycling and also the potential for substitution of their existing

materials with less hazardous alternatives so that the waste arising do not occur. In addition, he felt that it would act as an attraction to industries that generate refractory wastes which at this stage would require this kind of facility to deal with them.

Marcia D'Alton (Group No. 3) asked if problems arose with the incinerator resulting in fires and explosions, what facility needed to be on site for emergencies and what procedures needed to be followed and would the residents in the area need training in emergency procedures.

Dr. Santillo replied that with this type of facility you would need a very detailed emergency plan, both for plant personnel and emergency services and also possibly for residents. He hadn't seen any emergency plans in detail at the hearing. Such an emergency plan would also have to be tested in practice. He stated that details of such plans depended on many factors, including the types and the quantities of waste, the types of automated facilities for dealing with the waste, etc. Notifications to residents in each potential circumstance would also have to be worked out.

Dr. Santillo stated that one of the other difficulties that could arise was that types of waste may change over time and he was not clear what procedures there were for re-notification of emergency services, etc., in respect of such changes in emergency plans.

Nicholas Loughnan (Group 4) stated that the incineration plant was a creator of waste. He asked what was to be done with the wastes like ash that it would produce and asked Dr. Santillo for his expert opinion on Indaver's proposal to dispose of this waste.

Dr. Santillo stated there were a number of waste streams. His experience showed him that there were enormous variations in these wastes, and it would depend on the operational conditions at the facility, the type and mix of waste being combusted, the ability of the system to adapt to changing qualities of waste being introduced, etc. All he could state from his experience was that there was a wide variation in the quality of the different parameters in ashes that will be generated, for example heavy metal content and bottom ash depends on the waste being burned. He stated that it was a fact that designers could not make the assumption or assertion that any of the ashes will be non-hazardous. This had to be tested and evaluated in a laboratory with appropriate quality control and accreditation. Mr. Loughnan asked whether the EIS comprehensively addressed this issue.

Dr. Santillo stated that it had not addressed appropriately the issue of ash contamination and how the ash quality would be monitored, nor how the ash will be deemed to be contaminated would be handled and disposed of ultimately.

A. Navratil (Group 5) referred Dr. Santillo to paragraph 2.3 and 2.4 of his text. He asked whether there was a better and alternative proposal to this development.

Dr. Santillo replied that the points raised in paragraph 2.3 and 2.4 were generic in nature. The present proposal was for a facility which sits close to the bottom of the hierarchy of waste management. It disregards opportunities that exist in industry for avoidance of waste generation, either through process changes or changes in material inputs, also opportunities for capture and recovery of solvents and for the recycling and re-use of materials from industrial applications, including a mixed waste stream from industry. He stated that opportunities across the Board exist for waste avoidance, recycling and minimisation and that these must be evaluated and implemented before we can look at the lower levels of the waste management hierarchy, to determine not just the need for the development but also the capacity to deal with residual waste arisings. He stated that he though the danger in this case was that we were pre-judging the quantity of waste that would be residual because we were not addressing properly the issues of waste minimisation that could reduce that.

Mr. Navratil stated that he had referred in paragraph 2.5 of his submission to inadequate waste management practices. He asked how could existing industries tidy these up. Dr. Santillo stated that this was a more general issue for policy within Ireland as there were possibilities within different pieces of legislation and financial incentives to encourage or force industries to achieve where possible the minimisation and reduction of waste arisings. He stated that this had to come from a clear commitment from Government to implement the national waste management strategy.

Mr. Navratil stated that in paragraph 3.1 Dr. Santillo had mentioned site selection and that the WHO Guidelines relied on stakeholder involvement. He stated that as there was much evidence from around the world that something awful could go wrong, he asked what indemnification structures should be required to be in place to achieve public acceptance of the proposed facility.

Dr. Santillo stated that compensation was a necessary part but having such a legal recourse would not remove nor address the concerns of the residents about the proposed plant. He stated that, on sustainability, how did you deal with future claims for unforeseen problems from accidents or from operation.

Mr. Navratil noted that there were many current precedents where the resources of the companies and their insurers or re-insurers had been exceeded and that the costs for compensation were being placed on natural exchequers. He stated that this contingent liability had to be taken into account by the Board. He asked Dr. Santillo in relation to the statement he made in paragraph 4.2 regarding the state of the contaminated filters had he an answer.

Dr. Santillo stated that if the filters were to come off-site, they would contain hazardous chemical residues. It was not clear whether or not they would be treated on-site or off-site.

Mr. Navratil asked about the necessity to preserve the assets of Cork Harbour. He asked Dr. Santillo whether he could think of a better location for a national hazardous waste incinerator such as, for example, Athlone.

Dr. Santillo said that he would not look or comment on any other location. He stated that it was his view that this site, in terms of the proximity principle, was not the best location for this type of facility. He stated that first we had to ask whether such a facility was required and justified. In other words was it part of an integrated and sustainable strategy for hazardous management of waste. Until that question was asked, and until the mechanisms were in place to implement the higher aspects of the waste management hierarchy, he stated that he felt it was not suitable and was premature to discuss whether such a facility should be placed here. He stated that on the basis of the evidence that had been presented in this appeal there wasn't sufficient evidence to justify this facility at this location.

Ms. A. Hogan (Group No. 7) asked whether public support and acceptability were part of the WHO Guidelines.

Dr. Santillo said that this aspect was in the WHO Guidelines and that the applicants had stated they had used these guidelines for site selection. The Guidelines stated that public acceptance is required both for the selection of a site and also for the need for a facility.

Ms. Hogan noted that 25,000 objections had gone in and there was no public acceptability of this development. Hence she stated that there was a breach of the WHO Guidelines.

Ms. Hogan asked about gridlock at Shannonpark Roundabout. She asked if there was congestion here what impact this would have on emergency services.

Dr. Santillo stated that he was not a traffic or emergency procedures expert, but that he had noted on his visit to the site that there was congestion on this road. He stated that a 20-minute period for response in the event of a fire from Cork had been mentioned in the EIS, and that in his view much could happen during such a period of time in relation to a facility where flammable or hazardous materials were stored.

Sarah O'Hara (Group 9) asked what kind of substances did the witness envisage in the event of an accident.

Dr. Santillo stated that it depended on the type of incident and on the types of waste at the time. For example, if there were chlorinated compounds in a fire quite substantial amounts of dioxins would be released. The facility must be capable of containing such an incident to prevent contamination of other parts of the site. If the problem was internal, an important question to ask was how long it would take for the detection of the problem and this would depend on the automated detection procedures and operational procedures. Dr. Santillo stated that there was a precedent relating to an accident in a plant operated by the applicant company elsewhere, where there had been uncontrolled releases that were not detected for some time.

At this point the Inspector intervened and stated that he was not accepting submissions from third parties about what the applicant company may have done in

another country nor would he accept submissions from the applicant company as to its view of its record. He stated that these matters were irrelevant, as a planning application under Planning Law related to the site and not to the person who is applying for such permission. If the Board were to grant permission in this case, the Inspector stated that the applicants could then sell the site with benefit of such permission to another company.

Ms. O'Hara asked what would the consequence be on humans from a hazard if they ingested substances. Dr. Santillo stated that he could not consider this as this was a health issue as well.

At this point Mr. J. Noonan (Group 1) requested the Inspector to provide a ruling in writing in respect of the Board's prohibition on considering health matters, and also the legal advice on which this ruling had been made.

Mr. Noonan stated that without prejudice to this matter, he submitted that it was admissible to consider what might happen in the case of an accident or emergency since this was a different situation to that contemplated under Section 54 of the Waste Management Act. He stated that the applicant has referred to the HSA letter in the context of major accidents hazards. He stated that it seemed the Board had made a policy decision that was making a decision on the consequences of major accident hazards which it would take evidence on and routine admissions which was for EPA licensing. He felt that on this basis it was appropriate for third parties to address the Oral Hearings on matters relating to the consequences of major accident hazards.

The Inspector asked parties if they had any comments on this latest submission from Mr. Noonan.

Mr. Declan McGrath, for the applicants, stated that this was a matter for the Board.

Mr. Sreenan, for the Planning Authority, stated that they would support Mr. Noonan's proposition.

The Inspector stated that having considered the matter without prejudice to any instructions that he may get from the Board overnight on this second legal issue, he would accept questions on health implications arising from major accident hazards, but would reiterate that he would not be prepared to consider matters of routine emissions nor the health or environmental implications of these.

Sarah O'Hara asked Dr. Santillo what would be the consequences for people if there were a release of dioxin in an uncontrolled fire at the plant.

Dr. Santillo stated that in such circumstances, the dioxins would be an important contaminant but they would be by no means the only contaminant nor risk that could arise from a release of other substances. He stated that the issue relates to dioxin generation and exposure from an uncontrolled fire. He stated that the Seveso II Directive was called this because there had been such a problem of release from the Seveso plant itself. He stated that dioxins are capable of causing severe skin

conditions. Longer term concerns relate to lower dose impacts and it was difficult to determine the proportion of impacts that would arise from a major accident and those which would arise from general exposure. Dioxins cause cancers, reproductive problems, and child developmental problems. In such a fire, Dr. Santillo stated that dioxins would only be one of the many substances that would be released.

Ms. O'Hara referred to the Seveso II Directive and quoted preamble paragraph 22 and Article 12.1. She asked Dr. Santillo whether a grant of planning permission would be consistent with these articles and with other policies of the Directive.

Dr. Santillo stated that the Seveso II Directive sets out the general policies to decide what should be in place to handle incidents. His problem with the submitted information was that it was not possible to decide precisely which articles of the Directive would apply and also the types of changes in wastes which would require re-notification. He stated that clearly the Directive would have to be implemented in full. He stated that he did not feel he was in a position to answer the question and that the Board would need to look at this Directive in full when considering the application in fundamental terms.

Dominick Donnelly (Group No. 13) asked Dr. Santillo what objectives or policies was he aware of at EU or national level for waste minimisation for toxic waste.

Dr. Santillo stated that the issue of waste minimisation and waste prevention goes across much EU legislation and would have to have been transposed into national legislation. He stated that there was a general underlying principle was that there should be compliance with the waste hierarchy with priority given to avoidance and minimisation.

Mrs. Harty (Group 23) asked, on the major accidents issue, whether there was an extra hazard having regard to the fact that the application site surrounds an iron foundry due to the domino effect on account of the proximity of this foundry.

Dr. Santillo stated that he was aware of the existence of the Hammond Lane Foundry and that the site extends around it. He stated that he did not know the nature of the process engaged in within the foundry. In general terms he stated that where you have two industrial concerns in close proximity this would raise an additional issue. It could be that its existence could act as a source of increased hazard for the proposed development. One would have to have full regard for the safety of the staff of the Hammond Lane facility from a major accident risk from the proposed development.

J. Masson (Group No. 24) noted that it was said that to run any incinerator to the best standards and subject to control is uneconomic and results in CO_2 emissions. In the light of Ireland's breach of the Kyoto requirements and reducing levels of toxic waste due to cleaner production, she asked would the energy produced by the proposed development be the most expensive in the world and hence not be in the national interest.

Dr. Santillo stated that it was not by far the most efficient way of generating electricity but this doesn't address the issue of CO_2 emissions. He stated that we were dealing here, not with renewable waste but rather with waste that is fossil fuel derived.

Dr. Santillo stated that there were a number of comparisons made in the EIS of the greenhouse gas emission consequences of dealing with this waste, one being landfilling and the other being waste to energy incineration. He felt that he did not feel the analysis given in the EIS provides sufficient evidence to judge the sustainability of this facility, either as a waste management facility or as a facility for generating power. He stated that it was clear that, although it is a waste to energy facility, the production of energy was not its primary purpose but an added benefit. However, he felt that disbenefits of this facility in the absence of waste minimisation made it an unsustainable strategy.

The Inspector asked Dr. Santillo whether he would classify himself as an expert witness on emergency planning. Dr. Santillo replied that he would not consider himself an expert on the formulation and implementation of emergency plans. What he had given was his evidence and his expert opinion and experience as far as this is relevant, but he had not tried to give any answers outside his area of competence. He would state, on the issue of the relevance of Seveso II in the site selection process, he would encourage the Board to take full account of that matter.

Declan McGrath, for Indaver, stated that he wished to correct the record. The Hammond Lane facility was not an iron foundry but rather a metal recycling facility and it was not a Seveso site.

Dr. Santillo stated that this also was his understanding but that the fact that it was not a Seveso site did not mean that its activities might not have impacts on the proposed development.

This ended the day's proceedings

ORAL HEARING PROCEEDINGS

25th SEPTEMBER, 2003.

At the opening of the day's session, the Inspector stated that he had considered the legal submissions made by Mr. Noonan the previous afternoon, and had consulted with the Board. The Board's view is that it will not be making available any written documentation in relation to its ruling. Its view of the legislation had not changed from its letter to all of the parties dated 20th August, 2003. Accordingly, its ruling was already given in writing to all of the parties well in advance of the Oral Hearing. Naturally it does not give out copies of its own legal advice, as solicitors and barristers would be well aware, as these are matters between its legal advisors and itself.

In relation to the issue of Seveso II, the Inspector stated that he was prepared to accept evidence in relation to the implications under SI 476 of 2000. The Board's decision is that, under that Statutory Instrument, the competent Authority, the HSA, shall give technical advice if requested by a Planning Authority. The Planning Authority requested that advice and the HSA gave it, and the Board has it on file. At this stage the Board is not proposing to call the HSA or requesting any technical advice from it, but the Inspector stated that he was empowered to take evidence from the parties on that issue and would record it for the benefit of the Board. In due course, when the Board considered that evidence, it had the power to request technical advice under the Statutory Instrument. So the Inspector stated that he would take submissions on major accident hazards.

Mr. Noonan (Group 1) stated that, while he was pleased at the response to the second issue, he wished to place on record his concern that the Board was hiding behind legal professional privilege in refusing to publish its legal advice on a matter of very great public controversy. He noted this because the issue had already found favour with two High Court judges and with the EU Commissioner for the Environment, Ms. Walstrom. He stated that he was not satisfied with the Board's attitude and that private citizens should not have to go to court, which is something the Board is there to do for them. He stated that it seemed that the Government's policy was to discourage litigation and that the Board was, by its action, encouraging such litigation.

Evidence by Mrs. Darina Allen (Group 22)

Mrs. Darina Allen stated that Cork City and County have always been an important food producer. It had the largest concentration of artisan production in food in Ireland and it was recognised internationally. The perception was that it had clean food of high quality. Her cookery school is very successful and takes students from many international countries. They come for the quality of the food - 100 acres of organic farming. She stated that she employed 20-35 people in the school and up to 200 in the overall Ballymaloe Enterprises. Mrs. Allen stated that Bord Bia promotes Ireland as "the Food Island" and hence our unique selling point is our clean green image. She stated that brands are difficult to establish and easy to loose. Saving this brand is vital.

Mrs. Allen stated that we are fortunate in Ireland in having a low level of dioxins. If we squander this, the price will be enormous in tourism, financial, and employment terms.

Perception, as people arrive in Cork, will shatter this clean green image. This image helped Bord Tractala to sell Irish food after Chernobyl.

Mrs. Allen stated that her life's work had been to promote Irish food quality and the awareness of this nationally and internationally. Through this cookery school and on television, she stated that she promoted the image of Irish food. She was a member of Bord Bia and she was on the consultative committee of the Food Safety Authority of Ireland. She stated that she truly believed in the importance of the food we eat. Food is intimately linked to our health - safe clean food. The prosperity of our nation depends on our food and agricultural sector. If the proposed development goes ahead, it would have an impact not only on the people but also on the image of Ireland.

Mrs. Allen stated that she would like to paint an alternative picture of Cork, building on the work already begun on cleaning of Cork Harbour as an amenity for Cork people and for visitors. She stated that we should build on the image of our country in the slow food movement and in the farmer's markets movement, getting quality food to the people.

Mrs. Allen stated that she would like to request a moratorium on incineration until everything possible has been done to reduce, re-use and recycle, and until we have looked into every possible alternative method of waste management. She stated that she wished to conclude with her concern about not being allowed talk about the health consequences of this development. In her view it was not democratic to prevent people speaking on this. She requested the Board to refuse permission and then have the applicant re-apply under new legislation where such issues could be discussed.

Mr. P. Gardner, for the applicants, asked Mrs. Allen whether she agreed that the Food Safety Authority of Ireland had concluded that incineration facilities, if properly managed, would not contribute to dioxin levels in the food chain to any significant extent, as this was stated in their 2003 discussion paper. Mrs. Allen stated that there had been a discussion in the FSAI, but it did not support incineration. There was much concern about it and the Authority felt other options should be looked at. Also it was not clear what the term 'significant extent' means. Mr. Gardner quoted from the FSAI report as follows:

> *"In relation to the possible impacts of the introduction of waste incineration in Ireland as part of a national waste management strategy, the FSAI considers that such incineration facilities, if properly managed, will not contribute to dioxin levels in the food supply to any significant extent. The risk to health and sustainable development from continued dependence on landfill far outweighs any possible problems on food safety and quality".*

He asked the witness whether she agreed that this was the conclusion of the document.

Mrs. Allen stated that yes this was the fact that it was the conclusion of the document but that she did not agree with this conclusion.

Mr. Noonan (Group 1) asked Mrs. Allen whether she was a member of the consultative committee of the FSAI and whether the document referred to by Mr. Gardner was a policy paper or discussion paper. Mrs. Allen stated that the document was a "work in progress" and was for discussion only.

Mr. Noonan stated that the applicants, in their written submission, had referred to the FSAI and that there was a current low level of dioxins in Ringaskiddy and their inference was that this area could therefore take more dioxins.

Mrs. Allen stated that she thought that would be absolutely out of our minds to accept any more dioxins as we could not get rid of them. She stated that we shouldn't be adding to dioxin levels but rather to reduce them. She stated that there are alternatives - recycling, re-use and waste minimisation, and the Councils need the resources from Government to support this. She stated that she had trained this view into our cookery school in terms of waste management.

Mr. Noonan noted that part of Indaver's target market was to target industrial and commercial firms such as that owned by Mrs. Allen. He asked her whether it would act as a disincentive to her competitors to invest management time and money in exploring such alternatives.

Mrs. Allen stated that the proposed development will act as a magnet for other businesses that do not wish to recycle and reduce and it would be a cop-out for them. She stated that she would be deeply concerned also regarding the idea of toxic waste coming down from Northern Ireland.

Mr. Noonan asked Mrs. Allen regarding the Board's ruling on non-routine emissions in the event where there a major accident at the plant and asked whether she had views on this and the consequence of such an accident.

Mrs. Allen stated that it would be totally devastating on the whole area and that there are examples elsewhere of such accidents due to human error and so on. She stated that we rely on our food and our best food comes from our grass. Dioxins would accumulate in the grass and hence in the food chain.

Joe Kelleher (Group No. 3) asked Mrs. Allen whether her customers or menu would be affected if permission was granted.

Mrs. Allen stated that they would because they had become known for clean, fresh and seasonal food, that this was the raison d'être for their business. As they were downwind of a toxic waste incinerator they would clearly be affected directly.

Alan Navratil (Group No. 5) stated that he wished to turn to the policy of the WHO and the stated policy of the EU as stated by the Environment Commissioner - they advise stakeholder involvement and informed public consent in relation to projects of

this type. He asked Mrs. Allen whether prior to the application being made there had been adequate public involvement or informed public consent.

Mrs. Allen stated that no there had not been such involvement or consent.

Mr. Navratil referred to the Heinz brand, stating that Tony Reilly had said that the greatest tangible asset of his company was intangible asset, in other words its image and reputation. He asked whether Mrs. Allen agreed that Ireland's image and reputation as a clean country was its greatest asset.

Mrs. Allen stated that she agreed with this. She stated that we are jeopardising this by bringing in an incinerator and that we need to explore all other alternatives working with industry and citizens.

Mr. Navratil stated that the witness had mentioned that there should be a moratorium. He asked whether she had looked at the feasibility and potential of alternatives of waste management and whether she would agree that this proposal was not needed and would be prejudicial to the adoption of orderly waste management strategies.

Mrs. Allen stated that she totally agreed with this point. It was likely that the applicants would be importing toxic waste to feed their incinerator. This would be so wrong for us - we should reduce our waste and then look fully at alternatives. She felt that this specific proposal was not needed.

Submission by Mary O'Leary (Group No. 1)

Mary O'Leary spoke to a text, copies of which have been circulated to those in attendance at the hearing (see Appendix 2 - Group No. 1-2).

Submission by Carmel Cronin (Group no. 1)

Carmel Cronin (Group No. 1) spoke to a text that had been circulated to all the parties in attendance at the hearing (see Appendix 2 - Group No. 1-3).

Submission by Sara O'Hara (Group no. 1)

Sarah O'Hara (Group No. 1) spoke to a text which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group No. 1-4).

Submission by Feargal Duff (Group no. 1)

Feargal Duff (Group No. 1). Mr. Duff spoke to a text which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group No. 1-5).

Fr. Pat O'Herlihy (Group no. 2).

Fr. O'Herlihy stated that he was a Columban Missionary. He circulated a text (see Appendix 2 - Group 2-1), the content of which he spoke to.

He began by putting on record his objection to the Board's ruling on excluding issues relating to health and the environment as this was contrary to democracy and free speech. He also objected to the Inspector's ruling preventing discussion of the applicant company's track record in other countries.

He spoke from the text under the following headings:- dump or burn, waste does not disappear when burned, creating dioxins and furans, incinerators will undermine Ireland's reputation for clean food, locked into incineration for 30 years. (Note: The text as spoken is set out in Appendix 2 at Group 2-1).

There were no questions for this witness.

Submission by Mary Murphy (Group no. 7)

Mary Murphy (Group 7) spoke to a text which was circulated to the parties in attendance at the hearing (see Appendix 2 - Group 7-1).

Mr. P. Sreenan (for the Planning Authority) put it to Ms. Murphy that there is in existence the Cork Major Emergency Plan, prepared by the County Council, Emergency Services, and the Health Board. He asked whether the witness was aware of this.

Mrs. Murphy replied that she had never seen this document and that there was a need for such a plan for residents.

Mr. Sreenan asked the witness whether she had heard of the Seveso Directive, as the proposal comes within the lower tier of that Directive. Mrs. Murphy stated she was unaware of this.

Mr. Noonan asked, arising from the County Council's comment on the Major Accident Plan, if this plan could be made available to the parties in advance of his discussion at the hearing. He also stated that he did not accept that the development was a lower tier Seveso site.

Mr. Loughnan (Cork Environmental Alliance - Group 4) asked Mrs. Murphy how long she had lived in the Cork Harbour area and had she any knowledge of the Cork Major Emergency Plan or had any plan been communicated to her.

Mrs. Murphy stated that she was 18 years living in the area and had never heard of such a plan.

A. Navratil (Group 5) noted Mrs. Murphy's comment in Item 5 that the pharmaceutical industries in Ringaskiddy have said that they are moving towards recovery, due to the high cost of raw materials. He asked her to elaborate on this.

Mrs. Murphy replied that when it was clear that another incinerator was proposed in Ringaskiddy the Residents Group went around to all the pharmaceutical companies and asked them. All of those companies said that they were heading towards zero waste management due to the high cost of materials.

Joan Masson (Group 24) asked the witness at what time do the children go to school at the Shanbally Roundabout.
Mary Murphy replied that the school starts at 9.50am, so that they would be coming in from c.8.20am.

Joan Masson noted that the toxic lorries would be coming in at about 8.45 to 9am. She asked that there would probably be a very severe smell which would emanate from this plant. She asked whether the witness considered that living in Strawberry Hill she would get that smell.

Mrs. Murphy stated that she currently gets smells from time to time so she presumed she would get smells from the plant if built.

Submission by Joe McCarthy (Group no. 7)

Joe McCarthy, for Ringaskiddy and District Residents Association (Group 7), spoke as a resident of Ringaskiddy. He argued that the people of Ringaskiddy had contributed more per capita than most communities towards the creation of wealth in Ireland, and have got noise and smells in return. The State has benefited from the chemical and pharmaceutical industry, but the local community has not. The local communities have been lost, and there are no traffic lights nor pedestrian crossings, despite the heavy traffic on the road through the village.

Mr. McCarthy stated that, if incineration was permitted, there would be no incentive for the industries in the area to recycle and to reduce their waste.

Mr. McCarthy stated that the Oral Hearing was about credibility and respect, respect for people and their elected representatives. The people do not want this development, and the representatives agreed not to rezone the area. The Board should respect this also and refuse permission, thereby treating the people of Ringaskiddy fairly.

Mr. McCarthy noted that the model presented at the Oral Hearing, showing the village of Ringaskiddy, was incorrect and did not show the houses of three members of its family, nor the local school.

Submission by Barbara Daly (Group no. 9)

Barbara Daly, a witness for Cobh Action for Clean Air (Group 9), read out a copy of the letter of objection, from St. Mary's Convent National School in Cobh, that had been sent in to the Planning Authority at the time it was considering the application (see Appendix 2 - Group 9-1).

Nicholas Loughnan (Cork Environmental Alliance) asked Ms. Daly whether she or any of her colleague teachers had ever heard of an Emergency Plan. Ms. Daly stated that they had not.

Mr. Loughnan stated there was an emergency in the Harbour area in 1993 when Hicksons went on fire. He asked whether there was an internal School Emergency Plan in the event of such an accident occurring.

Ms. Daly replied that the only thing that should recall was a rumour of advice to get all the children inside and to block up the windows.

John Russell (Group 2) asked what kind of a message would granting permission for this development give to the children. Ms. Daly replied that the children in her school were small, from four to 12 years and that they would not be aware. She felt that it would send out a negative message personally.

A. Navratil (Group 5) asked the witness whether she was aware of the protection afforded to educational institutions under Article 44.2.6 of the Constitution. He asked if it were to be proven that this type of development were to cause damage would the school seek compensation. Ms. Daly stated that she would.

Mr. Navratil asked whether she had any indication from parents of the school that if this proposal went ahead, they would pull their children out of the school, and how would this affect the school. Ms. Daly stated that this had not happened yet.

Natasha Harty (Group 23) asked Ms. Daly whether she was aware of any Evacuation Plan for the island of Cobh and if so what the evacuation routes would be if an accident affected the island.

Ms. Daly stated that she was not aware of any Evacuation Plan. There is only one route off the island, at Belvelly Bridge. This bridge is narrow and it would be quite impossible for 12,000 people to get over it.

Joan Masson asked the witness whether she was aware that children excrete dioxins much less quickly from their bodies than adults. Ms. Daly stated that she was aware of this.

Submission by Dr. W. (Ted) Neville (Chase Monkstown - Group 2)

Dr. Neville stated that he was a geologist who had taught geology in TCD from 1947 to 1959 and then in UCC until 1985 and was now retired. He stated that he was very familiar with the geology of the area. The geology is dominated by dense limestone with no porosity, and is nearly a mile thick in the Cork area. The limestone is soluble and develops caverns that can cause subsidence. Such caverns exist in the Carrigaline area to a considerable extent.

Dr. Neville stated that he had read through Section 11 of the EIS, which he felt disappointing, as there was no map of the site, only a red circle showing where the site was. The applicants investigated the site by trial pits, which he is familiar with, and this method of investigation is reasonable. However, there was no information on the number of pits nor how they were dug. The applicants say that it was 1 metre to 9 metres to bedrock, but there was no plan in the EIS to show where these pits were. So the reader of the EIS would not know where the overburden was thick and where it was thin. He considered this to be most unsatisfactory.

Dr. Neville stated that there was a danger of there being solution channels underneath the site and these have not been explored for. He said that the applicants must know the information, but had not given the reader of the EIS this information. At a 9 metre depth, there was a clear danger of caverns. At the very least, the applicants should have done two boreholes beneath the site of the main building, down to at least 25 feet into rock to check for caverns. There might also be horizontal channels below the site, including drainage channels out to the harbour. Such channels are common to this area.

The applicants (per Mr. Gardner) stated that they had no questions for Dr. Neville. The Inspector stated that he was putting the applicants on notice that he would expect a response to this evidence at a later stage in the hearing. A number of points had been raised in relation to the EIS, and the Inspector stated that he would want, for his own information, a detailed response or rebuttal to Dr. Neville's evidence.

Greg Casey (An Taisce - Group 11) asked Dr. Neville whether there was any data in the EIS on the trail pits/boreholes.

Dr. Neville stated that he had read Section 11 of the EIS on geology, and there was no mention of boreholes. There was no data on the trial pits which had been done by KT Cullen.

Kate Corcoran (Group 10) asked Dr. Neville would it be important to know where the groundwater was and the depth of the groundwater.

Dr. Neville replied that there is an estuary beside the site and the groundwater would rise by 5 to 10 feet per mile from this. He did not consider hydrogeology at all.

J. Noonan stated that, in Section 11 of the EIS, only three references are cited on which the applicants rely. The first of these references is "Neville, W.E. (1963) Geology and Ireland". He asked was this him. Dr. Neville stated that this indeed was his work.

A. Navratil (Group 5) asked the witness, in his professional opinion, how many trial holes should have bee bored and to what depth, given the nature of the area.

Dr. Neville replied that he was surprised that there was no mention of the published geological map of the Cork area, which shows geology and glacial deposits. He felt that there should have been four pits for the big building, of 20-25 feet into solid rock, to assess caverns.

Submission by Mary McAleese (Group no. 7)

Mary McAleese (Group 7) stated that she was the Principal of Ringaskiddy Lower Harbour National School and wished to express the concerns of parents and teachers about the proposed development. She read a statement, a copy of which was subsequently handed in to the Inspector (see Appendix 2 - Group 7-2).

Mrs. Kate Sinnott (Group 15) asked the witness if she noted differences between children who are sick and those who are not. Mrs. McAleese said that she did.

Mrs. Sinnott asked, when children are not well, do they find it hard to learn. Toxic loading directly affects learning.

Mrs. McAleese stated that she agreed with this. When children had something that did not agree with them they were not interested in their school work.

Mrs. A. Hogan (Group 7) asked the witness if she was aware of any Evacuation Plan in the case of a major hazardous accident in Ringaskiddy. Mrs. McAleese replied that no-one had ever approached her about such a plan.

Ms. Elly O'Byrne (Chase Cork - Group 3) asked whether the witness was concerned about a major accident occurring beside the school. Would it be easy to evacuate the residents and children from the area. Mrs. McAleese stated that the services would have extreme difficulty in getting to the school.

Mrs. J. Masson (Group 24) asked at what time the school starts. In the Roads Report of the EIS it had been stated that all the toxic trucks would come into Ringaskiddy at 9pm in order to avoid congestion.
Mrs. McAleese stated that the school begins at 8.50am and that she felt that the traffic would create a major problem for the school.

Kate Corcoran (Group 10) asked the witness whether she had ever heard of a health baseline study being done on the people who live in Ringaskiddy or the Harbour area. Mrs. McAleese stated that she had never heard of such a survey.

B. Brennan (Group 7) asked the witness if she remembered when the schools in the area closed and children were sent home due to sickness from gas in the atmosphere resulting from an accidental release from one of the factories nearby.

Mrs. McAleese stated that she remembered this incident and the children had been sent home from her school.

G. Casey (Group 14) asked whether there was a fire station in Ringaskiddy.

Mrs. McAleese stated there was no fire station in Ringaskiddy. The nearest fire station (a part-time one) was in Carrigaline.

Submission by Peter Walter (Group 7)

Peter Walter (Group 7) stated that he was a resident of Carrigaline and wished to voice his concern at the proposed development. He read out a statement, a copy of which was subsequently handed in to the Inspector (see Appendix 2 - Group 7-3).

Submission by Nuala O'ReillyTeegan (Group 3)

Nuala O'Reilly Teegan (Group 3) stated that she was PRO of the Monkstown Amenity Association. She spoke to a text which had been circulated to the parties present at the hearing (see Appendix 2 - Group 3-1).

Submission by John Howard (Group no. 7)

John Howard (Group 7) stated that he was a resident of Ringaskiddy with children in Ringaskiddy National School. The Ringaskiddy community is surrounded by heavy industry over the last 30 years, the product of a conscious plan that took advantage of a poor community. The IDA bought large tracts of land in the 1970s. The community objected to an asbestos dump, and the Government promised that there would not be any more of this. The Council was to find an alternative site for this dump. The Ringaskiddy community is still waiting.

Mr. Howard stated that Ringaskiddy has always been losing something - a view of the harbour or a local amenity. Poor planning has been consistent in the area and it has to stop now. The area has had fires and a major explosion. All the major plants, bar one, are built on the edge of the harbour.

Mr. Howard stated that the infrastructure in the area is poor, and is incapable of dealing with the huge demands already placed on it. There is no emergency procedure, with only one way in and one way out.

Just when things were looking up, and a balance created with the building of the Maritime College, Mr. Howard stated that the County Manager wanted to let one or two incinerators be built less than 100 metres away. These, he said, as were told by Indaver, are needed to meet EU Directives. They are in fact a business venture driven by profit with no regard for EU requirements. If the venture proves to be unprofitable it will close just like ISPAT did. Mr. Howard stated that the community relies on public bodies to protect them against dangers that could afflict their quality of life. The Cork Councillors stood by the County Development Plan in refusing the material contravention.

The EPA is Government controlled, is under-manned, and has shown itself incapable of policing everyday breaches in the industries already there. Complaints are ignored. The community have no confidence in the EPA nor in the County Manager. Putting a monster in a cul-de-sac on the edge of one of the world's best harbours is not good planning.

Mr. Howard stated that the development is just not worth the risks - the danger of pollution to the harbour, to the heath of the community, etc. The democratic view of the 25,000 people who objected, and the view of the Councillors, should be supported.

Mrs. A. Hogan (Group 7) noted the witnesses' comment on the asbestos that was dumped in the Ringaskiddy area. She asked was it still buried there. Mr. Howard replied that it was still there.

Mrs. Hogan asked whether the witness was aware of any emergency plan. Mr. Howard stated that he was not aware of any such plan.

B. Brennan asked about a chemical waste lorry which was leaking a couple of years ago, on its way to MinChem in Dublin. He asked wasn't it stopped only when it reached Watergrasshill. Mr. Howard replied that this was true. It was seen to be leaking in Ringaskiddy, but it took until Watergrasshill before it was stopped by the authorities.

Submission by Michael O'Brien (Group 3)

Mr. Michael O'Brien (Chase Monkstown - Group 3) stated that he was a resident of Monkstown and wished to address the issue of the National Maritime College. He spoke to a text, copies of which had been circulated to the parties at the hearing (see Appendix 2 - Group 3 - 2).

Elly O'Byrne (Chase Cork-Bishopstown - Group 2) stated that two of the witnesses from her group, Kathleen Ryan and Frank O'Byrne, would not be present due to the exclusion of health and environmental issues from the hearing.

Submission by Elly O'Byrne (Group 2)

Ms. O'Byrne stated that she was a resident of Cork and worked in the food industry. She felt that the proposed development would be detrimental, not only to the people of Cork Harbour area, but also to those who live and work in Cork City.

She stated that the traffic survey in the EIS did not give a proper assessment of the number of HGV's that would be coming from other parts of the country to Cork on National Routes, including the Southern Ring Road and the Jack Lynch Tunnel. This was important since the tunnel often closes for maintenance, forcing these hazardous HGV's to go through the city to get to Ringaskiddy.

Ms. O'Byrne stated that the AM peak time given in the EIS of 7.45am to 8.45am and Indaver's suggestion that staff would be phased entry and lorries not be allowed to come in until 9am was non-sensical and impractical. The majority of traffic would be in transit to the site through the area at the peak time, since it takes 20 minutes at present to go from the Jack Lynch Tunnel to Ringaskiddy.

Ms. O'Byrne stated that any increase in traffic volume also increases the risk of an accident occurring, and an accident involving hazardous waste increases the likelihood of loss of human life. The people should not be exposed to any risk that can be avoided, and this risk could be avoided.

During the construction phase, it is stated that there would be a night shift of 70 workers. Many industries in the area also operate at night, yet the EIS had traffic counts only for 18 hours. Ms. O'Byrne considered this to be unsatisfactory and unrepresentative.

On the ecological report, where the existence of badgers had been mentioned, Ms. O'Byrne stated that it was not believable that these badgers would remain during two years of construction work at night as badgers are nocturnal and would be affected by light and disturbance.

Ms. O'Byrne stated that the mixture of Phases 1 and 2 in the EIS, on issues such as traffic, waste and noise, was most unsatisfactory and was misleading to the public.

Ms. O'Byrne stated that she was concerned about the impact of the development on the quality and safety of food, and on the jobs of those working in the food industry. The 1996 Census showed that there were 5,086 people working in the food production industry in County Cork. Many more would be working in retailing and in agriculture, all of which rely on the quality of our food. Food scares that had taken place had raised public concerns about food coming from countries with incinerators, and Irish products are perceived, locally and internationally, as being safe. Organic production is growing, with County Cork in the lead - 13 farmers markets in Cork, compared to five in County Dublin.

Ms. O'Byrne stated that the value of the agricultural and food industry is ε16 billion, with a small domestic market and a large export one. Bord Bia's research shows that the agricultural industry has 714 Irish-owned units out of a total of 790 units. People in the food producing industry in Cork know of its good reputation abroad and at home. Despite controls on emissions and requirements, accidents could happen. Ms. O'Byrne stated that just one serious breach of emission limits would lose us this reputation of quality.

Submission by Declan McDonald (Group 7)

Declan McDonald stated that he was a local resident and a teacher in the area. He spoke to a text (see Appendix 2 - Group 7 - 4) which had been circulated to the parties in attendance at the hearing.

Submission by Braham Brennan (Group 7)

Braham Brennan stated that he was chairman of the Ringaskiddy and District Residents Association. He is a long-term resident in the area, as was his father and grandfather. He had spent 26 years as a Fire Officer in Cork, before being left-off due to health problems. He was a County Councillor 15 years and for nine years was a director of the Port of Cork.

Mr. Brennan spoke of the problems which the residents of Ringaskiddy had 30 years ago when an asbestos dump was put forward. They protested, and after some time an agreement was formally reached with the IDA, the Cork County Manager and Government ministers, that the dump would be temporary and that there would be no more dumps in the area. The asbestos dump is still there. What the present application was is really a dump.

Since then there have been a number of incidences of fires and chemical releases, most notably Hicksons fire, which burned chemicals for two days, leaving the community with a chemical cocktail. Mr. Brennan stated that Ringaskiddy already has five incinerators and does not need another two. The residents do not want to have to suffer again.

Mr. Brennan stated that Cork Port has moved to Ringaskiddy, and now huge ships unload there, spewing dust and chemicals into the air.

Mr. Brennan stated that Ringaskiddy had amenities 30 years ago but has virtually none now. The children play on the road. The field beside the terminal, owned by the Port, has had trees planted on it and so cannot be used for ball playing anymore. The site that was once Irish Steel's playing field, and used by locals, is part of the current site.

Mr. Brennan stated that the planning process for toxic waste incinerators required a material contravention of the Development Plan. The Council tried to sneak it into the new Draft Plan. The County Manager was contacted and he told the residents that no change was intended. The following day the newspaper said different. The

Council officials said they had no problem with the development. At the vote of the Council, 75% of the members voted against the proposed development. Mr. Brennan stated that it should have stopped there and then, since this was democracy. It has been taken out of the democratic process to the appeal, with the Government pushing for incinerators.

Mr. Brennan stated that the people have been waiting 33 years for a baseline study on the health of human beings in Ringaskiddy and the Harbour. There are animal health studies but none for humans. He stated that you could not have a proper EIS without a human health baseline study.

On the issue of the emergency plan, the chairman of the Chief Fire Officer's Association had said recently that there was no such plan for Cork Harbour or Ringaskiddy. Mr. Brennan stated that the local community has never seen any emergency plan.

Mr. Brennan stated that this toxic incinerator will give profits to the chemical industry and create thousands of tonnes of toxic waste which has to be dumped. It will affect property values in the area.

The WHO was mentioned by the applicants and seems to have no problem with incinerators. But he asked whether they were in favour of toxic incinerators. The Irish GPs voted unanimously against incineration at their annual conference, as did the IMO recently. He stated that we should take heed of these views.

P. Sreenan, for the Planning Authority, asked for clarification about Mr. Brennan's meeting with the County Manager, and what this was about.

Mr. Brennan stated that the meeting was sometime in 2003, when the residents heard of discussions regarding the project. What the Manager told him was different to what was said in the local papers the following day.

Rosie Cargin (Group 8) noted Mr. Brennan's comment on asbestos being dumped in Ringaskiddy. She asked whether the dump was still there. Mr. Brennan stated there was still 20 acres of it dumped in 3 foot deep trenches. He considered this to be a derelict of duty by the County Council and the EPA which knows about it.

Ms. Cargin asked whether there were any other residues from closed industries in the area. Mr. Brennan stated that there are thousands of tonnes left on Rocky Island underground by Irish Steel/Irish ISPAT. It is the responsibility of the Government, the County Council or the EPA, but no-one seems to care. He stated that he had no confidence in the EPA nor in Cork County Council.

Mrs. Masson (Group 24) asked whether the witness was aware that Indaver's licence application includes for storage of asbestos. Was there not a written agreement that there would never be any dump in the future. Mr. Brennan replied that there was such an agreement.

Submission by Sean Woodgate (Group 5)

Sean Woodgate (East Cork for a Safe Environment - Group 5) stated that he as General Managing Director of Trabolgan Holiday Centre and Chairman of East Cork Tourism Board (a voluntary body interested in tourism, representing local tourism interests). He stated that this Board aims to promote, nurture and protect tourism in the East Cork area. The business people in this section have an Action Plan for Tourism.

Mr. Woodgate stated that the proposal for this incinerator concerned the Tourism Board. It flies in the face of promoting tourism in East Cork. The businesses range from Fota, Middleton Distillery and Trabolgan, down to individual heritage properties and accommodation.

The perception of the area, if this is granted, will be such as to put people off from coming to East Cork and to Ireland. Mr. Woodgate stated that he had people coming to fish, with the best fishing area being at the mouth of Cork Harbour. He stated that the proposed development would affect the potential of businesses such as this, which generate spin-off expenditure to other businesses in the area. If there is an incinerator, Mr. Woodgate felt that it would make marketing or local tourism assets most difficult. It would have a detrimental affect on investment and jobs in the area in the future.

Legal Submissions by P. Sweetman and G. Casey

Mr. P. Sweetman stated that together with his legal advisor he had gone with the intention of going to court to review the Board's decision. However, he had been unable to do so and he asked Mr. Casey, on behalf of himself and Mr. Cronin, to explain why.

Mr. Casey stated that on the previous Monday Mr. Noonan, as well as himself, had made a submission regarding Section 54 of the Waste Management Act and Section 98 of the EPA Act. He stated that he had also made a submission on the Seveso II Directive. He stated that he understood that the Inspector was to obtain a ruling on these issues from the Board and that he gave that ruling on the following Monday. He recalled that the Inspector said that the Board had directed him that firstly he could not consider environmental protection matters at the Oral Hearing and secondly that the Board proposed to take into account the HSA letter to the Planning Authority and were satisfied with that. Mr. Casey stated that he now understood that the Board had directed that matters relating to health and safety and environmental protection, as well as Seveso, were allowable. He stated that he had contacted a named officer of the Board on Tuesday afternoon and had been told that he would respond to us as to the Board's decision on the matter. Subsequently he was informed by two individual employees that no Board decision had been made on the exclusion of environmental pollution. The same day he had spoken to a named officer of the Board and that officer had indicated that he was unaware of any change of heart on the Board's direction or decision in relation to the Seveso II issue.

Mr. Casey stated that he wished to know who in An Bord Pleanála was saying that Board decisions were being made that are communicated to the Oral Hearing when no such Board decisions had in fact been made. He stated that in his view there was an attempt to mislead the public on the matter. He felt that the Inspector was being "led up the garden path" in relation to the instructions he was receiving from the Board.

Mr. Casey said that judicial review could not be made unless there was a decision on the matter. He stated that the Inspector had been informed that decisions of the Board had been made when no such decisions appeared to have been made. He asked that clarification be provided from the Board as to how matters related to Seveso were not to be considered the Friday before the Oral Hearing opened and could now be considered and how issues relating to Section 54 of the 1996 Waste Management Act could not be considered and now can. He stated that he did not consider that the Oral Hearing could proceed further until the Inspector had obtained clarification of this matter.

Mr. Casey stated that he was renewing his application regarding the inclusion within the Oral Hearing of environmental pollution matters. He stated that Justice Quirke had granted leave for a judicial review in July last against An Bord Pleanála regarding the Indaver decision at Carranstown, Meath. He stated that An Bord Pleanála's own affidavit on this review stated that the issues were legal issues that required to be dealt with by the courts. He submitted that the Board should consider the request he had made to refer this matter to the High Court or to the European Courts of Justice.

The Inspector responded to Mr. Casey that he would given an initial response to what he had said in certain areas and that he may or may not consult with the office in relation to what he had said in relation to what Mr. Casey stated that he had or had not experienced with staff in the Head Office.

The Inspector stated firstly that Mr. Casey was clearly not aware of the situation with regard to Section 54 of the EPA Act. The Board's view on that had not changed. Mr. Noonan had raised this matter with the Inspector the previous day, and the Inspector had informed him in open session that the Board's attitude to the matter had not changed and that the Inspector was accordingly not taking evidence in relation to the risk of environmental pollution from the proposed activity.

Secondly, the Inspector stated that he had indicated clearly that the Board was not providing written documentation to any party in relation to that view. He also indicated that all parties to the Oral Hearing were in fact informed of the Board's view on the matter, in writing, by letter dated 20th August. The Board's understanding of the law in that matter had not changed.

The Inspector noted that Mr. Casey was quoting an affidavit in a judicial review of another application rather than the present one. He was also quoting an affidavit which he had not in front of him but which would appear from what Mr. Casey had said to indicate that the Board was stating that the matter should be dealt with legally (in the courts) and hence not in the forum of an Oral Hearing.

Thirdly, the Inspector stated that Mr. Casey's request and Mr. Sweetman's request to him at the start of the Oral Hearing that week was "to abandon and that was the word that had been used at the Oral Hearing" so that matters relating to information which Mr. Casey had obtained from the HSA but which the Board had not before it, could be obtained. The Inspector stated that Mr. Casey had raised the point that he (Mr. Casey) considered that there hadn't been consistency in the Board's treatment of the matter because at a hearing the previous year in relation to the Corrib Gas Field he had stated that the Board had reopened the hearing so that, amongst other things, issues relating to Seveso could be further discussed and so that somebody from the HSA had been asked to attend the hearing. The Inspector stated that his response to Mr. Casey at the time was that he would take a note of what Mr. Casey had said, and if it was a matter that the Board, having considered what he had said in the Inspector's Report on the Oral Hearing, felt that it was necessary to do so, the Board had power to re-open the Oral Hearing as it had done at the Corrib appeal. Mr. Casey's request was to abandon the Oral Hearing so these things could be done and the Inspector stated that he had indicated that he was not prepared to do so.

The Inspector stated that Mr. Noonan had made a submission to him whether issues in relation to Seveso II, specifically issues on foot of the "control of major hazards involving dangerous substances" could be considered and whether the Inspector would be prepared to hear evidence regarding that matter, as opposed to the issues of the risk of environmental pollution from the activity. The Inspector stated that he had indicated that he would be prepared to consider that, exactly in the same line as he had already told Mr. Casey, that he would listen to evidence and put it to the Board and that it would be a matter for the Board, having seen the points he had raised and indeed any responses from any other parties, to decide whether it in turn would seek further technical advice from the HSA. If the Board so decided they had the power to re-open the Oral Hearing. The Inspector stated that that position also had not changed.

The Inspector stated that as regards whether or not it was a Board decision, he had been very careful of the words he had chosen to use on Tuesday. He had stated "my instructions were". The Inspector stated that he had not said that the Board had made a decision but merely indicated what his instructions had been. At no point had the Inspector indicated to Mr. Casey that the Board (as in the Board of the Board) had met to consider his submission. The Inspector stated that he was not telling Mr. Casey whether there was, or was not, a Board decision because he was not aware of the matter himself. The Inspector also stated that he had indicated in response to a request from Mr. Noonan that he would not be providing any written documentation as to the Board's view nor of its legal advice, and had checked subsequently with the office to confirm that that was the case.

The Inspector stated that, as he was not a lawyer, he was not in a position at this stage to look at any legal pleadings in relation to the Board's Carranstown decision. In any event he stated that it was a separate decision and as Mr. Casey would have been aware, each planning application and appeal has to be dealt with on its own merits or demerits. The Inspector stated that on the basis of the information that Mr. Casey had now provided he saw no reason, on his layman's view of the law, to stop the Oral Hearing on that basis.

There was considerable further discussion on this matter between the Inspector, Mr. Casey and Mr. Sweetman (see Tracks 00, PP, QQ, RR and SS). These generally repeat the points made and outline further reasons why the two parties felt that the Oral Hearing should be adjourned. The Inspector remained adamant that he was not prepared to adjourn or abandon the Oral Hearing on the basis of the legal submissions made by Mr. Sweetman and Mr. Casey.

The day's proceedings ended at this point.

ORAL HEARING PROCEEDINGS

26th SEPTEMBER, 2003.

Questions for Feargal Duff (Witness for CHASE (Carrigaline))

A. Hogan (Group 7) asked how would the proposed development affect Ireland's commitments abroad in terms of its conventions, and whether we would be breaking International Law.

Mr. Duff replied that Ireland has been a responsible of the international community and has confirmed its commitment to sustainable development by signing the Convention of Biological Diversity, by adopting the Rio principles, by signing the Stockholm Convention on Persistent Organic Pollutants, and by translating that into Irish policy in the National Bio-Diversity Action Plan.

If Ireland permits incineration, it will be contradicting its own policy, especially in relation to the POP's Convention, where it was agreed to phase out POP's such as dioxins and furans, and it would make a nonsense of its international commitments. You cannot make commitments at international level and then ignore them in practice.

Mr. Duff stated that the POP's Convention, in Article 5, commits Ireland to phasing out and eliminating POP's in the environment. UNED Chemicals Office Guidelines on this recommend that Governments provide transparency with the public on what the risks of these chemicals are, and involve the public in decisions about them. Article 10 of the Convention deals with public information and awareness and this is a trend that is increasing. Mr. Duff read from this article and in particular Articles 10.1.B and 10.1.D.

Mr. Duff stated that Ireland, as a contracting party to the Convention, has international commitments in this area. Allowing incineration, which increases POP's in the environment, is in direct contravention of the Convention.

Mrs. N. Harty (Group 23) asked about Gerard Morgan's paper, and section of the EIS, and asked the witness whether he considered that the EIS surveys carried out were adequate to do a proper baseline study of the site, with two days for botanical, two days for birds, five days for mammals, and one day and night for insects, generally in one season.

Mr. Duff replied that this level of survey was totally inadequate. The modern approach to surveys is an eco-system management approach, which deals with interactions between humans and nature. The survey in the EIS was not adequate.

Mr. A. Navratil (Group 5) noted that the flora and fauna survey in the EIS was limited to the curtilage of the site. He asked whether this scope was adequate, and should the survey not have been done within the potential fall-out area of the potential emissions from the development, including surveys of sentinel species, which are indicative of the health of the bio-system.

Mr. Duff stated that the survey should not have been limited to the site - the micro-system - but the whole area should have been taken into account. One is obliged

under EIA to take into account the wider eco-system, and also under the Convention on Biological Diversity. For example, Article 8D of this Convention implies that the natural surroundings have to be protected and hence both inside and outside protected areas. The survey should have looked at, for example, the marine bio-diversity in Cork Harbour.

It could also be argued that the general area around the site is a degraded eco-system, and so Ireland is obliged under Article 8(f) of the Convention to rehabilitate and restore degraded eco-systems. This seems to be the intention of the Cork Development Plan, which seeks to improve amenities of the harbour.

Mr. Navratil noted that Mr. Duff stated, in page 2 of his submission, that the Irish Government is working to meet the Rio principles, including "empowerment of local people and communities". He asked Mr. Duff to explain what this should mean.

Mr. Duff replied that it meant that local people should be involved at the start of a project, including the needs assessment, and to be fully informed of what is happened to their eco-system, and should be given the resources to participate.

Mr. Navratil stated that when the development was first mooted, the local community did its best to inform itself from its own resources. If there is a right that local stakeholders be given the resources, does this not put them in an unfair situation.

Mr. Duff stated that by resources he meant the resources of the UNED's programmes, not funds for the local community. These resources are available to citizens, through the Government, but there seems to be very little reference to UNED's resources by the applicant or by the County Council.

Mr. Navratil asked the witness whether he felt that the EIS was a very limited one, and if this was in breach of the conventions. Mr. Duff replied that he felt that the EIS does not follow the Rio principles and the Convention on Biological Diversity.

Mr. Navratil stated that, for a proper EIA, there had to be comprehensive inputs into it, including transboundary effects of pollutants. He asked how long would one need to prepare such an EIA.

Mr. Duff replied that it was impossible to answer this question. An EIA must cover the whole life and design stage of the project, from the identification of need through appraisal, approval and an audit. Such things can take years, if they are to be done properly. It is inadequate because the stakeholder population were not involved at the early stages.

Mr. Navratil stated that this then underlies the lack of a baseline study of human health. Is this then a dereliction of Government duty and should it not have been done before any factories were put up in Ringaskiddy.

Mr. Duff replied that the EIA should have started with the question of whether or not there was in fact a need for incineration.

Mr. Navratil referred to page 6 of the submission, dealing with lead fall-out coming from incinerators, where it is said that the trend is for closure of incinerators in the western world. He asked whether Mr. Duff could adduce from that that incinerators are shutting down, but that Indaver say that they are increasing in numbers.

Mr. Duff stated that his comment came from the UN Earthwatch Programme for Chemicals, which is published by the UNED and is a reliable and credible source of information. Mr. Navratil stated that, if incinerators are in fact shutting down, we should not be contemplating putting them in.

Mr. Duff replied that it would be making a nonsense of our commitments abroad if we start this process. If you commit yourself in May 2001 to start reducing and eliminating dioxins and furans, and on the other hand consider in 2003 that you will begin to be a major producer of dioxins and furans, there is a clear contradiction, and could make it very difficult for the Irish Government internationally.

Mr. Sweetman (Group 22) asked the witness whether he was aware that Cork County Council, in recommending a grant of permission for this development, could purport under the Irish legislation to have carried out an EIA. Mr. Duff replied that he did not know. His evidence was that the submitted EIS was not adequate.

Mr. Sweetman noted that the developer strongly relies on Government policy, and asked the witness whether he considered that this policy, without a full EIA of that policy, would be in breach of Ireland's international commitments.

Mr. Duff stated that he felt that the development is not in line with national policy, because it does not follow international commitments. He also stated that national policy on Rio and the Bio-Diversity Plan went against the proposed development.

The Inspector asked Mr. Duff about the Convention on Biological Diversity in Article 8 (which he had quoted) and what the phrase "as far as possible and as appropriate" meant.

Mr. Duff replied that Governments cannot be expected to change overnight and the phrase allowed for its gradual implementation of the Convention. Ireland signed it in 1992 and further reaffirmed it in 1996. It has turned the contents of the Convention and the principles adopted in Rio into its own policy, and reaffirmed this policy in more recent conventions such as Stockholm. In his view, this would be totally contradictory to Irish international policy if we go down the route of incineration, since the Government has subscribed to Rio and recently affirmed the POP's Convention. When a Government commits itself internationally it doesn't just mean that we say in Ireland we won't start producing dioxins and furans, we are telling the rest of the world that this will be so. It is part of an international consensus to reduce and eliminate them.

The Inspector noted that one of the strong arguments put forward by the applicants was that the project was in accordance with the National Hazardous Waste Plan. He asked Mr. Duff whether he felt that this national policy in supporting incineration is in breach of Ireland's international commitments - in effect that one section of national policy is contradicting another section of national policy - the national policy on bio-diversity.

Mr. Duff said that this was the case but that he would like to refer to the portion of the National Hazardous Waste Plan referred to by the applicants.

The Inspector stated that it was contained in the conclusion on page 66 (as indicated verbally by Mr. Gardner for Indaver). Mr. Duff read through this portion of the document. He stated that he noted that the plan had indicated "on the face of it" and "would appear" – and stated that these are not conclusive statements. In the absence of a proper EIA, the policy was not clear nor definitive.

Mr. Duff stated that the general consensus in Rio and in the POP's Convention is to get away from this type of situation. Ireland is in a privileged situation as it is one of the few developed countries that has not gone down the route of incineration. It has also confirmed internationally that it wants to eliminate dioxins and furans. In his view the National Hazardous Waste Management Plan is not consistent with what Ireland is saying internationally.

P. Gardner (Indaver) asked Mr. Duff whether he had read the document, prior to giving evidence to the Oral Hearing. Mr. Duff stated that he read the Draft Plan, and was familiar with Government policy on incineration - the "proposed National Hazardous Waste Management Plan".

Mr. Gardner asked the witness whether he accepted that the policy stated that a thermal treatment disposal facility for the management of hazardous waste currently exported for disposal is required (paragraph 4, page 90).

Mr. Duff noted this, but said that on page 66 of the same plan it says in the conclusion that "it would appear" that it is justified. In his opinion and in terms of Irish policy internationally, the National Hazardous Waste Plan is contradictory.

Mr. Noonan referred Mr. Duff to the National Hazardous Waste Management Plan on page XIII where nine priorities were listed and on page 89 where priorities were listed, including paragraphs 9.1 and 9.2 (which he quoted). He asked Mr. Duff whether, as a principle of good planning, it is consistent, when preparing a serious of steps to be taken, that one takes only one of the steps in isolation from the other steps.

Mr. Duff replied that of course it would not be appropriate. In the waste pyramid thermal treatment is down the list after waste prevention, minimisation, re-use and recycling. The other steps have not been taken, so it is a nonsense.

Mr. Duff stated, as a supplementary answer to Mr. Gardner, that he is not a lawyer, but is well versed in international environmental policy, with a lot of experience in the field. What he has said is that the policy and the commitments made by Ireland internationally are in line with the various action plans. He said he had not gone through the National Hazardous Waste Plan in detail, but has read the sections referred to on page 66, which state "on the face of it" and "would appear to justify". He felt that these were crucial phrases and they were vague and unclear. From a proper EIA, all this would have been worked out in advance, both for environmental and economic feasibility. For example, what would the cost burden to the Exchequer be in the future if waste had to be brought to the proposed incinerator.

The Inspector clarified to Mr. P. Gardner that it was reasonable to put to the witness, who stated he had experienced an international policy, the quotations from the National Hazardous Waste Management Plan which Mr. Ahern of Indaver had quoted in his submission to the hearing as part of his justification for the development. Whether the witness had read the whole document was not relevant.

Mr. Gardner, for the record, stated that he was not disputing the Inspector's entitlement to ask any question. The quotation from page 66 comes from national policy and is was his submission that, while Mr. Duff was an expert on international policy, he was not an expert on national policy.

Submission by Dan Boyle, TD (Group 12).

Deputy Boyle stated that he was a Dáil Deputy for the general area, including the site, containing a population of 100,000 people, many of whom are concerned about the development. He circulated a summary sheet of the issues he was going to address (see Appendix 2 - Group 12 - 1). (note – as this is a summary, it is appropriate to give a précis of what Deputy Boyle said)

1. Planning Context of Industrial Development in Ringaskiddy/Cork Harbour Area

   A national policy decision, augmented by Cork County Council Planning Policy, decided that the Ringaskiddy area and Cork Harbour should be a designated centre for the pharmaceutical/chemical industry. The initial general reaction to this had been favourable due to the employment available. There were questions raised in more recent times, which were ventilated in the planning process. The County Council was compromised in its dual role of protecting the environment and promoting industrial development. From 1985 onwards, Deputy Boyle stated that attempts were made by the Council to have a more diverse approach to planning in Ringaskiddy, including electronics industries, port activities, and now the National Maritime College, the foundation stone of which had been laid that day.

   Deputy Boyle stated that it does not make economic sense for an area to be dependent on one individual sector of industry, because of the potential

problems arising in the global economy, and so he welcomed this change in planning approach.

2. Beneficial Ownership of the Proposed Development Site

Deputy Boyle stated that this was the central point of his submission. The site for the proposed scheme had been purchased or acquired by Indaver from Irish ISPAT - a steel company that ceased operations and went into liquidation last year. ISPA took over Irish Steel in 1996 under an agreement with the Government, for a consideration of £1. Part of this agreement was, in five years, Irish ISPAT would engage in environmental clean-up, improve health and safety standards, and sustain employment levels. At the end of the five-year period, and not having reached agreement with the EPA over a waste licence, the company ceased operations.

Deputy Boyle stated that, as a result of this, Irish ISPAT was in Breach of Contract with the Irish Government. As a member of the Dáil, Deputy Boyle stated that he had sought that an investigation be entered into by the Committee of Public Accounts, through the Office of the Comptroller and Attorney General. That investigation is ongoing.

Deputy Boyle stated that he wished An Bord Pleánala's attention to be directed specifically to this fact, and that the Board be requested not to make any decision of a positive nature on the proposed development until this investigation had been completed.

3. Conflict in National Government Policies and Prioritisation of Same

Deputy Boyle stated that the Board has to take account of national policies. However, national policies are ephemeral, and can be changed over time or due to a change of Government. The proposed development is a long-term project. Every opposition party in the Dáil had expressed opposition to incineration as a means of disposal of waste. In 2002 all general election candidates for the Government parties for the constituency stated their opposition to the proposed development. Policy can also be compromised in the context of EU Law and the Irish Constitution. The Oral Hearing process, in terms of public participation, the degree to which people are constrained by the legislation, can be questioned under the Constitution. On all these grounds, Deputy Boyle stated that there were factors that had to be taken into account.

Deputy Boyle stated that the conflict of national Government policy becomes more ludicrous when placed beside other environmental commitments and other international commitments. Under the Kyoto Protocol, the Irish Government have agreed to maintain greenhouse gas emissions at their 1990 levels by 2010. In 2003, Ireland is already 31% over that level. The Government's stated policy of putting in eight domestic MSW incinerators and a hazardous waste incinerator will contribute to that excess, and this is an international commitment being breached by a national policy.

In terms of national policy on waste management, Deputy Boyle stated that we have heard the degree to which a waste hierarchy should be implemented - reduction of waste, recycling of wastes, etc., and yet again we see a "end of the pipe" solution. He stated that if we are serious about dealing with environmental difficulties, we should be trying to close the valve at the opening of the pipe rather than trying to widen the pipe itself. He stated that he believed that the proposed development would send out all the wrong environmental and economic signals to any attempt to limit and control waste, and to safely dispose of waste, especially hazardous waste.

4. Conflict in Local Government Policies and Prioritisation of Same

Deputy Boyle stated that in his experience as a councillor since 1991, in the production of the joint waste management strategy and CASP, he was aware of the need to prevent the use of fake phrases and not leave room for ambiguity. In the joint waste management strategy, three options were given to the two Councils of Cork County Council and Cork City Council. In approving the joint waste strategy, both Councils were adamant that the third option, which included incineration, was not acceptable. The second option - waste minimisation, diversion and ultimate landfill - was the preferred option.

5. Use of Executive and Reserved Decision-Making Powers

Deputy Boyle stated that he found it somewhat ironic that we were debating a reserved decision of the County Council. Reserved function decisions are limited and have been further limited in recent years. He stated that he believed that the decision here made by the Board should reflect that of the elected members of the County Council.

6. Application of Best Available Technology in the Management of Similar Facilities, and the Record of Management of Indaver

Deputy Boyle stated that it was a central principle of the EU Environmental Directive, that BAT has to be used, but qualified by the phrase "not entailing excessive cost". But even in its qualified state, it does presume that anyone who wants to run a facility of this kind has to do so to the best possible level. Deputy Boyle stated that he had concerns that the technology being proposed - the fluidised bed incinerator - had been used elsewhere and had not been successful. The Dundee plant, which is a fluidised bed system opened in 1998, had an appalling record. Deputy Boyle stated that Indaver had not any experience to date of running such a system. In promoting themselves as being the people best able to run such a facility, they put forward their own safety record. Deputy Boyle stated he had a number of difficulties with this. Belgium as a country has a very poor record, with dioxin levels much higher than any other EU State. There have been a number of incinerators in Belgium, such as the St. Nicholas plant. In the last year, Indaver had had difficulties with its Antwerp plant, and this raised questions about the technology and the ability of the applicant company to run it.

7. Economic Basis and Impact of the Proposed Development

Deputy Boyle stated that it was a difficulty in economic development and planning terms to get the balance right. He stated he would argue that the very fact of an incinerator, regardless of the effects of that incinerator, sends out a message that would compromise other areas of economic activity, in tourism, in the port/harbour and in agriculture.

Deputy Boyle stated that what really bothered him about the economic basis for incineration was that it was a statement that not less than 60,000 tonnes of hazardous waste every year has to be created. Just by building an incinerator, you are saying that you cannot go beyond a certain level in minimising hazardous waste. Hence the incentive to minimise waste was instantly removed by having an incinerator in place. Deputy Boyle stated that that in itself was in conflict with already stated national policies.

8. Impact of Transit of Hazardous Materials in the Greater Cork Area

Deputy Boyle stated that, while the applicants had made great play of the national waste database figure of 60% of hazardous waste being generated in the Cork area, it could not deny that 40% of the hazardous waste would have to be brought in from the rest of the State. The likeliest route to be taken was the main Cork to Dublin Road, the South City Link Road, the Southern Ring Road, and the N28 into Ringaskiddy. Deputy Boyle stated that he saw a problem in the increase in traffic of hazardous materials going through the Jack Lynch Tunnel. He stated that we should not envisage the situation of large container traffic that has the potential of accidents being allowed to travel that route. If successful in coming through the tunnel, such traffic would have to pass through areas of high population density such as Mahon, Douglas and Carrigaline, on its way to Ringaskiddy. These were unacceptable and unnecessary risks, and they were risks that could not be properly protected under the Major Emergency Plan.

Deputy Boyle stated that in 1993 at Hicksons, there was one accident which led to pollution of the harbour and plumes of hazardous smoke over Cobh. It also revealed that there were difficulties in dealing with an accident of that nature under the Major Emergency Plan. There were difficulties in informing persons of the risk, in terms of water pressure of the site, in terms of subsequent information on the extent of damage. Deputy Boyle stated that he believes there had been improvements in the operation of the Major Emergency Plan for the area since then. However, yesterday's incident (*the Sunbeam fire in Blackrock on 25th September*) revealed that many of the flaws that had existed in 1993 still remained, and to permit a further risk, when it is clear that we have not got things right in terms of public protection, was not in the interests of the people of the area.

9. Obligation to Decide on Behalf of the Common Good Ahead of Economic Self-Interest

Deputy Boyle stated that he considered the development a commercial activity which was not there to meet the environmental needs of the region nor the country. As a commercial activity, its incentive was to seek as much material as possible so that it would justify its existence and continued use. That should not be the basis for a piece of environmental infrastructure. Deputy Boyle asked that the Board would use the precedent of the Corrib Gas decision as a basis for its decision on the present case. Considerable political pressure existed to allow that development on economic grounds, and the Board had made a wise decision in refusing it and ignoring these pressures in order to protect the environment of that area. Last week's landslide in County Mayo showed how wise and justified that decision had been. Deputy Boyle stated that he was asking the Board to note that Ringaskiddy is an area that already carries significant high risk industries and has lived with such risks for a 25-30 year period. He felt that it was unfair to the region and to the local community to accept any additional risk factors upon it. He stated that to be consistent with the precedent of the Corrib Gas decision, the Board should refuse the application.

P. Sreenan, for the Planning Authority, asked Deputy Boyle to clarify the matter in his submission regarding the use of executive powers. The impression that had been given was that the County Council at the Oral Hearing was in some way supporting the application. Mr. Sreenan stated that the County Council had refused the application and it was Indaver that had appealed it. He stated that the County Council at the Oral Hearing was defending its refusal decision.

Deputy Boyle stated that he accepted this point, however the difficulty was that the recommendation to the Councillors was to grant permission and the applicants were relying on this recommendation as supporting material for their appeal.

Mrs. A. Hogan (Group No. 7) asked Deputy Boyle what were his fears for his constituents in the event of a major hazardous accident, especially in the light of the existence of the Hammond Lane facility and the Major Emergency Plan.

Deputy Boyle stated that Ringaskiddy is a cul-de-sac peninsula and that the site is at the end of this peninsula - making it difficult for access for emergency services and difficult for residents to be evacuated in the event of an accident. He stated that Cork Harbour has the highest concentration of Seveso II sites in the State, giving fear of the danger of a domino effect, depending on the severity of any incident that might occur in any of the sites. This risk should not be added to by the current situation. Future developments in the area are already limited by these Seveso sites, and the proposed development would further prevent the area reaching its proper potential.

Gertie O'Driscoll (Group No. 7) asked Dr. Boyle had he seen the Emergency Plan as the residents had not seen it. Deputy Boyle stated that the Emergency Plan is shown to members of the Council and is updated but it is a very generalised document setting

out general procedures. There was ongoing concern and people should have access to this plan.

R. Hayes (Group No. 7) asked Deputy Boyle about an Evacuation Plan. If they were to evacuate the island of Cobh, with 5,000 people, how could it be done with one road out over a small bridge. Mr. Hayes stated that Cobh is downwind of Ringaskiddy.

Deputy Boyle stated that the Major Emergency Plan was a generalised document. The difficulty in Ringaskiddy, as indeed in Cobh, was that there was only one road out and this was limited access. Such limited access does not give options for getting out in the event of an accident.

Kate Corcoran (Group No. 10) asked Deputy Boyle whether he felt that a specific evacuation plan was needed for Ringaskiddy.

Deputy Boyle stated that he did not wish to overstate the matter as the County Council generally has a good record but he felt that there should be public information provided to the residents. There is a review process of the Major Emergency Plan and this can be varied over time. However, the question of resources for major emergency planning often depends on national resources and the Government is not very forthcoming on these.

P. Sweetman (An Taisce) asked Deputy Boyle whether he was aware of any public emergency plans for Seveso plants in the Harbour area. Deputy Boyle stated that there were problems with informing local people in terms of the Seveso requirements. He felt that there were severe questions on how the Seveso was being implemented, for example all residents within a quarter mile radius were supposed to be informed but they were often not informed.

Submission by Peter North (Witness for Group No. 5)

Mr. North spoke to a text, copies of which had been circulated to the parties at the hearing (see Appendix 2 - Group 5 -2).

He then made a number of additional points verbally. On the issue of reliability and waste storage, Mr. North stated that with a "single train system" such as is proposed, there was a relatively high probability of abnormal shutdowns. Emissions are at their worst at such times. When these shutdowns occur, storage or alternative treatment has to be available.

On the issue of meat and bone meal, which is one of the waste inputs proposed, Mr. North stated that there was a strong case for separate treatment. Meat and bone meal is an extremely rich source of phosphate, a scarce natural resource and every attempt should be made to recover it.

Mr. North stated that the ICPMF (the industry group) and the IEI have not come out unequivocally in favour of incineration, but only in favour of a national hazardous waste treatment strategy. They accept the concept of a hierarchy of treatment options with mass-burn incineration and landfill at the bottom of the hierarchy.

J. Masson (Group 24) noted that Mr. North had stated that if incineration becomes defective and emissions are over the limits it may take weeks to rectify. He asked how was this done.
Mr. North stated that it depended on the type of fault. Some faults could be repaired quickly, others could take months and that the worst problem is refractory cracks.

Ms. Masson asked when maintenance or reorganisation of the incinerator was taking place, did one have to evacuate people living or working nearby.
Mr. North stated that this was not the case but that his concern was the storage of the waste if the plant was regularly shutdown and was shutdown for a long time. He stated that this was really an EPA problem.

Carmel Cronin (Group No. 6) asked Mr. North whether he would recommend a national treatment centre for all types of hazardous waste as opposed to in-house treatment or recovery facilities. She asked whether he felt it was better to treat in-house rather than in an centralised location or facility.

Mr. North stated that this was so in general but not always. In general on-site treatment is better than off-site. He stated, however, that there would be limited waste types and streams that are better treated off-site for financial cost reasons than for an individual industry.

Ms. Cronin asked whether Mr. North could recommend other non-burn methods for treating hazardous toxic waste. Mr. North replied that it entirely depended on the materials to be treated.

Ms. Cronin asked Mr. North in his experience of the pharmaceutical chemical industry was it his view that there was no need for this proposed facility on the basis of tonnage.

Mr. North replied that mass-burn incineration is an outmoded concept. He stated that we do need a hazardous waste management strategy and would need some form of facility, but he did not know what type of facility was needed at this stage. Incinerators of this type had to be bottom of the list and he could see no need for it at this point in time.

Submission by David Touhy (Group no. 7)

David Touhy (Group No. 7) stated that he wished to give the objection of the youth of Ringaskiddy as a student living there. He stated that the prospect of living in close proximity to the National Toxic Waste Incinerator made him think of having to leave his home village. He stated that if the development was allowed local residents could

not continue to swim of Gobby Beach nor even cross the road to the village green to play due to the level of traffic of heavy trucks that the incinerator would attract. He asked those cynical about our cause against the incinerator to ask themselves whether they would honestly allow their children to go up next to the National Toxic Waste Incinerator.

Further Questioning of Peter North

Mr. Navratil (Group 5) asked Mr. North about his comment regarding carbon regeneration. He stated that there was a proposal to incinerate the activated carbon filters from industry and asked whether Mr. North was proposing a better alternative.

Mr. North stated that carbon regeneration was a thermal process in any event. If the carbon was saturated with heavy metals or dioxins, any facility would have to be designed to deal with that. In a carbon regeneration facility you get the carbon back, whereas in an incinerator you merely burn it. The other thing is that it opens the prospect of waste trading - bringing waste to other countries where there are specialist facilities to deal with this type of waste.

Mr. Navratil asked about best practical environmental option (BPEO) and asked whether it was difficult to demonstrate this on any particular project.

Mr. North stated that wherever you look at the waste material, the modern preference is to do a study on it to determine which is the best treatment and disposal strategy. The procedure you use is a BPEO study. It appeared that such a study had not been done for the proposed development.

Mr. Navratil noted that Mr. North had stated that there was no clear imperative for a national hazardous waste incinerator, let alone a mass-burn mixed waste one. He asked Mr. North was it correct to adduce from that that this proposed development is not a necessary installation at this time.

Mr. North replied that at present waste is being exported. There are a number of countries that have not yet said they will not accept Irish waste. Until they do, we can export. If and when they do, they will have to give notice and then we would have to do something. Until such time, logically it was not imperative but it was possibly desirable.

Mr. Noonan (Group 1) asked Mr. North why he questioned the practicality of all countries handling their own hazardous waste.

Mr. North stated that handling waste was generally an economic cost which has to be borne by someone. There are nearly always economics of scale. So putting in small plants for particular types of waste is a nonsense from a technical point of view, if not a political one.

Mr. Noonan asked was it fair to say that facilities for waste management by way of incineration may benefit in turn by increasing sophistication in the way that they work, if they have to deal with larger quantities of waste and diverse waste streams.

Mr. North replied that he didn't like mixing waste as it is more difficult to deal with mixed waste rather than individual waste streams. This development was like a sledgehammer and was based on a worst-case waste that could be received.

Mr. Noonan asked Mr. North to look at the schematic process drawings in the EIS (Drg. NTS-4 in the Non-Technical Summary). From his experience of process design, Mr. Noonan asked what could go wrong in the liquid waste reception area.

Mr. North stated that you have large storage tanks for liquids. If such a tank went on fire you could have a major incident. He stated that he was not sure if Indaver were storing cyanide. In the solids, you could have fires in bunkers or hoppers. The fluidised bed furnace could have problems with the refractory and in the afterburner if you had any solids in the liquid, as they would not be properly treated. The boiler could be problematic. There are many problems, most quite minor. But it is a complicated process. Mr. North stated that to go through a full hazardous risk analysis would take some months to do. But what was shown in the EIS was simply a schematic drawing and not a design. The major hazards he felt were outside or coming out of the end of the building - fires, explosions and gas emissions.

Mr. Noonan asked what could go wrong at the waste transfer facility.

Mr. North stated that he hadn't seen any design basis for the waste transfer station at all. It was the operation that he would be most concerned about. He stated that he would assume that Indaver and the HSA would be looking at this issue. Some of the products would have bio-reactive effects - effects on humans which were lethal or sub-lethal.

Mr. Noonan referred to the National Hazardous Waste Management Plan at page XIII, which lists priorities 1-9. He stated that it was his clients' contention that the initial priorities 1-6 had not been implemented. He asked Mr. North that, if this were true, would that alter his view on the plant being in conformity with national policy.

Mr. North stated that the Government should have had some of these priorities done by now in a plan which was supposed to operate for the years 2001-2006. He could not say whether it was necessary for the proposed development. However, until you had identified and eliminated unreported hazardous waste, you could not decide anything.

Submission by Donal O'Mahony (Group 9)

Donal O'Mahony (Cobh Action for Clean Air - Group 9) spoke to a text which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 9 - 2).

Submission by Alan Navratil (Group 5)

Alan Navratil (East Cork for a Safe Environment - Group 5) spoke to a text which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 5 - 3).

Mrs. A. Hogan (Group No. 7) asked Mr. Navratil in the event of a major accident in the development, what would be the consequences for the lower harbour area.. Mr. Navratil stated that it would do nothing to enhance the harbour and there was a clear risk that it would be detrimental. Environmentally it would be definitely be detrimental as dioxins would enter the foodchain and affect creatures, etc.

R. Cargin (Group No. 8) asked Mr. Navratil whether importation of waste was proposed. Mr. Navratil stated that Indaver were already importing into Belgium and proposed to import waste into this plant.

Submission by Nicholas Loughnan (Cork Environmental Alliance - Group 4).

Mr. Loughnan was the next witness. He handed out a summary text subsequently to the Inspector (see Appendix 2 - Group 4 - 1).

Mr. Loughnan stated that he was shopkeeper for 30 years in Youghal, with a large tourism and seasonal element. He was aware of the views and concerns of similar visitor related businesses in the area. He stated that he did not accept Indaver's statement that tourists had nothing to fear from the development. Perception, while an abstract concept, was a reality. Tourists come to East Cork for its scenery, quality and tranquillity.

Mr. Loughnan stated that he considered the development would not fit comfortably with hopes of the tourist industry of East Cork, including investment in this industry for the future. It was the case that for normal people such investments decisions are serious. Anyone thinking of investing in tourism in East Cork would be wise to consult the County Development Plan. This plan therefore assumes a significance upon which such investment decisions are taken.

Mr. Loughnan stated that he was speaking for the Cork Environmental Alliance which had been formed in 1987. It was a response to the industrialisation of Cork Harbour. He stated that the hearing had already heard the history of this issue from Deputy O'Keeffe, who has accurately reflected the social and political climate of the town. Cork Environmental Alliance sought to understand what was going on in the harbour area. Many studies were produced, by many bodies, on the peculiar social and political climate of this area. The residents have told the hearing at different times and issues what they had experienced.

Mr. Loughnan stated that it came down to a question of planning and environmental control - the responsibility of Cork County Council now and in the past. The answers

given on the Emergency Plan problem and the deficiency in information about it on the part of the residents showed that the community had been poorly served by the Council. Many overseas planners have seen Cork Harbour and have asked "who has done this".

Mr. Loughnan stated that it wasn't just the environment we breathe that was bad but that it was a toxic, political and spiritual process. The relations between politics and the industries was poor. From 1985, the County Development Plan was changed to allow the community to put this toxic past behind it. On that basis, and with agreements, it came out. Mr. Loughnan stated that the Development Plan has become a social contract or convenant with the people of Cork, just as is the Constitution of the State. It has this kind of significance to the local people because of the background behind it.

Mr. Loughnan stated that this was an unusual appeal in that the environment had been separated from planning. This legislative problem makes it difficult to participate and the constraints make the proposal an unquantifiable entity. He stated that it was almost philosophical in its implications - because of the legal constraints one could discuss the building but not what goes on within it - in effect an "incinerator as an ideal".

Mr. Loughnan stated that our discussions had involved us in the "whatness" of an incinerator, rather than the thing itself. He stated that the Inspector was being asked to look at it as a battering ram of the principle - a battering ram of the democratic wishes of the people of the area and on its elected representatives. He stated that this appeal represented a most important crossroads in our democratic life.

In conclusion, Mr. Loughnan stated that he wished that the Board would keep itself open to the cataclysmic importance of this appeal to the local community. This community had agreed to live by an agreed plan and he asked that the Board would not allow this plan to be overturned.

That closed the day's proceedings.

ORAL HEARING PROCEEDINGS

29th SEPTEMBER, 2003.

Submission by David Stanton TD (Group 5)

Deputy David Stanton (Witness for East Cork for a Safe Environment - Group 5), stated that as a Dáil Deputy for the area, he was representing his constituents, including those in Cobh, who are concerned about the development. People in Cobh and Middleton see themselves as living in the fall-out zone from the development if there was an accident there.

Deputy Stanton stated that the issue is that many chemical compounds could be produced which we do not know about and which we could find out later that this would be a mistake. He said that East Cork is a highly productive agricultural area and that he is concerned that the image of safe, clean food will be damaged in the public's mind by the development of an incinerator.

Deputy Stanton stated that East Cork is, in the County Development Plan, earmarked for major housing development over the next number of years, and hence we must be careful not to allow something that would cause risk. The National Development Plan and the National Spatial Strategy do not mention at all the need for an incinerator. CASP has no mention of an incinerator either.

Deputy Stanton stated that in East Cork there is a strong promotion of tourism. Anything that would disrupt that would be detrimental. The appearance and very existence of a hazardous waste incinerator from Cobh would damage tourism in East Cork. He stated that he was also concerned about locating the incinerator in Ringaskiddy, close to the deepwater quay, and this raises questions about the importation of hazardous waste in the future.

Deputy Stanton stated that the concentration of pharmaceutical and chemical industry in the Cork area has happened over the last 20 years without a toxic waste incinerator to attract them, and that these industries have been operating very successfully without it as they have their own in-house incinerators and treatment facilities.

Deputy Stanton said that Government policy requires that waste reduction, waste recovery, waste re-used and recycling, have to be encouraged FIRST, before anything else. He submitted that if a toxic waste incinerator were permitted, it would discourage the reduction, recovery, re-use and recycling of waste materials. So there was no need, at this stage, to build the incinerator. The local industries, with their own in-house incinerators, use them when they need them - they do not need to operate them 24 hours a day, every day in the year, in order to be successful.

Deputy Stanton stated the County Council had voted down this proposal, that is the elected members. Many of those members were from other parts of Cork County which would not be affected by the development, yet they still voted against. There had been no party whip.

Deputy Stanton said that we also had to take into account national policy regarding international agreements entered into, such as Kyoto, which mandates Ireland to reduce CO_2 emissions. The development would increase such emissions. The Board is required to have regard to this policy. He asked the Board to agree with the Councillors of Cork County Council who voted down this proposal and to refuse permission.

Mr. Paul Gardner, for the applicants, asked Deputy Stanton whether he accepted that the National Hazardous Waste Plan represents Government policy. Deputy Stanton stated that he did, but there was a conflict in this plan with other Government policies.

Mr. Gardner stated that supposing the development did not increase CO_2 emissions, then there would be no conflict with Kyoto, wasn't that the case. Deputy Stanton replied that his understanding was that the development would increase CO_2 emissions, but if it does not, then he accepted that this would be the case and that there would be no conflict.

Mr. J. Noonan (Group 1) asked, from a planning point of view, what Deputy Stanton felt about the process that we were undertaking. He stated that it was suggested by the applicants that there are selected parts of national policy documents that justify the development. The Council's view in the context of a local planning policy was that the proposed development contravened the County Development Plan. He asked what would Deputy Stanton ask the Board to take into account on the proper planning and sustainable development of this particular area.

Deputy Stanton replied that there were issues of visual appearance which would be detrimental. We already have a traffic management problem in the area and this was a relevant consideration. He stated that he understood that the Board could not take into account health matters, but this facility, while the National Hazardous Waste Plan does indicate the need for one at some stage, it also suggested that recovery, recycling, re-use, etc., had to be done first. Adding the need to comply with international obligations under Kyoto, etc., with immense financial implications for the State, anything that would increase CO_2 emissions should not be allowed. Kyoto has to take precedence, because it affects us now. Deputy Stanton stated that industry in the area had been attracted to Ireland without the need for this incinerator and are operating here successfully. For these reasons he felt that the Board had to reject the incinerator proposal.

Mr. Noonan quoted a section from the Hazardous Waste Plan, at page 61, on the subject of the recovery of hazardous waste (paragraph 6.1.1). He quoted this to the witness. He asked Deputy Stanton whether he would agree that this quotation indicates that the situation in Cork in relation to the pharmaceutical chemical sector is satisfactory.

Deputy Stanton stated that this was indeed his point. The companies in Cork are extremely responsible - they are licensed and are dealing with their own wastes and working to increase their recovery levels. He felt that granting this incinerator would serve to undermine this valuable work and also could attract industries to the area that

may not be as responsible as the current industries are. Stated Government policy is to recover, reduce and recycle waste, and this must take precedence over the need for a hazardous waste incinerator at this stage. We already have industries which produce hazardous waste, and these operate integrated policies, including recovery and re-use and at the very end of this stream they incinerate what is left. Deputy Stanton stated that hence he failed to see the need for the construction of a very large incinerator plant here. It is not a bungalow, it is a major plant that could affect the environment and be visually detrimental. We already have problems with traffic and the site is located in a cul-de-sac. In addition, the proposed development would be very close to the National Maritime College and also a research facility in Haulbowline Naval Yard. We are working hard to clean up the Irish ISPAT plant, and make the Harbour attractive for tourists and for clean industry. The very existence of a hazardous waste incinerator by its name would make companies think twice about coming here, and this would be detrimental to the development of Cork.

Mr. Noonan asked that if the pharmaceutical and chemical sector in Cork is managing its waste successfully, did Deputy Stanton see any planning sense in locating such a national facility at this location.

Deputy Stanton stated that it didn't make sense when the waste streams are being managed well. It would only lead to waste being transported into Cork from other parts of the country, and possibly in the long-term to waste being imported from abroad into Cork. This would be contrary to all policy, both national and local.

Mr. A. Navratil (Group No. 5) quoted the phrase "if it ain't bust don't fix it". He asked Deputy Stanton, who had indicated that there is no need for this development and that it would breach international obligations under Kyoto and Stockholm, whether it was important for the Board to take these international policies into account.

Deputy Stanton replied that under the Planning and Development Act the Board is required to "have regard" to national policy. These international commitments are national policy.

Mr. Navratil noted Deputy Stanton's comment that Ringaskiddy is a cul-de-sac. In the event of an accident, the potential for human damage is great. The same applies to Cobh, which also has one way out. He asked Deputy Stanton if he had any views on this point.

Deputy Stanton stated that Cobh people are concerned about this problem. In the event of an accident or an emergency at the plant, having regard to the prevailing winds, Cobh would be in the fall-out zone. Even in terms of routine emissions, Cobh would be downwind of the proposed plant.

Submission by David Huw Jones (Speaker for Group No. 5)

Mr. Huw Jones stated that he used to work for Shell Chemicals. His interest now is in harbour water and in the very extensive oyster beds there. Oysters have been farmed here since 1963. He stated that he runs an oyster fishery (with an OF order in the North Channel).

Mr. Jones stated that we know that dioxins pass on from one species to the next and that they attach to organic matter. Oysters feed on small organic particles, including those particles falling from the sky. They filter about 10 litres of seawater per day and clean the water. We know from agriculture the impacts of dioxins, but there are few incinerators beside large shallow water bodies such as Cork Harbour and so there is little or no research on the matter. His own fishery on the North Channel, one of two in the channel, produces 300 tonnes per annum or approximately 3 million oysters, and feeds approximately half a million people. The adjoining fishery produces 150 tonnes per annum. Combined, the two fisheries would feed up to 1 million people per year.

Mr. Jones stated that oysters concentrate bacteria 100 times and viruses 1,000 times and also concentrated heavy metals, e.g. mercury. The real problem was that we don't know what we will get from the plant.

Mr. Jones stated that his oyster fishery had been closed for the past two years due to sewage pollution coming from Middleton. Yet, we know what is coming from the sewage plant there and would not know what would come from an incinerator.

Mr. Jones stated that the harbour area in the past used to have a much larger oyster fishery but that this has declined over the years. The Harbour does not operate well to flush out contaminants. Nevertheless, previous contaminants are being removed and are declining such as, for example, anti-fouling paint. He stated that this area was not the right place for an experiment on this enormous scale having regard to the enclosed and confined body of water that the harbour represented. Accordingly, he felt that the development should be refused.

Mr. J. Noonan (Group 1) asked Mr. Jones whether he was familiar with Indaver's EIS. Mr. Jones stated that he was. Mr. Noonan asked whether his enterprise and that of his neighbour were mentioned in the EIS. Mr. Jones replied that he did not think so.

Mr. Noonan showed Mr. Jones two maps from the EIS (Drg. Refs. NTS-01 from the Non-Technical Summary and Fig. 14.4 from Section 14 of the EIS). He asked Mr. Jones to indicate on these maps the locations of the two oyster farms. Mr. Jones replied that the locations are shown on Figure 14.4 in the North Channel (north of Great Island and also north-east of a line joining Long Point to Currabinny Bay to the east of the Harbour area).

Mr. Noonan stated that the applicants propose two main aspects - the incinerator and the waste transfer station. They suggest that the latter will allow storage of up to

1,800 drums of chemicals with daily movement and transfer of substances either to the incinerator or elsewhere. Much of this area would be open, on tarmacadam, with any spillages falling on this hard area collected to an underground holding sump. From the sump, the substances would be tested and if they meet EPA parameters, would be discharged to the County Council sewer which in turn discharges into the Harbour. He asked Mr. Jones whether that regime put his mind at rest.

Mr. Jones responded that he had much experience of trying to keep toxic wastes under control, due to the landfill beside his fishery. Liners in this landfill have failed on a number of occasions and so he is worried. Oysters and industry can, generally, co-exist and his main concern to date has been with human sewage. With an incinerator Mr. Jones stated that you are dealing with unknown chemical compounds.

A. Navratil (Group 5) stated that he understood Mr. Jones to say that the raw sewage overflow from Middleton had been expanded due to anticipated additional loadings. Mr. Jones responded that he had been assured in the EIS for the Middleton Sewerage Scheme and for the Foreshore Licence that there would be no problems. However, the spillages they have had in the winter had been of the order of daily spillages which was much more than was anticipated, 90 times more. This he felt reveals the problem with the planning of this type of installation.

Mr. Navratil stated that hence Mr. Jones was trying to get the problem with Middleton Sewage Scheme rectified. He asked if this were rectified would Mr. Jones be back in business. Mr. Jones replied that he would. Mr. Navratil asked whether Mr. Jones would be put back in a difficult situation if the present development were to go ahead and perhaps put out of business.

Mr. Jones stated that he would hope that we would get a new sewage scheme approved in Middleton as fixing these kind of schemes are not difficult. The real problem was that local authorities regulate their own procedures and methodologies.

Mr. Navratil asked that if Mr. Jones could not rely on the methodologies of the local authority how could it rely on dioxin monitoring which would be only two days per year. Mr. Jones stated that that type of monitoring would be unreasonable. On the sewage, the samples have to be taken more regularly.

Mr. Navratil asked Mr. Jones if he was familiar with the “precautionary principle”, And asked whether he felt that it would be breached if this development were to go ahead.

Mr. Jones stated that he was familiar with the principle and that that was the thrust of his appeal and he felt that this principle would be breached if the development went ahead.

Mr. Dominick Donnelly (Group 13) asked Mr. Jones when he marketed his oysters was it important that they have a perception of being from Ireland and hence being clean and safe. Mr. Jones responded that it was vital for this product that the whole

thrust was the green and clean waters of Ireland. He sells internationally and this was a key part of his business.

Submission by Fr. Sean McDonagh (Group 2)

Fr. McDonagh stated that he had spent 20 years in the Philippines and had been involved in environmental theology. He stated that he wished to look at the ethical issues involved in this development. Human beings are the only species of the 50 million on the plant that has reflective consciousness and has an ethical being. He stated that he had written extensively on environmental ethics but for the purposes of the hearing would refer to Catholic church teaching as set out in the document "from Stockholm to Johannesburg" (Pontifical Council for Justice and Peace). He read from some of the general concepts from this document, as follows:-

- An ordered system within creation that must be respected.
- The need for a unified moral vision towards the environment and a global ethic to address it.
- Solidarity with the natural world.
- The natural environment is not solely for consumption but has intrinsic values.
- There are limits to available resources.
- Science technology cannot be the determining factor in development.

Fr. McDonagh stated that once you come to ethical issues, you have to consider the consequences of these issues. These include concerns about human health from the dioxins and other POP's, especially in relation to babies in the womb and early infant life. These concerns came out from the UNEPA report of 1994. Waste incineration can be held responsible for up to 80% of all dioxins in the environment, as noted in a recent Dutch report. Ethics involved risk assessment. Fr. McDonagh stated that there was very little evidence of baseline data on human health. If you put in an incinerator where there is a fear that there will be problems you will not have the data on which to measure the impacts.

Fr. McDonagh raised the "precautionary principle" - when an activity raises threats of harm to humans or the environment, precautionary measures should be taken even if some cause, effects or relationships are not fully established scientifically. He stated that it was his view that the components of the development should bear the burden of proof in this area. Applying the precautionary principle must be done in an open, informed, and democratic manner, and must include potentially affected parties. It must also involve an examination of the full range of alternatives, including the alternative of no action at all. This matter had to be taken into account by the Board.

Fr. McDonagh then looked at the concept of the "common good" which looked on the impact of an activity on individuals or the human community. Now this concept includes not just that but also the impact on the environment, since we depend on

other creatures for human sustenance. If something is seen to cause destruction, it should not be called "development". The proper term for the EPA, for example, is the Pollution Licensing Agency, since that is what the body does.

Fr. McDonagh stated that we needed to take on board the ethical concept of inter-generational justice. There is a serious issue of one generation poisoning future generations through leaving a toxic legacy. This is a moral imperative. To add anything more to the chemical loading of the planet, when we do not know what the chemicals are, is problematic. Nature does not create waste but rather it recycles. Humans have to adapt to the same principle. Humans cannot continue to assume that there will always be development, as the world cannot sustain continued growth and consumption.

Fr. McDonagh stated that this appeal was an opportunity to stop, to take serious steps towards promoting at all costs clean technologies. If we did that, we would have no place in the future for toxic waste incinerators. Fr. McDonagh stated that if you build this incinerator, then there is basically an incentive to keep supplying it with toxic waste for its 20-25 year life, even when technologies might be there to reduce and address the problems. So you are stepping onto a redundant technology.

Fr. McDonagh stated that to sum up, ethical engagements are not normal at such hearing as this, but are essential to us as human beings and as ethical creatures. If something can detrimentally affect us, it should not be proceeded with. The natural environment has intrinsic value and has rights, and one of those rights is not to be polluted by human kind. He stated that he was a Christian and that the scriptures come mostly from the Hebrew world which had respect for the land. It is crucial to the Judeo-Christian tradition. If the Eucharist - the fruit of the earth is toxic, he asked how could a priest give it to the people. Fr. McDonagh stated that this development is on moral and ethical grounds fundamentally wrong and should be refused.

A. Navratil (Group 5) asked Fr. McDonagh whether he felt the proposed development was not good in ethical terms. Fr. McDonagh stated that this was his view. He stated that we have to establish whether something is good or bad and on the precautionary principle he has to conclude that the proposed development is and therefore it is not appropriate to permit it.

Mr. Navratil asked Fr. McDonagh whether he believed that the papal teaching that he had referred to should overrule other views which may not be so ethically guided. He asked whether such ethical views constituted a reasonable guideline for Planners as to what constituted the "common good".

Fr. McDonagh stated that he wouldn't go so far as to regard papal teaching as the only teaching, however he felt that ethical matters had to be considered and that too often they were subordinated to the technical and technological considerations. He noted that neither the NRA nor the EPA had developed a "land ethic" or an "environmental ethic". Such ethics are required by such bodies.

Mr. Navratil stated that a "vision statement" might be described as an "ethical statement". Fr. McDonagh stated that this was true. He stated that it was important that words be accurate and describe what was meant. He stated that a toxic legacy is plunder and it is not development. He stated that moral issues were not simplistic but complex and that good people have a right to disagree, but one has to articulate the ethical foundation on which one's decisions are made and cannot make choices that are not ethically guided.

Submission by Sue Power (Group 7)

Ms. Power stated that her house was one mile from the site and that she was a parent of children in Ringaskiddy. She felt that the proposed development would be unsafe to children. Two local schools are within one mile of the site and one of these is on the main road. Lorries with toxic waste would run past the school. She asked how long it would be before there was an accident outside the school given the level of traffic envisaged.

Ms. Power stated that the road comes to a bottleneck at Shanbally, with the school, the church, the shop and the pub beside it, all of which serve the community. This road has to be crossed to reach these amenities. The road cannot take the existing levels of traffic, let alone further traffic.

Ms. Power stated that the surrounding area has many factories but has no local park, no playground and no public green areas for the children. Both Shanbally and Ringaskiddy have been neglected in the development of local amenities. The proposed development would be the death of an area that has a wonderful community spirit.

Submission by Dr. G. ten Tusscher (Group No. 1)

Dr. Tusscher spoke to a text, copies of which were circulated to the parties in attendance at the hearing (see Appendix 2 - Group No. 1 - 6). At the start of his presentation the Inspector reminded those present that he could not deal with matters relating to the risk of environmental pollution from the activity and that if Dr. Tusscher's evidence was of this kind he could not consider it. At the end of the presentation the Inspector stated that he would be prepared to accept the evidence on the health effects of the development on the basis of major accident hazard under Seveso II.

Derry Chambers (Group 4) asked Dr. Tusscher whether dioxins occurred naturally and whether there was a safe limit of exposure to dioxins.

Dr. Tusscher stated that dioxins possibly occur naturally but only in very small concentrations. They are almost always produced by incineration processes. There is no safe limit of exposure - dioxins are a highly dangerous pollutant. The EU has tried to reduce levels to 14 picograms per fat body weight per week, but this is based on adults. Babies get up to 25 times this amount. So while a reduction is good it is not

sufficient to diminish the health effects. Also he stated that dioxins persist and so accumulate in the body so one needs to look at lifelong exposure rather than an exposure level per week.

Mrs. N. Harty (Group 23) asked Dr. Tusscher why did bodies such as the WHO publish guidelines on site selection for new hazardous waste incineration plants. He replied that the WHO tries to promote health. On the basis of past health experience, the WHO wants to limit damage to health. However, the WHO's Guidelines are not legal requirements. He stated that in addition a factor was the location of health facilities and emergency services.

Mrs. Harty asked that if the WHO Guidelines were breached would the witness have concerns from a medical point of view. Dr. Tusscher replied that he would have concerns. Any extra exposure constitutes extra damage over and above existing background levels.

Mrs. Harty asked whether there were statistical ways of estimating the risk of cancers if people are exposed. Dr. Tusscher said that there were, both for health and economic reasons. However economically research had looked at the expense to our health services if we don't limit the extra exposures we are getting.

Mrs. Harty asked whether Dr. Tusscher's work formed part of the literature reviewed by the Health Research Board report on the effects on incineration and landfill in Ireland. Dr. Tusscher replied that his study on Zeeburg formed part of this report.

Mrs. Harty asked Dr. Tusscher had he any idea of the cost to the Dutch Health Authorities of these problems. He replied that he had not idea of the cost and that nobody knew. The Dutch background levels were generally very high. EU legislation in recent years on chemical registration (the Reach System) would hopefully assist in answering these questions. €100-€300 billion is the current assessment of the costs on the health service.

Marcia D'Alton (Chase Monkstown - Group 3) asked the witness whether he felt the development would compromise the quality of life for the residents of Cork.

Dr. Tusscher replied that he felt that this was the case. This was on the basis that it was impossible for any company to guarantee that there would never be a disaster. Such a disaster with chemicals would be most serious.

A. Navratil (Group 5) queried Dr. Tusscher in relation to the figures that he had quoted, over €100-€300 billion. Dr. Tusscher replied that these estimates had been based on the long-term effects over years of the effects we have now from current background levels and were prepared to show that there will be economic gain from the cost of about €50 billion to industry of complying with the Reach Registration System. The €100-€300 billion cost relates to the health costs.

Mr. Navratil asked if the incinerator came where would the people go to escape it. Dr. Tusscher stated that one would have to live with the risk of a disaster because there is no place to hide.

Submission by Vivian Prout - Ringaskiddy Residents - Group 7

Mr. Prout stated that he was a resident of Ringaskiddy and a parent of three children. In the event of an explosion, he stated that his family and neighbours would perish in a toxic cloud. They are not aware of an Emergency Plan for this area even though the County Council says that one exists.

Mr. Prout stated that in 1993 there was a major fire in Ringaskiddy. It has been indicated after this that a temporary Emergency Plan would be put in place, involving the ringing of the church bell. Last Thursday the Sunbeam fire took five hours to bring under control and this fire was close to the city fire stations and did not involve chemicals. He asked how much longer with a fire in Ringaskiddy burn and how quickly would the people be evacuated.

Mr. Prout stated that in Ringaskiddy the community had contributed more than its fair share to the national economy and had lost many amenities. A local road had been converted to the entrance road of a factory. He stated that traffic levels on the main road at Ringaskiddy are already congested. The Swansea Ferry comes in at 7.30 in the morning with large amounts of noise and much traffic congestion. The community gets dust from the commercial boats coming it. He stated that the Ringaskiddy community could not take any more and asked that the development be refused.

In response to a question from the Inspector, Mr. Prout stated that his house was on the main road in Ringaskiddy and that he knew the ferry traffic very well. The Swansea Ferry came in every second morning and more often in the summery months, generally between 7.00 and 7.30am. The French Ferry comes in at 12-12.30pm on Saturdays.

Submission by Joe Kelleher - Ringaskiddy Residents (Group 7)

Mr. Kelleher read out a statement to the Oral Hearing. He subsequently provided the original of this statement to the Inspector (see Appendix 2 - Group 7 - 5).

Mr. P. Gardner (Indaver) asked Mr. Kelleher if he had asked for an independent appraisal of the proposed development. Mr. Kelleher replied that what he had asked for was an independent appraisal of the most suitable site in Ireland for a national toxic waste incinerator. He stated that he would also think that the commercial viability of the development has been seriously questioned by the actions of Mr. Ahern, in seeking to process British waste, and that this implies to him that the figures didn't stand up.

Mr. Gardner asked Mr. Kelleher whether he was familiar with the National Hazardous Waste Management Plan. Did this plan not express the national interest in having, as a priority for the years 2001-2006, the development of a national hazardous waste incinerator. Mr. Kelleher replied that he did not consider himself to be an expert sufficiently to comment on this plan.

Mr. Gardner asked Mr. Kelleher whether he had read Mr. Ahern's witness statement at the Oral Hearing. Mr. Kelleher replied that he had not read the statement but he had heard Mr. Ahern state at a public meeting that "the current management would not import waste, but that this did not bind future management".

Mr. Gardner stated that how could Mr. Kelleher then say that Mr. Ahern had gone back on his commitment. Mr. Kelleher replied that Indaver were now seeking to import waste from the UK.

Mr. Gardner stated that Mr. Ahern had said at the hearing that Indaver does not need to import hazardous waste to make a commercial success of the project. He put it to the witness that this was the case. Mr. Kelleher replied that if Mr. Ahern stated that was so then so be it. However, in his professional capacity as a management consultant he evaluated businesses. He was making the observation from this experience that it was probable that the figures did not stack up. He could not say so definitely since he hadn't seen the figures concerned.

Mr. Gardner asked Mr. Kelleher whether it was his concern that it was now a proposal to import waste from Northern Ireland without any conditions.

Mr. Kelleher stated that if you look at it from a site selection point of view, you are now proposing to process waste from Northern Ireland. The residents were led to believe that Indaver's documentation was accurate and that the reasons why a national toxic waste incinerator was required was because 60% of Ireland's hazardous waste is produced in County Cork. So the incinerator was primarily going to be processing waste from local industries. The residents' research shows that the local industries would not use the incinerator. By seeking permission to import waste, Indaver provided confirmation of his view.

Mr. Gardner stated that the permission that was sought was to seek importation of the waste from Northern Ireland, only with the consent of the County Council. He asked Mr. Kelleher whether this was his understanding. Mr. Kelleher stated that this was not his understanding and that he was basing his comments, not on what was said here at the Oral Hearing, but on the facts that have come out.

Mr. Gardner asked that on the issue of site selection, wasn't it true that what Mr. Kelleher had read in Carranstown was the description of the site and not the Carranstown document itself. Mr. Kelleher responded that he was not an expert on this but he did read it though.

The Inspector asked Mr. Kelleher whether he had read the site selection criteria from Indaver's EIS for Carranstown. Mr. Kelleher replied that yes and that his evidence had come from the EIS submitted by Indaver.

Mr. P. Sreenan (for the Planning Authority) asked Mr. Kelleher whether he referred to a conversation with Mr. Ahern regarding the importation of waste. Mr. Kelleher replied no but that he was present at a meeting in July 2001 in Crosshaven where Mr. Haran had said this. That was Mr. Ahern's statement in public at that time.

Mr. Sreenan stated it had been put to Mr. Kelleher by Mr. Gardner that Indaver's intention was only to import waste from Northern Ireland with the consent of the County Council. He stated that the first time that that concession had ever been made had been on Day 2 of this Oral Hearing and that this would be the County Council's evidence. He asked Mr. Kelleher whether he accepted that the County Manager was never aware that the waste would not be coming from the State only - hence his recollection of Mr. Ahern's view is at one with the opinion of the County Manager and what the Council had been led to believe.

Mr. Kelleher stated that he had been present at a meeting in Macroom just after the local authority's decision had been made and that at that meeting the County Manager stated that his rationale for supporting the development was that we would "have to be responsible for our own waste". Mr. Kelleher stated that he could see no reason why British waste would be accepted and doubted that even the 13 Councillors who had voted in favour of the proposed development would have voted in this way had they known this.

The Inspector stated to Mr. Kelleher that in his submission, he had indicated that there had been a number of meetings with various companies during the autumn and winter of 2002, and that these local companies indicated that none of them had any proposal to use the incinerator. He asked Mr. Kelleher whether the people that the residents had met from the industries concerned would be people who would be in a position to make those decisions on behalf of these companies. Mr. Kelleher replied that the people that the residents had met from the local companies were senior managers in those companies and were very well aware of the issues that were involved.

Statement by P. Gardner, on behalf of Indaver

Following the lunch break, at the resumption of the hearing, Mr. P. Gardner, on behalf of the applicants, noted that Mr. Ahern had said, at Item 5 of his witness statement at the Oral Hearing, that the commercial viability of the development does not require, and never did require, the importation of waste from Northern Ireland. This issue had been a concern of Mr. Kelleher that morning and had also been raised by the Planning Authority.

Mr. Gardner stated that Indaver was not now pursing that request, which is contained in Section 8 of its written submission to the Board (its appeal document). Indaver had proposed that Condition 3 of the Planning Officer's draft condition should be "no hazardous waste from outside the island of Ireland shall be accepted for treatment at the site, without the consent of the County Council". Indaver was now withdrawing that proposal and was now stating that the condition as originally suggested by the

Planning Officer could be imposed in any permission that the Board might decide to give.

Mr. Gardner stated that there was another matter which Indaver wished to clarify - the requirement that no more than 100,000 tonnes by weight be treated at the facility. Mr. Gardner stated that, in the light of the confusion that surrounds megawatts and calorific value, the company was now contented to have no comment on that condition - Condition 4 as recommended by the Planning Officer. So at Section 8 of the appeal, Indaver made submissions on these two conditions, and it is now not pursuing these submissions.

The Inspector noted that Mr. Gardner had used the phrase "Indaver are not pursuing". He asked Mr. Gardner to clarify if he was now to take it that the witness statements from Mr. Ahern and Ms. Burke on these two issues could now be disregarded completely by the Board.

Mr. Gardner confirmed that this was the case and that the Board could disregard these aspects of the Indaver appeal.

Submission by Sean Cronin (Carrigaline Community for a Safe Environment - Group No. 6)

Mr. Cronin stated that he was chairman of the group, and spoke to a text, copies of which had been circulated to all of the parties in attendance at the hearing (see Appendix 2 - Group 6 - 1).

The Inspector asked a number of questions of Mr. Cronin relating to the appendices to his text. Firstly, he asked what date the photograph in Appendix 1 of the submission had been taken. Mr. Cronin replied that as far as he knew the photograph had been taken in 1979. Secondly, the Inspector asked Mr. Cronin to describe what the maps were in the appendix. Mr. Cronin stated that the first map had been taken from the 1996 Ordnance Survey, which was the last ordnance survey map in which the survey recorded manually measurements above ground. After that the survey only used aerial photos and didn't record rights of way. He stated that the other two maps were in fact blow-ups of that original map.

The Inspector asked Mr. Cronin to explain the statement he had made on page 5 of his submission which stated "the HSA was not aware of the EIS". Mr. Cronin replied that the HSA letter to the Council was dated March 2003 and that the EIS which he had had been dated post-2003. The Inspector responded that the EIS that had been submitted to the Planning Authority had been submitted in 2001. Mr. Cronin accepted that that might be the case.

The Inspector asked Mr. Cronin regarding his comment on page 6 of his submission about the mid-term break for schools and whether the schools were in fact on mid-term break during the traffic survey. Mr. Cronin stated that he was certain that the survey was taken the week of the mid-term break and that he had checked this matter with the secondary school teachers in the area.

[Due to time pressures, Mr. Cronin stated that he would be available for cross-examination later in the Oral Hearing].

Submission by Ronald Hales (Ringaskiddy Residents - Group 7)

Mr. Hales stated that he wished to object to the development on two main grounds - firstly health and safety, and secondly infrastructure.

1. Health and Safety

   Mr. Hales stated that a number of years ago one of the pharmaceutical plants at Ringaskiddy exploded and was on fire for five days. The plume of smoke drifted down the valley to East Cork ten miles away. The EPA Inspectors only came later. Last year there was a fire at Smith Cline Beecham. The company was later fined for this by the EPA.

   Mr. Hales stated that he was not satisfied with the regulatory mechanisms we have - fining and investigations after the fact are little use to residents.

2. Infrastructure

   Mr. Hales stated that the local roads are little better than narrow and winding boreens which are unchanged for 30 years. This included Carr's Hill on the N28. The rest of the N28 has been widened down to Ringaskiddy in bits and pieces. Mr. Hale stated that recently the residents were told that the section of the road through Shanbally would not be improved because of lack of funds. Residents were asked for their views and the residents requested a pedestrian crossing, but this was refused by the Council. Such a pedestrian crossing would have helped the children cross the heavily-trafficked N28 from the school. He stated that there was much talk about the N28 realignment. He would be sceptical that funds would be available for its improvement.

   Mr. Hales stated that he lives in Shanbally Village and that he has noticed that the road congestion has got much worse over the years. It is barely able to cope now. The vehicles for the proposed development would be large, slow moving and smelly trucks, and this does not seem to have been taken into account in the projections.

   Mr. Hales stated that there seemed to be no Emergency Plan or Evacuation Plan for the people of the area.

   Mr. Hales that this Oral Hearing came about because Indaver appealed the Planning Authority's refusal. He stated that he objected to the Board's refusal

to allow the people to speak about health and felt that this was an undemocratic situation.

Submission by Paul Hogan (Ringaskiddy Residents - Group 7)

Mr. Paul Hogan spoke to a text, copies of which were circulated to all the parties in attendance at the hearing (see Appendix 2 - Group 7 - 6).

In response to questions from the Inspector, Mr. Hogan explained the figures in the appendix to his submission. He stated that these showed that the volume of waste exported for disposal is holding at roughly the same level, indicating that there is not an increase in need for the disposal of waste by Indaver. He confirmed that, as the figures came from the trans-frontier waste database, they relate to the amount of hazardous waste licensed for export for the years concerned. (This was subsequently confirmed by Mr. Daly of the Planning Authority to the hearing).

Mr. Hogan stated that the remainder of his appendices show how the local industries are reducing their hazardous waste to be disposed of - for example more than halving in Novartis between 1998 and 2002. For Novartis, the total waste exported that could go for disposal would be 4,922 tonnes. In the case of Pfizers, of 25,600 tonnes of hazardous waste, 16,100 tonnes were sent for incineration. In the case of Glaxo Smith Cline, which has its own incinerator, of 21,708 tonnes, only 5,765 tonnes were incinerated in 2002.

In summary, Mr. Hogan stated that, overall, about **15,000** tonnes would be available for the proposed development, not the 30,000 tonnes or the 60,000 tonnes quoted by the applicants.

Mr. P. Gardner (Indaver) asked Mr. Hogan about Table 2.2 of his submission, which he stated was quoted from the EIS. Mr. Gardner stated that in fact this states it is a summary of hazardous waste and asked Mr. Hogan how he felt that this would mislead anyone. Mr. Hogan responded that Table 2.1 is described as industrial hazardous waste and that this is not the same as hazardous waste.

Mr. Gardner asked Mr. Hogan whether he was familiar with the National Waste Database report 2001. Mr. Hogan stated that he was not.

Declan Daly (Cork County Council) stated that he wished to clarify the role of the County Council in terms of movement of hazardous waste. The County Council is the competent authority. The figures presented by Mr. Hogan do not relate to *production* of waste but rather to the *movement* of waste out of the county. The Council's response to the FOI request did not pick up on the distinction between produced and disposed, and he apologised for this. He stated that the Council had no figures for the amounts of waste *generated* in County Cork and that this was a matter for the EPA.

Submission by Gertie O'Driscoll (Ringaskiddy and District Residents Association - Group No. 7)

Mrs. O'Driscoll stated that she had lived in Ringaskiddy all her life and was speaking from her own experience. Ringaskiddy had changed from a lovely fishing village into an industrial area. No-one had asked the people of Ringaskiddy what they wanted. They had amenities and now they have very few. She stated that Ringaskiddy had a concentration of chemical plants but was still not against industry. The community always wanted a balance, a mix. She felt that Indaver's proposal would prevent this balance. She asked whether it was to be forced on the people like the asbestos dump. She stated that the community had been guaranteed that there would be no dump in the area and that this agreement was signed by the IDA. She herself saw that document, it was on Government paper.

Mrs. O'Driscoll stated that the traffic studies submitted by Indaver were not accurate. She asked what about the ferry traffic. The surveys were taken in February, and the ferries do not operate in February. So the surveys would not show the freight lorries that would be on the road, nor the caravans, nor the many cars coming from the ferries. Car transporters come through the village 24 hours a day. When the ferries are late, the traffic congestion is even more horrendous.

Mrs. O'Driscoll stated that the residents had asked ferry passengers whether they would come into Ringaskiddy if there was a toxic waste incinerator in place. (She handed out a copy of the leaflet that had been used for this survey). A big percentage of the passengers stated that they would go via Rosslare instead. What a loss to the local economy.

Mrs. O'Driscoll stated that bringing toxic waste into a cul-de-sac was madness. Accidents happen. The local residents have had to live with explosions and fires in the past. She lives near Hicksons and on the day of that incident no-one told them what to do, whether to evacuate or not. If an accident does happen, the local residents are in a cul-de-sac and have no way out.

Mrs. O'Driscoll stated that we must all be responsible for the waste we create and we must reduce, recycle and re-use. The same principles apply to industry and if they do not, they should pay. In conclusion, Mrs. O'Driscoll stated that she wished to object, like others, to the exclusion from the Oral Hearing of issues relating to public health and the environment.

Mr. Noonan (Group No. 1) asked Mrs. O'Driscoll about the IDA agreement. He noted that subsequently the IDA had been restructured into three bodies, IDA Ireland, Enterprise Ireland, and Forfas. He noted that the applicants depend in their appeal on something that Forfas said. The applicants quote from a Forfas document of December 2001 on key waste issues. Mr. Noonan quoted from this document under the heading of public fears need to be addressed as follows:-

> *"The general public appears to remain strongly opposed to the concept of thermal treatment. For instance, proposals to construct a combined hazardous and non-*

hazardous waste to energy facility at Ringaskiddy in County Cork…have met with strong opposition".

"An effective communications programme should provide relevant and timely information and it should facilitate mutually satisfactory two-way communication with the community, so that the community is allowed to express its concerns and an appropriate response is made".

Mr. Noonan asked what Mrs. O'Driscoll thought the appropriate response should be.

Mrs. O'Driscoll replied that the local community had not got any response - 25,000 people objected to this development, including every single resident of Ringaskiddy.

Mr. Noonan stated that the Forfas document on page 51 said the following:-

"County Cork would seem to be a particularly appropriate location for a mixed, non-hazardous and hazardous waste incinerator, since this area has the highest density of pharmaceutical and chemical companies in the country, producing over 60% of Ireland's hazardous waste".

Mr. Noonan asked Mrs. O'Driscoll whether she considered the Forfas report coming from the body that came out of the IDA was honouring the agreement made with the Ringaskiddy residents.

Mrs. O'Driscoll stated that no, in her view this would breach the agreement made with the IDA.

In response to a query from the Inspector as to when the ferries come in, Mrs. O'Driscoll stated that Brittany Ferries operate between April and October and come in at c.12.30am on Saturdays. This ferry has a capacity of between 1,000 and 1,500 cars. It is due to increase its capacity from 2004.

She stated that the Swansea Ferry arrives at between 7.00 and 8.00 in the morning, and operates seven days per week in the summer and less often in the autumn and spring. It does not run during January and February. 500-600 cars come off it every morning.

Submission by Audrey Hogan (Ringaskiddy and District Residents Association - Group 7)

Ms. Hogan spoke to a text that had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 7 - 7).

Mr. Gardner (Indaver) noted that Mr. Cronin had stated that the right of way has moved with time and works away from the diagonal path and now runs around the site. He asked Ms. Hogan whether she agreed with this point.
Ms. Hogan stated that the right of way had varied but it was still running straight through the proposed site. She invited all present, including the Inspector, to go there.

The Inspector stated, for the record, that he had walked through the site on 19th August, 2003..

Mr. Noonan (Group 1) stated that part of the visual impact was related to the view from the waters in the Harbour. He offered the Inspector and Mr. Gardner the opportunity of viewing the area from the water via a boat which he could facilitate.

Mr. Noonan asked Ms. Hogan about the Forfas report. He stated that the Indaver application went into the County Council in November 2001 and the Forfas report was published in December 2001, just a month later. This report mentions Ringaskiddy four times as an illustration of where the incinerator might go. Apart from Carranstown, County Meath, which gets one mention, Ringaskiddy is the only part of the country that is singled out in this report for mention. He asked Mrs. Hogan whether she ever got the feeling that she was being taken for granted. Mrs. Hogan replied in the affirmative.

This closed the day's proceedings

ORAL HEARING PROCEEDINGS

30th SEPTEMBER, 2003.

Submission by Michael Martin (Cobh Action for Clean Air - Group No. 9)

Mr. Martin spoke to a text, copies of which had been circulated to the parties present at the hearing (see Appendix 2 - Group 9 - 3).

Submission by Jimmy Halligan (Group 9)

Mr. Halligan read out a paper to the hearing, a copy of which was subsequently given to the Inspector (see Appendix 2 - Group 9 - 4).

Submission by Chris Ramsden (Chase Monkstown - Group 3)

Mr. Ramsden read out a paper to the hearing, a copy of which was subsequently given to the Inspector (see Appendix 2 - Group 3 - 3).

Submission by Sybil Fuller (Chase Monkstown - Group 3)

Mrs. Fuller spoke to a text, copies of which had been circulated to the parties present at the hearing (see Appendix 2 - Group 3 - 4). At the outset, Mrs. Fuller objected to the exclusion from the hearing of discussion of matters relating to human health, in the light of the constitutional provision (Article 40.6) for freedom of expression of citizens.

Submission by Councillor Jo Kelleher (Chase Monkstown - Group 3)

Councillor Kelleher read out a text to the hearing, a copy of which was subsequently handed in to the Inspector (see Appendix 2 - Group 3 - 5).

Submission by Fleury Family (Chase Monkstown - Group 3)

A statement was then read, on behalf of the Fleury family (also observers to the appeal) by Margaret O'Callaghan of Chase Monkstown. This text was subsequently handed in to the Inspector (see Appendix 2 - Group 3 -6).

Submission by Ian Breen (Ringaskiddy and District Residents Association - Group No. 7)

Mr. Breen stated that he was a resident of Ringaskiddy for 14 years, living on the Main Street. His house was the closest one to the site. His parents and grandparents also came from Ringaskiddy. He stated that he wished to speak at the Oral Hearing regarding his major concerns for the health and welfare of his family and for the wider community.

Mr. Breen stated that Ringaskiddy had suffered a great deal from the IDA and industries, all supposedly in the national interest. When Pfizers came in 1970, it was welcomed because of its employment but it brought a pungent odour to the area, that has now all but disappeared. Now industry and the local community co-exist reasonably well. Mr. Breen stated that he remembered the development of the port of Cork area with infilling for the ships. He remembered the constant dust over the village. In the 1980s, Ringaskiddy still had jobs when other areas did not, and so the community were prepared to put up with this.

Mr. Breen stated that in the 1990s, the economy improved. We had further development of the deep water facility, which brought its own problems from noise, animal feed and grain dust, etc. In the 1970s the community was subjected to an asbestos dump, which still remains on IDA land at Barnaheely in Ringaskiddy. He felt that enough was enough, that the Ringaskiddy residents had suffered enough and could take no more.

Mr. Breen stated that traffic in the village is a constant problem. Ringaskiddy is a cul-de-sac. The proposed site lies within the mile from his house to Gobby Beach. There is commuting traffic coming past Mr. Breen's house from Spike Island Prison, from the Naval Base, from Pfizers Lough Beg and DePuy. All coming at peak times. Accidents do and will occur in this kind of traffic. Mr. Breen stated that he had huge concerns about an accident involving trucks with chemicals and other problem materials outside his house. He did not know what categorises a major disaster, but if two of these tankers collided, the village would be wiped out, and the proposal would only make this worse.

Mr. Breen stated that the area has ro-ro ferry traffic. On a Saturday, c.10,000 people come through due to the Brittany Ferries ferry and the Swansea-Cork ferry, disembarking and embarking traffic. There is huge potential for an accident, with people unused to driving on the left.

Mr. Breen stated that the EIS submitted by Indaver did not think that the ferry traffic was relevant. He considered it relevant. Every day a Garda is on duty to deal with the ferry traffic. The EIS survey was carried out in February 2001. The ferries do not run in January or February.

Mr. Breen stated that six days a week, Ringaskiddy now has 66 extra lorries a day, each carrying 30 tonnes. This comes from the Ringaskiddy Logistics development almost opposite the Indaver site, which has been granted retention planning permission for a fertiliser blending plant. The community were unaware of this. It is now in operation. It is expected to import 40,000 tonnes per year. The Harbour Board have purchased lands owned by Irish ISPAT and have changed the use of a warehouse there (formerly used for steel storage) to R&H hall for animal feeds - 30,000 tonnes coming from the deep water port and passing the site. The Hammond Lane plant, adjoining the site, will now be exporting 80,000 tonnes of their shredded material (known as frag) which had previously been dealt with in Irish Steel. This will be coming through the village. All these together come to an additional 66 extra lorry movements through the village, every day, six days a week. All this would not

have been included in the EIS submitted by Indaver. The reality is that this is the situation today.

Mr. Breen referred to planning Ref. S/01/1806 - Howard Holdings. He stated that this was an application for the site immediately adjacent to the subject site. It was refused by the County Council, one of the reasons being that it was premature until a by-pass route was identified for Ringaskiddy. This route has not yet been identified. Mr. Breen stated that on this basis alone, the present proposal should be considered to be premature.

Mr. Breen stated that Indaver had suggested in its EIS that the preferred location of their facility should be 500 metres from any sensitive location such as a school. The County Council granted planning permission for the National Maritime College on a site directly across the road from the Indaver site. This college is to accommodate 750 students from all over Europe, only one of two such colleges in the whole of Europe. It should be marketed as an attraction for the Cork area. With the incinerator, this is unlikely, as no-one would want to live in the shadow of this plant.

Mr. Breen spoke about the ownership of the site. He stated that he understood that the sale of the site to Indaver by ISPAT is under investigation as to whether ISPAT had the right to sell it. It is not, as yet, registered to Indaver, despite it allegedly having been purchased in 2000.

Mr. Breen stated that the site is contaminated to his knowledge and the clean-up for which would cost €30 million. It would be ideal for the Harbour Board to purchase, but the clean-up cost is obviously too much. He asked where was the contamination of the site as the residents do not know. He asked would there be a proper study done and what are the contaminants and how they are to be dealt with. In the absence of this he considered the application to be premature.

Mr. Breen spoke on amenities in the village. He stated that the village had very few amenities. The main open space is to the front of the freight facility, but the problem is trying to get across the road. There are no pedestrian crossings and there is no traffic calming. Indaver state that they will be developing a walkway around the perimeter of the site for public use. The people of Ringaskiddy are used to walking, but Mr. Breen stated that they would not want to walk beside an incinerator.

On the issue of landscaping, Mr. Breen stated that Indaver suggests (at page 16 of its appeal document, paragraph 5.4) that the County Planning Officer referred to the Council's Senior Executive Architect who had said that the landscaping would minimise the impact on the environment. He stated that the buildings proposed would help to screen the Hammond Lane facility. Mr. Breen stated that when the Hammond Lane facility applied for planning permission they would have been subjected to conditions requiring landscaping and screening. He stated that the County Planning

Officer is now seeking to cover up the mistake then with the present mistake. He asked in 20 years time what would the then County Planning Officer use to screen Indaver - the village of Ringaskiddy perhaps.

Mr. Breen spoke about property prices in Ringaskiddy. He noted that the County Planning Officer did not think the plant would impact on property prices. Everybody knows that there is a perception of the people of Ringaskiddy - how can people there stay in Ringaskiddy and not move. This is the general perception of Ringaskiddy. In fighting for their rights, the residents had raised negative connotations about Ringaskiddy. Their property values would decrease by the same amount it would increase. But the residents feel so strongly that they must protest, to bring it into the public limelight. If Indaver does go into the village, property prices would decline even further. There are derelict commercial properties lying idle in Ringaskiddy, unlike everywhere else.

Mr. Breen stated that there is a general feeling in the village of apathy - there is an attitude of people who are downtrodden. They feel that the development is inevitable, that it is a foregone conclusion, that the Oral Hearing is only paying lip service to the system. Mr. Breen stated that he thinks they are wrong. He feels that the Board can and should refuse permission for this development.

Mr. Gardner (Indaver) put it to the witness that there was no issue regarding the ownership of the site and that registration of title was with the Land Registry. Mr. Breen responded that he had heard Deputy Dan Boyle and he believed the Deputy.

Mr. Gardner stated that he suggested that the title had been lodged with the Land Registry and that Mr. Breen had no personal knowledge, other than what Mr. Boyle had said. Mr. Breen responded that he had faith in Mr. Boyle.

Mr. Noonan commented that it was necessary to look at the title issue. He stated that page 8 of the applicant's written response on file, headed 5.3, stated that "Indaver Ireland is the registered owner of the site". Mr. Noonan stated that his own law searchers had checked on a regular basis and the property is still registered in the ownership of Irish Steel, with a dealing listed. Simply putting papers into the Land Registry confers no right of ownership, nor its validity, until it is registered. The Land Registry deals with matters of validity.

The Inspector stated that we would deal with the matter later, at the time of questions for the applicants. The test for planning is the FRASCATI test.

Mr. Noonan asked Mr. Breen about the Forfas report that had been referred to the previous day. He stated this had been issued one month after the application had been submitted and it mentioned Ringaskiddy on four occasions. This report says that if a hazardous waste facility were to be built Cork and Ringaskiddy were noted as suitable for such a facility and Ringaskiddy could gain by some road improvements. He asked Mr. Breen whether he was convinced by this report and this policy advice.

Mr. Breen stated that he had rang the IDA and EPA many times about transgressions in the Ringaskiddy area and has never got satisfaction. He stated that he could only say that if Indaver comes to Ringaskiddy his family will leave because it is too much of a risk to him to live that close to an incinerator.

The Inspector asked Mr. Breen about his comment regarding the contamination of the site. He asked Mr. Breen to tell him what he knew about this contamination.

Mr. Breen responded that there was contamination on Rocky Island, a small island on the route from Ringaskiddy to Haulbowline, which was accessed by two bridges and this island was in between. The area of most contamination was the area immediately the east of the old Irish Steel main building, where the slag was deposited with no retaining walls and was bulldozed into the harbour.

The Inspector asked Mr. Breen whether he had any evidence that the site for the proposed development itself was contaminated. Mr. Breen stated that he had no evidence but he felt that an investigation should be done to allay public fears. He noted that the site surrounds the Hammond Lane facility and that the mounds of the Hammond Lane frag have dropped into the site. This frag is similar to what is contaminating the Haulbowline Irish Steel site, so Mr. Breen stated he had concerns. The Inspector asked how recent was that big pile of frag, which he had seen during his inspections, as it is not shown on the drawings submitted by the applicants. Mr. Breen responded that to his knowledge the frag mound had been always there.

Submission by Marcia D'Alton (Chase Monkstown - Group 3)

Ms. D'Alton spoke to a text, copies of which were circulated to the parties present at the hearing (see Appendix 2 - Group 3 - 7).

Submission by Eddie Butler (Kinsale Environment Watch - Group 8)

Mr. Butler spoke to a text, copies of which had been circulated to all of the parties present at the hearing (see Appendix 2 - Group No. 8 - 1).

Dominick Donnelly (Group 13) asked Mr. Butler about his fears for his business, that he had spoken about. He asked whether Mr. Butler had any evidence to substantiate these fears. Mr. Butler replied that he had been on a delegation with the IFA to the Netherlands two years ago, which visited Nestlé's factory. The IFA delegation asked Nestlé about their procurement policy. They stated that they would avoid any area where there were incinerators. Upon return the IFA spoke of this publicly and this matter, Mr. Butler stated, had raised his fears.

Mr. Butler stated that it was important to remember what had happened with Nuclear Power in Rosslare. The people objected to this, against the view of the experts, and it was stopped. Mr. Butler stated that he feels that this shows that people can stop this incinerator and allow us to keep our leading edge in our food in the European market

place. He stated that Ireland's green image is an important asset to our industry which we cannot afford to lose.

Submission by Sean Forde (Ringaskiddy and District Residents Association - Group 7)

Mr. Forde stated that he had grown up in Ringaskiddy when it was a small fishing village. It now has a large amount of industry. There is a reasonably good relationship between the community and this industry. He stated that he considered the site for the proposed development was wrong, being at the end of a cul-de-sac beyond the village, that already has 5,000 people coming in and out every day.

Mr. Forde asked was it because Irish ISPAT and the IFI had closed that the County Council wished to promote this development in order to get back their rates income. The Councillors had made their decision and this decision should now be respected. The County Council had neglected Ringaskiddy Village, with no pedestrian crossing and concerns regarding dust not having been dealt with. The Council tended to grant planning permissions but not enforce the conditions of these permissions. Every time a ship comes in, dust covers the village.

Mr. Forde stated that the Hammond Lane development promised us trees and shrubs. Instead we have mounds of waste on the site. Cork County Council has neglected Ringaskiddy. Shanbally Roundabout was to have been surfaced and the residents are still waiting on this beside the school.

Mr. Forde stated that he would be frightened about living close to the national toxic waste incinerator. It is the wrong place for this. Mr. Forde stated the residents of Ringaskiddy had given a lot for Cork and were willing to accept more industry but they were not willing to accept this incinerator.

Submission by Christina Brownlow (Crosshaven for a Safe Environment - Group 17)

Ms. Brownlow spoke to a text which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 17 - 1).

[There were a number of questions to this witness, all relating to the impact of an incinerator on child development and the impact of dioxins generally.]

Submission by Noel Condon (Crosshaven for a Safe Environment - Group 17)

Mr. Condon spoke to a text, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 17 - 2).

Submission by Dr Vyvyan Howard (Chase Carrigaline - Group 1)

Dr. Howard spoke to a text, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 1 - 7).

Mrs. N. Harty (Group 23) asked Dr. Howard whether he had any knowledge of the Health Research Board of Ireland's report, published recently, on Ireland's ability to protect the public from risks of incineration and landfill.

Dr. Howard stated that Mr. Noonan had provided him with a copy of this report. The HRB mention risk assessment, detection, and monitoring of human health impacts, of environmental impacts, and risk communication. He stated that he was fully in agreement with the statement put there which is a sensible way forward, that we should have the information on which to base the risk assessment. He stated that one should know what the baseline conditions are because if there is to be any help from epidemiological studies, one needed to know where one started from. Without this in place, it becomes a useless tool.

Mrs. Harty asked did the witness consider that the recommendations of the HRB were prudent. He replied in the affirmative.

Mrs. Harty asked the witness whether he considered it safe to proceed with the proposed development now in the light of the recommendations of the HRB. Dr. Howard stated that it was not safe to proceed, on the basis of the evidence that he had seen.

The Inspector asked Dr. Howard, in respect of Sections 6 and 7 of his paper on the WHO Site Selection Guidelines, whether he thought that these Guidelines were appropriate.

Dr. Howard stated that the WHO Guidelines take a precautionary stance, and lay out a route through which it recommends that Planning Authorities should go before allowing such a plant. Because the WHO is a health organisation, with international standing, he felt that the Board should note what they say and to follow the recommendations which he considered to be very reasonable.

Submission by Andrew Dillon (Kinsale Environment Watch - Group 8)

Mr. Dillon stated that he was a member of Kinsale Tourism and a solicitor by trade. He stated that he wished to speak on the effect of the development on Kinsale. He felt that the project was "a mixture of madness allied to greed".

Mr. Dillon stated there has been 25 years of development of tourism in Kinsale and that now the town attracts 700,000 tourists. This in a town with 3-4,000 of a population. These tourists come to Kinsale, and if it wasn't for Kinsale they probably would not come at all. In Kinsale there are four hotels, 35 restaurants, 13 pubs of which 10 serve food, 189 rooms of self-catering accommodation, two hostels, 1,200

registered bedrooms and probably 1,000 unregistered bedrooms. There were 300,000 bed nights in total per annum in Kinsale. Kinsale also had houses and apartment complexes for rent.

Mr. Dillon stated that this tourism product supports many shops, including many high quality shops, 560 people are employed in the peak season directly in these shops. In addition there are commercial, agricultural and industrial support facilities for these establishments.

Mr. Dillon stated that if the proposed development went ahead, it would threaten this long-term effort on the part of Kinsale. If tourists were lost, even no more than 20% of them, the jobs would be lost. Kinsale would run back to the situation it was in the 1970s when it was a ghost village. He asked the Board to refuse permission on this basis.

Submission by Kate Corcoran (Group No. 10)

Ms. Corcoran stated that she was a resident of Coolmore and was speaking on her own behalf and that of Susan Hackett. She stated that both had lived in the area for a combination in excess of 60 years. She was a grandmother.

Ms. Corcoran stated that in 2001 she attended the applicant's presentations and she read the application, the EIS and the Cork County Development Plan. She attended the NRA road proposals for the N28 and was surprised to note that the site was shown as if the building was already in place.

Ms. Corcoran stated that the EPA had been formed because people had lost confidence in the County Council. The EPA is under-funded and under-resourced. In 1993, on 6th August, there was an explosion at the Hicksons plant with an estimated damage of £25 million. In the District Court, Hicksons got the maximum fine of £2,250. At that time there was no Evacuation Plan and people were terrified. The residents have never since seen this plan. ISPAT left a hazardous waste dump and it is still there.

Ms. Corcoran stated that Indaver promised landscaping in its EIS. The Hammond Lane had a similar requirement in its Condition 3 of its planning permission PLS/770/90, which require them to plant 400 trees and 300 shrubs. They are not there still.

Ms. Corcoran stated that the port of Cork has grain ships coming in to Ringaskiddy. On many occasions, these have operated outside the time limits set out in their licenses, causing problems for the local people. On 13th August, 2001, Novartis had a spillage on site. This involved 20 kilos of sodium hydride. Fire brigades from Carrigaline (a part-time station) and Cork City came out to deal with this. Glaxo Smith Cline were fined in the courts in 2003 for non-compliance and non-reporting. The accident there happened in 2002 but the first time the residents became aware of it was when one of its staff rang the secretary of the association the day the incident was reported in the paper one year after it happened.

Ms. Corcoran stated that asbestos waste was dumped in the marsh in 1977. 25 years later the residents are still waiting for it to be removed. In 1989, 200 tonnes of radioactive waste/caesium 137 was put on Rocky Island for storage by Irish Steel packed in fertiliser bags. To the residents knowledge, it is still there.

Ms. Corcoran stated that in 1991, there was a baseline dioxin survey carried out for Sandoz at seven sites in Ringaskiddy. One sample, taken on the Indaver site, showed levels of 20 nanograms ITEQ per kilo of soil, that is 100 times over the background levels in soil according to the EPA.

Ms. Corcoran stated that she wished to talk about traffic in Ringaskiddy. Indaver had ignored the fact that Ringaskiddy and Shanbally are small villages which experience continuous traffic all day and not just a peak times. Grain trucks, ferry traffic, coaches, car transporters, naval personnel, etc. She felt that it was ludicrous to suggest that Indaver would have control over the times the trucks would arrive at the site - the Hammond Lane lorries frequently are abandoned overnight at Carr's Hill on the N28 or are parked outside the facility. There is only one national route, the N28, into Ringaskiddy. The R613 from Carrigaline to Ringaskiddy is totally inadequate for heavy traffic, as it narrows at certain parts and is very dangerous. All the other roads that are mentioned in the EIS are merely rat-runs. Ms. Corcoran stated that the ambiguity of the EIS beggars belief. Indaver continue to say their entrance is onto the N28. It is not. It is onto a local road, the LP2545, culminating in a cul-de-sac with no cat's eyes or white lines.

Ms. Corcoran stated that the proposed site borders the edge of the harbour and would be subjected to erosion from east and south-east storms. She noted that Pfizer Lough Beg and Glaxo Smith Cline have already had to reinforce their foreshore boundaries with armour.

Ms. Corcoran stated that the photomontages submitted by Indaver minimise the impact this huge development will have on the harbour with its stack of 55 metres. She stated that when the residents saw Sandoz's EIS at the time they noted that they used photomontages and that they minimised the impact too. This was proven later to be incorrect. This plant is now Novartis and can be seen from many of the tourist routes around the harbour.

Ms. Corcoran stated that she noted that no mention is made of external lighting on the site, but she presumes that Indaver will do the same as other industries in the area, with highlighting levels in the darkness hours, polluting the night sky in what is a rural area and disrupting nocturnal wildlife. She stated that she believed that Indaver would be very visible at night-time and she invited the Inspector see the night-time view of the harbour to confirm it.

Ms. Corcoran stated that the hearing had already heard of the impact that industry has had on the industries of Ringaskiddy. Gobby Strand is the last local amenity and it is used by local families and also by day-trippers. Cork County Council provided a small car park beside the beach and this is often used by visitors awaiting the ferry, enjoying their last hours in Ireland on the strand. She questioned whether this would happen in the future if the incinerator is permitted.

Ms. Corcoran stated that the Martello Tower is an excellent example of cut stone, and a hazardous waste incinerator close by would visually disturb its setting. The path from the beach to this tower has been walked on for many years. Ms. Corcoran stated that these amenities would become obsolete if the development went ahead. Who would want to walk or swim beside such a hazardous area.

Ms. Corcoran stated that the residents also contested Indaver's view that the site is zoned industrial. The County Council had refused to materially contravene the County Development Plan. The site is in fact zoned for port uses.

Ms. Corcoran stated that on the matter of risk assessment, the public were not privy to this report and so they had no idea what methodology was used for the risk assessment. They note that while the HSA had not advised against granting permission for the development, nor did it advise in its favour either. In conclusion, Ms. Corcoran stated that the residents totally oppose this proposal and having read all the information available to them, fell that it would be inappropriate, obtrusive and excessive planning for the area. She stated that the residents felt that enough was enough. They fully support the County Council's refusal and they ask that the Board would uphold this refusal.

Declan McGrath (Indaver) made a point of clarification. He stated that the witness had made reference to contamination of the site. He stated that Chapter 14 of the EIS, beginning at paragraph 14.7, deals with this issue and contains the result of the EPA monitoring referred to.

J. Noonan (Group 1) stated that he wished to make a comment on Mr. McGrath's point. He stated that he was not sure if this was correct - Section 14.7 of the EIS seems to be a general survey of known information and was not site specific. He noted that Section 11 on the EIS on the subject of geology at paragraph 11.1 in the introduction stated as follows "*This chapter describes the geology, soil and surface water and groundwater, based on investigations done by KT Cullen & Company*". He stated there may well be information in the applicant's hands about the condition of the site but that the Oral Hearing had not been given it. He stated that, in raising this issue, he was not to be taken as asking for it.

The Inspector stated that he would want the report since it had been raised. He stated that he had wanted the applicants to provide a response to the evidence earlier in the week from Dr. Neville.

Mr. McGrath stated that Section 14.7.7 in the EIS detailed the results of the EPA survey and Site 6 is quoted in Figure 14.2. He stated that he was not referring to the KT Cullen report.

Legal submission by J. Noonan re "K.T. Cullen Report"

There was a lengthy and detailed legal submission from Mr. Noonan, on behalf of CHASE Carrigaline, in respect of the matter of the KT Cullen report. [These submissions made be reviewed in Track BB - beginning at time index 0900, Track CC

and Track DD.] The submission made by Mr. Noonan was to the effect that the applicant's EIS did not contain the adequate data, since they had withheld the KT Cullen report, and hence it was reasonable for the Board to deem the EIS inadequate. He felt that it would not be appropriate, and would be contrary to fair procedures at the oral hearing, were the KT Cullen report referred to above to be submitted by the applicants at this late stage to the Oral Hearing. He stated that the applicants had decided, when offered the opportunity, not to question Dr. Neville on his submission regarding the geology of the site. It was evident that the EIS was faulty in this regard and inadequate, and it was not appropriate for the applicants to fill in this potentially serious gap in the information during the period of the Oral Hearing. He stated that they, as third party appellants, were expected to set out their stall in full as part of the planning application in 2001 and if that stall was now deemed to be inadequate they could not be permitted to proceed.

The Inspector stated that he would consider this submission.

Derry Chambers (Group 4) stated that the study referred to was actually carried out on contamination by Sandoz, not the EPA, and it was carried out by Sandoz as a condition of its planning permission. Seven sites in the harbour were studied, one being the present application site. This showed the level of contamination that had been referred to. The EPA did do a separate survey later, but did not survey the subject site.

Submission by Jeremy Irons - Witness for Cobh Action for Clean Air (Group 9)

Mr. Irons stated that he had come to the Oral Hearing to give his submission as a "blow-in" who is able to see Ireland as the tourist sees it. He stated that he did not wish to see Ireland ruin itself as other countries had done, through lack of planning, lack of thought, and lack of understanding of their own intrinsic value.

He stated that the reputation of Ireland was its most important asset and could soon be lost. Ireland was a late-flowering economy and so was able to look at the mistakes of other countries. He stated that while it needed a sound economy it had to strike a balance. He stated that it was important to safeguard the best of what it has, its environment and its natural beauty.

Mr. Irons stated that after agriculture and food, tourism was Ireland's biggest economic asset, earning €4 billion every year. He stated that he sees this country as a tourist does. The recent downturn in the tourist trade illustrates that tourism is a very delicate flower.

Mr. Irons outlined what he felt was the joy of arriving in the magnificence of Cork Harbour in a ferry, coming past the beauty of Cobh. He stated that this whets the appetite of what's in store for thousands of tourists. It would change irrevocably when the chimneys of a toxic waste incinerator were blowing a plume north-east across the land.

Mr. Irons stated that if toxic waste is inevitable, it should be minimised. Government waste management policies should be implemented to the full, burning being the last resort. It was stated that Cork produces 60% of the waste and that the EU instructs Ireland that it can no longer export its problem. He stated that Ireland should look to its waste and look to every effort to reduce and recycle it, redesigning products so that it is not produced in the first place, rather than throw up Ireland's hands in helplessness and burn it.

Mr. Irons stated to build such a plant, on the edge of one of the world's most beautiful harbours, the gateway to the south, in the teeth of an onshore south-westerly wind, seemed an option to him which was tinged with madness. He stated that if the capacity of the incinerator was sufficient to deal with today's waste and if today's waste is being reduced, to keep the incinerator working, its private owners would be forced, for economic reasons, to import waste from abroad despite their assurances that the were removing that aspect from the application. He asked when they would they build on the shores of such a harbour, unless they wanted to import waste to burn.

Mr. Irons stated that building such a facility sends out a message to the world that the Celtic Tiger, limping as she may be, has finally turned on her own. The message to other entrepreneurs will be that as long as you pay the piper, dear old Ireland is up for grabs. He asked that the Board should refuse permission for this development.

Submission by Mr. Brian Watson (Carrigaline for a Safe Environment - Group No. 6)

Mr. Watson stated that his family moved to Cork in 1963 where they have a small holding in Carrigaline which is farmed organically. He stated that Rachel Carson's Silent Spring in the 1960s exposed the problems of industrial pollution in the US. In Ireland in the 1970s John Hanrahan had the same experience. Events in more recent times in Askeaton in County Limerick in particular have exposed the scandalous behaviour of the Government - the same Government that encourages Indaver into the country.

Mr. Watson stated that life on earth goes back 4,000 million years. Three years ago Ireland celebrated the second Millennium. He stated that this was a very short time in 4,000 million years. In his boyhood, there were few cars, and chemicals were kept in bottles and poisons hidden on the top shelf. Pollution was never spoken of. Today, he said, around us we see a loss of species and examples of poisoned water, earth and the air we breathe. Even a company who plays down the dangers of dioxin. He stated that companies, with few exceptions, deny the dangers of their products. People were all assured that asbestos was safe, DDT was safe, thalidomide was safe and nuclear power was the best thing since the sliced pan.

Mr. Watson stated that the submission by Dr. Meehan at the hearing reflected the arrogant attitude of the Government. He felt that this was unlike those people who came before us every few years whose only thought was to put young citizens' welfare first and foremost in all their doings. As soon as the citizen questions the decision of the politicians, the rules tighten. Examples being the removal of rates and giving the power of the veto to the unelected appointed County Managers. He felt

that the restriction on what could be said at the Oral Hearing was "another bite off democracy".

Mr. Watson stated that the Oral Hearing did not come out of the blue but was a result of voluntary activity, night meetings and fund raisings. It was to fight the Government, the same people who promised to take care of the people's welfare. Mr. Watson stated that the residents were not going away, that in all things there was a right way and a wrong way to go and that the proposed development was wrong.

Submission by Rosie Cargin (Kinsale Environmental Watch - Group No. 8)

Ms. Cargin read out a text, which was given subsequently to the Inspector (see Appendix 2 - Group 8 - 2).

Declan McGrath (Indaver) stated that he wished to make a comment. He stated that the witness had said that the pharmaceutical and chemical companies had not made any submissions in support of the application. This was not true. He stated that letters of support had been made by IBEC and by the IPCMF, representing the industry as a whole.

Mary Herlihy (Group 9) asked Ms. Cargin whether any submission had been made to An Bord Pleanála by the industry. Ms. Cargin replied that no submission had been made to the An Bord Pleanála appeal and that the letters of support mentioned by Mr. McGrath had only been made to the County Council earlier before it decided to refuse permission.

Ms. K. Sinnott (Group 15) asked Ms. Cargin whether there were any surveys on the public's view on incineration, and on whether they were in favour or against. Ms. Cargin responded that 25,000 people had objected to this proposal. Mrs. Sinnott asked whether there had been a general survey of public opinion in relation to incineration. Ms. Cargin responded that she was not aware of such but that once people looked into the matter and realised its dangers and affects everyone would be against it. She stated that she knew of no-one who was in favour of incineration. She felt that public awareness had to be raised on the issues and that there had to be a public debate on incineration before any decision is made.

Submission by Orlagh O'Connell (Cobh Action for Clean Air - Group 9)

Ms. O'Connell stated that she was a resident of Cobh. She spoke to a text, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 9 - 5).

This ended the day's proceedings.

ORAL HEARING PROCEEDINGS

1st OCTOBER, 2003.

Submission by Councillor Peter Kelly (Carrigaline for a Safe Environment - Group No. 6)

Councillor Kelly circulated a text to the parties at the outset of his presentation (see Appendix 2 - Group 6 - 2).
[As this text is merely a list of headings used by Councillor Kelly, it is proposed to give a précis of his evidence, which was quite detailed and is considered to be important for the understanding by the Board of a number of issues raised].

Councillor Kelly spoke about the background to the consideration by the Council of the application, and his role in this process as a leader of the Fine Gael group on the County Council. He felt that insufficient and objective information had been given to the Council members by the Council officials at the time of the meeting, and that members had to extract the information they needed themselves. He analysed the information available to the members. This included the Cork Area Strategic Plan 2001-2020, which he argued does not permit the proposed development, since it is proposed in an industrial area "which is to be reserved for port uses" which the proposed development is not.

Councillor Kelly stated that in relation to the County Development Plan process, it is noted that there were a large number of Section 11 and Section 12 submissions, but that no specific submission had been made on the zoning of this site. There had been a submission from Indaver regarding waste policy (Section B, 9.7). This submission may have led to a suggested rewording of Sections 1.9.4 and ZON3-13, by the Council officials. However, this suggested rewording was rejected by the Council members, who retained the wording that had been in the Draft Plan (see Appendix 4/5 of his paper), after 1,650 submissions against it had been made.

Councillor Kelly went through specific sections of the adopted Development Plan, pointed out where the Planner's Report had incorrectly stated that there were no problems of infrastructure in Ringaskiddy, whereas in fact there are such problems outlined in the Plan at Section 26.1.5. In addition, he pointed out sections of the plan which stressed the need to allow for the further development of the port, which this development would threaten (and use up a significant potential development site for port activities).

Councillor Kelly outlined the background to planning permission for the National Maritime College, which he felt should allow for student accommodation on campus, in line with Government policy. He argued that the proposed incinerator would prevent this, due to concerns that had been expressed by the HSA arising from the proposed development, that were included in the National Maritime College's planning permission in 2001.

Councillor Kelly argued that the Waste Management Strategy for Cork City and Council, which had been discussed by the members, makes no provision for incineration. The strategy has been delayed for four years for various reasons. It allows only for the carrying out of a feasibility study on waste to energy and this has not yet been done.

Councillor Kelly spoke on the perceived "need" for the development, as outlined by the applicants and, in the context of lack of progress on the recommendations of the Cork City and County Waste Management Strategy, contended that the proposed development would be premature, since recycling and waste minimisation as outlined in the strategy has yet to occur.

On the National Hazardous Waste Management Plan, Councillor Kelly stated that a number of principles are adopted, the key one being avoidance and reduction. Waste prevention is seen as the corner stone of the plan. The plan recommends the development of thermal treatment and hazardous waste landfill for residual waste TOGETHER, and not one at a time. He submitted that with hazardous waste reduction as per the plan, only 11,328 tonnes of hazardous waste generated in Cork would require to be incinerated, which is one-tenth the size of the proposed development. On this basis he contended that the proposed development would be premature.

In relation to the Planner's Report, Councillor Kelly stated that there had been a failure to provide the information that the Council members had requested previously (see Appendix 1 of his submission). Councillor Kelly went through the Planner's Report, pointing out the sections of this report which he was not happy with (see page 6 of his submission). On the zoning issues, he stated that the reason no provision had been made for contract incineration in any zoning category, reflected the conscious decision of the elected members not to permit it, as it was not in the interests of the proper planning and sustainable development of Cork County, in voting on the amendment 1.9.4 to the plan during the preparation process.

On the issue of traffic, Councillor Kelly stated that the Planner's Report failed to mention the reference to this in CASP at page 125 (see his Appendix 3), and did not mention the fact that the N28 realignment (NRA scheme) had a 12-20 year time horizon, and that there is no funding commitment for this.

In conclusion, Councillor Kelly submitted that the development is contrary to the proper planning and sustainable development of the area, and the provision of a plant of this scale is premature on a number of grounds (see page 7 of his submission).

The applicants indicated that they had no questions for this witness.

P. Sreenan (Planning Authority) asked Councillor Kelly as an elected official he was evidently concerned regarding democracy and the County Development Plan. Did he accept that the courts had interpreted the County Development Plan as a "contract with the community" and did he accept that the Council here at the Oral Hearing upholds this plan. Councillor Kelly stated that he accepted this.

Mr. Sreenan asked Councillor Kelly whether he was aware of the duties of An Bord Pleanála to "have regard" to the County Development Plan but not necessarily to follow it slavishly. Councillor Kelly stated that he was aware of this, but this process for this particular County Development Plan was different from most Development

Plans because of its long gestation period and also because it had, at its core, the proper planning and sustainable development of the area, which was the primary test for the Board to use in dealing with this planning application.

Mr. Sreenan noted to Mr. Kelly that he had said that there had been over 1,600 submissions made to the Development Plan and all except a handful opposed contract incineration. He asked when the members were looking at these submissions whether the current application was in the forefront of their minds. Councillor Kelly stated that the application was contemporaneous with the consideration of these submissions and therefore was in the forefront of the minds of the Council members.

Mr. Sreenan asked whether he could take it from what Councillor Kelly had said and from the fact that the Councillors had rejected the Indaver submission to the County Development Plan' that it was the intention of the Council members to reject contract incineration.

Councillor Kelly stated that this was the intention of the Councillors, in other words to reject contract incineration but not only here but elsewhere in the county.

Mr. Sreenan referred Councillor Kelly to page 171 of Volume 1 of the County Development Plan - zoning objective ZON3-13. He asked the Councillor whether he interpreted this as a clear statement that Cork County Council does not want contract incineration within this zoning. Councillor Kelly stated that this was the way one should interpret this zoning.

Mr. Sreenan stated that it had been suggested by the applicants that this particular paragraph accepts in principle that it might allow contract incineration. He asked Councillor Kelly whether he agreed with the view of the applicants.

Councillor Kelly stated that it was certainly not the case in his view. The Council members wanted to allow industries to incinerate their own waste on their own sites, but also did not wish to allow this waste to be incinerated at third party locations, nor indeed by way of contract incineration.

J. Noonan (Group 1) asked Councillor Kelly regarding his statement that prevention was the cornerstone of the National Hazardous Waste Management Plan and noted that this was stated at paragraph 8.3 of page 85 of the plan. He asked what the recycling budget was in Cork County Council. Councillor Kelly stated that he did not know but that the overall budge for 2003 had been cut by 17% and he assumed that this cut applied across the board.

Mr. Noonan stated that it was his client's view that the prevention programme listed in the National Hazardous Waste Management Plan had not been implemented and that the £43.5 cost for this prevention programme has not yet been provided. He asked Councillor Kelly whether this was consistent with his experience in Cork. Councillor Kelly replied that it was so consistent.

Mr. Noonan asked Councillor Kelly whether if one didn't have the cornerstone as identified in the National Hazardous Waste Plan, was it appropriate to proceed with the rest of that plan. Councillor Kelly responded that he considered that it was not appropriate to proceed. He stated that we need to start in accordance with the hierarchy in reviewing options in line with the plan, then do the prevention to 1996 levels and beyond this and only then look at the options, one of which was incineration for residual waste.

Mr. Noonan referred Councillor Kelly to the Forfas 2001 report which had indicated Ringaskiddy on four separate occasions in relation to waste incineration and had suggested that two things should be done first. First of all that there be HRB research on allaying public fears and secondly that NRA improvements be expedited. One resident at the hearing had said that the NRA had assumed that the Indaver plant would be there and other residents feel that it was a foregone conclusion. He asked were there elements of this process that justified the feelings of the residents.

Councillor Kelly stated that he was naturally optimistic so that the answer must be no. He understood that people were frustrated with the lack of recycling and with the lack of an integrated Waste Management Strategy. He stated that this was the result of neglect of successive Governments. With the exception of the lack of information, Councillor Kelly did not think that there was any malice or old boys' network behind this. He believed that Councillors took the decision in the County Development Plan not to permit contract incineration in their area and he had faith in that process as a democratically elected politician.

Mr. Noonan asked, on the Development Plan review process, didn't Indaver try to have the wording of the plan changed. In the course of their submission, Indaver threatened that, without such a change, the County Council would be contrary to EU Law. He asked had any action been taken to deliver on this threat.

Councillor Kelly responded that no action had been taken to his knowledge. He stated that submission 3.2.14 was Indaver's only submission on the plan and that he was aware of it because it was summarised for the Councillors when they were looking at the plan.

Marcia D'Alton (Group 3) asked Councillor Kelly when had the planning permission for the Maritime College been granted. Councillor Kelly stated that he did not know but that it was after the application had been submitted by Indaver. The Maritime College had an outline permission before then. Ms. D'Alton asked whether the Maritime College was granted before the Indaver refusal. Councillor Kelly stated that he did not know.

Ms. D'Alton asked Councillor Kelly whether the planning permission for the Maritime College included a condition preventing residential accommodation. Councillor Kelly responded that the HSA report on that application had said there should be no residential development, because of Seveso issues regarding the Indaver application and also possibly the Hammond Lane facility.

Marcia D'Alton asked Councillor Kelly about the zoning and asked had not the zoning of the site merely been port-related in the previous plan. She asked when was the zoning changed to industrial. Councillor Kelly responded that in his view the zoning did not change, although the zoning wording was broader in the 2002 plan but when set within the interpretation in context in Ringaskiddy it remained zoned for port activities or for water-using activities.

Ms. D'Alton asked Councillor Kelly whether he could confirm that the National Hazardous Waste Plan had not yet been adopted into the City and County Waste Strategy. Councillor Kelly responded that he was not aware of any debate or discussion on this matter since 1999. Section 22 of the Waste Management Act requires the Council to incorporate it into our Waste Management Plan and so far the Council members have not done this.

In response to a query from the Inspector, as to whether it was his understanding that the amendment to the Waste Management Strategy incorporating the National Hazardous Waste Management Plan had to come before the Council members for approval, Councillor Kelly stated that it was evident that the section had to be added and even if the County Manager, under recent legislation, had the power to incorporate it, he envisaged that it would be brought before the members before this was done. As yet, the matter had not been put before the members.

The Inspector asked Councillor Kelly whether the exclusion of residential accommodation on the Maritime College was a result of the submission made by the HSA, or the result of a judgement made by the Planning Authority that residential development would be tending to object to industry in the area. Councillor Kelly responded that the proposal jeopardised the residential policy for on-campus accommodation on this site as per Government policy and this jeopardisation came from a HSA recommendation to the Planning Authority on the application for full planning permission for the Maritime College.

The Inspector asked Councillor Kelly regarding the amendment to the Development Plan as outlined in his Appendix 4, whether this recommendation from the officials arose from Indaver's submission or whether it had been in response to other submissions.

Councillor Kelly stated that he could supply a copy of the full record, as there is a preceding page in addition to what is shown in Appendix 4 which lists the original text and the submissions received. (THIS WAS SUBSEQUENTLY HANDED IN TO THE INSPECTOR AND HAS BEEN INCLUDED AS APPENDIX 5 TO COUNCILLOR KELLY'S TEXT). Submissions were numbered and Indaver's submission was numbered No. 3214.

The Inspector asked whether there were other submissions, other than Indaver's, seeking a change in favour of contract incineration. Councillor Kelly replied that most of the submissions related to opposition to the proposal (1,655 of them, and there were perhaps 19 other submissions but he did not know the content of these

submissions). He said that the County Manager had stated at the meeting that only a few submissions were in favour of contract incineration.

The Inspector asked him was it his view that the adopted Development Plan does not permit contract incineration anywhere in County Cork. Councillor Kelly stated that this was indeed his view.

Declan McGrath (Indaver) asked Councillor Kelly whether he stated that the proposal does not comply with CASP as it is not port-related and doesn't use large volumes of water. He asked what the Councillor regarded as a large volume of water. Councillor Kelly replied that in dealing with the Development Plan the Council members were looking at industries that needed millions of gallons of water.

Mr. McGrath asked Councillor Kelly that, supposing Indaver needed 30 million gallons of water per annum, whether this would be a large water user. Councillor Kelly accepted that this would mean that it was a large water user.

Mr. McGrath put it to Councillor Kelly that the HSA letter to the County Council of 7th March, 2003, stated that the Authority had noted that the planning permission for the National Maritime College excluded residential buildings. He suggested to the witness that this exclusion of residential accommodation had been made prior to the decision on the Indaver application. Councillor Kelly stated that he wasn't clear on the dates but he would accept what Mr. McGrath had stated.

There was some exchange between the parties as to what was the accurate level of water usage of the proposed development. The Inspector ruled that this was not a matter to be put to Councillor Kelly but could be clarified in questioning of the applicant's witnesses later in the hearing.

Joan Masson (Group 24) asked Councillor Kelly whether, at any time during the debate at the Council, were the Councillors furnished with details of what actually will be burnt, other than chemical and industrial waste generally.

Councillor Kelly replied no and that only the term 'hazardous waste' had been used and the Councillors had not been given a detailed list of substances.

Joan Masson asked Councillor Kelly regarding the storage shed whether the Councillors at the meeting had been informed of the items which were going to be stored there. Councillor Kelly replied that no information had been given to the Council members on this matter either.

Submission by Martin Creaner (Cobh Action for Clean Air - Group 9)

Mr. Creaner read through a text, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 9 - 6). This text included two appendices, the second of which was furnished only to the Inspector having been read out by Mr. Creaner to those in attendance.

Declan McGrath (Indaver) asked Mr. Creaner where the figures that he had quoted had come from. He asked had they come from the same FOI request that had been adverted to in Mr. Hogan's evidence two days earlier. Mr. Creaner replied that he didn't know but that he did not get those from Mr. Hogan. Mr. McGrath asked him who had made the FOI request. Mr. Creaner stated that the request had been made by Cobh Action for Clean Air, of which Mr. Hogan wasn't a member.

Mr. McGrath asked Mr. Creaner to comment on the EPA figures he had given in relation to industrial waste. He asked which was the highest. Mr. Creaner stated that it is Meath. Mr. McGrath asked Mr. Creaner would he accept that this was so because of Tara Mines. Mr. Creaner stated he did not know. Ms. McGrath asked Mr. Creaner in relation to the figures for Limerick whether he knew whether this was mainly composed of figures from Aughinish. Mr. Creaner stated that he didn't know. He stated that his observation was that, apart from generic comments by Indaver, he didn't know where the applicants intended to get their non-hazardous industrial waste from so he couldn't answer the question.

Mr. McGrath asked Mr. Creaner whether the thrust of his evidence was that applying the proximity principle Cork wasn't appropriate for non-hazardous industrial waste. He put it to the witness that the top three counties in terms of industrial waste had spoil tailings which were non-combustible waste and that apart from these Cork had the highest levels of non-hazardous industrial waste which was combustible. Mr. Creaner stated that he didn't know so he couldn't comment on that.

Mr. McGrath quoted from the EPA National Waste Database 2001 at Table 4.12, which had been referred to by Mr. Creaner. He stated that, when one analyses these figures, Cork is the appropriate place for industrial non-hazardous waste, as well as industrial hazardous waste and he asked Mr. Creaner whether he accepted this.

Mr. Creaner stated that as he was not aware of the type and source of the non-hazardous industrial waste that Indaver proposed to take he could not comment on the matter. Mr. McGrath asked him if he accepted that spoil from mining wasn't combustible then wouldn't he accept then that Cork produces the most combustible waste.

Mr. Creaner stated that he had no idea, and had to rely on the figures. If there were figures in the EPA database in relation to combustible material for each county then it would be possible to make an analysis, but without this it would not.

Elly O'Byrne (Group 2) asked Mr. Creaner whether he had seen the list of substances that Indaver had included in its waste licence application. Some of the items on the list were meal and bone meal, hospital waste, and waste from mining. On the basis of this she asked Mr. Creaner whether he thought that the issue of combustible waste was centrally relevant. Mr. Creaner replied that this list underlined his point about the possibility of mining waste being taken in by the applicants.

Ms. O'Byrne stated that the issue was that 60% of industrial waste was produced in Cork. However, the County Council (Mr. Daly) had said earlier in the hearing that

this figure was in fact waste *exported* from Cork rather than *produced* in Cork. Mr. Creaner replied that this was his understanding as well and that the EPA report didn't appear to distinguish either.

Mr. Peter Sweetman (Group 22) asked Mr. Creaner about waste characteristics and whether he was aware that in the EU mining waste is a different category from industrial waste. In Mr. Sweetman's view this proved how inaccurate the EPA statistics were. He stated that he knew something of Tara Mines and that this produced 2 million tonnes of mining waste per annum. Accordingly, if the EPA figures included this figure, the EPA report was flawed. Mr. Creaner stated that he did not know.

Submission by Peter Murray (Cobh Action for Clean Air - Group 9)

Mr. Murray spoke to a text, which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 9 - 7).

Submission by Dr. George Fitzgerald (Cobh Action for Clean Air - Group 9)

Dr. Fitzgerald read through a detailed text, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 9 - 8). The appendix to this paper, which he had subsequently given to the Inspector, was read out to all present. This related to the number of cruiseliners who came to Cork.

J. Noonan (Group No. 1) noted that Dr. Fitzgerald had mentioned the WHO description of health. He asked Dr. Fitzgerald whether he was aware of the WHO Report No. 46 on Site Selection for New Hazardous Waste Management Facilities. Dr. Fitzgerald replied that he was not aware of this report.

Mr. Noonan asked Dr. Fitzgerald if the WHO had issued recommendations for matters to be taken into account when selecting a site should in those opinion those criteria be carefully observed by any deciding body charged with giving a permit for this development or refusing it. Dr. Fitzgerald stated that of course something issued by the WHO should be carefully observed.

Marcia D'Alton (Group 3) asked Dr. Fitzgerald whether the rate of respiratory infection was high in Cobh. Dr. Fitzgerald that one GP would not see enough patients to give a scientific answer but that all of the GPs in the area have suspicions, hence his call in his submission for the Minister for Health to carry out large scale studies.

John Russell (Group 3) asked Mr. Fitzgerald that, if An Bord Pleanála was present, what would he say to them regarding the health outcome of this development. Dr. Fitzgerald replied that he would say that the Board should not give planning

permission as the development would be deleterious to the quality of life and health of the people of the area.

Submission by Edmund Mansworth (Cobh Action for Clean Air - Group No. 9)

Mr. Mansworth read out a paper which was subsequently given to the Inspector (see Appendix 2 - Group 9 - 9).

Submission by Oliver O'Leary (Carrigaline IFA - Group 18)

Mr. O'Leary stated that he was vice chairman of Carrigaline IFA and had been farming in the area for the last 34 years. Carrigaline IFA represent farmers in the area and they object to the development on the basis that their livelihood would be at serious risk.

Mr. O'Leary stated that Carrigaline and its surrounding area are farmed intensively and extensively with dairying, beef, sugar beet, cereals, potatoes, and market gardening as the principle enterprises. He stated that, as it had already been said, the area that could be affected by the proposed development would be wide - huge areas of Cork farmland and not just Carrigaline. Mr. O'Leary stated at this point that he should say that Carrigaline IFA object to toxic incinerators anywhere and not simply in the area around them hence this was not an IMBY thing. He felt that incineration and farming do not mix and that expert witnesses have concurred with this view.

Mr. O'Leary stated that, if Indaver were allowed, it would have a detrimental impact on their businesses. Traceability and movement of animals, and food safety requirements, apply to all farmers nowadays. Where accidents have happened, it is the farmers who suffer most. If milk is rejected, it cannot be stored. You would be left with contaminated milk, which you cannot get rid of. The applicants can give no guarantees that food would not be affected nor that there would never be any mishaps.

Mr. O'Leary stated that, at present, Danone and Cadburys will not accept milk from within 40 kilometres of any incinerators, for obvious commercial reasons. They cannot afford the risk.

Mr. O'Leary asked that, if the incinerator was granted, what would happen to Ireland's exports. At present Ireland exports nine out of every ten cattle produced, eight out of every ten gallons of milk as butter or cheese, etc. Ireland is heavily dependent on exports. Agricultural exports account for a huge part of the national income. The countries with incinerators that are referred to by Indaver consume most of what they produce. Ireland could not as it has to export most of its produce.

Mr. O'Leary stated that Ireland was promoted on the basis of its clean green image. He asked why should Ireland lose this marketing advantage. At present only Greece and Ireland do not have incineration and this should remain the same.

Mr. O'Leary said that it had been stated to be Government policy to have incinerators as part of national waste policy. He stated that it was also Government policy to maintain as many farmers as possible on the land. Farmers were here first and intended to say. One didn't need incineration but one did need farming. A number of years ago, nuclear power had been proposed, but people power won out. Now the Government was trying to force incineration on the people, while other countries were trying to phase it out.

Mr. O'Leary stated that farmers spend much of their time outdoors and were aware of the meteorological conditions in the area. He asked the Board to note that fog is prevalent along the south coast and often stays there for days. This was an issue that should be considered.

Mr. O'Leary concluded by raising one issue that had been put forward by Indaver. He stated that he lives on the N28. This road starts at the Bloomfield interchange and goes to Ringaskiddy. He felt that Indaver's figures for traffic flows were simply unbelievable. The NRA figures for the year 2000 at Carr's Hill was almost 19,000 cars per day, not the 2,500 cars that Indaver had quoted in its report. He stated that An Bord Pleanála had the power to impose incineration on us but he did not believe that the Board had the right to do so.

Mr. J. Noonan (Group 1) stated to Mr. O'Leary that he had mentioned that eight out of every ten gallons of milk are exported in some form. He asked whether the export market was prone to heavy competition from other countries. Mr. O'Leary stated that it was getting more difficult year by year.

Mr. Noonan asked whether countries buying Ireland's products were getting more stringent on testing those products. Mr. O'Leary replied that this was the case. The buyers of Irish produce now test that produce. They would not distinguish between Cork and Munster since testing is done on a larger scale level there. So a Cork problem would become a Munster problem and affect all Munster produce.

Mr. Noonan asked Mr. O'Leary if there was an accident what would happen to contaminated milk. Mr. O'Leary stated that one would have to dispose of it on the land as nobody would want contaminated milk. It couldn't be made into cheese, nor fed to calves.

Mr. Noonan asked Mr. O'Leary whether he had any idea of the quantity of milk that was produced in his area. Mr. O'Leary replied that he hadn't a figure for the immediate area but that Dairygold was one of the largest purchasers of milk in the area and that they deal with over 200 million gallons of milk per year.

Elly O'Byrne (Group No. 2) stated that in Alberville in France, after an incident in an incinerator, there had been a ban on milk for a whole year. She asked Mr. O'Leary whether a dairy farmer would still be in business in a year. Mr. O'Leary stated that it was unlikely. With the margins it was difficult, no-one could give compensation to

farmers so they would have to go out of business. Ms. Byrne said so it would lead to unemployment. Mr. O'Leary replied yes it would.

Submission by Gerard O'Connell (Carrigaline IFA - Group 18)

Mr. O'Connell stated that he lives at Monkstown, less than 2 kilometres from the site. This area is the most productive agricultural area in Europe. His farm is 300 foot OD and the stack of the proposed development would be 180 foot OD. He stated that it was possible that an accident could happen, leading to dioxins being released, which would then fall on his fields where he produces milk and beat.

Mr. O'Connell stated that, after the Foot and Mouth and BSE, farming is now back to normal. 400,000 people are employment in agriculture and support enterprises and this is worth billions to the Irish economy. Ireland's clean air green image is important to it in the marketing of its food, especially as Ireland will compete more with other countries in the future.

Mr. O'Connell stated that, while we may import €300 million worth of food from countries with incinerators, if we had better labelling, people would not buy such food. The IFA recently discovered that a quarter of samples of meat were mislabelled as Irish. He stated that Kerrygold is an internationally renowned brand, as is Galtee and Erin foods. All of these enterprises depend on Ireland's clean green image. Since 1996 we have full traceability of all cattle, born in the State, until they are slaughtered. In world trade Ireland would compete with the US and New Zealand, and these countries were phasing out incineration.

Mr. O'Connell stated that, in the US, certain companies will not take produce from farms within 80 kilometres of an incinerator. Recently in the UK, Cadburys have said that they would not take cocoa powder from a plant near an incinerator. (He handed in documentation on this matter - see Appendix 2 - Group 18 - 1). He stated that he had met Belgian farmers recently. In 1999 they had had a fall-out from incineration and there are 29 incinerators in Belgium. In Alberville, France, levels were 27 times over the EU limit. Immediately farms in the catchment area were closed down.

Mr. O'Connell asked whether Indaver would have a bond in place to compensate surrounding farms in the event of an incident which would affect their production and income. He stated that Ireland needs a better solution to waste management than this. Incineration does not get rid of landfill as 30% of the product goes to landfill as residue and ash.

Mr. P. Gardner (Indaver) stated that the letters handed in by Mr. O'Connell do not support the supposition put forward. Mr. Noonan (Group 1) asked Mr. O'Connell to read the letters as these had not been circulated to the parties. Mr. O'Connell read the letters in full.

P. Russell (Group 2) asked Mr. O'Connell about consumer confidence. He asked why would someone claim that their meat would originate in Ireland as in the recent

controversy over mislabelling. Mr. O'Connell stated that when a consumer looks for Irish meat they know it is fully traceable. Imported meat outside the EU is non-traceable.

Mr. Russell asked Mr. O'Connell about labelling with GM products. He asked whether one could foresee a stage when food has to be labelled, not only for its GM content, but also for its background dioxins and pollution background. Mr. O'Connell replied that he had met Commissioner Byrne (EU) last week, and Commissioner Byrne says that there would be more stringent labelling in the future in the EU.

Submission by Madeline McKeever (Growing Awareness Ltd. - Group 19)

Ms. McKeever stated that she represented a food and farming group in West Cork, Growing Awareness Ltd., which had the aim of respect for food production and farming. She stated that they were a group engaged in sustainable food production. She noted that An Bord Pleanála says, in its Mission Statement, that it has to deal with issues on the basis of sustainable development as an independent body.

Ms. McKeever stated that sustainable development is generally recognised as having three components - economic, social and environmental sustainability. Most damage to the environment has taken place in farming only since chemicals got involved, with fertilisers, after 5,000 years of no damage. Farming is therefore more sustainable than industry which is only around for a short time.

Ms. McKeever stated that the EPA is not independent. Mary Kelly, the Director General of the EPA, was appointed by the Government, which is in favour of incinerators. She stated that 90% of Ireland's land is farmland and so 90% of emissions will fall on farmland. She asked how one can trust the EPA after its poor treatment of farmers in Askeaton, County Limerick.

Ms. McKeever stated that Indaver had dismissed the impact of the development on agriculture on 16 lines. They admit that there might be a perception by the public. The public are here at the Oral Hearing. The impact they say would not be significant but marketing Ireland's produce depends on image, and irrespective of the extent of the impact, the image of Ireland's produce would suffer if an incinerator is built. Long after the pharmaceutical and chemical industries have left Ireland, people will still be farming. Dioxins and furans would still be there if this development went ahead and would still be in the food chain. She appealed to the Board to refuse this development on the basis of sustainable agriculture.

Submission by John Masson (Group No. 24)

Mr. Masson spoke to a text, copies of which had been circulated to the parties in attendance at the Oral Hearing (see Appendix 2 - Group 24 - 1).

Mr. J. Noonan (Group 1) referred Mr. Masson to page 2 of his paper where he had raised the issue of Indaver's submission. He asked whether Mr. Masson believed

Indaver when they stated they were supporting the chemical and pharmaceutical industry. Mr. Masson replied that he did not believe Indaver. The IPCMF's letter is in pretty vague terms and none of the proximate plants to this industry made any such submission.

Mr. Noonan referred the witness to the National Hazardous Waste Management Plan at page 63 where he quoted "there is no scope for EU Member States to restrict the movement of waste for the purpose of recovery". He stated to Mr. Masson that, if one assumes the manufacture with hazardous waste, he might as well export this waste for recovery and disposal. Economically, if an incineration plant is built, he asked whether it would be more or less likely that the industrialist would continue to export his waste for recovery.

Mr. Masson stated that nationally people in such firms would make an economic decision which would include transportation and insurance costs, in respect of sending hazardous waste to Cork. Shipping costs tend to be relatively stable, while road transport costs tend to fluctuate.

Mr. Noonan asked Mr. Masson, as a retired vet whether he was aware of the issue in respect of meat and bone meal as to whether BSE can be properly treated by heat.

Mr. Masson replied that he was aware of the situation regarding BSE and prions. He stated that there are other types of treatment, such as anaerobic digestion which would destroy the prions. Incinerators so far had not been proven to do this.

Submission by John Russell (Chase Cork/Bishopstown - Group No. 2)

Mr. Russell began by outlining his protest regarding the legal position imposed by the Board in not being able to consider environmental and human health matters.

Mr. Russell stated that planning was all about anticipating current trends. The incinerator would undermine these current trends. The Government wants us to seek the closure of Sellafield, but is pushing for incineration. Prevention is better than cure. People power stopped Rosslare having nuclear power and people power can stop this incinerator also. No-one would want nuclear power in Ireland now.

Mr. Russell stated that he put it to An Bord Pleanála that planning should anticipate where we are going to be, rather than react in the short-term to current problems.

Mr. Russell stated that he wished to highlight the issue of the undermining of local democracy. The County Council members had voted against this development, and the politicians' arguments were clear and founded on good democratic reasons - that they listened to the public that they represent. Democracy does not belong to the Minster, nor the Taoiseach, nor the Government, but belongs to the people. How can people participate in local democracy, and our young people have trust in it, if the democratic will of our Councillors is overturned. He stated that he hoped the Board would not overturn this.

Submission by Mary Hurley (Cobh Action for Clean Air - Group 9)

Ms. Hurley read out a text, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 9 - 10).

Mr. Peter Sweetman (Group 22) referred the witness to View 17 in the EIS. He asked the witness to identify where on this view was the site or the Martello Tower. Ms. Hurley responded that she didn't know as she couldn't see either on this view.

Mr. Sweetman then asked Ms. Hurley regarding View 21 and asked whether this view had been taken from. Ms. Hurley responded that the view was taken from Russell Heights in Cobh. She stated that one can see the Martello Tower normally from this point, but one could not see it in the photomontage.

Mr. Sweetman then referred to View 22 and asked Ms. Hurley where this view was taken from. Ms. Hurley responded that the view had been taken from Coskinny at the shore. She stated that one would get a different view if one went up the hill a bit from this location.

Submission by Peter Sweetman (for B. Cronin - Group 22)

Mr. Sweetman stated that he wished to address six issues at this Oral Hearing, as follows: (1) the right of way, (2) traffic, (3) the boreholes, (4) Seveso, (5) visual amenity, and (6) the rules of the Oral Hearing.

1. Mr. Sweetman stated that the right of way was clearly shown on the 1996 Ordnance Survey map and could not be lost by the removal of earth. He stated that the right of way does exist and cannot be extinguished without a decision by the elected members. So he considered that it was a waste of time to deal with the right of way here.

2. Mr. Sweetman stated that traffic studies in the EIS were, either by bad luck or design, wrong. The school was off. The details of the Naval College were not clear. 750 students and staff could generate 750 car movements and not 150 as Indaver had claimed. He felt that the traffic study was entirely inaccurate.

3. Mr. Sweetman stated that under the law, an EIS shall show "data on which the information is based". He stated that there was evidence on the site of boreholes, but there was no mention of boreholes in the EIS. He stated that the information on the relevant boreholes had been suppressed. Just like Cork County Hall, the site was on the same geological formation. One of the boreholes at County Hall dropped when they started building. In this case we didn't know. He stated that one couldn't grant planning permission because one didn't know if the development would disappear into a cavern.

4. He stated that the Board were relying on the HSA letter of 7th March. However, the Indaver map was dated 13th March. His submission was that the

proper evidence was not before Mr. Colreavy of the HSA because the report on which he was supposed to be relying was dated after his decision. Mr. Sweetman stated that he was bringing to the Inspector's attention that SI 402 of 2003, which had been signed by the Minister on 8th September, 2003, amended Regulation 7 of the Seveso II Directive by adding in the term 'the public'. The public now, by law, must be consulted on the accident plan relevant to a Seveso development.

Mr. Sweetman stated that it was his contention that the HSA looked at nothing, on the basis that the HSA Inspector had no knowledge that it was properly assessed. He stated that the HSA did not assess the domino effect, because they did not know. He stated the HSA did not know what was to be stored on site because Indaver did not know. It was a moveable feast.

5. Mr. Sweetman stated that there are various designated views around the harbour, including the national monument beside the site. The County Development Plan had two Martello Towers listed as protected structures but that the Martello Tower at Ringaskiddy didn't appear to be listed. He asked was this because, under the law, the setting was to be protected. He stated that the fact that we have see-through pylons in the area was no reason why we should have this development.

Mr. Sweetman stated that the Martello Tower was a designated national monument and hence by definition was a protected structure. The setting of a protected structure is itself protected, as is the view from that structure. In this context he referred to an Inspector's report in the case of File Ref. 201396 (D. Johnson - Standish) where the Inspector had said that the view from the garden of a protected structure was particularly relevant.

Mr. Sweetman stated that it was his submission that the photomontages were inadequate, and that because no views were provided from the Martello Tower, the EIS submitted by Indaver was inadequate.

6. Mr. Sweetman stated that he now wished to address the issue of the rules under which the Oral Hearing was being held. He stated that Sections 256 and 255 of the 2000 Planning and Development Act amend the EPA and Waste Management Acts. They are primary legislation amending primary legislation, and hence didn't have any commencement date.

Mr. Sweetman stated that the Board is required to look at applications de novo/ab initio. His submission was that the Board therefore received the application after to 11th March, 2002, and hence had to take environmental pollution matters into account.

Mr. Sweetman stated that the EPA does not do an assessment. They merely look at an EIS and they get a waste licence application. He stated that we have been told since the EPA was set up that the EPA would look after the environment. Now we need an office of environmental enforcement, so obviously the EPA were not working properly prior to this. He noted that the

EPA had now got a chemical expert from IBEC. She believes in chemicals and pollution and her job is to licence pollution so they are called emissions.

Mr. Sweetman stated that under the 2000 Planning and Development Act, the Oireachtas decided to re-empower An Bord Pleanála to make a full assessment of the EIA. Under the rules as imposed, it is impossible for anyone to carry out a proper environmental impact assessment according to the Directive, and under the 1999 Act - the "interaction of the foregoing". He stated that we cannot do this since An Bord Pleanála deal with human beings, and the EPA deal with emissions, and no-one can deal with the interaction of the two.

Mr. Sweetman stated that the Oral Hearing was therefore a farce. He stated that we all knew that the application would be granted by the Board on the basis of national policy. But which national policy - is it a moveable feast? And if it breaches international policy - at least Ireland puts its name to something.

Mr. Sweetman stated that there were two applications here before the Board - a consent under the EU Directive where An Bord Pleanála has to assess the impact of the development, and an application for planning permission. Only if the development does not have significant impacts on the environment, he submitted, could the Board make a decision from a planning point of view. The European process takes precedence over national policy and regulations.

Mr. Sweetman stated that it was his submitted that this development is the wrong development in the wrong place and materially contravenes the County Development Plan and the National Hazardous Waste Management Plan. The development is not in accordance with the EU waste hierarchy because it is the last resort.

The applicants and the Planning Authority both stated that they had no questions for Mr. Sweetman.

Mr. J. Noonan (Group No. 1) stated to Mr. Sweetman that they had heard his view that the powers of the Board were before the courts. This was similar to the view he had expressed. Where there was such a fundamental cloud of uncertainty, he asked Mr. Sweetman hadn't the Board the power to refer the matter to the High Court or the European Court or just wait. He put it to the witness that in drunk driving cases, where a legal point arises, doesn't everyone stop and wait for the High Court to give its verdict. He asked Mr. Sweetman could he think of any reason why the Board would not want to take the same course.

Mr. Sweetman stated that he knew nothing of drunken driving cases, but knew *Shannon Regional Fisheries Board -v- Maguire Pig Units*, where the ability of the Fisheries Board was questioned on the basis of their pollution samples. This case took two years and the District Court could not take any similar case in the meantime. He stated that he presumed drunk driving was the same.

Mr. Sweetman said that his information was that this issue was before the High Court in Martin and other cases. On 26th July this year, the EU Commission had brought the 2000 Act to the EU Court so that they could not go ahead. His view was that An Bord Pleanála must refer the matter to the European Court in view of this and that it has the power to do so.

Mr. Sweetman stated that if the Board granted this planning permission, somebody would have to lodge a case in the High Court to make it stand up before the European Court. He felt that this was wrong as it was an abuse of the people.

Submission by Mrs. Natasha Harty (Group 23)

Mrs. Harty read out a text, a copy of which was subsequently given to the Inspector (see Appendix 2 - Group 23 - 1).

There were a number of documents that Mrs. Harty stated she wished to hand in to the Inspector. She was queried by Peter Sweetman whether these documents were all published documents, and hence did not need to be circulated to the parties. Mrs. Harty stated that only one of the documents was a published document. On this basis the Inspector stated that he could not consider them since it would not be fair to the other parties if they were not able to comment on the documents.

Mrs. Harty stated that on that basis she would not be handing in the documents but would read a paragraph from one particular document - a report by Murray Consultants on public attitudes towards incineration. She stated she would read out one paragraph from this document and that would enable those who wished to ask her questions to be aware of the content. This stated as follows:-

> *"Consumers are much more concerned about incineration as a safe and environmentally sustainable means of waste disposal than either the Government or industry stakeholders".*

Mrs. Harty stated that this represented her view as well.

There were no questions to Mrs. Harty on the evidence she had submitted from any of the parties.

Submission by Joan Masson (Group 24)

Mrs. Masson stated that she lived with her husband in Currabinny, the next peninsula to Ringaskiddy. She stated that she strongly felt that mass-burn incineration was not appropriate at all. Incinerators are raised landfills upside down - in effect inverted landfills - and are putting waste into the air that we breathe.

Mrs. Masson then read from a text, a copy of which was handed in subsequently to the Inspector (see Appendix 2 - Group 24 - 2). With this document she handed the

Inspector a copy of the National Roads Authority's leaflet on the N28 route corridor options (this is appended to Mrs. Masson's statement).

Mrs. Gertie O'Driscoll (Group 7) stated that she wished to make a point regarding the issue of coastal erosion that had been raised by Mrs. Masson. She stated that, as a child, she remembered the farmer who had previously owned the land that now comprises the site. This farmer had a wire fence with wooden poles, and Mrs. O'Driscoll stated that she used to walk up there as a child. Every couple of years the farmer had to move that fence back due to coastal erosion.

Elly O'Byrne (Group 2) asked Mrs. Masson whether she was surprised to see nothing in the Environmental Impact Statement on the night-time visual impact of the development. She stated that one can see the industries in the harbour lit up at night already. She asked would Mrs. Masson think that there would not be a glow from the new proposed development as well. Mrs. Masson replied that she was aware of this problem.

John Russell (Group 2) stated that he lives in Cork City with its lack of amenities. He asked Mrs. Masson if she accepted that places like Gobby Beach are an amenity, not only for the local residents but also for city dwellers like himself. Mrs. Masson stated that she agreed with Mr. Russell. Amenities are lacking in Cork City. This is why the County Development Plan tries to address the matter by looking at the harbour area as a potential amenity area. Nobody would be interested in amenities if an incinerator went in.

Margaret O'Callaghan (Group 7) asked Mrs. Masson whether she would agree, in business terms, that to put an incinerator in an area is a waste of an important wealth-producing space in Cork's deep sea port, a wealth-producing asset. Mrs. Masson replied that she agreed with this point. She felt that very little development should be permitted on the site, other than amenity or tourism uses, which would be compatible with the amenities of the area.

Mr. P. Sweetman (Group 22) asked Mrs. Masson how long she had been aware of the site and how long she had walked up from the site to the Martello Tower. Mrs. Masson replied that she had been aware of the site for very many years and had often walked down from the Martello Tower, as walking up was quite strenuous, and as she walked down from it no-one stopped her. In fact she had often met people on that walk. The walk is still marked.

Submission by Greg Casey (An Taisce - Group 14)

Mr. Casey stated that he is a solicitor and is representing An Taisce at the Oral Hearing. An Taisce is opposed to the use of incineration as a method of disposal of any kind of waste, whether hazardous or domestic.

Mr. Casey said that he commended Cork County Council for its refusal, having regard to the objectives of the County Development Plan in 2003. He stated that he wished to outline the history of the application. A material contravention of the 1996 County Development Plan was first advertised in July 2002 where the public were invited to make submissions. That proposal was not voted on at the time. In September 2002 he stated that he had been told by a planning staff member in Cork County Council, and saw on the computer screen, that the County Council was awaiting a report on health and environmental matters. He stated that he was not sure whether this report was ever received.

In the event, Mr. Casey stated, the County Council decided not to proceed with the consideration of that material contravention. By February 2003, a new County Development Plan had been adopted. This plan made it clear that the subject site is zoned for port-related industry and this use does not include incineration. The County Manage brought a motion for material contravention of the 2003 Plan, and that was voted down by the members - hence the refusal that is now before the Board.

Mr. Casey stated that it was An Taisce's submission that the refusal ground cited by the County Council was not broad or encompassing enough, that there were a number of other substantive grounds that should have been adduced by the County Council as well. He proposed to go through these.

1. Martello Tower

   Mr. Casey stated that the Martello Tower is a protected structure in the County Development Plan and is also a listed archaeological monument. He stated that it was clear that the construction of the proposed development, and the visual impact of the emissions from that development, would severely and detrimentally impact on the visual setting of this protected structure. The 1999 Act defines this visual setting as being part of the protected structure.

2. Right of Way

   Mr. Casey stated that Indaver, in its written response to the third party appeals, suggested that the public right of way marked on the ordnance survey sheets no longer appeared since 1997 and has fallen into disuse. The County Council has never indicated that it intends to extinguish this right of way. This right of way is in constant public use, through the area which is proposed to be built on, and constitutes an immovable object which it is not open to An Bord Pleanála nor the Planning Authority to get around. Mr. Casey stated that hence this should have been a reason for refusal.

3. Polluted Harbour

   Mr. Casey stated that Cork Harbour is probably the most polluted harbour in Europe, and that this pollution is caused by many factors, including the discharge of untreated sewage, the long history of heavy industry in the area, large mounds of dangerous quantities of ash/leftovers from Irish Steel. He

submitted that putting a further dirty industry into the harbour, when the general thrust of policy in the County Council is to clean up the harbour, flies in the face of logic and is against what the people want.

4. Inadequacy of EIS

Mr. Casey stated that the Board placed a public notice of its receipt of the Environmental Impact Statement. In doing so, Mr. Casey believed that somebody in An Bord Pleanála must have made the decision that the EIS was adequate to meet the EU Directives. He disagreed with this view. He stated that he had walked through the site last April and noticed four capped boreholes. He stated that he could find no reference to boreholes and to the data from these boreholes in the EIS. He took the view that the information which is in the hands of a developer and which is not furnished to the Board, can only be withheld because it may not suit the particular picture that the developer wants to draw. He stated that it is well known that the site is underlain by limestone, and that that limestone is of a dense nature, under which there are caverns. When the County Hall was constructed in the 1970s, a pile during building works was lost into such a cavern. This shows what can happen if we don't know what is under the ground. There is no data in the EIS on the trial pits. Under Directive 97/11, which was the amending Directive to the EIA Directive, all of the data, on foot of which conclusions are to be drawn by proposers, has to be provided in the EIS. Mr. Casey submitted that until we have the data relating to geology and hydrogeology, it was not open to the Board to draw any conclusions, nor to make any decision on the planning application other than to refuse it.

5. Seveso

Mr. Casey stated that he wanted to draw the Board's attention to page 15 of the applicant's written response where, in paragraph 10.1, they refer to the risk of accidents and spills, and the applicants state that the site would be a lower tier site under Seveso II. The response also states that the applicants submitted a risk assessment report on hazard identification and evaluation for major accident prevention to the Health and Safety Authority (HSA) in 2002. It is stated by the applicants that this risk assessment took into account the risks, consequences, and environmental impacts of credible incidents, and took into account, inter alia, the National Maritime College, Spike Island, and the Naval Base.

Mr. Casey stated that there are a number of omissions in this risk assessment. It does not take into account the existence of the Hammond Lane site in the centre of the proposed site. He had personally seen the slag heap on the Hammond Lane facility blowing out with smoke and fire and highly heated pellets. The risk assessment seemed to him only to relate to the risk of the failure of tanks from internal pressures and made no reference to external damage risk. Given the nature of the Hammond Lane facility, adjacent to tanks with highly hazardous chemicals, he submitted that this is a fundamental flaw in the applicant's submission.

Mr. Casey noted that the HSA letter to the County Council of 7th March, 2003, on the file, indicated that it (the HSA) had no objection to planning permission being granted. He submitted that the risk assessment failed to take into account the nearby Seveso establishments that are referred to at page 57 of the County Development Plan. These include Novartis Ringaskiddy, Pfizer Ringaskiddy, Pfizer Loughbeg, Smith Cline Beecham, Currabinny. He stated that he understood Smith Cline Beecham to be a Seveso II higher tier site.

Mr. Casey stated that Mr. Sweetman had handed the Inspector a map the previous day, and that this map was a map submitted by Indaver to the HSA with its risk assessment report on 21st March.

At this point the Inspector intervened, stating that if Mr. Casey wished to make points regarding this map, he would have to provide copies for the other parties in attendance at the hearing since, on the basis of fair procedures, all parties would have to be able to see this map so that they could formulate any questions to him at the end of his presentation. The Inspector stated that this standard of proof was required of other parties, and would also be required of Mr. Casey. Mr. Casey stated that on that basis he would take it back. The map had been given to him and to Mr. Sweetman on the Friday before the Oral Hearing by Indaver. He stated that his clients had not provided him with the funds to copy it.

The Inspector informed Mr. Casey that if he was not prepared to copy the map and distribute it to the other parties, then he could not put it forward in evidence to comment. Other parties had gone to expense, including individual residents, so as to participate in the hearing, and it was a matter between Mr. Casey and his client as to what funds he had available and how best to make his case.

There ensued a vigorous exchange between the Inspector and Mr. Casey regarding the admissibility of this map, and a very detailed report which accompanied it, which Mr. Casey wished to put in evidence. The Inspector ruled that he would not accept documents from Mr. Casey unless copies were made available to other parties, on the basis of fair procedures. He stated that he would allow Mr. Casey to speak verbally about his point regarding the map, without distributing it. He would accept this on a without prejudice basis, without any commitment as to whether or not he would allow the admissibility of the matter later. Mr. Casey said he would go ahead on that basis.

Mr. Casey stated that his point in relation to the HSA was as follows. Cork County Council had sought advice from the HSA, and the HSA had supplied that advice on 7th March 2002. However, the information that Mr. Casey had obtained showed that the map, and the risk assessment report, was circulated to the HSA on 21st March, 2002. He quoted from the covering letter to the HSA from Indaver with that submission, which stated as follows "We enclose herewith documentation to provide a composite document recording the

information provided by Indaver to the HSA for the purposes of implementing Regulation 29 of Statutory Instrument 476".

Mr. Casey stated that at the time this process of engagement was taking place between the HSA, Cork County Council, and Indaver, Mr. Colreavy of the HSA was in fact in attendance at the Corrib Gas first Oral Hearing. Mr. Colreavy gave evidence in that Oral Hearing that the HSA was not standing in the way of a permission. At this point Mr. Casey read a detailed extract from the transcript of that Oral Hearing (pages 214 to 230).

Mr. Casey stated that the point from this extract was that there were no detailed design drawings of the Corrib Gas development and that Mr. Colreavy, on behalf of the HSA, had accepted that this was a problem in the planning process. In a similar manner, there were no detailed design drawings of the proposed development in this case nor were any submitted to the County Council or the Board. Mr. Casey stated that to have a large amount of information not made available to Cork County Council, meant that the Board could not rely on the letter submitted by the HSA to the County Council. He stated, if the Board saw fit, it could call the HSA to be cross-examined at this hearing, or at a further Oral Hearing, as to what the HSA took into account in its letter to Cork County Council of 7th March.

Mr. Casey stated that it was clear from <u>any</u> map that the Glaxo Smith Cline establishment (Seveso II higher tier site) was not far away from the proposed site. It was also clear that Pfizer Loughbeg, a lower tier establishment, was at an angle to this. There are also two other lower tier Seveso sites in Ringaskiddy. Across the water from the site there is a further higher tier establishment - Irish Refineries - and there are a number of other Seveso II establishments dotted around the harbour.

Mr. Casey stated that the question he was asking was what would be the effects or possible effects of an incident in any one of those plants on the proposed development. Mr. Casey argued that the Indaver risk assessment submitted to the HSA did not take into account the impact of the Hammond Lane facility, nor the impact of the other Seveso establishments in Ringaskiddy on their development.

Mr. Casey stated that there had been much debate at the Oral Hearing on the matter of an external emergency plan which had to be prepared by the Council under Seveso II. He noted that this plan was required to be notified, under Section 17.2(e) of SI 476 to a number of specific bodies. He stated that under SI 402 of 2003, signed by the Minister of 8th September, 2003, this statutory instrument had been amended to include the public in Regulation 17.2(3) as mandatory consultee. He stated that the County Council had to answer to this matter given the requirement now to consult the public.

6. <u>Legal Submission by Mr. Casey</u>

Mr. Casey stated that he wished to make a further point regarding the Board's ruling on exclusion of environmental matters in relation to this appeal. He

stated that he fundamentally objected to this ruling, but that he had a further legal argument to make which had not previously been made before the Board in any appeal or pleading.

Mr. Casey's legal submission is contained in Tracks RR, SS and TT. The submission is extremely detailed. I propose to summarise it as follows.

Section 266 of the Planning and Development Act, 2000, is the transitional provision regarding applications made prior to the commencement date of 11th March, 2002. It provides that applications which had been submitted to a Planning Authority prior to that date fall to be decided on foot of the previous 1963 to 1999 Planning Acts. Mr. Casey argued that the 2000 Act provisions that amend the EPA and Waste Management Act (Sections 256 and 257) are stand-alone provisions, not affected by the transitional provision, and simply amend Section 98 of the EPA Act and Section 54 of the Waste Management Act, from the operative date - the date the Act was passed. Hence they did not require commencement orders to be made. It was his submission that from that date, in relation to all new appeals, the Board was required to consider them in the light of the amendments to the EPA and Waste Management Acts. Accordingly, he stated that the Board was required to consider environmental pollution matters, for purposes of deciding to refuse planning permission.

The Inspector stated that he had made a detailed note of what Mr. Casey had stated, and that the full statement by Mr. Casey will be on tape and available to the Board. He stated that he would deal with this submission in due course.

This concluded the day's proceedings.

ORAL HEARING PROCEEDINGS

2nd OCTOBER, 2003.

Continuation of Questions for G. Casey

Mr. Gardner asked Mr. Casey whether it was his evidence that the EIS did not contain any reference to boreholes. Mr. Casey stated that his complaint related to the lack of data to back up the issue of boreholes.

Mr. Gardner stated that paragraph 7.2 of the EIS, which dealt with matters relating to construction, specifically stated that a preliminary soil and hydrological investigation had been carried out, and the results are listed there. He put it to Mr. Casey that the EIS did refer therefore to boreholes and trial pits.

Mr. Casey replied that he would have expected to see it in the geological section of the EIS, and he had not spotted it in the construction section. However, he stated that his primary objection remained, which was that the *data* was not there in the EIS. He said that there appeared to be a different approach on the part of Indaver to the planning application and to the EPA. The KT Cullen report was only submitted with the EPA's waste licence application, and was not included in the EIS on the planning application.

Mr. P. Sweetman (Group 22) asked Mr. Casey, when he had referred to the Hammond Lane facility, whether he was aware of a similar Hammond Lane site in Dublin Docks.

Mr. Casey stated that he was aware of such a development. He knew the Hammond Lane development that had had a catastrophic fire and blow-out some years ago, which had been covered in the media. His reference to the Hammond Lane site adjoining the subject site, was about the "slag heap" of chopped plastic and other similar type materials left over from the metal chopping shop. He stated that from his inspections of the site, this slag heap is now a small mountain, and he had observed flare-offs coming from this.

Submission by Sarah Iremonger (Group No. 9)

Ms. Iremonger spoke to a text that had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 9 - 10). This text included, as appendices, quotes from Mirza Khan, and Lewis Topographical Dictionary, relating to Cobh.

At the end of reading the text, Ms. Iremonger stated that the physical nature of the harbour was a huge bowl, a kind of amphitheatre. When Irish Steel had been in operation, she could not open her windows due to the noise and the dust. She stated that this bowl effect amplified sound, and anything that makes noise can be clearly heard across the harbour.

She stated that in 2005, Cork would be European Capital of Culture She asked what kind of message would we be sending to Europe if the development were to be built in Cork.

Submission by Tom Mulligan (Group 9)

Mary O'Leary read Tom Mulligan's evidence (see Appendix 2 - Group 9 - 11), copies of which had been circulated to the parties in attendance at the hearing.

The Inspector stated that he would allow comment on this paper in the summings up, if so wished by the parties, as Mr. Mulligan was indisposed and hence was unable to answer any questions.

Submission by Dominick Donnelly (West Cork Green Party - Group 13)

Mr. Donnelly spoke to a text, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 13 - 1).

Mr. P. Gardner (Indaver) referred Mr. Donnelly to the last sentence of paragraph 3 of this submission, and invited the witness to withdraw the statement. Mr. Donnelly stated that he would not withdraw the statement, as he had used the word "unless". He stated that Ireland had a history of people who should act in the public interest meddling in the planning area. He was not stating that this was the case in this particular instance, since he had used the term "unless". He stated that what he had said was a widely held public suspicion.

Mr. Gardner asked Mr. Donnelly whether this was official West Cork Green Party policy. Mr. Donnelly stated that this was not in any way party policy.

Mr. Gardner asked Mr. Donnelly whether he was familiar with the Waste Management Act, 1996, and the National Hazardous Waste Management Plan. Mr. Donnelly replied that he had read excerpts from those documents.

Mr. Gardner asked Mr. Donnelly who had published the National Hazardous Waste Management Plan. Was it not the agency established under the Waste Management Act of 1996 - an independent State agency called the EPA. Mr. Donnelly responded that that was basically the Government. He stated that he was not sure how appointments to the EPA are made, but it is essentially appointed by Government. While it is set up to be independent, he stated that he had to call into question its complete independence.

Mr. Greg Casey (Group 14) asked Mr. Donnelly whether he had considered the National Hazardous Waste Management Plan. Mr. Donnelly replied that he had read parts of it.

Mr. Casey stated that this plan made reference to policy such as EU policy and so on. He asked him whether, in reading the document, Mr. Donnelly had recalled any reference to the Stockholm Convention, which was signed in 2001. Mr. Donnelly stated that he wasn't sure.

Mr. Casey put it to Mr. Donnelly that there was no reference to the Stockholm Convention in the National Hazardous Waste Management Plan. He asked Mr. Donnelly if he thought that this was a major gap in the document.

Mr. Donnelly replied that if there was no such reference to the Stockholm Convention, he considered it to be a major omission in the plan, considering that Ireland was a signatory to the Convention. He stated that on that basis, the National Hazardous Waste Management Plan has failed to include provision for how Ireland will deal with its commitments under the Stockholm Convention.

Submission by Mrs. K. Sinnott (Hope Project - Group 15)

Mrs. Sinnott spoke to a text, copies of which had been circulated to the parties present at the hearing (see Appendix 2 - Group 15 - 1).

[There were a number of detailed questions to Mrs. Sinnott, concerning matters relating to environmental health. These are contained on Track J.]

SUBMISSIONS BY PLANNING AUTHORITY (Cork County Council)

Submission by Denis Deasy (Senior Executive Architect)

Mr. Deasy spoke to a text, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - PA - 1).

At this point, Mr. P. Sreenan, for the Planning Authority, stated that the applicant's written submission to the Board on the appeal had commented on financial contributions, which the Planning Authority had suggested be imposed in the County Planning Officer's Report. He asked the Inspector whether it was necessary for him to make a submission formally to rebut this point.

The Inspector responded that that was a matter for Mr. Sreenan to decide. He explained that the planning application will be considered by the Board de novo, and that it was normal in appeals of this nature for submissions to be invited on potential conditions that might be imposed, in the event that the Board should decide to grant permission.

There was an adjournment allowed to facilitate Mr. Sreenan in taking instructions from his clients on this issue. On the resumption, Mr. Sreenan stated that the Council, through Mr. Kelleher, would be making a submission on the issue of financial contributions.

Submission by B. Kelleher (County Planning Officer)

Mr. Kelleher spoke to a number of texts, the first text was his brief of evidence, and copies of this were circulated to all of the parties in attendance at the hearing (Appendix 2 - PA - 2A).

The second submission by Mr. Kelleher, copies of which were also circulated to the parties in attendance at the hearing, related to financial contributions. Mr. Kelleher read the full text of this (see Appendix 2 - PA - 2B).

Mr. Kelleher stated that the Inspector had asked him, the previous day, about the issue of Seveso II Directive and consultation distances. As requested by the Inspector, he had prepared a map showing the various Seveso sites within the Cork Harbour area, and the consultation distances specified by the HSA for these. This information was prepared using, as a base map, the relevant zoning map from the County Development Plan. (This was circulated to the parties and is in Appendix 2 - PA - 2C).

Mr. Kelleher stated that there are various requirements under the Seveso II Directives, and one of those requires Planning Authorities to seek advice from the central competent authority (the HSA) on developments listed within distances from Seveso designated establishments. For this purpose, the HSA had provided the Planning Authority, over time, with a serious of consultation distances. These are distances within which the HSA would wish to be consulted about developments, which involve either planning permission or developments of certain types and scale undertaken by a local or public authority.

Mr. Kelleher stated that the consultation distances do not, of themselves, establish that there is or is not a risk within all of the areas so described to persons in those areas, as they are simply there for consultation.

Mr. Kelleher stated that the other point he wished to make was that some of these distances were measured from the centre of sites and some were measured from site boundaries. In all cases the consultation distances are based on the advice that the Planning Authority had obtained from the HSA.

Mr. Kelleher stated that the red circles on the map are the consultation distances. That from Pfizer Loughbeg, a lower tier Seveso site, overlaps the subject site. The broken green line shows the consultation distance that had been supplied by the HSA in respect of the specific advice it had given to the Council in relation to the planning application. This shows that it overlaps with the site of the National Maritime College.

The Inspector asked Mr. Kelleher to clarify the map that he had submitted. He noted that the consultation distance for Pfizer Loughbeg appeared to come from the centre of that site, but that the one for Glaxo Smith Cline appeared to come from the edge of that site. Mr. Kelleher replied that was so.

The Inspector asked Mr. Kelleher if one were to take it as reasonable that the boundary of an industrial development is the more appropriate one for a consultation distance rather than the centre of that development, since presumably there would be buildings up towards that boundary, then the Pfizer Loughbeg consultation distance would in fact overlap the proposed subject site in its entirety. He asked was that a fair assumption. Mr. Kelleher confirmed that was the case.

Submission by Declan Daly

Mr. Declan Daly spoke to a text, copies of which had been circulated to all the parties in attendance at the hearing (see Appendix 2 - PA - 3).

The Inspector asked Mr. Daly about the statement he had made in the submission concerning the Joint Waste Management Strategy of 1995. He asked whether this was the one adopted on a joint basis between Cork County Council and Cork City Council. Mr. Daly stated that it was.

The Inspector asked Mr. Daly whether there was a more up-to-date joint waste management strategy. Mr. Daly replied that there was not, as yet. The relevant Waste Plan for Cork County Council, is the 1999 County Waste Plan, which was adopted following on from the 1995 Joint Strategy. This plan is still in force.

The Inspector asked Mr. Daly whether there had been any variation to the 1999 County Cork Waste Management Plan in order to incorporate the provisions of the National Hazardous Waste Management Plan. Mr. Daly stated that there had not been.

The Inspector asked Mr. Daly, in the light of his official capacity as a member of the County Management Team, whether such an amendment would be carried out by the County Manager as an executive function under the Waste Management (Amendment) Act, 2001, or by the elected members. Mr. Daly replied that in the first instance the elected members would be given a period of three months to consider any variation, and thereafter it would become an executive function.

Submission by Dan Ryan (Roads)

Mr. Ryan spoke to a text, copies of which had been circulated to all the parties in attendance at the hearing (see Appendix 2 - PA - 4).

The Inspector asked Mr. Ryan about the proposed National Roads Authority N28 realignment. He stated that he had been provided with a copy of a Route Corridor Options document by a third party. He noted that the consultation mentioned in that document had taken place in May 2003, and asked Mr. Ryan at what stage the NRA were now at in relation to this road scheme.

Mr. Ryan replied that the National Roads Authority was now considering the submissions that had been made following this consultation. After that, the NRA will be proceeding with the design, with a view to a Section 8 and CPO process.

The Inspector asked Mr. Ryan, since the document related to route selection, would it not be the case that a preferred route has yet to be identified, and an EIS prepared for that. Mr. Ryan stated that that would be the normal procedure, but that had not happened yet.

The Inspector asked Mr. Ryan regarding the matter of financial contributions. He had noted the comments made by Mr. Kelleher, who had felt that this N28 road scheme will be carried out in the next five years. He asked Mr. Ryan whether there was funding obtained for the scheme, and whether in his view it was likely that the scheme will be constructed and completed within a five-year period.

Mr. Ryan responded that no funding had been allocated for the scheme, although the design procedure had been approved. He stated that this gave some level of commitment. He stated that in his view it would be possible that the scheme could be in operation by 2007, but this depended on the allocations to be given next year.

The Inspector asked Mr. Ryan whether the N28 realignment work would be carried out by the local authority, from its own funds, or by the NRA from national funds. Mr. Ryan responded that the National Roads Authority would be responsible for the design and construction supervision, and that the funding would be coming from central funds.

Submission by Pat Geoghan (Hope Project - Group 15)

Mrs. Nuala Geoghan spoke to a text, that had been prepared by her husband, copies of which had been circulated to the parties in attendance at the hearing (see Appendix 2 - Group 15 - 2).

This submission spoke of the health problems experienced by the Geoghan family in Askeaton, County Limerick, and the responses of the regulatory and consent authorities in the area, including the Mid-Western Health Board, Department of Agriculture, Teagasc, the EPA, and Limerick County Council.

Mrs. Geoghan submitted that a proper protocol must be agreed for an independent and thorough assessment of all unlicensed occurrences and harm caused by industry, before An Bord Pleanála considers giving permission for the proposed Indaver incinerator. She stated that no such protocol exists. She said that she had no trust in the independence of the EPA to regulate industry nor to monitor it, nor to protect the health of families like hers.

There were a number of questions from Helen Riordan (Group No. 3) in relation to this submission, and health and pollution impacts of industry generally. This is contained in Track Z beginning at time index 1 minute.

Questions for L. Harrington (Planning Authority)

After the lunch break, Ms. Louise Harrington, Conservation Officer with Cork County Council, was made available for questions.

The Inspector asked Ms. Harrington whether the Martello Tower was a protected structure under the County Development Plan. Ms. Harrington stated that it was.

The Inspector asked Ms. Harrington what was the Planning Authority's policy regarding development within the visual setting of a protected structure. Ms. Harrington replied that it depended on the type of protected structure, and the proximity of the proposed development. The visual setting of a protected structure would be important where one had, for example, a country house with a domain. Generally this would not apply to individual protected structures on their own.

The Inspector asked Ms. Harrington whether she had a view regarding this particular Martello Tower and its visual setting. He asked what would be the area that she would see as being its visual setting such that she would advise the Council that it should be protected from development. Ms. Harrington responded that it would be a limited area or space around the Martello Tower, and she didn't think that there was a "curtilage issue" here.

The Inspector noted that, as the Martello Tower was not an archaeological structure but a more modern structure, would it be a situation that the Planning Authority would have a fallow area or buffer zone around it to protect it. Ms. Harrington responded that generally the Council would normally look for a buffer zone but it would be quite small.

The Inspector asked Ms. Harrington would the buffer zone be related to the presence or potential presence of structures or artefacts nearby which would need to be protected from development, or would the buffer zone relate to the visual setting of the structure, such as a Martello Tower. Ms. Harrington stated that it would be the first of these, so as to prevent any ground disturbance close to the monument.

At this point in the hearing, the Inspector stated that he would take questions for any of the third party witnesses that had not yet been subjected to questioning. He notes that there were three – Ms. Mary O'Leary, Ms. Marcia D'Alton and Mr. Sean Cronin.

Questions for Mary O'Leary (Group 1)

There were no questions from any party to Mary O'Leary.

At this point Mr. Sreenan, for the Planning Authority, distributed copies of the Council's **Major Emergency Accident Plan**. He stated that this had been requested by the parties, and he had undertaken to provide it, and he was now providing copies for all of the parties in attendance at the hearing. *(Note: a copy of this Plan is*

included in Appendix 3 at the end of this report, with other published documents that were provided at the oral hearing)

The Inspector thanked Mr. Sreenan for this, and stated that he would probably require an expert witness the following week to respond to any questions that the parties may have, following reading of the document.

Questions for Marcia D'Alton (Group 3)

Mr. Sreenan (Planning Authority) asked Ms. D'Alton had she heard Councillor Peter Kelly's evidence. Ms. D'Alton stated that she had.

Mr. Sreenan stated that Ms. D'Alton may recall that he had asked Councillor Kelly a question regarding zoning objective ZON3-13. He noted that page 24 of her submission also deals with that matter, and that she had underlined paragraph (b) for emphasis. He asked Ms. D'Alton whether she agreed with Councillor Kelly's view that it was the Councillor's firm intention, in drafting this objective, to exclude contract incineration entirely.

Ms. D'Alton stated that she accepted that was the case. However, as outlined in her submission, she felt that the Council members, if they had intended to exclude it, could have worded the text better.

Mr. Sreenan read out the text of zoning objective 3-13(b). He asked Ms. D'Alton whether the expression 'waste management facilities' (which were defined in the area) were intended to specifically exclude contract incineration. Ms. D'Alton stated that that was her view.

The Inspector asked Ms. D'Alton whether, on the basis of her evidence, when she was talking about industry, did she consider that the Development Plan objective applied to both the dark blue and the light blue shaded areas on the zoning map. Ms. D'Alton stated that in her view the same applied to both.

Mr. Greg Casey (Group 14) asked Ms. D'Alton whether she considered that what was proposed by Indaver in this case constituted contract incineration. Ms. D'Alton replied that this was her opinion.

As Mr. Cronin was not present, the Inspector stated that he would take questions for him later in the hearing. He stated that Mr. Deasy, of the Planning Authority, would not be available on future days, and so would be cross-examined next.

Questions for Denis Deasy (Planning Authority)

Mr. J. Noonan (Group 1) asked Mr. Deasy, from his knowledge, whether there was any other building of this form and scale in the lower harbour area at present. Mr. Deasy stated that there wasn't.

Mr. Noonan stated that Mr. Deasy had heard the contributions during the Oral Hearing regarding the issue of CASP, which clearly indicated that CASP was very concerned about the harbour area. Mr. Deasy stated that he had heard these.

Mr. Noonan stated that the applicants had submitted that there are a number of industrial plants around the harbour. When Novartis was proposed some years ago, it was stated at that time that there would not be an adverse visual impact from the building. His clients did not feel that this, and other industries, should be used as a justification for another new industrial building. He asked Mr. Deasy whether he agreed with this view. Mr. Deasy responded that was their interpretation.

Mr. Noonan asked Mr. Deasy about the issue of landscaping. Was it Mr. Deasy's view that the visual impact of the proposed development was dependent on the success of the landscaping. Mr. Deasy stated that it was not. He stated that the landscaping would aid the minimisation of the visual impact of the development, but it would have a very small effect because of the scale of this particular building and its peculiar location, in the short to medium term. He stated that landscaping would take 15 years to become effective. The visual impact that was most critical from this development was from a distance, and the landscaping would not be of great importance from a distance. Mr. Noonan asked was this because of the scale and form of the building. Mr. Deasy replied that it was.

Mr. Noonan noted that the building has been designed for two incinerators, but that the planning application was only for Phase 1, which was one of these incinerators. He asked Mr. Deasy whether he agreed that a smaller building size would have a smaller visual impact. Mr. Deasy stated that he would agree with this point.

Mr. Noonan stated that Mr. Hasting's presentation, on visual impact, had indicated that there was an additional factor on the degree to which a development is visually obtrusive, and that this factor was the degree to which a development was seen as culturally or socially acceptable. He asked Mr. Deasy whether he agreed with this view. Mr. Deasy stated that he did.

Mr. Noonan asked that if it was the case that the observer sees a development as not acceptable, would the impact of the development not be disproportionate. Mr. Deasy accepted that that was true.

Mr. Noonan stated to Mr. Deasy that he had indicated that some form of industrial development would take place on the site because of its industrial zoning. He asked Mr. Deasy if the type of development that were to be built on the site were socially or culturally acceptable, would it not be less visually objectionable.

Mr. Deasy stated that it would not be so from his point of view. It might be perceived to be less offensive as a biscuit factory for members of the public, but it would still be a building of visual significance to him as an architect.

Mr. G. Casey asked Mr. Deasy questions regarding the scale of the building as opposed to its colour. He asked Mr. Deasy why he considered that the building, albeit unsightly, would be an appropriate development on this site, having regard to its difference in size and scale as compared to that adopted by the County Council in relation to the Maritime College. Mr. Deasy responded that his assessment had been based on the building that had been submitted to him for assessment. He stated that the proposed building, in its form, was at the limit of its scale and mass. If it were any larger, it would be unacceptable, since it would not be possible to use the technique that had been used by the applicants in mirroring the topography of the site (the hillside, etc.). However, Mr. Deasy stated that this site was part of a site that was zoned for large scale stand-alone industry, and if buildings were to be placed anywhere else on the lands, they would be even more visually prominent. He stated that the present site was probably the least prominent location for a large building in the vicinity, in that it is cut into the contours of the hill.

Mr. Casey asked Mr. Deasy whether he was aware of the Martello Tower and the rights of way and pathways connecting it to the village and to the shore. Mr. Deasy stated that he was aware of the Martello Tower, and he had seen the lines on the map.

Mr. Casey asked Mr. Deasy had he given any consideration to the proposed development in the context of the visual setting of the Martello Tower, and its associated structures, including paths. Mr. Deasy stated that he had not.

Mrs. K. Sinnott (Group 15) noted that it was difficult to camouflage a building such as this, minimising things that don't fit in. She stated that when people come to Ireland, such as tourists, might it not be more honest not to seek to camouflage the building. Mr. Deasy replied that he had lived and worked in the harbour area for many years. He stated that he himself would prefer to see a building that wouldn't offend him visually. There were dozens of offensive industrial buildings around the harbour.

Mr. P. Sweetman (Group 22) asked Mr. Deasy how many of these "unattractive plants" had been built since 1987, buildings that Mr. Deasy thought were unattractive in the harbour area. Mr. Deasy replied perhaps one to four.

Mr. Sweetman asked Mr. Deasy would somebody not have said, when these plants were being put forward, that they would have had no significant effect on the environment. Mr. Deasy stated that he did not know. Mr. Sweetman stated that if these buildings were ugly and yet they got built, would not Cork County Council have refused them if they had felt if they were ugly, yet somebody had granted them.

Mr. Deasy stated that whether something is ugly or not was a matter of subjective opinion. He as an architect considered that they were ugly. A chemical engineer might think that they were lovely.

[There were a number of further questions for Mr. Deasy from Mr. Sweetman. All of these were inconclusive.]

The Inspector stated that he had a number of questions for Mr. Deasy. In relation to the EIS, the Inspector asked Mr. Deasy whether it was his view that the submitted photomontages give a fair and reasonable view of the development. Mr. Deasy stated that he did so feel.

The Inspector asked Mr. Deasy, in his view, whether the applicants had provided enough photomontages, and had they covered all of the areas where there would be a significant impact from the development. Mr. Deasy responded that they had, but that he felt there were a few that should have been included that were not. These would have been the view from higher up on the Crosshaven side, and also the view close up to the front of the building, directly from the road.

The Inspector stated that it had been suggested to him by third parties that a very important view of the development was from the sea, since the harbour was used for leisure purposes. Yet he noted that most of the photomontages supplied by the applicants were from the land. He asked Mr. Deasy whether he agreed with this point. Mr. Deasy stated that he did, but that there were some views from the sea, and that these were generally sufficient to give an impression - Views 44, 45 and 43.

The Inspector asked Mr. Deasy, on the basis of his extensive experience of the harbour, whether it was fair to say that the proposed site was a maritime one which was quite exposed. He asked Mr. Deasy whether he considered that trees could successfully grow to the 5-10 metre heights that were shown on the photomontages, on this exposed site. Mr. Deasy stated that this was not part of his expertise, he did note that the end of the peninsula at Ringaskiddy has much lower vegetation than other parts, and in any event he didn't think that the strategy of planting large trees here would be either natural or successful. A better approach would be to lower the building further onto the site.

The Inspector asked Mr. Deasy whether he though that the trees shown on the site in the photomontages will grow to the heights indicated, with the native trees that were proposed within the period proposed. Mr. Deasy stated that he didn't know.

The Inspector asked Mr. Deasy about the proposed colour scheme. He noted that Mr. Deasy had talked in his submission about two alternative approaches, the first being the use of a single colour close to the surrounding colours, and the second being a mix of colours. In the case of the first approach, he asked Mr. Deasy whether the colour to be used as a guide would be the hill, which was the background to the building. Mr. Deasy stated that that might be the case, but it should be remembered that the site was not in a rural setting. Because of the particular location of the site, a number of views would see the building against water, and against the lower end of the hill, which was lighter in tone than the upper end.

The Inspector referred Mr. Deasy to the model which was on display at the hearing. He asked Mr. Deasy whether he saw any tones of blue on the building in this model. Mr. Deasy stated that he didn't.

The Inspector noted that, on the basis of the drawings, what was proposed for the roof involved a speckle of three colours, grey, green and blue. In addition, large sections to the side of the building would be entirely in blue. He asked Mr. Deasy whether there was any blue to be seen on the model. Mr. Deasy stated that there was not, and that the model was only accurate on the massing of the building, and was not accurate in relation to colour. The Inspector referred Mr. Deasy to paragraph 5.8.1 of the EIS, which talks about the mix of greens and greys, but noted that the submitted drawings show greens, greys and blues. He asked Mr. Deasy whether he felt that the EIS was accurate.

Mr. Deasy responded that the drawings submitted with the application showed all three colours. He stated that he did not consider even the drawings to be conclusive, as he had indicated in his report that he would want a planning condition put on regarding the erection of test panels to have a look at the development in practice.

The Inspector noted that the EIS talked of the use of disruptive patterns of colours, that had been used recently in Ireland. He asked Mr. Deasy whether he had ever seen a large industrial building such as was proposed, with this type of technique being used, in the Harbour area. Mr. Deasy replied that there were no such buildings in the Harbour area, and nationally he could only think of one example, in Ballydine in Tipperary (Merck Sharpe and Dohme).

The Inspector asked Mr. Deasy whether he was aware of the research mentioned in the EIS and the conclusion stated there that it was proven that the use of disruptive patterns was the most successful. Mr. Deasy stated that he was aware of the research but was not aware of any proof.

The Inspector asked Mr. Deasy to look at the view showing the stack (View 4). He noted that the applicants proposed silver for the stack. He asked Mr. Deasy, in the light of his evidence, whether he thought that this was right. Mr. Deasy stated that he would not consider this correct and that it should be painted dark green or dark grey.

The Inspector asked Mr. Deasy what height the building would be if it only included Phase 1 and not Phase 2. Mr. Deasy said that he couldn't be quite sure but he reckoned that it would be approximately 10 metres lower and this would reduce the height and bulk of the building.

Mr. J. Noonan stated that he had a further question for Mr. Deasy, arising out of the Inspector's questions. He asked Mr. Deasy whether in his view the roof shown on the model was an accurate representation of the building by reference to the submitted drawings. Mr. Noonan replied that in his view it was.

Mr. Noonan asked Mr. Deasy whether he was familiar with the design of the roof and had looked at it, what was it constructed of. Mr. Deasy responded that it was to be finished with a translucent sheeting. Mr. Noonan asked Mr. Deasy whether this was a solid structure, or were there openings and vents. Mr. Deasy stated that the drawings

indicated a number of openings and vents, but the model did not show these. He accepted that it was a block model only.

Mr. P. Gardner (Indaver) asked Mr. Deasy what was the view from the Martello Tower, what was the first thing that would strike one as one looked out in that direction over the harbour, on the view that had already been discussed with Mr. Sweetman. Mr. Deasy stated that the first thing one would see would be pylons.

Mr. Gardner asked Mr. Deasy whether he considered the pylons to be visually attractive. Mr. Deasy replied - not particularly.

Mr. Gardner asked Mr. Deasy whether these pylons enhanced the visual amenity of the tower. Mr. Deasy replied that they did not. Mr. Gardner asked wasn't that the amenity that was currently there on the site. Mr. Deasy stated that he accepted that that was the case.

Mr. Gardner put a number of the photomontages to Mr. Deasy, and asked Mr. Deasy whether he considered that the omission of the trees would be particularly a problem. He asked whether anyone would be misled by the photomontages that had been submitted. Mr. Deasy stated that he didn't think so.

Mr. Gardner asked Mr. Deasy whether it was the case that the entirety of the peninsula, including the site, was zoned for industrial purposes. He asked was it not the case that an industrial building could be located on the remaining part of those zoned lands, including up higher on the hill than the proposed development. Mr. Deasy stated that that was possible.

Following an intervention by the Inspector in relation to a remark made by Mr. Gardner about questions that he had asked, there were some further questions for Mr. Deasy.

Mr. Sweetman put it to Mr. Deasy that he had said that the entirety of the Ringaskiddy Peninsula was zoned industrial. Was it not the case that a zoning was not a grant of planning permission, but that any application must also conform to the proper planning and development of the area, and take into consideration all things like protected structures. Mr. Deasy replied that this was so and that he accepted the point.

Ms. Marcia D'Alton (Group 3) put it to Mr. Deasy that they were all agreed, were they not, that maintaining views within the harbour because of its setting was important. This was also the case because the Council had identified scenic routes, the views from which would be impacted by the proposed development. She asked Mr. Deasy whether he could tell her, as one familiar with the area, what a visitor might see coming in on the ferry, and what other buildings break the skyline on the promontory, and that she stated that she meant buildings not pylons.

Mr. Deasy stated that the only building breaking the skyline for visitors coming in on a ferry on this promontory was the Martello Tower.

Ms. D'Alton asked Mr. Deasy, if one looked at the area from Cobh, was there any other building that breaks the skyline on the promontory. Mr. Deasy stated that it was only the Martello Tower that did this.

Ms. D'Alton asked Mr. Deasy was it normal planning practice, if one was trying to preserve a scenic view, to permit the existing skyline to be disrupted. Mr. Deasy responded that it would be an objective not to develop on a skyline any development which would significantly alter that skyline.

Ms. D'Alton referred Mr. Deasy to photomontages Nos. 5, 6, 9, 10, 14, 15, 16, 17, 18, 19, 20, 23, 39, 30 and 44. She asked could Mr. Deasy comment on the only building that was shown in all of these photomontages as breaking the skyline, other than the Martello Tower. Mr. Deasy stated that the only building breaking the skyline was the proposed development. However, he stated the operative word was how significantly it would break the skyline, and how significantly it would alter the landscape. He stated that the building had been configured in such a way as to reflect the hillside. He stated that he did accept that in those views the building would exceed the hillside in places, but in its overall context he did not consider this to be significant.

Ms. D'Alton put it to Mr. Deasy that the term "significant" was of course a subjective view, was it not. Mr. Deasy stated that it was.

Mrs. J. Masson (Group 24) asked Mr. Deasy whether the building proposed by Indaver would not stand out to a certain extent. Would not the 55 metre high stack, with a plume, be a blot on the promontory and would it not rivet the eye. Mr. Deasy replied that he accepted that it would be visible.

Mr. Noonan asked Mr. Deasy to clarify one word of terminology. When he had answered Ms. D'Alton he had used the term that the building "exceeded the hill". He asked Mr. Deasy whether this meant something other than "breaking the skyline". Mr. Deasy replied no that this was the same.

Submission by Colin Morgan and Jamie Fealy (Group 15).

Mr. Morgan and Mr. Fealy made a verbal submission to the hearing. They stated that they were secondary school students in Nagle Community College, and wished to add their voices to those of the adults against the proposed incinerator. They asked that the Board should consider their views, as they were the rising generation, and did not wish to live in an area close to an incinerator.

That ended the day's hearing.

ORAL HEARING PROCEEDINGS

3rd OCTOBER, 2003.

Inspector's Announcement

At the opening of the days proceedings, the Inspector informed the hearing that he had considered the information supplied by the County Planning Officer, Mr. Kelleher, and in particular the map showing the locations of the various Seveso sites in proximity of the proposed development site. As a result of this, the Inspector stated that he had been in contact with the Board, and the Board had now decided to invite representatives of the HSA to attend at the Oral Hearing in order to give him (the Inspector) information on the basis of the HSA's advice to the County Council. This would give an opportunity to other parties to raise questions regarding this advice, as had been requested earlier in the hearing.

The Inspector stated the only date on which the HSA representatives were available was Friday October 10th. Accordingly he proposed to complete all other aspects of the appeal prior to that date, finishing on October 9th, including final submissions. He would not be prepared to accept closing statements subsequent to the 9th October. He states that at the close of the presentation by the HSA, and any cross-examination of their witnesses, the parties would be given an opportunity to make supplementary comments purely on the issues that had been raised on that date.

CROSS-EXAMINATION OF APPLICANTS' WITNESSES

Cross-Examination of John Ahern

The hearing then proceeded to provide for cross-examination of the applicant's witnesses. The first witness for cross-examination was John Ahern.

Mr. J. Noonan (Group 1) asked Mr. Ahern to outline his qualifications and experience. Mr. Ahern stated that he had a degree in chemical engineering, and had wide experience over the preceding eight years in the hazardous waste industry both for his own company (MinChem) and subsequently for Indaver. He stated that the staff of the company, which had planning permission in Dublin for the treatment and export of hazardous waste, including chemical engineers and environmental science graduates.

Mr. Noonan asked Mr. Ahern whether he considered himself to be an expert in this field. Mr. Ahern replied that the company had been successful in this field under his direction but that he wouldn't wish to be characterised as an expert. He did accept that he had a "very hands on role" in relation to the application.

Mr. Noonan asked Mr. Ahern whether he had ensured, as the manager of the company, that the preparation of the application for planning permission had been done properly. Mr. Ahern replied that that was the case because this was his job. Mr. Noonan asked whether Mr. Ahern was satisfied that all of the information that had been sent into the Planning Authority was full and adequate. Mr. Ahern stated that he was satisfied.

Mr. Noonan asked Mr. Ahern whether, having heard the testimony of the witnesses at the Oral Hearing, he felt that he had learned anything new. Mr. Ahern replied that they had made considerable efforts regarding public meetings over a period of two years, where a lot of issues had been debated with some length. He stated that most of what he had heard discussed at the Oral Hearing had been discussed previously at these meetings.

Mr. Noonan asked Mr. Ahern whether there was anything now in the material before the Board that he would wish to amend or correct or change. Mr. Ahern stated that this the only item was the point regarding the Northern Ireland importation of waste which the applicants had already withdrawn at the Oral Hearing. He stated that if something else came up they could withdraw or correct it. Mr. Noonan asked therefore that, besides withdrawing their appeal on the Northern Ireland importation was there anything else that he wished to correct. Mr. Ahern replied that after the Oral Hearing the applicants might meet and see if there was anything more that needed to be changed and he was sure that he would do that.

Mr. Noonan asked Mr. Ahern whether therefore he was happy to stand over for the purpose of the appeal the material that was put before the Board. Mr. Ahern replied that he was.

Mr. Noonan stated that at Point 20 of the planning application form, the applicants had stated in answer to the question "energy supply give details" that 10 megawatts would be generated, of which 8 megawatts would be exported to the National Grid, which would be the said subject of a separate application. He asked Mr. Ahern what separate application this was. Mr. Ahern stated that the company intended to export electricity to the grid and knew that he may need to give consent from the Commission for Electricity Generation. He stated that planning permission might be needed also depending on the size of the line. He stated he wasn't any expert in this area but whatever permissions were required he would seek them.

Mr. Noonan asked Mr. Ahern whether he was familiar with the EPA Guidelines for this type of project. Mr. Ahern responded that he would be familiar with a lot of these guidelines. Mr. Noonan asked whether it was Mr. Ahern's view that the application conformed to those guidelines. Mr. Ahern stated that he believed so, as they had hired the best consultants they could find to put the application together.

Mr. Noonan stated that in the EIS, it was asserted that the applicant complies with the guidelines. On site selection, it states that the company has complied with the WHO Site Selection Guidelines and the Basel Convention Technical Guidance Notes. He asked Mr. Ahern whether he was involved in the site selection process. Mr. Ahern stated that he was in charge of this but that Ms. Burke did the main work. She could give evidence on this in detail.

Mr. Noonan stated, that, in accordance with the Guidelines, when the decision was made to find a place for projects such as this, the Guidelines would click. He asked Mr. Ahern whether this was his understanding. Mr. Ahern stated that that was his understanding. Mr. Noonan stated whether Mr. Ahern then accepted that these guidelines did click in and were operated by his company at that point in relation to

this project. Mr. Ahern replied there had been a number of aspects such as capacity etc, but as soon as they were applicable they would have been applied.

Mr. Noonan asked whether that was a yes or no answer. He asked whether the company brought the guidelines to bear at the point that they decided it was a good idea to find a place to build the proposed development. Mr. Ahern replied that as soon as the company became aware of the guidelines they began to apply them. He could not state at what date that was.

Mr. Noonan asked Mr. Ahern when he started the site selection process. Mr. Ahern stated that he did not know as he was bad with the dates. The Inspector intervened to state that December 1999 was mentioned in Laura Burke's evidence.

Mr. Noonan asked Mr. Ahern when did the company approach ISPAT. He stated that it was approximately sometime that year, perhaps early 2000. Mr. Noonan asked him when he purchased the site from ISPAT. Mr. Ahern replied that it was purchased in December 2000.

Mr. Noonan stated that in the EIS, it said that ISPAT were first approached in early 2000 but at the time ISPAT were not willing to sell. In May/June 2000 ISPAT decided to put the property up for sale and Indaver made a deal which was completed in 2000. Mr. Ahern stated that certainly the completion of the deal in December 2000 was correct.

Mr. Noonan asked, therefore, could one assume that the WHO Guidelines were discovered between December 1999 and early to mid 2000. Mr. Ahern stated that this matter would have to be answered by Ms. Burke who had discovered the document.

Mr. Noonan reminded the witness that he had stated that the WHO Guidelines contain exclusionary factors in site selection. He referred the witness to page 34 of the WHO Guidelines and Point 1 of those exclusionary factors, which related to sites with unstable or weak soils, or clays with a shrink-swell character, and soils subject to subsidence and hydraulic influence.. He asked Mr. Ahern whether he considered this factor to be of any relevance to the application. Mr. Ahern stated that this was a geological issue and that he didn't know. The company employed experts in this area. He stated that one doesn't learn about geology in a chemical engineering course.

Mr. Noonan asked if there was any other exclusionary factor, out of the 14 exclusionary factors listed by the WHO, that applied to the site. Mr. Noonan replied that the Guidelines state that there is no site that is perfect, and he was sure that there were parts of these guidelines where the proposed site didn't score the highest. Mr. Noonan asked whether the applicants kept a score. Mr. Ahern replied that in the EIS the site selection showed a table of how the methodology was used.

Mr. Noonan asked Mr. Ahern, looking at the list of exclusionary factors in the WHO Guidelines, whether there were any that he believed did not apply to the site. Mr. Ahern replied that he would have to read them all. Mr. Noonan stated that he would put the points to him. He stated that the second point list deals with subsidence owing to solution-prone subsurfaces and asked Mr. Ahern whether he thought that this had

any bearing on the suitability of the site. Mr. Ahern responded that this was a question of geology, which was outside his competence.

Mr. Noonan asked Mr. Ahern whether he knew anything out the Basil Convention Technical Guidelines on Incineration on Lands. Mr. Ahern stated he was aware of them but wouldn't be very familiar with them.

Mr. Noonan stated that he mentioned these because they are mentioned in the EIS which Mr. Ahern had already stated that he authorised and stood over. Mr. Noonan quoted from Guideline paragraph 62, which states "*the EIS should be made prior to final decisions on the siting of the plant. Land use factors should also be addressed, population density, proximity to the facility. The social acceptability of the facility is a key to the site selection process, together with the environmental suitability, the technological and financial suitability, and land use compatibility. Public acceptance represents a basic element in the site selection process. Public participation should be encouraged in the overall process, in particular at the early stages of the proposed facility. Public participation should be actively solicited during the entire process, beginning with need assessment*".
Mr. Noonan asked Mr. Ahern whether he knew where, in the EIS, one could see any evidence of any assessment of the level of public acceptance of this in relation to the various sites the EIS stated where considered.

Mr. Ahern responded that the company had engaged in a very detailed communications programme at a local level, involving leaflets being distributed, newspaper advertisements in the local papers advising the public of the project, organisation of information days, and provision of the EIS to those who sought it.

Mr. Noonan repeated his question - where, if at all, in the EIS was there any indication that public acceptance as a factor was considered in the case of the various sites that the EIS stated were considered. Mr. Ahern replied that he didn't know if it was addressed. Mr. Noonan asked whether the applicants had done a leaflet campaign in Charleville or Mallow or anywhere else except in the Cork Harbour area. Mr. Ahern responded that he had debated the project on Cork local and national radio and on TV stations and he was sure that the people of Mallow or Charleville knew about the project. He accepted that there were no leaflet drops in Charleville or Mallow only in the harbour area.

Mr. Noonan referred the witness to paragraph 68 of the Basel Convention Technical Guidelines on Incineration of Land which he quoted. He asked Mr. Ahern whether he accepted in principle that these were wise suggestions. Mr. Ahern confirmed that he didn't consider so. Mr. Noonan asked Mr. Ahern whether he agreed that Indaver was "a party with vested interests" that was referred to in the second sentence of the extract that he had quoted.

Mr. Ahern stated that he would not consider that Indaver was referred to here. He stated that, in the context, the vested interests referred to are people trying to sell a particular type of technology, for instance if somebody was to propose that the applicants would use a rotary kiln to deal with Irish waste it would be wrong, as

Ireland does not have the type of waste needed to use such a kiln. He stated that the type of incinerator chosen by Indaver was a simpler type, because Irish hazardous waste is generally simple in content. The vested interest referred to are the people who actually sell incinerators. Mr. Ahern stated that Indaver don't sell the technology but buy incinerators from plant builders who all propose different types of technologies and then they operate them.

Mr. Noonan asked Mr. Ahern whether he considered a rotary kiln incinerator would not be a suitable technology for solid hazardous waste disposal. Mr. Ahern replied that he would not consider that this was necessary in this country. Where the guidelines refer to parties with little experience, one of the advantages Indaver has is that they have been exporting Irish hazardous waste for incineration for 28 years so they were aware of the type of waste and the type of technology as needed to deal with it.

Mr. Noonan asked Mr. Ahern whether he considered that the fluidised bed incinerator was better than a rotary kiln incinerator for disposing of solid hazardous waste. Mr. Ahern replied that it depended entirely on the type of waste to be treated. Mr. Noonan asked what types of waste would Indaver be handling.

Mr. Ahern responded that there were a number of different types of waste that Indaver intended to handle. In terms of solid hazardous waste, industrial hazardous sludge was ideal for this type of incineration. Off-specification pharmaceutical waste, such as tablets and the like, are ideal. Clothing used in the pharmaceutical industry as protection is ideal for a fluidised bed.

Mr. Noonan asked Mr. Ahern wasn't the rotary kiln incinerator seen as "state of the art" for incineration of solid hazardous waste by the Basel Convention. Mr. Ahern replied that rotary kilns were a very good technology for certain types of waste but so were fluidised beds and grate incinerators. They are all state of the art but one must select the right type of technology for the type of waste one is trying to deal with.

Mr. Noonan stated that it was the view of those drafting the Basel Convention Guidelines for the Disposal of Hazardous Waste (Guideline No. 6) that incinerators taking solid hazardous waste would usually be of the rotary kiln type. This represents current perceptions for "state of the art". He stated that he was putting this matter on the record. Indaver were proposing to build a fluidised bed incinerator with the intention of putting in unspecified quantities of solid hazardous waste, among other things. He asked Mr. Ahern wasn't this the case.

Mr. Ahern stated that Indaver had said that there would be some waste streams, which they were familiar with. There would also be some waste streams that would not be suitable and that these would be shipped abroad from Ringaskiddy or from Dublin, perhaps to rotary kilns which the company operates in Antwerp.

Mr. Noonan handed the witness a copy of the EPA Guidelines on Information to be included in an EIS (see Appendix 3). He asked Mr. Ahern whether he was familiar with these Guidelines and which version of the guidelines were complied with. Mr. Ahern responded that he didn't know whether this question should be addressed to

Ms. Burke. He stated that he was happy to answer questions on the most recent Guidelines.

Mr. Noonan asked Mr. Ahern whether Indaver was involved in any way in the compilation of these EPA Guidelines. Mr. Noonan stated that they were not.

Mr. Noonan stated that he wished to refer to page viii, dealing with the legislative context under which the EIA is to proceed ,in the view of the EPA. Footnote 2 on that page refers to two international conventions in the heritage area that have been ratified in Ireland, including the UN Convention on Biological Diversity of 1992. He asked Mr. Ahern whether he had heard Mr. Feargal Duff's evidence on this Convention. Mr. Ahern stated that he had.

Mr. Noonan stated that there are two formats laid out in the guidelines for EIS's to follow. He quoted from paragraph 2.3.7 on page 11, regarding the value of public participation. He asked Mr. Ahern whether he would agree that this emphasis was a reflection of similar advice set out in the Basel Convention Guidelines which he had spoken of earlier. Mr. Ahern replied in the affirmative.

Mr. Ahern then put section of paragraph 3.2.4 (page 19) to the applicant. This stated *"an accurate description of the existing environment is necessary to predict the likely significant impacts of a new development"*. He asked Mr. Ahern whether he was satisfied that this information had been collected and provided in the EIS.

Mr. Ahern replied that one of the reasons the applicants had selected their consultants to put the EIS together was because of those consultants' considerable experience with the preparation of EIS's and construction projects in the Ringaskiddy area. He believed that the information provided in the EIS was an accurate description of the existing environment.

Mr. Noonan asked Mr. Ahern how many pages in the EIS were devoted to the geology of the site. Mr. Ahern stated that there were a few pages, and it was quite small in fact. Mr. Noonan asked Mr. Ahern whether he was satisfied that there was no area of information that are required to be in the EIS by the Guidelines which were not in his EIS. Mr. Ahern stated that having selected the best consultants they could find in Ireland and in Cork he was so satisfied.

Mr. Noonan quoted paragraph 3.2.5 (page 23) of the guidelines "description of the likely significant impacts". He stated that the guidelines outlined that it was a statutory requirement of the EIA that the applicant should present an assessment of the likely impacts of the proposed development. The section then went on to describe the statutory criteria that applied. He asked Mr. Ahern whether he considered that those statutory criteria had been fulfilled in his EIS.

Mr. Noonan then went on to quote from the first four paragraphs of page 23 under the heading of "The Likelihood of Impacts". These note the need to provide systematic risk assessments, which were to be employed on worst-case scenario impact. He asked Mr. Ahern whether Indaver had carried out such a systematic risk assessment.

Mr. Ahern replied that the risk assessment for the HSA was one such. In the EIS, Indaver had to consider it and also had to consider it in the documentations for its EPA licence. Mr. Noonan asked whether the document that Mr. Ahern had sent to the HSA was what Mr. Ahern stated he used to comply with this part of the requirements. Mr. Ahern stated that no, there were a number of areas in the EIS where Indaver had considered impacts and proposed where necessary mitigation measures to prevent them, so it is also in the EIS.

Mr. Noonan asked where in the EIS did the applicants describe the size of the population that could be affected by the worst case scenario accident from this incinerator. Mr. Ahern responded that he would have to look at the EIS as it was some time since he had looked at it.

Mr. Noonan asked Mr. Ahern where in the EIS could one find a description of the magnitude and complexity of the worst case accident that could take place on site. He stated that he was putting it to the witness that this information was not in the EIS and accordingly if it was not in the EIS it was not before the Board, and if it was not before the Board, the Board could not consider that these statutory requirements had been met. Mr. Ahern stated that he could not answer the question without reading the entirety of the EIS again. Mr. Noonan quoted from Figure 7 on page 27 of the EPA Guidelines under the heading of "Sample Impact Evaluation Checklist". He asked Mr. Ahern from his recollection of the EIS, whether there was any such checklist in the EIS. Mr. Ahern responded that he wasn't sure.

Mr. Noonan asked Mr. Ahern whether the company owned the site and whether the company had any evidence of such ownership. Mr. Ahern responded that the company owns the site and they had a cheque that cleared proving that they were the owners.

Mr. Noonan asked Mr. Ahern whether Indaver were the registered owners of the site. Mr. Ahern responded that the company had lodged the registration documents, but he did not know if the registration was complete.

Mr. Noonan stated that in the planning application in November 2001, the company had stated that it had bought the site. In the company's response to the written submissions to the Board, Indaver stated, in July 2003, that it was the "registered owner".

Mr. Ahern responded that the term "registered owner" had a number of meanings. There was obviously the very formal one where the land was registered, and there was another one where the applicant was in the process of having the registration carried out.

Mr. Noonan asked Mr. Ahern whether he considered himself to be a legal expert. Mr. Ahern stated no, but that he had a reasonable command of the English language. Mr. Noonan put it to the witness that he could take it from him, as a practising solicitor, that the term "registered" in the context of the land registry had only one meaning. Mr. Ahern stated that if Mr. Noonan said this was so he was sure it was true.

Mr. Noonan asked Mr. Ahern whether he could explain why, in a land registry search, carried out the previous week, the land registry showed that Irish Steel was still the full owner of the land. Mr. Ahern responded that he presumes this was because the registration was not complete. Mr. Noonan stated that therefore a "little inaccuracy" in the response to the Board of July 2003 by Indaver might explain the position. Mr. Ahern said that yes - a little inaccuracy.

Mr. Noonan stated that the land registry printout shows that there is a "dealing pending" on the site - a transaction is underway. The details of that transaction are not publicly available. From the record number it shows that the dealing was lodged on 22nd January, 2001. He asked Mr. Ahern whether this could possibly be Indaver's purchase deed. Mr. Ahern stated possibly. Mr. Noonan asked whether Mr. Ahern had dealt with the land purchase lawyers himself. Mr. Ahern responded that this was Ms. Burke's responsibility.

Mr. Noonan asked Mr. Ahern how much rock was going to have to be taken out of the site for the construction of the development. Mr. Ahern stated that he had no idea.

Mr. Noonan asked Mr. Ahern whether it was his view that, if the plant was not built at this location, Cork would become a less desirable location for the pharmaceutical industry in the future.

Mr. Ahern responded that in this particular location, no. The IDA had been able to attract very substantial industry into Ireland, without having an incinerator here, and this was obvious. However he felt that he thought that the IDA's job would be easier, if there was a facility here, and that the companies operating here would also feel more secure if they had an access to such facility.

Mr. Noonan asked Mr. Ahern whether he was suggesting or threatening that if this incinerator were not to be built at all in Ireland, that Ireland and the Cork area in particular would never again see a pharmaceutical plant coming in. Mr. Ahern stated that he didn't think he could say that, no.

Mr. Noonan stated that the existing pharmaceutical chemical industries are implicitly praised in the National Hazardous Waste Management Plan, for the way in which they deal with their waste streams, and asked Mr. Ahern wouldn't he agree with this. Mr. Ahern responded that yes, these industries had a very good track record.

Mr. Noonan asked Mr. Ahern whether any of the plants in the Cork Harbour area had put in any written submission or observation in support of the planning application. Mr. Ahern stated that they had not.

Mr. Noonan asked Mr. Ahern whether the proposed incinerator did not entail solvent recovery processes or technology. Mr. Ahern stated that it would not entail these as it was an incinerator.

Mr. Noonan asked wasn't it the case then that the development wasn't "solvent recovery" nor "materials recovery" as Mr. Key had put in his witness statement, but rather "disposal". Mr. Ahern stated that it was disposal with energy recovery.

Mr. Noonan asked Mr. Ahern whether Indaver would refuse to take in waste at its gate for incineration that would otherwise be suitable for solvent or other materials recovery. Mr. Noonan stated in reply that customers have a choice as to what they wish to do with their waste. Indaver would not wish to take on such materials, as it is more expensive and a waste of energy to do so. Something like 40% of the waste that the company currently exports goes for solvent recovery.

Mr. Noonan asked Mr. Ahern accordingly whether he wouldn't commit to a policy of turning away waste that is presented to the company for incineration if it was waste that was suitable for solvent or material recovery. Mr. Ahern responded that they would have to rely on a number of things - material being suitable for recovery is not always possible to recover. One can always technically recover a fuel. One of the difficult areas is to find an outlet for the recovered solvent. If a material can be recovered is one thing, but if it can be recovered and one can find someone who wants it is an entirely different matter. If there was no outlet there would be no point in recovering it.

Mr. Noonan stated then therefore that Indaver was making no commitment to turn away waste which was capable of undergoing material or solvents recovery. Mr. Ahern stated that one would have to appreciate that the customer had a choice. Many of the company's existing customers had a limited choice, since all of them have IPC licences, if they are producing bulk solvents, and would be governed by those licences to ensure that they did not send waste to Indaver that could be recovered.

Mr. Noonan referred to Mr. Ahern's presentation, where he had stated that the proposed plant would ensure that Irish industry had the ready outlet for waste in the event that countries currently accepting this waste impose further restrictions or a ban (page 4 of his submission). He asked what the basis was for suggesting that Irish industries would be subject to a ban on exporting waste for recovery. He asked Mr. Ahern had he heard the evidence of the witnesses and indeed that it was in the National Waste Management Plan that there is no barrier to the exportation of hazardous waste throughout the European Union for recovery, subject to compliance with the normal licensing requirements in TFS notifications and that there is no indication of impending change in that regime. Mr. Ahern responded that no, this was true, there would be no barrier to such export for recovery.

Mr. Noonan asked Mr. Ahern what were the grounds on which countries could refuse to accept hazardous waste for disposal. Mr. Ahern stated that each member state was entitled to have a plan for its hazardous waste, as the EPA Plan is, and each country is entitled to ban the importation of waste for disposal. Mr. Noonan asked Mr. Ahern on what grounds were they entitled to ban the importation of waste for disposal. Mr. Ahern stated that it didn't have to justify their decisions to ban such importation.

Mr. Noonan asked Mr. Ahern whether he would agree with him that one of the grounds under EU Rules and under the Basel Convention is that Ireland could be

prohibited from exporting hazardous waste for disposal is if the proposed development were to be built.

Mr. Ahern responded that it stated in the EPA National Hazardous Waste Management Plan that, in the event of Ireland achieving self sufficiency, Ireland itself could consider banning the importation of waste into this country.

Mr. Noonan stated that he would repeat the question once again. Mr. Ahern responded that countries could make up their own mind.

Mr. Noonan put it to the witness that, if Ireland had the technical facilities to deal with hazardous waste, this then would allow countries to which it exports waste currently to refuse to permit such waste in the future - hence one of the barriers was in fact the existence of incineration facilities in Ireland.

Mr. Ahern responded that Indaver were exporting waste to a number of countries in Europe and were aware of their views in relation to Ireland and how Ireland should proceed. He considered that it would be most unlikely that, if Ireland had a facility here, those countries would then prevent any export of waste from Ireland for disposal. He felt that the countries concerned would welcome Ireland becoming almost self-sufficient in hazardous waste, and would then allow, as they do with other countries, the movement of small quantities of specialised hazardous waste to centres of excellence.

Mr. Noonan asked Mr. Ahern whether he denied that legally EU nation states could do so if this incinerator was operating here. Mr. Ahern replied that these were sovereign governments and could decide to do what they wished. Mr. Noonan asked Mr. Ahern that, even if sovereign, were countries not subject to the Basel Convention in which they pooled their sovereignty and written their rules. One of those rules was that they could impose a ban if the country from which the waste was being imported had its own incinerator, but they could not impose such a ban otherwise. Mr. Ahern responded that, as he had said, nation states did not have to give any grounds.

Mr. Noonan referred Mr. Ahern to his proof of evidence, in which he had stated that the use of incineration in the EU has not impacted on agricultural exports from other countries. He asked Mr. Ahern whether this was a sentence that he would like to stand over. Mr. Ahern stated that he would. Mr. Noonan asked Mr. Ahern whether he was aware of any incident involving incineration which has had an effect on the saleability of any exports of agricultural produce in any region within the EU. Mr. Ahern stated that he was so aware - the most widely known one was Alberville in France, where an incinerator which was operating with limited gas cleaning equipment and exceeding its licensing requirements resulted in the sale of food produce from the area being banned for a period of 11 months. He stated that that restriction had now been lifted. While the ban had been placed on that particular area, products from other French regions were exported.

Mr. Noonan stated that the EIS and the drawings submitted by Indaver relate to a very large building. He reminded Mr. Ahern that Mr. Deasy, the Council's Architect, had acknowledged that there wasn't a building of this form and scale in the lower harbour area. He asked Mr. Ahern what difference it would make to the size of this building were it to contain a single incinerator rather than to have provision for two incinerators. Mr. Ahern responded that this would result in the slicing off of about a third of the front (long) part of the building. Each of the process lines runs parallel down the full length of the building.

Mr. Noonan asked Mr. Ahern what he intended to do with the remaining portion of the building that he would not be filling with his hazardous waste incinerator. Mr. Ahern responded that the company had publicly announced that, if the Cork Local Authorities adopt incineration as part of their plan to deal with municipal waste, then the company would like to propose its plant to deal with that waste.

Mr. Noonan asked Mr. Ahern whether part of the site selection justification for this plant was its location proximate to the pharmaceutical and chemical industry. Mr. Ahern stated that this was so.

Mr. Noonan asked Mr. Ahern what site selection studies, if any, had the company done with regard to the most suitable location for a municipal waste incinerator.

Mr. Ahern responded that one of the things that the company were trying to achieve, which was in line with government policy "changing our ways", was to achieve economies of scale, particularly when one is dealing with municipal waste where the charges go to the public. He stated that the company believed that this could be achieved on this site, in that the people of Cork would benefit from the fact that there was already a hazardous waste facility which could be extended and hence would have a lower incineration charge than for people in other areas, who wouldn't be able to benefit from the fact that they had that "base sunk cost" in the hazardous waste facility.

Mr. Noonan asked Mr. Ahern, in a national context, (since Indaver placed its project in a national context), what was his understanding of the quantity of incinerators which were proposed to be built in Ireland in the medium term. Mr. Ahern stated that his understanding was it was proposed that it would be six to seven incinerators.

Mr. Noonan asked Mr. Ahern whether Indaver was a member of IBEC. Mr. Ahern stated that it was. Mr. Noonan asked Mr. Ahern whether Indaver was active in helping to form IBEC policy. Mr. Ahern stated that IBEC sat on the environmental policy committee of IBEC so it was so active. Mr. Noonan asked Mr. Ahern whether he was aware that IBEC two weeks previously had stated that this number would be too many incinerators for Ireland. Mr. Ahern stated he wasn't aware that that had been said. Mr. Noonan stated that, if IBEC's recommendations were to be followed by government, that Ireland would be looking not at six or seven incinerators, but perhaps just Invader's' incinerators. Mr. Ahern stated that he didn't consider this would be a sensible way to proceed.

Mr. Noonan asked Mr. Ahern whether he had seen the Maritime College which was now under construction and when had he learnt that it was going to be built.

Mr. Ahern responded that he thought that the applicants became aware of the Maritime College at the very early stages of the site selection - sometime after December 1999 and before June 2000.

Mr. Noonan asked Mr. Ahern whether he considered that the National Maritime College posed any problems for his development. Mr. Noonan stated that it did not. Mr. Noonan asked Mr. Ahern whether he considered that the Hammond Lane facility posed him any problems. Mr. Ahern stated – "none at all".

Questions of John Ahern (Indaver) by Marcia D'Alton (Chase Monkstown)

Ms. D'Alton asked Mr. Ahern whether he wrote the evidence himself that he had stated at the Oral Hearing. Mr. Ahern stated that he had. Ms. D'Alton asked Mr. Ahern whether he had read the National Hazardous Waste Plan. Mr. Ahern stated that he had. Ms. D'Alton referred to page 90 of this document and asked Mr. Ahern to read paragraph no. 4 on that page. Under the heading of Thermal Treatment Disposal Facility. Mr. Ahern read out this paragraph.

Ms. D'Alton asked Mr. Ahern to please read from the 2001 National Waste Database Report. She asked whether Mr. Ahern could tell the hearing how much waste was exported for disposal as listed in the database. Mr. Ahern replied approximately 47,000 tonnes, but he could check it. Ms. D'Alton asked Mr. Ahern what was the size of his facility. Mr. Ahern stated about 100,000 tonnes.

Ms. D'Alton asked Mr. Ahern how he proposed to make up the deficit between the amount of hazardous waste exported for disposal and the size of the proposed development. She asked how he proposed to comply with national policy, which requires a thermal treatment facility for the disposal of hazardous waste currently exported for disposal.

Mr. Ahern stated that it was clear from the EIS that this facility proposed was a combined facility for both hazardous and non-hazardous industrial waste. Ms. D'Alton asked whether this was the EPA's policy as recommended in the National Hazardous Waste Management Plan. Mr. Ahern stated that the hazardous waste part of the development was.

Ms. D'Alton stated then that it was a co-disposal facility. She asked Mr. Ahern whether he saw any reference to such a co-disposal facility being mentioned anywhere in the National Hazardous Waste Management Plan. Mr. Ahern responded that he didn't see anything which says that one couldn't have one either.

Ms. D'Alton then asked Mr. Ahern to turn to page 89 of the National Hazardous Waste Management Plan at paragraph 2 of Section 9.1. Mr. Ahern read this paragraph. Ms. D'Alton asked Mr. Ahern how much hazardous waste was exported for disposal in 1999. Mr. Ahern stated that he thought it was between 16 and 17,000

tonnes. Ms. D'Alton stated that it was actually 18,000 tonnes. She asked Mr. Ahern could he tell her how one made up the deficit between his proposed 100,000 tonnes and the 18,000 tonnes that the EPA requires to be disposed of by means of thermal treatment under the National Hazardous Waste Management Plan.

Mr. Ahern replied that one of the reasons why the applicants had gone for the type facility they have was that they were aware of this, and that the facility would be able to "flex" as the hazardous waste market changes, whether it grows or reduces. He stated that the applicants would make up the deficit with more non-hazardous industrial waste.

Ms. D'Alton asked Mr. Ahern whether it was his honest opinion that hazardous waste volumes in the country would decrease through concerted efforts by the producers, if there was an easy disposal option for them within the country.

Mr. Ahern stated that it was his honest opinion, because this decrease would be driven by IPC licence requirements and not by the applicants. The companies producing the waste were regulated by the EPA and they do have waste minimisation targets. They are reducing the amount of waste per tonne of product produced every year. Mr. Ahern stated that his view was that getting down to 1996 levels would be challenging, and that one of the reasons was that since the plan was written, a number of new facilities had come to Ireland and there was an expansion of some other existing facilities.

Ms. D'Alton asked Mr. Ahern how long IPC licensing had been in operation. Mr. Ahern stated 1993.

Ms. D'Alton asked Mr. Ahern to read paragraph 1 of Section 8.3 of the National Hazardous Waste Management Plan (page 85). Mr. Ahern read this section, which stated "*there is little or no co-ordinated effort being expended at present on the prevention of waste in general and hazardous waste in particular*".

Ms. D'Alton then asked Mr. Ahern whether he would then accept that although IPC licensing has been with us for the past 10 years, the EPA accepts that there is no co-ordinated effort to produce hazardous waste. In fact no significant reductions had been achieved to date.

Mr. Ahern replied that the hazardous waste has actually grown rather than declining at all.

Ms. D'Alton asked Mr. Ahern whether he was talking about industrial waste generally or industrial hazardous waste. Mr. Ahern replied industrial hazardous waste. Ms. D'Alton asked was it not the case that industrial hazardous waste, on the basis of EPA figures, has decreased in the last three years. Mr. Ahern replied that from the 1996 figures, it had increased, but over the last few years it has reduced due to IPC licensing.

Ms. D'Alton stated that they had agreed that approximately 18,000 tonnes was the aim for the EPA's plan. She asked Mr. Ahern what were the total quantities of ash to be generated by his development, of all types. Mr. Ahern replied 15,000 tonnes.

Ms. D'Alton asked Mr. Ahern regarding his statement that flue gas residues are hazardous. She asked whether it was not also the case under the EWC code that bottom ash can also be defined as hazardous. Mr. Ahern replied that bottom ash could be hazardous or non-hazardous, and that it would have to be subject to testing so that the applicants could prove that it wasn't hazardous. The same regime would apply to cycle and electrofilter ash.

Ms. D'Alton asked Mr. Ahern whether he had described in the EIS the testing procedures that he would undertake for such ash residues. Mr. Ahern replied that it was not in the EIS but it was in the licence application.

Ms. D'Alton asked whether it was important that the ash might be hazardous. Mr. Ahern stated that yes it would be important. Ms. D'Alton asked why was it not therefore in the EIS. Mr. Ahern responded that the applicants had stated that it was non-hazardous, based on their experience of dealing with the same type of waste.

Ms. D'Alton asked Mr. Ahern whether he would have to establish a testing procedure to decide whether or not the ash was hazardous. Mr. Ahern replied that they did not have to employ the procedure, as it was already in place in other facilities. Ms. D'Alton stated therefore that it could be found hazardous once tested. Mr. Ahern stated that that was so.

Ms. D'Alton stated therefore that it was POSSIBLE that the 15,000 tonnes of waste that the applicants would be generating would ALL be hazardous.

Ms. D'Alton referred Mr. Ahern to page 5 of his evidence, where he spoke of the pharmaceutical industry and stated that this industry produces hazardous waste. The basis for this was because the industry used hazardous materials in its processes. She asked Mr. Ahern whether he considered that the same principle could apply to his facility also.

Mr. Ahern responded that the pharmaceutical industry also produces non-hazardous waste, so that it is quite reasonable that the applicants should also be able to produce non-hazardous waste.

Ms. D'Alton asked Mr. Ahern how he proposed to dispose of the non-hazardous waste. Mr. Ahern responded that it depended, and as things stood at present it would go to a non-hazardous landfill. Ms. D'Alton asked Mr. Ahern whether the company had made any arrangements with any landfill to take this waste. Mr. Ahern replied that the company had not, as they were watching to see what happened in Bottlehill with interest. If that landfill proceeded, the applicants would be going to Cork County Council and asking it to accept this waste.

Ms. D'Alton asked what would happen if the County Council would not accept that waste, or what would happen in the meantime. Mr. Ahern responded that it would be transported outside the county to other landfills.

Ms. D'Alton asked Mr. Ahern whether he had heard Martin Creaner's evidence and had he seen the figures that Mr. Creaner had obtained from Cork County Council on the exportation of hazardous waste from Cork. She asked Mr. Ahern whether he had got similar figures from the Council when carrying out his site selection. Mr. Ahern responded that Indaver would have relied on the EPA database figures.

Ms. D'Alton asked Mr. Ahern how did the company get its data on hazardous waste exported for disposal from County Cork. Mr. Ahern responded that Indaver was probably the biggest exporter of hazardous waste from County Cork, so would have a very good information on what waste arisings there were, whether handled by them or handled by one of their competitors. Ms. D'Alton stated that it would be nice to see those figures, because there was no proof arising from the County Council's figures, that the proximity principle does indeed apply to the applicants facility.

Mr. Ahern responded that he hoped at this stage that it was clear from the EPA documents that approximately 60% of the hazardous waste produced in Ireland was produced in Cork.

Ms. D'Alton stated that was the case - that it was 57% on the last count. But that we were not talking about waste <u>produced</u> but about waste <u>exported for disposal</u>, under the EPA's National Hazardous Waste Management Plan at page 90. She asked Mr. Ahern how he could apply the proximity principle to his facility if he did not know exactly what volumes of waste were actually exported for disposal from Cork.

Mr. Ahern responded that each company in Cork that produces significant quantities of hazardous waste is required to prepare an annual environmental report as part of their IPC licence requirements. These reports give a breakdown of what they do with their waste, either on site or off site. He stated that the company consulted those documents as part of its work. In addition the company was commercially involved with some of the companies and would be aware of the waste streams involved.

Ms. D'Alton asked Mr. Ahern whether he could produce those figures at the Oral Hearing. Mr. Ahern stated that he could provide these figures, but it would not give the whole picture, as the applicant company accounts for between 40 and 45% of the market.

Ms. D'Alton stated that the problem was that the proximity principle does not apply according to the Council. The Council say that approximately 20,000 tonnes of hazardous waste were exported from Cork. The applicants state that the proximity principle applies to the facility. She was merely trying to establish whether the principle applies or does not apply.

Mr. Ahern responded that if Cork County Council says that over 20,000 tonnes are exported for disposal from Cork, and the EPA figures say that 47,000 tonnes were

exported from the whole country, then that was about 50% being exported from Cork. That in his view explained the proximity principle.

Ms. D'Alton stated that even if this were so, the proposed facility was for 100,000 tonnes. Mr. Ahern replied that this was both for hazardous and non-hazardous waste.

Ms. D'Alton asked Mr. Ahern how Cork related to other counties in relation to the generation of non-hazardous waste. Mr. Ahern replied that Cork was the biggest county in Ireland and was fourth on the list. He stated that Indaver had cross-examined Mr. Creaner about the top three on the list being Meath, Limerick and Tipperary, which had high figures in the 2001 database due to mining activity or bauxite processing. So Cork was in fact high on the list.

Ms. D'Alton asked Mr. Ahern what types of industrial non-hazardous waste was the company considering suitable for its proposed facility.

Mr. Ahern replied that the target market for Indaver, particularly with the fluidised bed, would be industrial wastewater sludges, particularly from the pharmaceutical industry. Ms. D'Alton asked what volume of these were currently being generated in County Cork. Mr. Ahern responded that approximately 40,000 tonnes of industrial sludges were produced in County Cork, of which 70% were from the South Cork area, and 70% of this in turn was generated in the harbour area.

Ms. D'Alton asked Mr. Ahern what was the County Council's local policy in relation to disposal of these sludges.

Mr. Ahern responded that in the Sludge Plan, it stated that the sludges were currently going to landfill, but that other ways of treatment of the sludge should be considered. Ms. D'Alton asked Mr. Ahern what technology did the Sludge Plan recommended, if any. Mr. Ahern responded that it didn't because the Sludge Management Plan only considered municipal sludges. Industrial sludges, especially from IPC plants, is a matter for the EPA and for the individual industry concerned.

Ms. D'Alton asked Mr. Ahern whether it not was the case that the local Sludge Management Plan does not recommended any specific form of treatment for such sludges. Mr. Ahern responded that it stated that it was a matter for the companies and the EPA. And it doesn't recommend or exclude anything.

Ms. D'Alton stated that she wrote that document, and that was not the case.

Ms. D'Alton stated that the Council's Sludge Management Plan had propose the use of advanced fluidised composting, and that this technology was chosen specifically because it accommodates industrial sludges as well as municipal sludges, and that it was anticipated that rather large gate fees could be gained from treating such sludges. It also shows that particular process because many of the sludges generated in the South Cork region are biologically based with high organic solvent content and the particular process was highly suited for this. She stated that the Sludge Management Plan did not recommend incineration.

Mr. Ahern stated that the Cork County Council Sludge Management Plan could not specify what must happen to industrial sludges since the Council had not responsibility for sludges produced in IPC licensed plants.

Ms. D'Alton asked Mr. Ahern whether he could definitively say that there would not be any accidents at the proposed plant. Mr. Ahern stated that of course he could not give such a guarantee. Ms. D'Alton asked Mr. Ahern who, if not himself, she could ask about process design to accommodate such accidents. Mr. Ahern said that this would be relevant for Ms. Burke. Ms. D'Alton asked who she should query regarding geology. Mr. Ahern responded Ms. Burke.

Questions for Dr. Meehan (Indaver)

At this point in the hearing, for logistical reasons, it was decided to adjourn cross-examination of Mr. Ahern and commence cross-examination of Dr. Meehan.

Mr. Noonan (Group 1) asked Dr. Meehan, who had laid heavy emphasis on following policy, what the difference was between policy and law. Dr. Meehan replied that policy in planning was based on law, and planning practice was the application of the law and it includes policy at all levels national, regional and local.

Mr. Noonan asked whether one of the difference might be that everyone was obliged to live within the law, whereas they might have a bit more flexibility with policy. Dr. Meehan replied that while policy in many cases was based on planning law, policy was also based on politics, on government, on democracy, on representation, and on what a country at any particular time wishes to do through its elected representatives. He stated that policy may not necessarily be based on law although in many cases it was.

Mr. Noonan asked Dr. Meehan whether he would agree that there was a hierarchy of laws, International Law, the Irish Constitution, EU Law, Statute Law, and Statutory Instruments. Dr. Meehan stated that that was true. Mr. Noonan asked whether it wasn't the case that one could not pick and choose which law we would abide by. We had to obey laws, but we could have regard to policies. Dr. Meehan stated that yes he would agree with this proposition.

Mr. Noonan asked Dr. Meehan whether, having listened to the evidence at the Oral Hearing, he had learned anything that would change his views about the planning suitability of this proposal for this location. Dr. Meehan replied that he had not heard a great deal, as there was a useful amount of information already written in the appeal and he didn't hear much that wasn't already written in the appeal.

Mr. Noonan stated that we had learned that Indaver was withdrawing their application to import waste from Northern Ireland. He asked Dr. Meehan, as a planning expert, whether he could tell the hearing whether there was any planning reason on which, if Indaver were to apply in 6 months time for permission to import waste from Northern Ireland, the Planning Authority could legitimately refuse that application.

Dr. Meehan stated that if that was a relevant issue, and it clearly was for Cork County Council as it was going to put in a condition to that effect, if An Bord Pleanála were to include a similar condition prohibiting the exportation either from other countries in Europe or from the island of Ireland, including the north of Ireland then all any Planning Authority would have to do, in the event of an application being made, would be to refer to this condition and state that the proposal contravened that condition and hence could refuse permission for importation for example.

Mr. Noonan asked Dr. Meehan whether there was any other planning principle or rule that would prohibit such an application from succeeding. Dr. Meehan replied that the condition could prohibit it. There could also be other reasons given, for example, the proximity principle could be stated as a reason for refusal, as it was in the Kilcock Incinerator case for example because of the core location being unsuitable in a national situation. There may also be other reasons that could be cited for such a refusal.

Mr. Noonan referred Dr. Meehan to his evidence, wherein he had stated that one of the reasons for refusal for the proposed incinerator in Kilcock, was that the National Hazardous Waste Management Plan had not been adopted and so the development was premature. Dr. Meehan stated that yes at the time the Hazardous Waste Plan was in draft form and had not been approved.

Mr. Noonan stated that since then the Plan has been published. He asked Dr. Meehan whether the Plan had been implemented.

Dr. Meehan responded that in his view, by far the most important element of the Plan was that the very development that it was the subject of the appeal. He stated that the development had a huge significance to the Plan, along with other aspects, since the Plan considered all the pros and cons, and the submissions to the draft document, and clearly came out with the establishment of a facility such as the one now being proposed, as part of the strategy necessary for dealing with hazardous waste.

Mr. Noonan asked Dr. Meehan whether the Plan had been implemented. Dr. Meehan responded that if the project proposed now proceeded, it would be a part of the implementation of the Plan.

Mr. Noonan asked Dr. Meehan whether the National Hazardous Waste Management Plan stated that this incineration should be built, and whether it should be built in Ringaskiddy. Dr. Meehan replied that no, no location was specified in the Plan.

Mr. Noonan asked Dr. Meehan what was described as the cornerstone of the National Hazardous Waste Management Plan. Dr. Meehan stated that he was not aware that that word had been used in the Plan, and that all he was aware of was that there were a number of recommendations and one of those recommendations was the building of a facility such as is now proposed.

Mr. Noonan referred Dr. Meehan to paragraph 8.3 on page 85 of the National Hazardous Waste Management Plan - the Prevention Programme. He noted that this was stated to be "the cornerstone" of this Plan. He asked Dr. Meehan what did a cornerstone mean to him, as a planner.

Dr. Meehan stated that the term cornerstone meant a key element, a basic fundamental part of the Plan. He stated that while the Plan stressed prevention, recycling and all of that, it also included treatment, at the bottom of the pyramid, but that treatment was in the pyramid, and in the Plan and not outside it. Dr. Meehan stated that the government had the option of not including incineration in the report. It had decided to include it. He felt that this fact had not been understood by a number of submissions made at the hearing who wished that incineration were not in the Plan. The applicants were availing of that inclusion to make a major point in favour of the development from a national interest point of view.

Mr. Noonan asked Dr. Meehan whether he knew if the Prevention Plan was in place. Dr. Meehan responded that he had no knowledge to offer a view on that.

Mr. Noonan asked Dr. Meehan whether it caused him any concern to be seeking to carry out one element of a Plan when the cornerstone of that Plan was not yet in place.

Dr. Meehan stated that he thought it would be very much in the national interest that the cornerstone that Mr. Noonan had mentioned should be pursued. He stated that we would all share the view that prevention is important.

Mr. Noonan asked Dr. Meehan that, when one was building a building, surely the cornerstone goes down first so to speak. Dr. Meehan stated that all parts of any plan should be implemented. In this context a word that has not been mentioned should be as it is important – the word "crisis". When we were talking about waste of any type, hazardous or non-hazardous, in the country at the moment, there was an emerging crisis at national and local level. That word crisis was one used a lot by politicians and by the leadership of the country and must be taken on board as part of the consideration by the public of the project.

Mr. Noonan asked Dr. Meehan whether there was in fact a crisis in dealing with the waste of the chemical and pharmaceutical industries in the Cork region.

Dr. Meehan stated that he didn't use the term crisis in his evidence, but decided, having heard what had been said, that it was about time to introduce the word. He stated that one could have a very serious problem if other countries decided in the near future not to accept the waste which we were currently exporting. If that were to happen, he felt that there could be very serious implications for the 20,000 persons employed in the industry, and the €30 billion of export value of those industries. As had been noted, Ireland was only one of two countries in Europe that does not have the type of facility proposed in this instance.

Mr. Noonan stated to Dr. Meehan that he was clearly concerned about the issue of Ireland being unable to export from what he had said. He stated that he wanted to ask him what was the basis for that concern. He handed in a document (Basel Convention

Guidance Document No. 2 - see Appendix 3). Mr. Noonan quoted from Point No. 6 on page 2 of the document which stated as follows: "*Article 4, paragraph 9 of the Convention, stipulates that parties shall take the appropriate measures to ensure that the Transboundary Movement of Hazardous Wastes will only be allowed of the state of export does not have the technical capacity and the necessary facilities capacity or disposal sites to dispose of the waste in an environmentally sound and efficient manner*".
Mr. Noonan suggested to Dr. Meehan that if the proposed incinerator was built, by virtue of this legally binding convention, to which Ireland is a signatory, export of hazardous waste from the State would be unlawful.

Dr. Meehan responded that he accepted that was the situation if Mr. Noonan said so. He said it was clear to him that the National Hazardous Waste Management Plan at paragraph 6.1 stated that the development of a thermal treatment facility for the disposal of hazardous waste is required if Ireland is to achieve self sufficiency and reduce its reliance on export. He stated that, whatever about legal matters, it was clearly undesirable not to have self sufficiency, if only from the point of view of cost and the proximity principle, and from the general point of view of self sufficiency of any country.

Mr. Noonan asked Dr. Meehan whether he had heard the evidence of Peter North, who had stated that there would be about 9,000 to 15,000 tonnes of industrial hazardous waste requiring disposal. He asked Dr. Meehan whether those figures surprised him at all. Dr. Meehan responded that the figures were there, it does make the case in the National Hazardous Waste Management Plan that it is desirable to have thermal treatment and disposal facilities as well, in Ireland.

Mr. Noonan asked Dr. Meehan whether he would accept that, just as there is a hierarchy of waste and of laws, that there is a kind of hierarchy of policy documents in the planning arena.

Dr. Meehan responded that there is a hierarchy, and the National Hazardous Waste Management Plan has been adopted by government. The letter to Cork County Council from the Department of the Environment and Local Government, which was included with his evidence, concluded by stating that this document is now government policy. So the Plan was not just another report but was government policy. He felt that nothing could be more important than that in the context of policy documents.

Mr. Noonan noted that the National Spatial Strategy falls into a similar category of national policy. He asked Dr. Meehan did he know what the National Spatial Strategy stated about the Cork Area Strategic Plan. Dr. Meehan responded that the NSS endorses the CASP, because the CASP was made in the context of the evolution of the NSS and vice versa, and that there were communications between the two in the process of preparation.

Mr. Noonan asked Dr. Meehan if he had heard the evidence of Mr. Deasy, the Council's Architect, who spoke on visual impact. Mr. Deasy has said that there are a number of ugly industrial buildings in the harbour area. He asked Dr. Meehan whether he would disagree with this. Dr. Meehan stated that the County Development Plan has a landscape characterisation system and Unit 19 of the system is Cork Harbour, which area is a mixture of things both very attractive landscape in certain portions and some unattractive industrial installations in other portions. It is a very complex suburban and urban landscape with a number of elements. Industrial activity is one of those elements and Mr. Deasy's evidence recognised this.

Mr. Noonan quoted from CASP at page 25 paragraph 2.1 which stated "*it is recognised that implementing the proposed strategy will be a challenge, particularly in the short term, since in many areas the proposed strategy is seeking to reverse existing development trends*". He asked Dr. Meehan whether there was a message there for us. Existing development trends referred to here would include the industrialisation of the harbour that began in the 1970s. He asked Dr. Meehan didn't CASP now caution that we needed to reverse these trends.

Dr. Meehan stated that this was not the case and that what was in mind in that basic vision statement, which is very general and does not refer to either industry employment or housing, was the settlement strategy for the area. CASP stated that up to now the trend had been for southern side development in Cork into the harbour area, as this was the more attractive area. What CASP seeks to do is to focus on the northside development to the city, and also on a linear urbanisation extending from Mallow to the northside and then eastwards towards Midleton. That is the key element in the Spatial Strategy of the CASP Plan. The second element in the Plan is the location of employment outlets, and the only major employment outlets identified in CASP were two. One at Little Island and one at Ringaskiddy. All of that was expressed in the key diagram of the CASP Plan on page 32. In that diagram the significant point that Ringaskiddy is one of only two locations in the entire area that is pinpointed as a key industrial port location. That, if anything, endorses the role of Ringaskiddy from what it was in the 1970s up to the present time.

Mr. Noonan put it to Dr. Meehan that his view was not entirely correct. He put it to Dr. Meehan that the CASP Plan had a very specific purpose and objective so far as the harbour was concerned which was to preserve it and to maintain and salvage the amenity of the harbour for the future. As the Plan describes it "*the natural environment and in particular the spectacular harbour area are without comparison elsewhere in Europe. Protecting this asset and the social and cultural assets and all the manifestations is therefore vital to the success of the area*" (Section 2.2).

Dr. Meehan responded that in the context of the multiple aspects of the harbour area, and that includes settlement development in certain locations and employment and industrial port development in others, Ringaskiddy was very clearly set out at page 125 of the Plan as having an important role as an industrial location and as a port location so as to provide employment. Significantly, Dr. Meehan stated that CASP does not recommended Ringaskiddy for any additional residential development. Both of these concepts are now reinforced in the 2003 Cork Development Plan, which zones a considerable area of land in Ringaskiddy for industrial development, of which the applicants site was one of only three sites designated for large scale industry.

Mr. Noonan stated that at pages 119 and 120 of CASP it states "*Cork's outstanding harbour and the port are among the city regions strongest attributes. It is a unique selling point both nationally and internationally, in terms of influencing the development of Cork as a "strategy" under the emerging National Spatial Strategy*". He stated that that is consistent with some further development in this part of Ringaskiddy of port related industry. Dr. Meehan stated yes he agreed with this but that the positive points about the harbour area in terms of its landscape have to be balanced against what is obviously stated to be development areas within it as well - industrial employment and residential.

Mr. Noonan stated on that precise point Dr. Meehan had raised the question of employment and he had quite rightfully pointed out the content of the drawing on page 32 of CASP. He noted that the hearing had heard Mr. Deasy yesterday that there isn't a building of this form and scale anywhere in the lower harbour, and the promised employment from the development of this scale at this location is about 60 people. Mr. Noonan put it to Dr. Meehan that it was entirely unreasonable to pay that price for that small return in employment levels having regard to the clear policy direction that CASP had outlined. He was suggesting that the proposed project did not strike the necessary balance between all of the factors that had to be taken into account.

Dr. Meehan stated that, on Mr. Deasy's point, he was much struck by the simplicity of the statement but the correctness of it, that of course the site is zoned very specifically for large scale industry and in his experience it was quite possible that an industry much bigger than the present one could propose to locate on the site. Mr. Deasy's point was the site would have, at some stage, a large industry on it and it could be much larger than this one. Dr. Meehan stated that on the employment point, it was true that the proposed development was relatively non-labour intensive. However he felt that it should be understood that it was not the number of jobs in the vicinity that was important, but the very important point about the 20,000 jobs in the pharmaceutical and chemical sector which was expanding significantly in the country and for which the proposed development would provide a facility. He stated that the benefit of having such a facility would encourage further investment in industrial development, which was a key objective of Forfas, and the industrial agencies in the country not just in Cork but elsewhere as well.

Mr. Noonan stated that he was glad that Dr. Meehan had mentioned Forfas as the third parties had mentioned them themselves during the hearing. He asked could all parties agree that Forfas was an industrial policy advisory board. However Forfas seemed to have a strong view that Ringaskiddy might be the place for an incinerator.

Mr. Noonan stated that the County Development Plan had been described in the Courts as "a contract between a local authority and the people". Generally, he stated, words mean what they say, and the County Development Plan seems to say that you can have incinerators generally in industrial areas but with exclusions and in this case paragraph I-15 stated that there should be no contract incineration in this part of Ringaskiddy.

Dr. Meehan responded that objective I-15 was the specific zoning objective which was the sole reason for refusal by the Council of this application.

Mr. Noonan stated that it was a sole reason put forward by the County Manager and hence the sole reason given by the Council for the refusal. However it was the only reason put forward for the material contravention, so that one didn't know if it was the only reason why the development should be refused.

Dr. Meehan stated that this was the most important point in his evidence. He said that one has to look at and read the County Development Plan in its totality. It is a contract, a very important document, and the first one that the Planning Appeals Board has to take into account. But there are other considerations as well, including the national public policy level and public authorities. These are the complexity of the issues that the Board has to deal with and they are all interlinked.

Mr. Noonan asked Dr. Meehan that, in coming to his own view about the suitability of the proposal for this location, was it part of his brief at all to look at how the site was selected with regard to guidelines published by other bodies within Ireland and outside Ireland, or was it not part of his brief.

Dr. Meehan responded that it would be a matter for any planner to be aware of locational issues. A very fundamental point about planning was that if the location is in principle a good one and meets a lot of planning criteria and can stand up to rigorous scrutiny, the applicant is in the correct position. In contrast, if the location is not appropriate, then everything falls apart. He would state that this is what happened in the Kilcock planning appeal, where the Board rejected a similar application as this, for a similar facility, because the location was incorrect.

Mr. Noonan stated that it was his impression that what drove the selection of the site was what the applicants described as proximity to the source of the waste. He asked Dr. Meehan whether he would agree that this was the guiding site selection criterion. Dr. Meehan said that he would be in agreement with that.

Mr. Noonan stated that, in relation to CASP, Ms. O'Leary on pages 9 and 10 of her evidence quoted pages 57 and 125 which stated as follows:

> *"port-related industry, port back-up facilities and other uses that complement the port, should be located at Ringaskiddy and other land uses should be avoided in this area".*
>
> *"Land supply in Ringaskiddy is becoming scarce. As described previously, the ports plans for expansion includes land reclamation. However land in the area should generally be reserved for port related or complementary uses" (page 125 of CASP).*
>
> *"Growth in the Ringaskiddy area should be limited to port related activities or complementary uses".*

Mr. Noonan asked Dr. Meehan whether he would accept in planning terms that there was nothing unique to this incinerator that required it to be on a coastal or seafront location.

Dr. Meehan replied that the statement which had been quoted from CASP and indeed were restated in the County Development Plan was that the key requirement for development in Ringaskiddy was that it was port related, complementary to port uses, or a major water user. He stated that he understood that the facility would consume approximately 17 million gallons per year and accordingly satisfy the criteria.

Mr. Noonan stated that he would repeat his question - was there anything unique about the incinerator that would require it to be located in a coastal or seafront location. Apart from the need for a large amount of water - which could be provided in other locations - Mr. Noonan stated he was trying to elicit from Dr. Meehan whether the proposed development needed to be beside the sea.

Dr. Meehan stated that clearly the development did not need to be beside the sea, but that there were a number of factors that would need to be considered for facility in terms of location, water was one. Secondly one had a site which was zoned for large scale industry, and there were only three such locations in County Cork designated as strategic industrial zones being Ringaskiddy, Little Island and Whitegate and within Ringaskiddy only three sites zoned for large scale industry. He felt that the proposed development would come within the definition of large scale industry. He stated that, in terms of suitability in planning, zoning was key. If it was not zoned, quite possibly it would not be granted planning permission. A further point he wished to raise was that the proposed development was "a complementary activity" to use the CASP terminology since the primary activity of the pharmaceutical and chemical industry was in this area and the proposed development would facilitate this industry.

Mr. Noonan stated that the term complementary activity in CASP related to uses which were complementary to the port. He repeated his question a third time - was their any feature of the proposed incinerator, in planning terms, that required it to be on the coast. Dr. Meehan stated that no, there was no reason that required the proposed incinerator had to be located on the coast.

Mr. Noonan asked Dr. Meehan whether he had been involved in drafting the proposed amendments to the County Development Plan that the applicants submitted in September 2002. Dr. Meehan stated that he was not involved in the drafting of this submission. Mr. Noonan asked whether the submission did not assert that because the zoning was worded so as to exclude contract incineration, the applicants were concerned that members of the public could misconstrue that to apply, in their view wrongly, that contract incineration could not be located anywhere in any industrial zone.

Dr. Meehan stated that Indaver were pointing out that this wording could give rise to public confusion or "to an ambiguity in the interpretation". He felt that they were right about that.

Mr. Noonan asked Dr. Meehan whether he had heard the evidence from people from Cobh, Passage and Monkstown all of whom were against the development. He noted that Dr. Meehan had stated that it was right to follow guidelines set out by bodies such as WHO. One of those guidelines, as already discussed, was public

acceptability. Mr. Noonan asked Dr. Meehan whether there was any evidence before the Board, in his opinion, or in any of the applicant company submissions, that this incinerator has any public acceptability in the area.

Dr. Meehan replied that he could not recollect an industrial development of this general nature where he had heard and observed such a genuine attempt to inform the public properly, to go to the public and directly meet them and listen to what they had to say. In addition he felt that the WHO guideline on public acceptability was not particularly relevant as, for a number of years, in Ireland it is almost impossible to obtain public acceptability for any major project. In this instance he was talking about projects which were in the public interest and not just private projects such as was proposed here - projects such as motorway schemes, public transports schemes etc. He stated that this was part of what he was saying in his brief of evidence when he expressed frustration about the objection to the principle of incineration for hazardous waste, which he felt was irrelevant. Much of the evidence that he had heard at the hearing was still about the principle of incineration. It was his view that incineration was government policy and one could not have a situation where government policy is reformulated at a planning appeal such as this. He felt that public acceptability was more than those who turned up at an Oral Hearing, as there was a silent majority which is never heard. Government policy was adopted by elected representatives of the people, and accordingly should be treated with the highest respect. He stated that, regrettably, there were objectors at every Oral Hearing in his experience, who were not locals affected by a development, but who were people who wished to express views that sought to change national policy, no matter what issue came up.

Following the lunch break, questioning of Dr. Meehan continued.

Mr. Noonan stated to Dr. Meehan that, in his answer on public acceptability, he had insulted all those in attendance at the Oral Hearing. He stated that Dr. Meehan had invoked public authorities and the government, in his interpretation of the public. In this he felt Dr. Meehan was misinterpreting the WHO Guidelines and the Basel Convention.

Dr. Meehan stated that he had not intended to insult anyone. He was not aware of the term "public acceptability" in the Irish Planning System. What he was aware of was that planning was becoming "plan-led" and that such plans included national plans and policies.

Mr. Noonan asked Dr. Meehan to agree that all people are bound by laws which are decided by public representatives. Dr. Meehan replied that we were bound by laws and policies.

Mr. Noonan asked Dr. Meehan accordingly why we were not bound by the prohibition of "contract incineration" in the County Development Plan. Dr. Meehan replied that the entirety of the County Development Plan had to be considered. The issue of government policy was also an important aspect in that regard.

Mr. Noonan asked Dr. Meehan whether he thought that locating the incinerator across the road from an educational institution (The National Maritime College) is in accordance with either the EPA Guidelines, the WHO Guidelines, the Basel Convention Guidelines or any other guidelines that Dr. Meehan was aware of.

Dr. Meehan responded that the presence of this was at all times considered when the decisions were made. The HSA had also considered it and had no problem.

Mr. Noonan asked Dr. Meehan whether he considered, as a professional planner, that the placing of this incinerator beside the Maritime College conformed to any guideline. Dr. Meehan stated that the most concise guideline was the County Development Plan, and this Plan had zoned the present site for large stand alone industry. To the north of that it had zoned the Maritime College for educational purposes. So the land use zoning in the Development Plan considered them both to be acceptable neighbouring uses. He suggested that no evidence had been produced at the Oral Hearing which indicated that the two were incompatible.

Mr. Noonan asked Dr. Meehan whether he was aware of any guidelines which recommend that hazardous waste incinerators should not be located close to places like prisons for example. Dr. Meehan responded that he was not aware of guidelines that dealt with that issue.

Mr. Noonan stated that he now wished to come to the decision of the elected members which was to specifically exclude contract incineration from the proposed site. He asked Dr. Meehan whether he felt that this clear statement should be overwritten. He asked had Dr. Meehan strong reasons when he was looking at all the possible sites for locating this incinerator, for insisting that it be put in the only site that the Plan would prohibit to be put in. He asked what those reasons would be.

Dr. Meehan stated that he felt that there was a difference of opinion on this. Mr. Noonan was stating that the prohibition of contract incineration was specific to this site. He disagreed insofar as there was a prohibition on contract incineration in the Plan, in ZON 3-13, it applied to all industrial zones throughout the county and was not site specific to the particular site. He stated that it was an alleged prohibition on all industrial zoned sites, and the problem with that prohibition was that it was inconsistent with a lot of the other objectives of the Development Plan. He stated as he hadn't heard any elected representative at the Oral Hearing who had stated that, in principle, contract incineration was not to be permitted in Cork anywhere. If such was said, it would be completely contrary to national policy.

<u>Questions for Dr. Meehan by E. O'Byrne (Chase Cork - Group 2).</u>

Ms. O'Byrne stated that Dr. Meehan, in his brief of evidence, had set out certain factors in relation to policy for Ringaskiddy (Table 2.4, Figure 2). He had stated that he chose to underline the first part of this extract. Ms. O'Byrne asked Dr. Meehan whether he accepted that other people could underline the second part of that extract from the Plan, which relates to amenity improvements in the village. Dr. Meehan acce4pted that that would be the case.

Ms. O'Byrne asked Dr. Meehan whether he had heard any of the evidence from the residents of Ringaskiddy or Carrigaline, who had said that they would no longer use the amenities of the area, bring children to the beach, if Indaver's proposal was granted. Dr. Meehan stated they may have said that.

Ms. O'Byrne asked Dr. Meehan regarding the conclusions which he had drawn in Figure 8 of his evidence. She stated that he concluded that the Development Plan provides for zoning objectives for waste disposal relating to the needs of the chemical and pharmaceutical sectors. Some of the substances that Indaver propose to burn in the incinerator are listed in the licence application and she could not see how they would they would relate to the chemical and pharmaceutical sectors. She asked Dr. Meehan for example how infectious healthcare waste would apply to his statement regarding waste disposal for the needs of the chemical and pharmaceutical sectors.

Dr. Meehan stated that he could not answer this matter specifically. He felt that the incinerator was very relevant to the needs of the chemical and pharmaceutical sectors and its waste disposal needs.

Ms. O'Byrne stated that Dr. Meehan's evidence had said that the development was "relating to the needs of the chemical and pharmaceutical sectors". She stated that what she was trying to establish was that some of the wastes that the applicants proposed to process in their development - infectious healthcare waste, batteries and accumulators, meat and bone meal, other agricultural and food processing waste, wastes from the leather and fur industries, waste from mining, municipal wastes and similar commercial and industrial wastes - these do not actually relate to the needs of the pharmaceutical and chemical industries. Dr. Meehan replied that he was not an expert on this matter.

Ms. O'Byrne asked Dr. Meehan whether he considered that the burning of meat and bone meal was relevant to the needs of the chemical and pharmaceutical sectors. Dr. Meehan stated that he did not know.

Questions for Dr. Meehan by Marcia D'Alton (Chase Monkstown - Group 3).

Ms. D'Alton asked Dr. Meehan whether he had given it as his view that the proposed development does not constitute a material contravention of the Development Plan. Dr. Meehan stated that this was his view, as outlined in his brief of evidence. He considered that the proposed development was not a material contravention of the Plan.

Ms. D'Alton asked what open space buffer was proposed around the access to the Martello Tower. This buffer was specifically mentioned in the Development Plan. Dr. Meehan stated that in his evidence he had dealt with the zoning and had not looked at the Martello Tower.

Ms. D'Alton quoted the first part of Dr. Meehan's witness statement where he stated that his evidence deals with the objectives of the County Development Plan. She stated that the open space buffer was specifically mentioned in Objective I-15 in the

Development Plan. Dr. Meehan responded that his evidence concentrated on the industrial zoning.

Ms. D'Alton asked Dr. Meehan whether the wind blew and what was downwind of the site. Dr. Meehan stated that there were many things downwind of the site. Ms. D'Alton stated what was downwind of the site in the case of a south-westerly wind. Dr. Meehan stated that the village of Ringaskiddy was downwind. Ms. D'Alton put it to Dr. Meehan that downwind of the site was Cobh Town where the prevailing wind was coming from a south-westerly direction. Dr. Meehan stated that he accepted that was the case.

Ms. D'Alton asked Dr. Meehan whether he had heard Mr. Ahern saying that morning that accidents could not be guaranteed against in the development. Dr. Meehan stated that he had. Ms. D'Alton asked Dr. Meehan when he referred to "the proper planning and sustainable development of the area" what area did he consider to be that area. Dr. Meehan responded that in the general sense the term is meant to mean the area of the Planning Authority.

Questions for Dr. Meehan by Nicholas Loughnan (Group 4)

Mr. Loughnan asked Dr. Meehan about the question of public acceptability, which he had discussed with Mr. Noonan. He asked Dr. Meehan whether he had any qualifications in political science or sociology. Dr. Meehan stated that he had no qualifications in these areas.

Mr. Loughnan put it to Dr. Meehan that he had no problem answering, in some considerable length, on the issue of public acceptability. Yet it was not an area in which he was qualified.

Dr. Meehan stated that while he was not qualified in political science or sociology, any planner is involved in the Development Plan process, and this involves contact with political parties, the public, and private forces. A planner is someone who brings these forces together, that is the nature of planning.

Mr. Loughnan stated so that all of the evidence that Dr. Meehan had given on public acceptability was not an expert one - it was only an unqualified opinion based on a layman's experience, and not on any particular expertise in this area. He submitted that the Inspector might wish to disregard Dr. Meehan views on the question of public acceptability.

Questions for Dr. Meehan by Audrey Hogan (Group 7).

Mrs. Hogan asked Dr. Meehan whether the planners had decided to leave any amenities at all for the people of Ringaskiddy, because they had take away Lough Beach, the Graun, Palmers Island, Ballybricken, the Slipways, the seashore, and two soccer pitches. What amenities were left for the village of Ringaskiddy, she asked.

Dr. Meehan stated that the map is the zoning map from the Development Plan and shows land use categories. These include open space areas and also objectives for amenity. He was here to give evidence on the conformity of the proposed development to the provisions of the County Development Plan, and related national and regional planning policies and objectives.

Questions for Dr. Meehan by Kate Corcoran (Group 10).

Ms. Corcoran asked Dr. Meehan whether there was a long term plan for the people of Ringaskiddy - would they have amenities. She stated that the residents of Ringaskiddy had been left with nothing all there seems to be an industry. She asked whether he had any comment on that.

Dr. Meehan stated that his evidence at the Oral Hearing was that the development was in conformity with the County Development Plan and National Planning Policy. He could not comment on the points that Ms. Corcoran made.

Ms. Corcoran asked Dr. Meehan in relation to national policy whether he would accept that national policy was only the policy of the government at a particular moment and that if the government changed would not national policy on this issue change also. Dr. Meehan stated that he could only guess. Policies were issued by government from time to time. Individuals may criticise current government policy, but the Board was required by virtue of Section 5 of the 1976 Act to be informed of government policy so that they could take such government policy into account.

Questions for Dr. Meehan by Deputy Dan Boyle.

Deputy Boyle asked Dr. Meehan what his experience was in being involved in decisions or making proposals that were not accepted to be in the public interest. Dr. Meehan responded that he had been involved in a number on all sides, for example he had acted for clients on the Interpretative Centres at Mullaghmore and the Boyne Valley on different sides. He was in favour of public representatives, the public through their public representatives, had the right in his view to control the planning process.

Deputy Boyle stated that Dr. Meehan had cited the support of groups such as Forfas, IBEC and the Cork Chamber of Commerce, in a favour of the development. He asked Dr. Meehan whether he was aware of how those groups made their decisions. Dr. Meehan responded that all he had said was that these particular bodies had made submissions which had expressed support for the principle of the development.

Deputy Boyle stated that the Cork Chamber of Commerce had no procedure in place in relation to its policy statement in support of the facility. There could very well be members of the Chamber of Commerce, and a large number, who do not support this ad hoc statement by a small number of individuals. Deputy Boyle stated that he presumed the same could be found in the other organisations that Dr. Meehan had cited as being in favour of the development. Yet Dr. Meehan seemed to be dismissive

of the large numbers of members of the public who had been publicly involved against the project. He asked Dr. Meehan why he attached such a weight to small scale bodies and did not consult and such little weight to large numbers of people.

Dr. Meehan responded that he had merely noted that these organisations had written to Cork County Council to support the planning application and did so in the context of employment where there is a wider back-up industry in the pharmaceutical and chemical sectors which the development would help to service.

Deputy Boyle stated that, in terms of the wider application of democratic principles, whether representative democracy or participative democracy, if you take recent developments in the Cork area at the last general election, in the constituency in which the site is, there were 11 candidates looking for 55,000 votes. None of the 11 candidates expressed support for this facility and all expressed opposition, including government candidates. He stated that Dr. Meehan could take it that this was a 100% blanket disapproval of the development.

Deputy Boyle stated that even if one were to take the issue at a national level, the government parties, with a majority of seats, have a minority of votes. The election manifestos of all of the opposition parties all include references that they were not in support of incineration as a matter of policy. He stated that collectively those parties won more votes than the government. He asked Dr. Meehan whether surely incineration was not a publicly acceptable policy. Dr. Meehan responded that currently it was government policy.

Deputy Boyle asked Dr. Meehan whether he believed in the precautionary principle, Dr. Meehan replied that he did. Deputy Boyle asked him whether he would be satisfied that the precautionary principle exists as a principle that is being applied effectively. Dr. Meehan replied that he would be satisfied that the principle has been taken into account in the formulation of the various national local policies that he dealt with as has the proximity principle. Having done that, the result is the policy which he had dealt with and stood over. This policy was written and carefully formulated and was not something that would change the next day. The policy had been in place for a number of years.

Deputy Boyle stated that no national hazardous waste policy was ever put before the floor of Dail Eireann to be voted upon. He stated that how policy was determined in this country was far from democratic. He stated that how policy was determined in this country was far from democratic.

Dr. Meehan stated that the Waste Management Act of 1996 had been put before the Oireachtas, and that Act required the EPA to formulate such policy and therefore the policy had been given statutory status.

Deputy Boyle asked Dr. Meehan whether he recognised the planning concept of "sacrifice areas" - that there are communities that are identified that accept in terms of facilities, waste management, dirty industries etc, that other locations and communities might not be willing to accept.

Dr. Meehan stated that he would accept that any Planning Authority has to provide for a number of uses in its Development Plan, including residential employment, commercial, industrial and so on. The Cork County Plan has done that in great detail and in his view had zoned this site as one that is suitable for single large scale industry, one of only three such sites in Ringaskiddy.

Deputy Boyle asked Dr. Meehan what he understood by the term 'industry' - was it manufacturing or infrastructural, because surely there was significant difference in this case. The proposed development wasn't there to produce goods, as a standard industry, but merely to provide a support service.

Dr. Meehan stated that it was not his opinion that was important in this matter but that of An Bord Pleanála, where, in respect of the Meath incinerator, this type of activity was categorised as industry. The Cork County Council had a similar view and this was detailed in the County Development Plan.

Mr. Dominick Donnelly (West Cork Green Party) attempted to ask further question of Dr. Meehan regarding his views on public acceptability. The Inspector ruled this question out of order, as he had heard sufficient on the subject of public acceptability and felt that at this stage the whole Oral Hearing was well aware of Dr. Meehan's views on the matter.

Questions for Dr. Meehan by P. Sweetman (Group 22).

Mr. Sweetman asked Dr. Meehan whether An Bord Pleanála had been wrong to refuse planning permission for the Mayo Gas Project. Dr. Meehan stated that he had no particular view on this matter, as he was not involved. The refusal reason given by the Board in Mayo was a site specific reason and not a policy reason. His evidence dealt with policy.

Mr. Sweetman asked Dr. Meehan whether he felt that the EIS submitted by Indaver complied with the regulations. Dr. Meehan responded that this was not part of his evidence as he wasn't dealing with the EIS. Mr. Sweetman asked Dr. Meehan what the difference was between 22 dB(A), and 27 $dB(A)_{leq}$. Dr. Meehan responded that this had nothing to do with his evidence and he was not a noise expert.

Mr. Sweetman asked Dr. Meehan when he had got involved in this project. Dr. Meehan stated that he had got involved about a year ago, when he had been engaged by the applicants for the Oral Hearing on the planning appeal. He stated that he had come here to give evidence on conformity with relevant plans and policies.

Mr. Sweetman asked Dr. Meehan what was the Development Plan and what was its legal status. Dr. Meehan responded that the County Development Plan was a written statement and maps and was a Plan as specified under the 2000 Planning and Development Act.

Mr. Sweetman asked Dr. Meehan whether he was aware of the court case *Attorney General (McGarry) and Others versus Sligo County Council*. Dr. Meehan stated that he was generally aware of it. Mr. Sweetman asked him did it not decide that a Development Plan was a contract between the people and their local authority. Dr. Meehan stated that this was so.

Mr. Sweetman asked Dr. Meehan whether he had stated that he had looked at all the relevant plans and policies relating to this development. He asked Dr. Meehan why he had not looked at the Stockholm Convention. Dr. Meehan replied that he had referred in his evidence to Section 5 of the 1976 Act which related to national policies and objectives to which An Bord Pleanála were required to be informed. He did not consider himself an expert on international policy. He was aware of what he believed to be the relevant issues for An Bord Pleanála to be concerned with in determining the appeal.

Mr. Sweetman asked Dr. Meehan where, in all those plans that he had quoted, was the term "co-incineration" mentioned. Dr. Meehan stated that he had never mentioned it in his evidence and he didn't understand the question. Mr. Sweetman asked Dr. Meehan what the proposed plant was. Dr. Meehan stated that it was a combined incinerator for hazardous waste and for non-hazardous waste. Mr. Sweetman responded that this amounted to co-incineration, and at nowhere in those plans and policies mentioned by Dr. Meehan was the term co-incineration used.

The day's proceedings closed at this point.

ORAL HEARING PROCEEDINGS

7th OCTOBER, 2003.

At the commencement of the day's hearings, Mr. J. Noonan (Group 1) stated for the record that there had been an intention to have a boat trip for the Inspector, so that he could look at the site from the harbour water. A letter from the applicants solicitors (Cox's) had been sent to the Board on Friday, which objected to this. He circulated copies of this letter and of his reply to the Board, which he read into the record.

The Inspector stated that he would be making his own arrangements for inspection, as he had informed Mr. Noonan and Mr. Glynn of Messrs. Cox Solicitors, by phone on Friday 3rd October.

Marcia D'Alton (Group 3) stated that Mr. Ahern had raised an issue the previous day regarding the Sludge Management Plan. She stated that she wished to submit an extract from the Sludge Management Plan (see Appendix 2 – Group 3 – 8) which indicates the technology process recommendations that had been made for the Ringaskiddy area. She stated this was important as the applicants have continually asserted that their development complies with national and local policy, which she considered was not the case. She stated that she could speak with some authority since this Plan, for which she had had responsibility, was prepared only with sustainability in mind.

Continuation of Questions for J. Ahern (Indaver).

Mr. Ahern stated that, at the previous days hearing, Ms. D'Alton had sought figures from the applicants of the export of waste by their companies. He now handed in a document - (see Appendix 2 - IND - 10) which he stated dealt with the situation both nationally and in relation to waste arisings in Cork in 2002. Mr. Ahern stated that, while this wasn't a full picture, as Indaver had 40 to 45% market share in the Irish waste market involved in hazardous waste exporting, it gave a good picture. He stated that this information would also have been supplied to the local authorities and to the EPA.

Ms. D'Alton asked Mr. Ahern whether he had any documentation to prove where this document had come from. She stated that there was a hazardous waste transfer station in Cork to which most of such waste goes, and that MinChem would naturally be involved.

Mr. Ahern responded that this was purely Cork-based waste. It was the volume that the company had shipped and none of it had gone through any waste transfer station in Cork. He stated that the waste originated in Cork, and that the company have transfrontier shipment licences and movement/tracking forms for each individual shipment. This is all reported to the local authorities, and is all official data not just their own.

Ms. D'Alton asked whether they could see any original proof of documentation. Mr. Ahern responded that data could be checked with Cork County Council or Cork City

Council. The Council had already provided some information to the hearing on waste shipments out of Cork. There seemed to be a constant dispute as to whether or not there is any waste leaving Cork. The applicant company has an office in Cork and the staff there had been surprised, over the last two weeks, with statements that they did not move truck loads of waste every day. They do. Mr. Ahern stated that the document represented their figures, but one could look at the national waste database from the EPA and that it confirms waste is leaving Cork.

Questions for J. Ahern by Peter North (Group 5).

Mr. North asked Mr. Ahern one quick question on the tables which he had just issued. He asked when Mr. Ahern talked of hazardous waste imported for recovery did he mean "materials recovery" or "energy recovery" or both. Mr. Ahern responded that the recovery would be primarily liquid solvents going to companies for reuse such as in the paint industry and in the production of small products such as window cleaners. Some would have gone for use as a fuel, but that is no more than 10%. Most would be for materials recovery, where the solvent would be sold on again to other industries.

Mr. North asked whether Mr. Ahern would continue to export this waste for materials recovery. Mr. Ahern stated that he would. Mr. North stated then that in fact some 90% of the hazardous waste exported for recovery was going to continue to be exported. Mr. Ahern stated that that was the case, as Ireland did not have the markets here for it at present.

Mr. North stated the main problem in terms of lack of markets in Ireland for waste solvents which had been recovered, was that Ireland did not have a recovery plant. He stated that he would have thought that it should have been part of an integrated hazardous waste facility, but there were of course economies of scale. However this tended to make a nonsense of talk of eliminating hazardous waste exports. He stated that Ireland was still going to be exporting quite a large amount of these solvents. He stated that it was right that we should export waste, where it is appropriate to export them. We are still going to be exporting considerable amounts of solvents and he was much happier doing that than burning them here.

Mr. North asked Mr. Ahern at what stage was the project at the moment in terms of design and engineering. Mr. Ahern responded that they had identified the key components and in the waste licence had discussed in more detail the design, but that the applicants would still be offering at this stage alternatives in some components. Plant builders and plant component manufacturers would love to see their particular products or pieces of equipment in so that they know that you have already specified it so accordingly the applicants had some alternatives. However the development was beyond concept stage - they had identified the key components, the flow diagram, etc, but hadn't done the detail engineering on it yet.

Mr. North stated in that case was Mr. Ahern at the budget estimate stage. Mr. Ahern stated that he was, therefore Mr. North said they would only have reached preliminary process hazardous assessment or risk assessment stages, Mr. Ahern stated that this was correct.

Mr. North asked Mr. Ahern what type of fluidised bed technology they were proposing. Mr. Ahern responded that there were a number of recommended technologies and that Laura Burke would deal with it in more detail.

Mr. North asked Mr. Ahern whether the technology the applicants had selected would have been proven in a hazardous waste/mixed waste facility somewhere else. Mr. Ahern responded that this was the case. The bulk of the hazardous waste would be in the liquids afterburner, which is a well tried technology. Most of Ireland's hazardous waste consists of tanker loads of bulk solvent and can readily be dealt with in such a facility. There is a very successful fluidised bed plant working in Belfast for burning sludges, Mr. Ahern stated, and a lot of what the company intended to burn would be of that nature. They would also expect light fractions from the pharmaceutical industry, such as off-specification product, which is not hazardous to handle, such as tablets, boxes, tubes and so on. These are ideal for a furnace of this kind.

Mr. North asked whether Mr. Ahern or his company had any experience of fluidised bed incinerators before. Mr. Ahern stated that they had not as they had never operated one themselves.

Mr. North stated that he would be concerned if this was essentially going to the first time that this particular technology was to be used for this type of mixed waste - if Cork was going to be used as some sort of test bed. Mr. Ahern responded by arguing that if one could not use a technology one was not familiar with, the applicants as a company would stand still and not change. This would be a variance with Mr. North's own evidence which was that one should consider lots of new technologies.

Mr. North stated that was not what he had said. He had stated that lots of different technologies should be looked at. All of the technologies that he had referred to were actually proven - and this one was not. He stated that any fluidised bed incinerator that was proposed by the applicants should at least have been taken to a large pilot scale on this particular type of waste as this was going to be the national hazardous waste facility. If the fluidised bed incinerator failed, you were going to have nothing. It should have a proven record for this type of mixed waste.

There was further questioning of Mr. Ahern regarding the details of the types of waste that are proposed to be incinerated in the proposed development, and how these wastes would be dealt with.

Mr. North stated that his major concern was that the applicants were dealing with a mass burn mixed waste and were putting in relatively modest proportions of chlorinated materials in with other types of waste. This would lead to contaminating a large feed with the chlorinated materials which was not good practice and would increase the emissions. Mr. Ahern stated that highly chlorinated waste would not be dealt with on the site but would be bulked in the transfer station and shipped to a specialised facility. He stated that that was part of the reason for having the transfer station adjoining the incinerator. It would operate not only for storage purposes but also a sorting plant, where hazardous waste would be sorted. This was something the company already did (MinChem).

Mr. North stated that this was going against the trust of the National Hazardous Waste Management Plan in that this had, as its basis, meeting national policy standards and making the country self-sufficient in hazardous waste. Now he was hearing that the country was not going to be anywhere near self-sufficient but was going to continue to export some of the more hazardous wastes for disposal.

Mr. Ahern responded that the composition of hazardous waste was changing all the time, as industry moved to new products. This flexibility was built in to the proposed development. Chlorinated solvents would be replaced with other solvents which were non-chlorinated but these solvents would also have to be disposed of.

There were further questions between Mr. North and Mr. Ahern regarding the disposal of drums in the incinerator. Mr. Ahern stated that the applicants were proposing to put a shredder in to the bunker area to allow drums to be shredded and also contaminated liners. In response to this answer, Mr. North stated that some fine particles could get through the shredder with pyrophoric materials which, if they got dumped in a hopper, would provide potential for fire. In addition, because of the use of the fluidised bed type of incinerator, drums are particularly hazardous materials, since, for example, sodium metal, when exposed to air or water, could become explosive. He felt that this was a significant risk.

Mr. North then asked Mr. Ahern questions regarding the personnel who would be working on the site. Mr. Ahern indicated that the development would be a 24 hour three shift plant, and would normally be under the supervision of a shift supervisor. This person would be likely to be a science graduate with experience of operating a large plant. Mr. North asked whether the staff in supervision would be experienced chartered engineers. At this point the Inspector intervened and stated that he did not consider this type of questioning relevant to the Board's determination of the application, as he had outlined earlier that any planning permission would enure to the benefit of the land, and would not be specific to the applicant company. Any issues relating to the qualifications and experience of operating staff, while it may be of relevance to the EPA Licensing Regime, would not be of relevance to the Board.

Questions for J. Ahern by A. Navratil (Group 5).

Mr. Navratil opened his questioning by quoting an extract from a book "Energy Resources and the Environment" edited by J. Blunden and A. Reddish (Open University). This stated:-

> *"From the corporate perspective, waste disposal has two aspects. From chemical producers, waste disposal is a cost which has to be kept as low as possible to maintain competitiveness. For waste disposal companies, disposal is a high profitable venture, within which the main barriers to entry are largely political. As a consequence, the industry has been quick to oppose any further attempts to regulate its operations, and individual companies have lobbied central governments in an effort to overcome local opposition".*

Mr. Navratil said that, in a nutshell, we have been here before. He therefore asked Mr. Ahern what he was doing here, and what was his company's motivation.

Mr. Ahern replied that he was here at the Oral Hearing because he wanted to build an incinerator, and his company's motivation was to run a business and to make a profit.

Mr. Navratil asked Mr. Ahern had he not agreed, earlier in the hearing, with the evidence of expert chemical engineers that his plant was not vital for the industry. Mr. Ahern responded that this was his evidence. He accepted that the pharmaceutical and chemical industry had come to Ireland without an incinerator. He responded however that the more difficult situation was that other countries have seen the success of the Irish economy and are not out to attract further investment in the chemical and pharmaceutical industrial sectors. He felt that it would be easier for Ireland to attract more of this industry in the future if we had waste disposal facilities for them. These industries are having problems disposing of their waste, as Ireland is becoming an expensive country on the world stage. Other companies are able to offer better facilities to the sector. In addition to this, Mr. Ahern argued that, with the proposed facility, the industries would be more secure in this country. It was the policy of the EU, the UK, and other countries, that Ireland should become self sufficient. Whether Ireland became 100% self sufficient was unlikely, but there were probably no countries that were totally self sufficient anyway. What they want for Ireland to do is to be mainly self sufficient, leaving centres of excellence for particularly difficult waste streams (for example mercury) around Europe where all will send and get economies of scale.

Mr. Navratil stated that he now wished to ask questions regarding the County Development Plan. He asked Mr. Ahern, up to the time of its adoption, whether there had been any representations made by the industry for the proposed development, or a facility such as is proposed in this case. Mr. Ahern replied that he knew that two submissions had been made on the planning application, at the time of the material contravention notices, by IPCMF, representing the pharmaceutical chemical industry in the country.

Mr. Navratil put it to Mr. Ahern that, up to the time of the adoption of the Development Plan, there were no submissions in support of a multi-use facility such as was now being sought by him. Mr. Ahern replied that it was the case that the first submissions that were made in support of the project were made before the Plan had been adopted.

At this point the Inspector intervened and asked for clarity on the matter. He asked Mr. Ahern whether it was the case that the only submission that had been made in respect of the site in the Development Plan was made by Indaver itself, and that the other submissions that had been made which he had mentioned were made in respect of the planning application.

Mr. Ahern responded that he thought there had been some submissions on the issue of incineration in the Development Plan from the industry, as well as from the applicants. He stated that he had no evidence on this one way or the other. The

Inspector stated that he would leave this matter for the Planning Authority's witnesses.

Mr. Navratil asked Mr. Ahern what subscriptions the company had made to any political party over the previous five years, whether he himself, his company, or his parent company or subsidiary. Mr. Ahern responded that the company nor him had never made any political subscriptions to any political party in Ireland anywhere.

Question for J. Ahern by S. Cronin (Group no. 6)

Mr. Sean Cronin (Group 6) asked Mr. Ahern whether his company had any experience whatever of dealing with fluidised bed incinerators. Mr. Ahern stated that they had none.

Questions for J. Ahern by D. Donnelly (Group 13)

Mr. Dominick Donnelly stated that he had a number of questions for Mr. Ahern on behalf of Deputy Dan Boyle TD, who could not be present.

Mr. Donnelly stated that Mr. Ahern was boss of both MinChem and Indaver Ireland. He asked Mr. Ahern would there not be a conflict between Indaver operating an incinerator and MinChem whose job it was to export waste. Mr. Ahern responded that he saw no conflict, as it was likely that both companies would in the future be combined into one. The companies had originally arisen separately and MinChem was acquired by Indaver so there would only be one company and hence no conflict.

Mr. Donnelly asked Mr. Ahern, in relation to the purchase of the site from ISPAT, whether there were any conditions on the purchase, such as the purchase being subject to obtaining planning permission or was the site bought outright. Mr. Ahern responded that the site had been bought outright. The only condition what Indaver put on, for a period, was that Indaver wanted to conduct site surveys, boreholes and trial pits etc, so that it could see that the site wasn't contaminated. Once this matter was checked out, Indaver completed the sale.

Mr. Donnelly stated that he understood that the actual vendors of the site were ISPAT Mexico and asked Mr. Ahern whether this was correct. Mr. Ahern stated that on the document it was Irish ISPAT Limited. And there was no reference to ISPAT Mexico.

Mr. Donnelly asked Mr. Ahern whether it caused him any concern that the purchase of the site took place five days before ISPAT went into liquidation. Mr. Ahern stated that his memory was that it was some months, not five days. The final sale may have gone through then. Mr. Donnelly asked Mr. Ahern whether it gave it any concern regarding the title deeds and so on. Mr. Ahern stated that they had been advised that they were on strong legal ground. They had tendered for the site, along with others and bought it properly. The Port of Cork bought the other ISPAT site. Deputy Boyle had raised this issue some months ago and they had checked it out. He stated that Deputy Boyle's objection was more of a political one, on the basis that ISPAT didn't treat Ireland fairly. But as far as Indaver were concerned there was no difficulty with the legal terms of their sale.

Questions for J. Ahern by K. Sinnott (Group 15)

Mrs. Kay Sinnott (Group 15) stated that there had been an electricity outage the previous night, and that the ESB have a register of vulnerable people who need immediate attention. She asked Mr. Ahern whether it was part of his plan to have such a register, for people who might be particularly sensitive to different emissions then licensed, or in the event of an accident. Mr. Ahern responded that the company would be required under the Seveso Directive to have an emergency plan, and would have to identify anyone who would be within the area that we might impact on, which he felt would be quite small. He stated that there was no one living with the HSA area, and that the applicants emergency plan would probably go beyond that.

Mrs. Sinnott stated that the Mr. Ahern had talked of a very small catchment area. In fact, a wider area would be affected from non-licensed emissions, depending on the direction and strength of the wind she asked would the Indaver Plan identify people who would be extra risk. Mr. Ahern stated that it would. He stated that there had been talk at the Oral Hearing about Ringaskiddy and Cobh having to be evacuated in the case of an accident. He didn't think that this was required. He noted that at the time of the Hickson fire, which had been mentioned at the Oral Hearing, nobody had been evacuated. He did not expect that anyone would have to be evacuated because of any incident in the proposed plant. He stated that the reason the development was a Seveso site was not because of the incinerator, but because solvents would be stored. Whether these solvents are stored in the chemical plant they came from, or on the applicants site, they would be a Seveso site.

Mrs. Sinnott put it to Mr. Ahern that because people weren't evacuated did not mean that they should not have been, and that no one had been harmed by the Hickson fire.

Questions for J. Ahern by P. Sweetman (Group 22)

Mr. P. Sweetman (Group 22) asked Mr. Ahern whether Indaver was a member of IBEC. Mr. Ahern responded that it was. Mr. Sweetman asked Mr. Ahern whether Indaver was a member of Cork Chamber of Commerce. Mr. Ahern responded that it wasn't, but a member of the Cobh and Harbour Chamber of Commerce. He stated that Indaver was not a member of IPCMF, nor a member of Forfas, both of which bodies had made submissions.

Mr. Sweetman asked Mr. Ahern whether he had read the non-technical summary in the EIS. Mr. Ahern stated that he had. Mr. Sweetman asked Mr. Ahern what was the difference between 26 dB(A) and 23 dB(A) $_{leq,}$ in non-technical language. Mr. Ahern stated that he had no experience in that area, which was a matter for a noise expert. As far as he knew one would be noisier than the other.

Mr. Sweetman put it to Mr. Ahern that the non-technical summary should not need to be interpreted by a noise expert, as it was supposed to be explainable to the general public. He stated that hence the EIS was fundamentally flawed and invalid. Mr. Ahern responded that he did not agree with that.

Mr. Sweetman asked Mr. Ahern who he should ask about the impact of the development on human beings. Mr. Ahern stated that he had been involved in the human side of the project. Mr. Sweetman asked Mr. Ahern who he should ask about the impact on flora and fauna. Mr. Ahern replied that he should ask Mr. Morgan who was their consultant on the matter. Mr. Sweetman asked who he should ask about the impact of the development on soil. Mr. Ahern stated that Laura Burke would cover this. Mr. Sweetman asked who he should ask about the impact of the development on air and water. Mr. Ahern responded that Ms. Burke would answer questions on water, but that they were not covering air due to the fact that environmental issues were not being considered at the hearing.

Mr. Sweetman asked Mr. Ahern who would answer questions on the construction phase of the proposed development. Mr. Ahern responded that Laura Burke would answer questions, perhaps assisted by a noise expert if it related to noise and the construction phase.

Mr. Sweetman noted that the applicants proposed to use a fluidised bed incinerator. He asked Mr. Ahern why this was not listed in the non-technical summary. He asked didn't one have sand in the bottom, out through which air is blown, and the sludge or other waste is placed on top of that, isn't that correct. Mr. Ahern said that that was a fair summary of the process. It creates a kind of sandstorm where one has excellent mixing, and for combustion to be successful, good mixing is essential. Mr. Sweetman stated it is a good way of burning sludge. Mr. Ahern stated that it was a good way of burning a number of things, there were power plants that are run on the same technology, there was such a power plant in the midlands, burning peat.

Mr. Sweetman asked how much sand did the applicants propose to use in this incinerator. Mr. Ahern stated that the details were in the waste licence. Mr. Sweetman stated that this was precisely the problem. The EIA Regulations 1999 stated that the materials used and the waste created must be assessed. He stated that the applicants seemed to have gone to extreme lengths to give this in the waste licence, but had not given it to the Board in the EIS.

Mr. Sweetman asked Mr. Ahern whether they were burning hazardous waste in the secondary chamber. Mr. Ahern replied that some hazardous waste would go into the fluidised bed incinerator perhaps 15 to 20%, with the balance going into the other burner. Mr. Sweetman said so what you are proposing then is a sludge incinerator which would use the highly flammable element of toxic waste, which could possibly be recycled to create free heat to neutralise the sludge. Mr. Ahern stated no the sludge goes in the front end of the process, and the liquid burner is after that. Mr. Sweetman stated that one would have to create heat in the afterburner, and that the applicants are using the toxic waste to create this heat afterburner wasn't that correct. Mr. Ahern stated that the sludge was a self supporting fuel. Once the incinerator was brought up to temperature, sludge would be introduced, and it would be self supporting. The applicants did not have to use fuel to keep the sludge part of it burning. The existing plant in Belfast, once it is up to temperature, operates and doesn't use any support fuel, and the liquid burner goes in afterwards and is a very simple technology to burn liquid waste.

Mr. Sweetman stated that the plant in Belfast was actually burning relatively dry sludges. He asked Mr. Ahern had he any evidence here that the sludges that he was going to burn would have a high water content. Mr. Ahern responded that the EIS was full of references to solid waste, and that the Belfast plant is not relatively dry, he has seen it and the sludge goes through a filter press but it will still be wet. He stated that many of the pharmaceutical companies in Ireland, which produce the sludge, are drying it and therefore reducing the water content. Effectively they do not wish to send water for incineration, as it is expensive, so they take it out first.

Mr. Sweetman asked Mr. Ahern about the toxic waste figure which he had given - 17,330 tonnes. He noted that Mr. Ahern had stated that this was 60% of the exported hazardous waste. He put it to Mr. Ahern that that left us a very long way short of the proposed size of the development which was a 100,000 tonnes.

Mr. Ahern responded that Table 1 shows 29,100 tonnes. That was the amount of waste that the company was currently exporting. They have always said that it was a combined hazardous and non-hazardous waste facility, and had indicated previously that they expected approximately 50,000 tonnes of it would be non-hazardous industrial "special" waste, such as sludges or other materials. He stated that the applicant company had nearly 60% of the waste they were already exporting and that would fill the hazardous element of the plant. Mr. Sweetman asked how much of the overall 50,000 tonnes of toxic waste was highly chlorinated waste. Mr. Sweetman stated that it was probably less than 1% in the case of highly chlorinated waste and less than 20% if it was medium chlorinated. Mr. Sweetman asked Mr. Ahern whether he proposed to burn chlorinated waste. Mr. Ahern replied that they propose to burn low levels of chlorinated waste and would deal with highly chlorinated waste by way of export where it can go to a recovery plant rather than an incinerator.

Mr. Sweetman asked how much of Ireland's hazardous waste was PCBs. Mr. Ahern responded that there were very small amounts - measured in kilograms rather than tonnes. Mr. Sweetman asked whether asbestos was classified as hazardous waste. Mr. Ahern responded that the company would not be burning asbestos.

Mr. Sweetman asked Mr. Ahern how much hazardous waste is actually the result of a manufacturing process <u>in</u> Cork. Mr. Ahern responded that this was 100% of all of those figures. These figures were the company's figures and were not taken from transfer stations anywhere else. They were wastes that the company was exporting from their customers in Cork. There were purely waste arisings in Cork that came out of manufacturing plants in Cork which were being exported by the company.

Mr. Sweetman stated so basically we were back to a figure of 17,000 tonnes exported for disposal. The company was building a co-disposal facility totally contrary to the Stockholm Convention, of 100,000 tonnes so as to dispose of less than 17,330 tonnes. Mr. Ahern responded that this was not the case. The total hazardous waste was 29,000, that the company actually export, and this would be suitable for the facility in Cork. If that was 40% of the national market total, that gives one an idea of the size of the entire market. Mr. Sweetman asked Mr. Ahern if it was a national facility, why build it at the extremity of the country.

The Inspector asked Mr. Ahern regarding the figure that he had given in Table 2 with a title "hazardous waste generated in Cork". He presumed this all related to waste for manufacturing process in Cork. He asked Mr. Ahern whether he should understand his evidence to be, both in Table 1 and Table 2, that asbestos was classified as hazardous waste. Mr. Ahern responded that it was so classified, but that it was not included in those figures. The Inspector stated so Mr. Ahern had mentioned that he had 45 to 50% of the market. So would it not be fair to say that any asbestos that has been exported in Ireland by others would be in that remaining 40 to 45% of the market. So wouldn't it be reasonable to double the figures to give the hazardous waste generated in Ireland that you could dispose of. Mr. Ahern stated yes what he had tried to show was waste "suitable for incineration", and the company exported more than 47,000 tonnes of waste in 2002. There were other wastes that went for other treatments. The Inspector asked whether it would be a reasonable assumption that if other firms were exporting asbestos for disposal abroad, it wouldn't be correct just to double the 29,100 tonne figure. Mr. Ahern responded that he would say that the market for incineratable waste would be approximately 58,000 tonnes. On top of that, there would be waste such as asbestos which would go for landfilling in Germany.

Mr. Sweetman referred Mr. Ahern to page 32 of the National Waste Database Report 2001 and to Table 4.18. He referred him to the total waste exported for thermal treatment. Mr. Ahern stated that the figure was 46,205 tonnes. Mr. Sweetman stated that this didn't add up to the 2002 figures that Mr. Ahern had given. Mr. Ahern stated that it did. If one take that and look at what they had been doing the following year. The company has 45 to 50% of the overall market. In 2002 it exported 29,000 tonnes, and this would mean that the waste that was exported was c.58,000 tonnes. All that he could say was that the company exported the 29,000 tonnes. It showed that they were roughly in line.

Mr. Sweetman put it to Mr. Ahern that the actual figure on hazardous waste generated in Cork and exported by their company in 2002 is 17,330 tonnes. And this is actually 37% of the waste disposed of, and not 60%. He stated that Indaver was providing one set of figures which don't seem to agree with the EPA figures. Either Indaver presumptions of the amount of business they are doing is wrong which he couldn't check or the EPA figures were wrong.

Mr. Sweetman asked Mr. Ahern about the construction phase in the non-technical summary of the EIS. He asked him whether they had any construction waste leaving the site at all. Mr. Ahern stated that he was sure they would have some, and that it was in the EIS. Mr. Sweetman stated that it was not in the non-technical summary pages 20 to 21. Mr. Ahern responded that in the non-technical summary they tried to deal with the key issues, construction waste is not a key issue.

Mr. Sweetman asked Mr. Ahern where they were going to dispose of their construction waste. Mr. Ahern stated they would try to recycle what they could and that the rest would go to a licensed landfill. Mr. Sweetman asked where was this licensed landfill. Mr. Ahern responded "in Cork".

Mr. Sweetman asked Mr. Ahern what licensed landfill would be taking construction and demolition waste in Cork. Mr. Ahern responded that this was a matter to be decided in 2006, he didn't know about the current site. Mr. Sweetman commented that the EIA has to deal with the effects on the environment and has to deal with this issue. If Mr. Ahern did not know, his EIS was fundamentally flawed.

Questions for J. Ahern by Mrs. N. Harty (Group 23)

Mrs. N. Harty (Group 23) asked Mr. Ahern, if there was an accident, how he proposed to compensate any families or farmers or landowners who might suffer damage as a result of the accident.

Mr. Ahern responded that the company had built in every safety feature that they could think of into the plant. However if there was an accident and if the company was found responsible for any damage, then they would be responsible for paying for that damage. They would either pay for it directly, or pay for it from their insurance policy.

Mrs. Harty asked Mr. Ahern whether the incinerator would be able to burn municipal waste or not. Was it of a design what would be suitable for burning municipal waste? Mr. Ahern responded that the plant had been designed for industrial waste. If you were to build a facility for municipal waste, you would do what the applicants were proposing for Phase 2 - a grate incinerator. One could burn municipal waste in the fluidised bed incinerator, but it would not be very suitable, as it would need to be shredded.

Questions for J. Ahern by J. Masson (Group 24)

Mr. John Masson (Group 24) stated to Mr. Ahern that the figures that he had given for 2002 were quite selective. He asked Mr. Ahern how one could draw conclusions when there were no basis for comparison. The figures were not audited nor were they provided for 2001. Mr. Ahern stated that he had been asked the previous Friday by Ms. D'Alton for this information. The figures were what the company exported from Cork as a percentage of the national arisings.

Mr. Masson asked Mr. Ahern how he arrived at the percentage. Mr. Ahern responded that in 2002, the company exported 17,330 tonnes of waste for disposal from Cork. From all of Ireland, including Cork, the company exported 29,000 tonnes, one as a percentage of the other gives you 60%. Mr. Masson asked what relevance this was. Mr. Ahern responded that the suggestion had been made that Cork didn't produce any hazardous waste.

Mr. Masson stated that EPA figures showed that the amounts of hazardous waste had declined between 1995 and 2001 by 33.3% and had declined by 20% from 1998 to 2001. If one were to take the hazardous waste in Ireland, the amount exported for recovery would be 9.2% and the hazardous waste exported for disposal would be 14.3%. He stated there was no point in making a percentage of a percentage. In the

EPA 2001 National Waste Database, at page 25, Table 4.1.2 gave the totals of national hazardous waste in tonnes. What Mr. Ahern was doing was giving figures for Cork of 17,000 tonnes which was 15% and yet his column stated 60%, which was misleading. Mr. Ahern denied that the figures were misleading.

There were further exchanges between Mr. Masson and Mr. Ahern regarding the figures. As, later in the hearing, Mr. Ahern produced figures for 2001, the same year to which the EPA National Waste Database Report relates, it is not proposed to outline this exchange here. It may be reviewed on tracks N and O of this day's hearing.

Questions for J. Ahern by the Inspector

The Inspector asked Mr. Ahern whether his understanding that in the EPA National Waste Database, meat and bone meal was classified as non-hazardous industrial waste, rather than agricultural waste. Mr. Ahern stated that that was true. The Inspector asked Mr. Ahern whether that was therefore the definition he was using for his non-hazardous waste component for the proposed development. Mr. Ahern stated yes.

The Inspector asked Mr. Ahern in that case whether he had a picture of the meat and bone meal arisings, and in particular as to what percentage comes from County Cork as opposed to elsewhere. Mr. Ahern replied that there was a rendering plant in Mallow and that that was the only one in Cork. The Inspector stated that this point related to the proximity principle. If 50% of the proposed development was intended to deal with non-hazardous industrial waste, then the proximity principle must also apply to it. He asked Mr. Ahern whether he could indicate what was the location of the meat and bone meal arisings in terms of county, since it is buried in the overall national figures. If the applicant were proposing to burn MBM, which Ms. Burke showed had a high calorific value, and something that he had stated was something he wished to bring in, the question was where it came from - what percentage comes from Cork. Mr. Ahern stated that he wasn't sure but he would try and provide the information later for the Inspector.

Questions by E. O'Byrne (Group 2) for J. Ahern

Ms. O'Byrne asked Mr. Ahern whether the IPC licence application was for Phase 1 or Phase 2. Mr. Ahern responded that it was a waste licence application and it was for both Phases 1 and 2. Ms. O'Byrne stated then that in the licence application, where the applicants refer to "MSW and similar commercial, industrial and institutional wastes", would that be in Phase 2? Mr. Ahern replied that a large proportion of Phase 2 would be for municipal waste.

Ms. O'Byrne stated that Mr. Ahern had answered earlier that waste could be shredded for Phase 1. She asked what materials would need to be shredded. Mr. Ahern responded that some industrial waste, for example, contaminated clothing and the like, would need to be shredded for the fluidised bed incinerator.

Ms. O'Byrne put it to Mr. Ahern that his evidence appeared to be that incineration forms an important part of an integrated waste management approach. Was this the case? Mr. Ahern stated that was so. Ms. O'Byrne asked Mr. Ahern whether it was the case that incineration could improve a country's ability to deal with its waste. Mr. Ahern replied that that had been the experience in other countries.

[There were then a number of questions by Ms. O'Byrne to Mr. Ahern regarding the Indaver company's experience of operation in other countries, including Flounders. As noted earlier in the hearing, the Inspector had ruled that these matters would not be considered relevant. Accordingly it is not proposed to provide a précis of this evidence. It may be listened to on Track P of the Oral Hearing proceedings tape]

Mr. Noonan asked Mr. Ahern to clarify the table which he had presented showing exported wastes for disposal. He stated that those figures showed tonnes exported for high temperature incineration. He used the term "suitable for high temperature incineration". Mr. Ahern stated that that was so.

After the lunchbreak, it was agreed to take questions for Mr. S. Cronin (Group 6), who was the only third party witness that had, at that stage, not been cross-examined.

Questions for Sean Cronin (Group No. 6)

Mr. P. Gardner (Indaver) referred Mr. Cronin to page 11 of his submission. Mr. Cronin had stated that the right of way had moved with time and successive works away from the diagonal path. Mr. Gardner asked Mr. Cronin where the right of way had moved to (it was supposed to be on the maps in his appendix).

Mr. Cronin replied that the right of way was shown on the land registry extract, where he had drawn it in blue pen. It shows an arc movement from about one-third of the path as it crosses the boundary, going east and down to the north. The right of way is going with the changed contours of the site, where rubble was removed, and the walkway has continued along in the accessible path.

Mr. Gardner stated that in fact the maps that had been attached didn't show it and he handed his copy to the Inspector. The path that is passable is shown with the OS diagonal path. The diagonal path in fact goes through the furze.
(The correct version, with the blue pen markings, were in fact only provided on the Inspector's copy, which is included as an appendix to Mr. Cronin's witness statement, in Appendix 2 – Group 6 – 1)

Mr. Noonan asked Mr. Cronin whether he wished to clarify any other matters arising from the Inspector's questions or otherwise.

Mr. Cronin stated that he had an affidavit from a Patrick O'Sullivan (copy of which he handed in to the Inspector) on the issue of the right of way. Mr. O'Sullivan says that he had walked this path for 40 years and that approximately 10 years ago Irish Steel leased the site to Hammond Lane, who removed the rock at that time.

The Inspector stated that the document which Mr. Cronin had handed him from Mr. O'Sullivan did not seem to be an affidavit but seemed to be a statement, in preparation for an affidavit, as it was not witnessed or sworn. Mr. Cronin undertook to get the original and hand it to the Inspector later. (This was later handed in and is included as an appendix to Mr. Cronin's witness statement in Appendix 2 – Group 6-1)

Mr. Cronin stated that the other clarification the Inspector had sought was in relation to the HSA report, and the claim that the letter submitted to Cork County Council pre-dated the availability of that report. Mr. Cronin stated that he had a press release from Indaver's website dated 12th March, stating that the HSA had responded to Cork County Council's request for its submission. Mr. Cronin stated that he also had the report itself which was entitled "Report on Hazard Identification and Evaluation Process for Major Accident Prevention - Waste Management Facility Ringaskiddy". This report, at Appendix 18, included a report which was dated 20th March, 2002. The date of the letter from Indaver was 13/3/2002 and the website date was 12/3/2003. Accordingly, Mr. Cronin stated, he would submit that the submission by the HSA to the County Council was premature, not having had access to the final report by Indaver's consultants, Byrne O'Clerigh Associates.

Marcia D'Alton (Group 3) asked Mr. Cronin whether he considered the right of way to comprise part of the setting of the protected structure. Mr. Cronin responded that the right of way was an access to an historical structure which is a registered structure and hence in his opinion was part of the setting of that structure. The setting was itself protected under the Register of Protected Structures Scheme.

Mary Hurley (Cobh Action for Clean Air) asked Mr. Cronin whether in his opinion the volume of traffic from the National Vehicle Distributors had been included in the EIS. Mr. Cronin responded that the National Vehicle Distributors, according to their own information, import 30,000 vehicles per annum. They have sites in Dublin, Rosslare and Cork. There would be on average 10,000 vehicles to be transported from the Ringaskiddy site per year. With about 8-9 cars per transported lorry, this would be quite a number of vehicles. The EIS does not give a sufficient volume on this.

Ms. Hurley asked Mr. Cronin whether the impact on the N28 traffic from the Pepsi Cola plant in Carrigaline had been itemised in the EIS. Mr. Cronin stated that he could find no evidence that Indaver took into account the Pepsi Cola factory in Carrigaline and for which the N28 would be the main traffic access route. This factory would add to the traffic on the N28 going north and south from the Shannonpark Roundabout. There are currently 150 car parking spaces at the plant and this will grow to 200 as they hire more people. Mr. Cronin felt that none of this had been taken into account in the EIS traffic figures. Nor could he find anything in the EIS about the location of the roundabout facing the ADM/Pfizer Ringaskiddy plant. This roundabout would have been in construction at the time of the survey. The applicants say that the traffic going west from Shanbally Roundabout would have 200 vehicles in a queue at peak morning times. Those 200 vehicles would also be in the queue at the Pfizer roundabout and that queue would comprise 8-15 vehicles bound

for the proposed development at the operational phase. Those vehicles would be stalled in traffic facing the ADM/Pfizer buildings for greater than five minutes, according to the EIS figures. 200 vehicles in a tailback, with an average of 5 metres per vehicle, represents a kilometre. If you take a HGV, the average length would be 11 metres, and hence a longer tailback would occur.

Mr. Cronin stated that this would occur during the busy school period in the morning, where children living, for example, in Shanbally, do not have a pedestrian crossing. People living in the residential area nearby, like Ard na Greine, would probably not be able to cross the road to get to the church, or the schools, on a daily basis. This would cause a big deterioration in their quality of life and their safety, particularly due to the fact that the traffic could contain a lot of hazardous waste and flammable materials which would be bottlenecked at the roundabouts.

Ms. Hurley asked Mr. Cronin whether he considered that these emissions were significant. Mr. Cronin responded that they would add to the view that the Council was being negligent in allowing any further developments in Ringaskiddy to proceed without an adequate road structure first being put into place to facilitate the known growth. He stated that the figures speak for the current over-capacity of the routes already. You have basically a compound traffic going north on the N28, bottlenecked at the Shannonpark Roundabout, comprising traffic from Crosshaven, Currabinny, Minane Bridge, and the huge traffic from Carrigaline and south of Carrigaline. This would concern residents of the area from the resultant noise pollution, air pollution, waste of energy, waste of petrol/diesel, plus one would have the safety factor of people in a rush at peak hours with the potential for traffic conflict and accidents. Accordingly, Mr. Cronin said the implications were quite serious for the people who would traverse the N28 on a daily basis, and those coming from the Shanbally Roundabout towards Cork and trying to cross that road.

Mr. Cronin stated that this was also serious in the context that the access routes such as the R613, which was cited as an ancillary route in the EIS, had not sufficient horizontal alignment to take HGVs, which would be unable to negotiate those bends without crossing the road centre. In addition, there are no footpaths along those roads. In the Shanbally area there were no footpaths along the side roads leading to the Coolmore area. Any HGVs that would be trying to avoid the bottlenecks by using such roads would be passing schoolchildren walking on the road on their way to school.

Questions for M. Hession - Cork County Council

Mr. Sreenan, for the Planning Authority, stated that Mr. Hession was attending the hearing, at the request of the Inspector, to provide information regarding the Major Accident Emergency Plan. Copies of this plan had been circulated to the parties the previous day.

Mr. Hession stated that he was a Fire Officer with Cork County Council, and had been invited to the Oral Hearing by the County Council to answer questions on the Major Accident Emergency Plan. He stated that he was a Senior Executive Fire Officer with the Council, responsible for East Cork, but had been a member of the Cork Joint Emergency Planning Group for a number of years.

Mr. Noonan asked Mr. Hession, in his capacity of a member of the Planning Group or as the Senior Executive Fire Officer with responsibility for the East Cork area, whether he had been presented with any data to judge the safety, from the fire point of view, of the proposed development plant at this stage.

Mr. Hession stated that he was not at the hearing to answer this. There was no-one with a detailed knowledge of the application, as this was dealt with under the Fire Certification application provisions of the Building Control Act. It was only at that stage that fire officers would look closely at the application.

Mr. Noonan asked Mr. Hession whether he knew how much water was needed on the recent Sunbeam fire that had happened the previous week in Cork City. Mr. Hession stated that he didn't know as he wasn't involved in it.

Mr. Noonan asked Mr. Hession whether he was aware of any other major fires in the area in the past. Mr. Hession replied that the biggest fire of which he was aware was in 1993 at the Hickson factory in Ringaskiddy. There was a consequent loss of water, at this fire incident, and allowing for this and providing sufficient water to fight the fire, there would have been in excess of 5,000 gallons per minute required on that occasion.

Mr. Noonan stated that it had been suggested by the applicants that a major fire is defined as a 90-minute fire. He asked whether the Hickson fire would be of a longer duration than that. Mr. Hession replied that the Hickson fire was considerably longer than that. He could not remember, but the whole incident exceeded three hours.

Mr. Noonan asked Mr. Hession would it fall within the definition of a major accident plan scenario were the fire water retention capacity at Indaver's plant to overflow, with resultant leakage into the surrounding terrain and harbour. Could that bring about circumstances that would be relevant to the Major Accident Emergency Plan?

Mr. Hession stated that to define what was referred to as a major accident or emergency, any event that caused an overrun on the capabilities of the emergency services was a matter for such a plan. What would be typically borne in mind would be how many actual casualties might take place or whether there might be a site with a wide perimeter, because in the first instance one was oriented towards the hospitals and the implementation of pre-determined arrangements with them to deal with major emergencies, where they may need to co-ordinate arrangements to deal with the distribution of casualty overflow. In the latter case, where there might be major tasks for the Garda Siochana, in the situation of control of a certain perimeter for access. The perimeter would be that defined as the edge of the danger area. The tasks for the Police would become more complex, depending on how large an incident was.

Mr. Noonan asked Mr. Hession whether, in the context of major emergency planning, it would be his view, that, to the greatest extent possible prevention is better than cure. Mr. Hession replied that the matter of prevention was not addressed in the context of planning for major emergencies. Mr. Noonan asked was planning for major emergencies essentially a reactive operation, dealing with the consequences.

Mr. Hession stated that the Major Emergency Plan was in fact a plan to provide dependable but generic arrangements for the rolling out of the wheels with the emergency services. It depends heavily on, and provides for, a proper alert procedure that is not subject to misunderstanding or to failure in or of itself both for the implementation of the Major Emergency Plan on a turn-out basis and on an alert basis.

Mr. Noonan asked Mr. Hession to what extent he has had to turn his mind to the prediction of worst-case scenarios, if an accident happened with regard to industrial locations around the harbour, for example at Seveso locations. Mr. Hession replied that here the emphasis was being changed from generic to pre-planning for specific locations and installations. This would be in the context of the Seveso Directive.

Mr. Noonan asked, when looking at a planning permission application, to the extent of the information as furnished, was it desirable that its safety should be considered at the planning stage. Mr. Hession replied that in the context of a planning application the Fire Authority would not be involved, other than as a consultee by the applicants at pre-planning stage or internally by the Planning Authority. The determination at planning stage would rest with the planning side of the Council. The development would only enter the remit of the Fire Services Department under the Building Control Act, where the process involves the certification of all aspects of proposed building development, and involves the submission of very extensive detailed reportage with the process leading to the grant or otherwise of Fire Safety Certificates effectively for each building in the development.

Mr. Noonan asked Mr. Hession whether Indaver had approached the Fire Authority prior to submitting the planning application. Mr. Hession stated that their consultants, Ove Arup, had. Mr. Noonan asked whether the results of those pre-application consultations had led to any changes in the materials submitted for planning. Mr. Hession stated that he himself had not been involved in the process, but he had consulted with his colleagues that were involved with that consultation, and what had come from the consultation was that there was only one means of access onto the site - the site of the development from the road - and the Fire Department recommended that there be a second access. He understood that that had been included in the formal planning submission.

Mr. Noonan asked Mr. Hession about his figure of 5,000 gallons per minute. This would amount to 300,000 gallons per hour. He asked him had he any conversion of this figure to cubic metres. Mr. Hickson stated that that would be 1,363.7 cubic metres. Mr. Noonan stated so the figure would be 2,100 cubic metres in 90 minutes. Mr. Hession said yes.

Mr. Noonan asked Mr. Hession whether he had any awareness of the rainfall figures presented by Indaver in relation to the retention capacity. Mr. Hession stated that he did not.

The Inspector asked Mr. Hession whether he was satisfied that the public water supply main, which he presumed was also the fire main, had adequate water to take the levels that he was talking about in the event of a fire. Mr. Hession replied that it was a matter for the local authority as sanitary authority to answer that question. The Inspector stated to the Planning Authority representatives that he would be looking for a witness from them to deal with this issue.

Mr. A. Navratil (Group 5) asked Mr. Hession whether he was correct in assuming that Mr. Hession had had inputs into the writing of the Major Emergency Accident Plan. Mr. Hession stated that he had. Mr. Navratil stated that according to the contents, there were appendices going from A to P, but that the copies he had received only had appendices going from A to H. Mr. Hession replied that the latter 20 pages, representing these appendices, were contact numbers and the like, and so for the purposes of the hearing, these had been left out. He stated that those pages were not normally circulated other than to the agencies that were parties to the plan.

Mr. Navratil asked Mr. Hession who gets the documents. Mr. Hession replied that there were 1,500 copies of the plan distributed internally to the various organisations and that what had been handed out to the Oral Hearing was an abridged version.

Mr. Navratil asked Mr. Hession about bunding. He stated that the particular site has a proposal for stormwater to be discharged to the estuary. In the event of a major fire there, and using the definition of a fire of 90 minutes duration, one would have to probably pump 2,000 tonnes of water at that. That water would wash into the estuary in due course. He asked Mr. Hession whether there was any measure of which he was aware to contain that water, which could be contaminated, lest that it would cause further damage in the estuarine receiving water. Mr. Hession responded that he couldn't answer the question, as this would be for somebody with specific knowledge of the development proposal.

Mrs. A. Hogan (Group 7) referred to the Hickson fire in 1993 and stated that there had not been enough water at that time, as the watermain was broken during the fire. She stated that the chairman of the Chief Fire Officers had said in May 2003 that major accident plans should be re-examined to ensure that Fire Authorities could cope with disasters. He had also said that services for the pharmaceutical and chemical industries would need to be re-examined, as in quite a number of situations, the fire services could not provide the facilities required. She asked Mr. Hession whether he agreed with that view.

Mr. Hession stated that he was familiar with East Cork, and in his view the Fire Authority services required under the Fire Services Act, were adequate to meet the needs of the area.

Mrs. Hogan asked Mr. Hession whether she was right in thinking that the local authority must produce an external Emergency Plan for Seveso sites, of which there are four already in Ringaskiddy, one of which is a higher tier establishment. Mr. Hession replied that the local Competent Authorities are each required to prepare an

external emergency plan for the top tier sites, of which there were seven in the county, two in the city and one in Ringaskiddy. This was Glaxo Smith Cline.

Mrs. Hogan asked whether there was such a plan in existence for Glaxo Smith Cline. Mr. Hession replied that the plan was at draft stage and was ready for implementation. It was not yet at a stage where it has been exercised and tested. Mrs. Hogan asked why the Ringaskiddy Residents Association were never contacted about this plan, in light of the Statutory Instrument of September 2003, which amended the Seveso Regulations and made public consultation obligatory. Mr. Hession replied that within Cork County Council, it was the fire staff in South Cork who would be finalising the major external emergency plan for the Glaxo Smith Cline footprint. The determination of that footprint lies effectively on a joint basis between the local authority and the HSA, with input from the developer. The lead role was taken by the HSA, and the footprint that is determined around the plant, for which external emergency planning is required under the Regulations, is 450-480 metres from the release points for the scenarios considered. The responsibility to inform the public in connection with Seveso arises only in relation to the footprint around the site itself.

R. Cargin (Group No. 8) asked Mr. Hession whether the fire services would be consulted when planning permission applications were being submitted, to ensure that safety issues would be dealt with. Mr. Hession stated that in the case of the Indaver plant, there had been prior consultation between the applicants and the Fire Authority in relation to access for the site. He stated that that was the only item prior to the decision on the planning application. Mr. Hession stated that once planning permission was granted for a development, the applicant then had to make an application to the Building Control Authority for Fire Safety Certificates for each of the proposed buildings in the scheme. That application for Fire Safety Certificates was much more detailed than a planning application. It is with that application that the material comes before the Fire Authority and hence it was not yet at a stage where the Fire Authority will be examining the proposals.

Mr. S. Cronin (Group 6) noted that a map had been presented by the applicants to the HSA which shows the development being beside the Hammond Lane dismantling facility. He asked Mr. Hession whether he would consider it prudent to locate a hazardous and flammable tank farm at the boundary of, and within a few feet of, a smouldering dump of dismantled automotive components. Mr. Hession replied that he couldn't answer the question as he was not involved in the analysis of the safety aspects of the development.

Mr. Cronin asked Mr. Hession whether he would consider it prudent to locate the hazardous and flammable tank farm at the entrance to the National Maritime College, no more than 50 feet away. Mr. Hession stated that he couldn't answer this question either, for the same reason.

Mr. Cronin asked Mr. Hession about the access route to the National Maritime College. He stated that this was through a single road, leading to the cul-de-sac. Opposite the entrance to the college, as shown on applicants' Drg. No.

C05/APP/92/117, the location of the National Maritime College is shown in front of the proposed tank farm and storage transfer facility. He asked Mr. Hession, in the event of an explosion of the hazardous and flammable material, unloading or during construction, and with the college in operation, what would be the escape route for the 825 students and staff located in the college. Mr. Hession stated that he couldn't answer this question, as he was not part of the risk assessment process for the development, nor for the Maritime College.

Mr. Cronin asked Mr. Hession whether he could see on the drawing (which was handed up to him) any route leaving the Maritime College that does not pass beyond or in front of the waste transfer station. How would anyone at the college escape in the event of a potential fireball explosion on the Indaver site? Mr. Hession stated that this was a legitimate question, that had everything to do with a person who was involved in the risk assessment for both installations, but that he was not the person who had dealt with this matter and so could not comment.

The Inspector asked Mr. Hession whether Mr. Cronin's question was a matter for the Fire Authority or for the HSA. Mr. Hession responded that the matter was essentially one for the HSA, who would have looked at the risk assessment documentation.

Mr. Cronin asked Mr. Hession about the access to the site in the event of an emergency for the relevant emergency services such as the fire tenders and water tankers. He asked whether, if there was an incident during peak traffic hours, how the emergency services would reach the site in adequate time in view of the congestion that is endemic in this area. Mr. Hession replied that he was at the Oral Hearing to answer questions on generic emergency planning, and that this was a traffic issue and one to be answered by the statutory authority. He stated that the emergency services effectively face traffic bottlenecks all the time in the metropolitan and urban areas. The issue essentially related to response times and the ultimate deployment capabilities for the fire services.

Mr. Cronin stated to Mr. Hession that we had seen from the map that the cul-de-sac location of the proposed site shows that there was no alternative route except by sea-borne access for emergency services. He asked whether the Major Emergency Plan included for this.

Mr. Hession replied that sea-borne access for emergency services was pre-planned for specific situations where they were aware that it might be required, such as for example in Spike Island Prison. For other locations, including Ringaskiddy, the Emergency Plan did not plan for sea-borne access.

There were then a number of questions to Mr. Hession from Mr. P. Sweetman (Group 22) relating to the specific Emergency Plan under Seveso II for the Glaxo Smith Cline facility. The Inspector ruled that this matter had already been discussed, and he was aware of Mr. Hession's views on the subject. Mr. Sweetman was asked to proceed with other questions.

Mr. Sweetman asked Mr. Hession, in the context of a Major Emergency Plan, how one would approach the Indaver site, when the wind is blowing from the east, and how would one evacuate the personnel from the National Maritime College when the wind is from the east, in the event of an incident. Mr. Hession stated that what he was asking was whether there was or could be, taking account of the avenues of approach that are available, either an evacuation plan put in place or a safe approach by the emergency services. This would be an issue to be asked at the future when the emergency services were involved in risk assessment for the site. It was only at that stage that the matter could be looked at in adequate detail for the question to be answered.

Mr. Sweetman stated to Mr. Hession that what he was trying to deal with was the Emergency Plan. He put it to Mr. Hession that when you make emergency plans the site was fundamentally unsuitable because there was no approach to the site that was safe if the wind was blowing from the east, and there was no way of evacuating personnel from the National Maritime College in the event of an incident. One may be devised later. Mr. Sweetman stated that what he was trying to avoid was the obvious problem, that the site was located at the end of a cul-de-sac, with only one way in and out. He felt there was no way of avoiding this problem.

Mrs. N. Harty (Group 23) stated that she was from East Cork, and that after the Hickson fire, the smoke did a loop around the harbour, and then went towards East Cork at about ground level. The Hickson fire was exceptional in that it was accompanied by an enormous black plume of smoke which made it visible. She asked Mr. Hession in the event of an accident at the proposed plant, where the plume may not be so visible, how would the residents be made aware of danger from airborne emissions that could come over due to the prevailing wind from the south-west. She asked Mr. Hession who would be responsible for monitoring the potential plume and for advising people as to whether they should evacuate or not.

Mr. Hession stated that this was dealt within the Cork Emergency Plan, where the relevant contacts are listed. The local and national media would be consulted. What was pre-planned for was the best operating procedure for interfacing with the media.

Mrs. Joan Masson (Group No. 24) asked Mr. Hession whether he could give an example of what emergency facilities the Fire Safety Services have in relation to there being a hazardous material incident in the Jack Lynch Tunnel. Mrs. Hession replied that the tunnel was a city installation, and in the context of the Major Emergency Plan the response to an incident in the tunnel would be by Cork City Fire and Rescue Service, supplemented by fire stations in Cork County. The Emergency Fire Services have an extensive capability to deal with such a problem, and there had already been a number of exercises in the tunnel.

Mrs. Masson asked Mr. Hession about his experience in relation to the Hickson fire. It had been noted that during the fire, there were a number of wind changes in Cork Harbour, where the plume of smoke initially went towards Cobh, then was blown towards Crosshaven, and eventually then was blown towards East Cork. She asked

Mr. Hession whether such changes of wind, in a short period of time, were characteristic of Cork Harbour.

Mr. Hession stated that the weather on the day of the Hickson fire was similar to that experienced recently at the Sunbeam fire. This was what would be described as "quite buoyant conditions" and the smoke was carried high for some time.

The Inspector stated that he had a number of questions to ask Mr. Hession. He asked him whether he should take it that his day job was as a Senior Executive Fire Officer responsible for East Cork, and that his work on the Emergency Plan was part-time. Mr. Hession replied that normally his work was as Senior Executive Fire Officer responsible for the delivery of all fire and rescue services for the East Cork area.

The Inspector asked Mr. Hession whether it was true that Fire Prevention Officers generally get to see planning applications when they are lodged, and normally give advice to the Planning Department. Mr. Hession stated that that used to be the situation, but in Cork there had been a change since the coming into operation of the Building Control Act. The Fire Authority do not now provide reports for the Planning Officer before planning decisions are made, but merely inform him whether or not a submission under the Building Control Act was required.

The Inspector asked Mr. Hession whether he was aware of any case, in his experience, where the Fire Authority had actually recommended a refusal on fire safety grounds for any planning application. Mr. Hession replied that he could not recall any such case. It was not the Fire Authority's practice to recommend refusal at planning application stage. They left it until the Fire Certificate application comes in.

The Inspector asked Mr. Hession was it the case then that a decision on the planning application would already have been made before the Fire Services Authority would look at whether or not something would be a fire hazard. Mr. Hession replied that that would generally be the case, but the Fire Officer would have already been copied with a set of the drawings, and so could form an opinion.

The Inspector asked Mr. Hession, apart from the issue of one access to the road in the present application, whether the application had been looked at from the point of view of whether or not it should be refused on the basis that the only access to the location of the site was a single access along the N28.

Mr. Hession stated that the applicants had given a reply to the Fire Officer, subsequent to their pre-application discussion in November 2002, indicating that a separate fire brigade entrance had been added to the east of the main site entrance to the waste to energy facility. That had been incorporated into the planning application.

The Inspector asked, arising from the questions, whether it was the case that Cork County Council Fire Authority does not now have a role in recommending refusal at planning application stage. Mr. Hession stated that that was the case.

The Inspector asked Mr. Hession, in his role as being responsible for the fire services in East Cork, whether there was a fire station in Ringaskiddy. Mr. Hession stated that there was not. The Inspector asked Mr. Hession about the nearest fire station. Mr. Hession stated that the nearest fire station to the proposed site was in Carrigaline.

The Inspector asked Mr. Hession whether the Carrigaline Fire Station was a full-time station or a part-time station. Mr. Hession replied that Carrigaline Fire Station was a retained service, and people were called out in the event of an alert. Generally the response time in Carrigaline would be five minutes. If the station were a whole-time station, the response time would be one minute.

The Inspector asked Mr. Hession accordingly whether the nearest full-time fire station in the event of an incident at this plant would be in Cork City. Mr. Hession stated that this was so.

The Inspector asked Mr. Hession what he would expect the response time to be if there were a fire on this site, or for example at Glaxo Smith Cline. Mr. Hession replied that a fire appliance in emergency response has an average rate of progress of 30mph in a non-built up area and 20mph in a built-up area, so, with a distance of 12 miles from Cork City, the response time in the event of a fire in Ringaskiddy would be 26 minutes.

The Inspector asked Mr. Hession, in the light of the fact that he stated that he had worked in this area for a long time, what he knew of the meteorological conditions in the harbour. It had been stated by a number of the parties at the hearing that the harbour area gets temperature inversions fairly regularly, so that one would not always get the buoyant conditions that had been mentioned earlier, as for example one could get in Cork Airport, which is on much higher ground. He asked Mr. Hession whether that was a fair summary.

Mr. Hession replied that, when preparing the plan for the IFI plant, this had been a key issue. This area was close to the harbour, and conditions were least buoyant there. In his experience inversions would tend to occur approximately 5% of the time.

Questions for Sheila Lane (Indaver)

Mr. J. Noonan (Group 1) asked Ms. Lane when she was briefed to participate in the preparation of her material for the application. Ms. Lane stated that it was in the second half of 2000. She was asked to do an archaeological assessment for the site.

Mr. Noonan asked Ms. Lane whether she had been referred by her clients to any particular guidelines under which the assessment should be prepared. Ms. Lane responded that initially she had not been but later Arups had referred her to the usual EPA EIS Guidelines. Those guidelines were the ones that were in circulation at the time. Mr. Noonan asked Ms. Lane whether she had read those guidelines and was she familiar with them. Ms. Lane replied that she was.

Mr. Noonan asked Ms. Lane whether she was aware that the guidelines require her to calculate the effects of an unexpected event on the site, as opposed to simply expected

events. He stated that at paragraph 3.2.5 on page 24 of the guidelines there was specific reference to a section on "Worst Case Impacts". He asked her whether she had been told what such worst case impacts might be.

Ms. Lane stated that she had not been so told. She would have considered it in terms of archaeology, so the worst case impact would have been the removal of any archaeology.

Mr. Noonan asked Ms. Lane whether she considered any other impact, such as the impact of rock blasting on the site, on the Martello Tower. Ms. Lane stated that she did not consider this.

Mr. P. Sweetman (Group 22) asked Ms. Lane whether she had only examined the archaeology of the site. Ms. Lane replied that she had. Mr. Sweetman then asked why was the section in the EIS headed 'Archaeology and Cultural Heritage'. He asked her whether she had examined cultural heritage. Ms. Lane stated that they had examined cultural heritage, in the sense that they had looked at the possibility of later houses of the 19th and 20th centuries, being in the area.

Mr. Sweetman asked Ms. Lane whether she was aware that the Martello Tower was a protected structure under the 1999 Act, and was stated as so in the County Development Plan. Ms. Lane responded that the Martello Tower is protected under the National Monuments (Amendment) Act, 1994, and when the EIS was prepared in the year 2000, it hadn't yet been listed as a protected structure in the Cork County Development Plan.

Mr. John Masson (Group 24) asked Ms. Lane whether she had made any report to Dúchas on the significance of the Martello Tower, the largest one built in Cork Harbour. He noted that the Martello Tower exclusionary area extended into the Indaver site. Ms. Lane responded that she had issued a report to Dúchas, and that this was in the EIS. This report was on the licensed testing for excavation. Mr. Masson asked whether this related to the Martello Tower. Ms. Lane responded that the archaeological testing was carried out on the site, and this report also referred to the fact that they were close to the Martello Tower. However, she did not gain access to the Martello Tower and as the proposed development does not involve excavation within the exclusionary area for the Martello Tower she did not investigate it further.

The Inspector asked Ms. Lane if her investigation had been limited to the boundary of the site as defined by the applicants. Ms. Lane stated that that was the case. The Inspector noted that in the EIS there was a large listing of other records of places and monuments in the general area. He asked Ms. Lane, with the exception of the Martello Tower, whether any of those were on the site or were affected by the development. Ms. Lane replied that none of them were.

Questions for Gerard Morgan (Indaver)

Mr. Noonan asked Mr. Morgan when he was briefed and by whom. Mr. Morgan stated that he was briefed in early 2001 by Arups Project Team.

Mr. Noonan asked Mr. Morgan whether he had been asked by the Project Team to give any aquatic services. Mr. Morgan stated that he had not been asked to give any aquatic services. His clients had stated at the outset that they would be confining their investigation to the impact of the construction and habitat removals on the site. Essentially the impacts which they had addressed related to the physical restructuring of the site for building purposes of the development, and the associated impacts that related to the construction activity on habitat, and they did not deal with the operational aspects of the activity.

Mr. Noonan asked Mr. Morgan whether the impacts which they had investigated related solely to flora and fauna currently on or over the site, and did he not deal with flora and fauna under the site. Mr. Morgan stated that he did not deal with flora and fauna under the site. Mr. Noonan asked Mr. Morgan whether he had dealt with any impacts on the waterbodies nearby. Mr. Morgan stated that he had not.

Mr. Noonan stated that he understood the badger to be a protected species. He asked Mr. Morgan whether this was so, and if so what were the implications of the development. Mr. Morgan responded that the badger was a protected species, but it was not an endangered species. He stated that his belief was that the badger, during construction, would not vacate the site. They had stated that foxes were likely to vacate the site, as they were more mobile. The badger has a sett on the site and would be likely to be faithful to that sett. They believed that the badger would not leave the site but that there would be guarantee that that would be the case. He stated that this was an assumption based on the experience of Dr. Sliemann, who had carried out the mammal investigation.

Mr. Noonan noted that Mr. Morgan had stated that he had limited his answer to his belief that the sett would not be disturbed during the construction phase of the development. Mr. Morgan responded that it would certainly not be disturbed physically during the construction phase. Mr. Noonan asked him in what other way could it be disturbed. Mr. Noonan stated that obviously it could be disturbed from general noise and general vibration in the area, which was what Dr. Sliemann was addressing, rather than the physical damage to the structure itself.

Mr. Noonan asked whether the badger sett would be disturbed due to artificial light at night-time. Mr. Morgan responded that the badgers would be likely to remain in the sett during the day. They would be foraging in the surrounding area at night. He stated that it was unlikely, on the basis of his experience, that the badger would be affected by the light. Badgers are known to live beside fairly busy motorways, and are unlikely to be disturbed by light. He stated that the improved grassland to the south was the optimal foraging area for badgers.

Mr. Noonan asked Mr. Morgan whether he accepted that there might be a difference between the willingness of a badger to have a sett near a motorway, and an established sett, which is suddenly inundated with unexpected artificial night-time light. Mr. Morgan stated that one could argue that.

Mr. Noonan asked Mr. Morgan whether any bat survey had been undertaken in the EIS. Mr. Morgan responded that, for the reasons given in the EIS, there wasn't an investigation of bats. The areas where bats normally roost, would tend to be buildings or mature trees, and these were generally absent from the site. Subsequently, having consulted Dúchas, it was decided that there was a possibility that bats may forage on the site and hence a bat survey should be carried out. The applicants have agreed that such a bat survey would be carried out, if required by condition of the planning permission. However, the feeling of the person who carried out the survey, Dr. Sliemann, was that bats would be unlikely to roost at the site.

Mr. Noonan stated that accordingly we did not yet know whether or not there were bats on the site. Mr. Morgan stated that that was so, but one would have to give some weight to the experience of the person who carried out the work. From Dr. Sliemann's knowledge, it was his feeling that bats would not occur on the site but obviously the survey would ascertain this for certain.

Mr. Noonan asked Mr. Morgan whether he was concerned to learn that Dúchas took a different view from Dr. Sliemann, and that in fact the site did have possible roosting habitats. Mr. Morgan stated that he was not concerned by this, as he thought that Dúchas were probably requiring it on the basis that bats might roost nearby.

Mr. Noonan read out the letter from Dúchas to the County Council of 10/1/2001, which stated "however, no bat survey was conducted during the EIS, despite the presence of suitable foraging and/or roosting habitats". He asked Mr. Morgan whether the bat's foraging areas were protected. Mr. Morgan stated that to his knowledge they were not.

Mr. Noonan asked Mr. Morgan whether he was aware of the EPA Guidelines on the preparation of Environmental Impact Statements. Mr. Morgan responded that he was aware of the guidelines - those published in 1995. Mr. Noonan stated that these guidelines required that worst-case impacts be investigated. He asked Mr. Morgan whether worst-case impact scenarios were in fact investigated by him. Mr. Morgan stated it depended on what one would describe as a worst-case scenario, but generally these were not investigated by him.

Marcia D'Alton (Group 3) put it to Mr. Morgan that Cork Harbour is an internationally recognised habitat for migratory bird species. She asked Mr. Morgan what species he had found using the site for that kind of activity, as it was a wet coastal site. Mr. Morgan responded that the had surveyed for all possible species that Ms. D'Alton was referring to and that the only species that would fall into that category was Shelduck. There was one record of a Shelduck heard on the site.

Ms. D'Alton asked Mr. Morgan when the survey was carried out. Mr. Morgan responded that the survey was carried out in 2001. Ms. D'Alton stated that Cork Harbour was particularly renowned for winter migratory species, using that type of habitat. Accordingly the survey was done at the wrong time. Mr. Morgan responded that he was aware of that, but the site was not a wetland site and does not adjoin any other wetland sites or protected wetland sites in Cork Harbour. He stated that the major concentration of wetland species are quite a considerable distance from the site, and in his opinion there was no way that any activity there would impact on the wetland species to which Ms. D'Alton had referred.

Ms. D'Alton asked what Mr. Morgan defined by a considerable distance. Mr. Morgan replied that there was a protected wetland area approximately 1 kilometre to the south, at Loughbeg.

Ms. D'Alton asked Mr. Morgan what would deter birds from using the subject site. Mr. Morgan responded that the removal of a habitat was a very obvious one. Continuous loud noise, or a lot of interference from the public or animals, would also deter birds.

Ms. D'Alton put it to Mr. Morgan that in the EIS he had described the site as being an "ecological oasis". Many of those factors which he had described would deter species from using the site if the development went ahead.

Mr. Morgan stated that they had not tried to minimise the potential impact that is likely to arise as a result of the development. They had suggested a number of features of the site that were fortuitously beneficial in this respect, in that the positioning of the buildings within the overall site still allowed for examples of the habitats to be retained, for example the grassland, the scrub hedgerows and the scrub woodland. Their view was that the biodiversity of the site would not change. Some of the bird species would be likely to be reduced because the areas of certain habitats would be reduced.

Ms. D'Alton asked Mr. Morgan, of the factors that he had mentioned, what impact noise would have. Mr. Morgan replied that noise was a matter of emissions, and was not addressed by him.

Ms. D'Alton asked Mr. Morgan when the searches for badgers were carried out on the site. Mr. Morgan responded that the initial searches were done in May and June of 2001, and a follow-up search was carried out in January 2002, because the vegetation during the summer months sometimes prevents very detailed searches being undertaken due to the density of the vegetation. In the follow-up search, two subsidiary setts, both now abandoned, and the main sett, were spotted. The main sett was being used and was quite active.

Ms. D'Alton asked Mr. Morgan whether inactive setts could be reoccupied. Mr. Morgan responded that the other setts were in the scrub woodland area which would be retained and so would not be affected by the development. He stated that it was possible that those inactive setts could be reoccupied.

Mr. A. Navratil (Group 5) asked Mr. Morgan whether his terms of reference involved him going outside the site. Mr. Morgan stated that no, he did not go outside the site. Mr. Navratil stated that, as the site had the potential to produce run-offs or atmospheric pollutants, was it not appropriate that the effect of the development was greater than the actual site boundaries. Mr. Morgan stated that he could not answer this, as his brief limited him to the site.

Mr. Navratil asked Mr. Morgan whether he honestly believed that any effects of the proposed development were precisely limited to within the site curtilage. Mr. Morgan stated that the issue of habitat removal was limited to the site. Other impacts clearly in relation to emissions and in relation to noise would range outside the curtilage of the site, but these were outside his brief.

Mr. Navratil asked Mr. Morgan whether he had looked at populations of frogs. Mr. Morgan stated that he had not. Mr. Navratil asked Mr. Morgan had he looked at mosses. Mr. Morgan replied that mosses that occur on the site were referred to in the flora section of the EIS. Mr. Navratil asked Mr. Morgan whether they had looked at bryophytes, liver worts and lichens. Mr. Morgan responded that bryophytes included mosses, and that mosses that were on the site were detailed in the flora section. There were no references to liver worts and lichens were not specifically looked for.

Mr. Navratil asked Mr. Morgan whether he was familiar with the fact that some of those that he had mentioned are "sentinel species". He asked would it not have been due diligence to ensure that those sentinel species were carefully catalogued.

Mr. Morgan responded that the only reason one would specifically catalogue lichens would be if one were assessing the impact of air pollution, which is one of the main reasons that lichens are surveyed. As he was not addressing air pollution, he didn't instruct his team to look for lichens.

Mr. Navratil stated to Mr. Morgan that essentially his brief was extremely limited and that he did not go outside the scope of his brief. Mr. Morgan stated that he had received his instructions and did not go outside his brief. Mr. Navratil asked Mr. Morgan whether he was asked to advise as to whether the brief that he had been given was adequate. Mr. Morgan stated that he did not so advise.

Mrs. A. Hogan (Group 7) asked Mr. Morgan about the issue of bats. She stated that in his evidence he had stated that there were no suitable structures for bats to roost, and no bats were seen. He had stated in response to questions that it was possible that bats may use the site for foraging at night. She asked Mr. Morgan whether his team had checked whether or not in fact bats foraged at night. Mr. Morgan stated that they had not checked for this.

Mrs. Hogan asked Mr. Morgan whether he checked the Martello Tower to see whether or not there were bats roosting there. Mr. Morgan stated that he presumed there was not connectivity between the Martello Tower and the site in terms of impact - at least nothing of which they would have been aware. Accordingly he did not look at the Martello Tower.

R. Cargin (Group No. 8) stated to Mr. Morgan that his brief appeared to be very narrow for the purposes of the hearing. She asked why this was. Mr. Morgan stated that he had no special understanding of the behaviour of dioxins, and for that reason it was decided that he would not address the issue of emissions. Ms. Cargin asked whether Mr. Morgan felt that there would be a competent authority that could give a comprehensive assessment of the impact of the development on the birdlife in the area immediately around the proposed site, and elsewhere in the harbour. She asked whether there would be somebody to give a comprehensive and real report.

Mr. Morgan stated that he was quite happy with the work that he had done and the assessment of the significant and likely impacts of the development on the birdlife in the harbour.

Ms. Cargin stated that she remained very unhappy, as a bird lover, about the narrowness of this assessment, both on birds and other species.

Mr. P. Sweetman (Group 22) asked Mr. Morgan why the EIS did not outline the extent of the Important Bird Area. Mr. Morgan stated that he did not understand the question. Mr. Sweetman asked why Mr. Morgan had not shown the extent of the SPA. Mr. Morgan stated that he had on Figure 10.4, which described "designated areas in lower Cork Harbour".

Mr. Sweetman put it to Mr. Morgan that that figure was out of date, as there had been major revisions to the Cork Harbour SACs and SPAs. Mr. Morgan stated that to his knowledge the areas of these had not changed. The level of designation may have changed but the areas had not changed.

Mr. Sweetman asked Mr. Morgan about badgers. He asked did Mr. Morgan have any evidence of badgers remaining on a site during a two-year, 24-hour construction period. Mr. Morgan stated that he had no evidence of this.

Mr. Sweetman asked then why did Mr. Morgan tell us that it was quite likely that the badgers would stay. Mr. Morgan stated that he had been so advised by Dr. Sliemann, that in his opinion the badgers were likely to remain on the site. He stated that he was happy with Dr. Sliemann's experience, which was over ten years with the Department of Agriculture on TB Irradiation. He stated that there could be no guarantees that the badger may not leave the site, but that Dr. Sliemann felt that they would not.

Mr. Sweetman asked Mr. Morgan what the maximum proposed noise level at night would be at the sett during construction. Mr. Morgan stated that he was not sure that this figure had been made available. Mr. Sweetman asked Mr. Morgan did he not consider that this would be rather relevant. Mr. Morgan replied that he was not aware of any noise guidelines for badgers. There was a US General Wildlife Regulation of 60 decibels in relation to wildlife habitats, but he was not aware that this was in force in Ireland.

Mr. Sweetman asked Mr. Morgan whether the noise at the sett during construction was likely to exceed 60 decibels. Mr. Morgan stated that he did not know, what the noise level would be during construction, but he knew that it would be significantly less than 60 decibels at the operational stage.

Mr. Sweetman asked Mr. Morgan what the interaction was between the emissions from the proposed development and the birds. Mr. Morgan stated that he had not addressed emissions. Mr. Sweetman asked Mr. Morgan whether he had done the EIS. Mr. Morgan responded that he had done a portion of the EIS.

Mr. Sweetman asked Mr. Morgan whether he had read the 1999 (EIA) Regulations. Mr. Morgan responded that he had followed the EPA Guidelines.

Mr. Sweetman stated that one of the things to be considered in an EIS was the interaction between the indents. This was a compulsory part of the assessment of an EIS. He asked Mr. Morgan whether the interaction between flora and fauna, and emissions, was considered in the EIS.

Mr. Morgan stated that the construction phase impacts were considered but that the emissions during the operational plants were not considered by him.

Mr. Sweetman asked Mr. Morgan what the noise level was going to be during construction. Mr. Morgan stated he did not know as he did not have the levels available to him.

Mr. Sweetman asked Mr. Morgan accordingly whether it was not the case that he didn't consider the interaction between the noise on the site during construction and the wildlife on the site. Mr. Morgan responded that they had discussed the concept of disturbance on the mammals. They had indicated how they felt that there would be an impact on the mammals on the site.

Mr. Sweetman asked Mr. Morgan whether he looked at, in any form, the interaction between the noise on the site and the nature on the site. Mr. Morgan responded that the impact of noise on any animal was not a precise science. They had addressed the disturbance on the site from movement of traffic and noise, etc., and how that might affect the animals. They believe that the badger would remain on the site and that foxes would leave the site because they were mobile.

Mr. Sweetman asked Mr. Morgan how the applicants were going to remove the solid rock below the proposed buildings. Mr. Morgan stated that he had no idea, he assumed blasting or some other means. Mr. Sweetman put it to Mr. Morgan that on the basis of the evidence that he had put here, he had no idea about the site, he had no idea about the assessment on the SPA/SAC/NHA, and no idea about the interactions between the construction impacts and the flora and fauna on the site. Mr. Morgan stated that he did not agree with that view.

Mrs. J. Masson (Group 24) asked Mr. Morgan how long he thought that the native trees that were proposed to be planted would take to grow. Mr. Morgan responded that the site would not rely entirely on the introduction of the planting of trees for maintenance of the biodiversity of the site. There were two aspects - the management of the remnants of the site, and the introduction of new trees. He stated that the trees would take some time to grow, but the bulk of the species that were currently on the site were not dependent on trees. The idea of introducing native trees was to enhance the current population levels on the remnant of the site, mainly on the western portion. He stated that the wildlife were not going to wait for the trees to grow before they occupy the site, as there was sufficient habitat remaining for them to stay on the site.

Mrs. Masson asked Mr. Morgan how long he thought the native trees would take to grow. Mr. Morgan responded that the enhancement measure dependent on the trees would take 10-15 years to become mature, depending on the growth stage to which they were introduced.

The Inspector stated that he had three questions to ask of Mr. Morgan. He referred Mr. Morgan to page 2 of his witness statement where he stated that there were no otters found. He asked Mr. Morgan whether this was a function of the time of the year in which the survey had been carried out. Mr. Morgan stated this was not the point. The Inspector asked Mr. Morgan why he thought that otters would not be found on the site. Mr. Morgan responded that the reason was that the site was not immediately adjacent to waters. Otters use Loughbeg, but not this site, because there are no foraging areas on the site, and otters normally build their holts along waterways that they use so that they would not be expected here.

The Inspector asked Mr. Morgan about a statement on page 2 that "the only badger sett on the site would be avoided during construction". He asked Mr. Morgan how he would advise his clients to do this, when you have a major development site which would involve a considerable amount of earth movement.

Mr. Morgan responded that the figure 10-2 with the mammal survey shows the badger sett as being adjacent to the Hammond Lane site of the site, and all areas immediately north of this is where the concentration of the main badger tracks are. This area is going to be retained. So the only area from which the sett needs to be protected is from the southern side, and he would recommend fencing off as a protective device. The Inspector asked Mr. Morgan wouldn't such a fence prevent the badger from getting out. Mr. Morgan responded that the likely area of forage for the badger is to the land to the south.

The Inspector put it to Mr. Morgan that the plan shows the badger sett quite close to the proposed recycling facility. Mr. Morgan stated that was so.

The Inspector asked Mr. Morgan about his comment, in the context of bats, that there were no mature trees on the site. The Inspector asked whether this was because the site was in a maritime environment where trees would not grow readily to maturity, due to onshore winds and salt-laden air. Mr. Morgan replied that the reasons relate to

the management of the site more than to any climatic condition. The site appears to have been neglected, and was originally grassland. Scrub has now invaded. Mr. Morgan stated that he couldn't say from that that the site was precluded from growing trees because of its condition.

Questions for Frank O'Mahony (Indaver)

Mr. P. Sweetman referred Mr. O'Mahony to his witness statement, where he had stated that a baseline tree survey had been done. He asked where was this baseline tree survey.

Mr. O'Mahony stated that the tree survey had been carried out by Mr. Martin Hallinan, who was the landscape architect employed by Indaver for the project. He stated that he presumed the baseline tree survey was in Mr. Hallinan's possession.

Mr. Sweetman asked Mr. O'Mahony whether the baseline tree survey was in the EIS. Mr. O'Mahony responded that the landscape architect, Mr. Hallinan, had been responsible for the landscaping design for the development. He outlined Mr. Hallinan's experience of landscaping works in the Ringaskiddy area, beginning with the Novartis project in 1990. He outlined Mr. Hallinan's philosophy of planting, which involved researching trees that are already growing in the area, as these had been proved to successfully work in the particular landscape.

Mr. Sweetman stated that he had the right, under the EIA Regulations of 1999, to see the data behind the conclusions that the applicants had made. He stated that he had never heard previously at the Oral Hearing that Mr. Hallinan had been involved. He stated that he wanted to see the baseline tree survey - which was necessary data under the EIS Regulations. He stated that his submission was that the tree survey was an essential part of the EIS, which was fundamentally flawed if this was missing.

Mr. O'Mahony stated that he would have to contact Mr. Hallinan about this.

Mrs. Joan Masson (Group 24) noted that, that morning, Mr. Ahern had said that there would be some chlorine incinerated in the proposed incinerator. She asked Mr. O'Mahony whether she was correct in her belief that chlorine affects the growth of trees quite considerably. Mr. O'Mahony stated that this area was outside his competence, and it was a matter for Mr. Hallinan as the landscape architect.

The Inspector addressed Mr. Gardner, of Indaver, stating that it appeared that Mr. Hallinan would be required to attend the Oral Hearing, to give him (the Inspector) answers about the proposed landscaping, since Mr. O'Mahony, the architect for the development, stated that he was not competent to answer questions on this matter.

There was considerable procedural discussion, between Mr. Noonan, Mr. Gardner, Mr. Sweetman, and the Inspector in relation to this issue. Mr. Gardner stated that he would consult with his client, to see whether Mr. Hallinan could be made available as a witness the following day.
The remainder of the hearing involved procedural points relating to availability of witnesses the following day, and the timescale for the remaining days of the hearing.

ORAL HEARING PROCEEDINGS

8th OCTOBER, 2003.

Questions for Dr. B. Meehan (Indaver) (Resumed)

Dr. Meehan, who had been available for cross-examination the previous Friday, now appeared for the resumption of his cross-examination.

Mr. P. Sweetman (Group 22) referred Dr. Meehan to the paper submitted by Marcia D'Alton, and asked Dr. Meehan where Ms. D'Alton had been so wrong in her interpretation of the County Development Plan, since her evidence was diametrically opposed to his. He stated that every part of the Development Plan which had been quoted by Ms. D'Alton had been omitted by Dr. Meehan.

Dr. Meehan replied that much of it had been dealing with the same areas, except the zoning, which he considered to be the key issue. He stated that he was satisfied that he had included all aspects of the Development Plan that were relevant to the development. Mr. Sweetman stated that Dr. Meehan had not looked at tourism nor had he looked at listed views, as set out at the Development Plan. Dr. Meehan replied that listed views had been covered in the EIS. In his view, Ms. D'Alton's submission was almost saying that the site should not be zoned for large scale industry, in the light of the other policies regarding the harbour. However, it was so zoned.

Mr. Sweetman asked Dr. Meehan whether he would agree that the access to and from the site for emergency services, when the wind is coming from the east, was relevant to sustainable development. Dr. Meehan replied that this was not his area of expertise.

Mr. Sweetman asked Dr. Meehan whether it was his view that the only thing involved was that the site was zoned for industry, and port-related industry. Dr. Meehan responded that he had prepared his evidence on the basis of his analysis of the County Development Plan. He stated that he felt that this demonstrated that the development was in conformity with the plan, and with national policies.

Mr. Sweetman asked Dr. Meehan whether the zoning of the site was for port-related industry, and was this the key issue. Dr. Meehan responded that it was the key issue, since it was the sole reason for refusal cited by the County Council.

Mr. Sweetman asked Dr. Meehan why, in his opinion, the proposed development was port-related. Dr. Meehan replied that the criteria as to what is meant by "port-related" in the County Development Plan and CASP involves a number of aspects. The first is access to the water. The second is access to water supply - substantial quantities of water. The third aspect is associated industry with the port, and it was his view that the proposed development came within this category since it is the underpinning service for the local pharmaceutical and chemical industry. This is the key port activity in Ringaskiddy.

Mr. Sweetman asked Dr. Meehan where the raw material for the development was coming from. Dr. Meehan stated that generally, a significant amount of it was coming from the Cork area and the Cork Harbour area. Mr. Sweetman asked Dr. Meehan which plant in the Cork Harbour area was going to supply waste to the

proposed development. Dr. Meehan stated that this was a confidential matter which was not part of his evidence to the hearing.

Mrs. Joan Masson (Group 24) referred Dr. Meehan to his submission, Figure 3, in which Ringaskiddy was quoted as having excellent port facilities and access to the national road network. She asked how Dr. Meehan considered the site had access to the national road network, because there was at least 12 miles from the national road network to the site. Some of the roads within that 12 miles were extremely narrow and are overloaded with traffic. She noted that the last quarter of a mile going to the proposed site was not even wide enough for the caravans that were there at that time and a car to pass.

Dr. Meehan stated that this was not his wording, but was quoted from the County Development Plan. He had merely underlined the section of the plan for emphasis.

Mrs. Masson asked Dr. Meehan why he had not qualified the comment by admitting that there are 12-15 miles of road that would not be suitable, and that the entrance from the N28 was totally unsuitable. Dr. Meehan responded that he did not give evidence on traffic, which was a matter for other witnesses. He stated that what he was doing from this extract was to show that the County Development Plan anticipates further development of the pharmaceutical and chemical sectors, and sees Ringaskiddy as an appropriate location for that, having regard to the road network and other aspects.

Mrs. Masson asked Dr. Meehan whether he was aware of the recently published EPA document "Climate Change - Scenarios and Impacts for Ireland". Dr. Meehan replied that he was aware that the document existed but he had no expertise in the area.

Mrs. Masson stated that in this EPA document, the authors recommend that hard engineering of the coastline should be viewed only as a last resort. She asked Dr. Meehan would he consider this particular proposed development to be one of "last resort".

Dr. Meehan stated that the proposed site was one of only three sites in the Ringaskiddy area zoned for large scale industry. Hence it was suitable for the type of development that was before the Board.

Mrs. Masson asked Dr. Meehan, looking at the closeness of Gobby Beach to the site, the quarter mile road to it, and the N28 road coming through the village, and looking at the availability of the type of land that the site can offer up to this industry, she asked Dr. Meehan whether he would agree that it was "a size 10 foot trying to get into a size 6 shoe".

Dr. Meehan stated that he wouldn't agree with this statement. Map 8 in the County Development Plan outlined all of the factors that were relevant to proper land use planning.

Mrs. Masson stated that the proposed development was not port-related, it was not in the Development Plan, and it was "way too large" for what it wants to go into. Dr. Meehan replied that Indaver's submission was that the site was zoned for large scale industry, and therefore was suitable to take the development proposed by them. The term "large scale industry" was specifically set out in Development Plan objective I-15.

Mrs. Masson noted that in the EPA report on Climate Change, it recommended that no new building should be constructed within 100 metres of a soft shoreline. She asked Dr. Meehan if this industry were to move back another 100 metres did he think it would still fit within the site. Dr. Meehan responded that he did not know the context of the 100 metres, and he was not an engineer. He stated that he would not be prepared to make a general comment unrelated to the particulars of the site.

Mr. P. Sreenan (Planning Authority) stated that he had a number of questions for Dr. Meehan. He asked Dr. Meehan whether he had dealt with the technical aspects of the incinerator. Dr. Meehan replied that this was not part of his expertise and would be dealt with by Ms. Burke.

Mr. Sreenan asked Dr. Meehan whether he would consider the proposed development to be an industrial activity. Dr. Meehan stated that there was nothing in the Planning Regulations that distinguishes between this proposed process and general industry activity. In his view this was the issue that brings it into the zoning for industry.

Mr. Sreenan asked Dr. Meehan to explain the basis of his view that the proposed development constituted industry. Dr. Meehan replied that the Board had so described it in the Kilcock Incinerator case and also in the Carranstown case. He stated that there was no separate category for it in the Planning Regulations, other than industry, in contrast for example to the retail sector where one had shops, retail warehousing, etc. The 2001 Planning Regulations deal with what is an industrial process. Mr. Sreenan asked Dr. Meehan whether he was familiar with these regulations, and whether he was satisfied that the proposed development came within the definition of "an industrial process" as set out in the Planning Regulations. Dr. Meehan replied that for zoning purposes, it was an industrial process, since it was permitted within an industrial zoning. In his view it complied with the definition in the 2001 Planning Regulations.

Mr. Sreenan asked Dr. Meehan to explain how in his view it came within the definition of an industrial process. Dr. Meehan replied that in the development there were inputs of material, and that this material was subjected to incineration. This to him lay within the statutory definition of an industrial process. On his reading of the Regulations, he saw no other category into which the proposed development could be placed, other than an industrial one.

Mr. Sreenan put it to Dr. Meehan that his interpretation of the Regulations, that the proposed development fell within the statutory definition of industrial process, simply seemed to be on the sole basis that it did not appear to fall into any other category. Dr. Meehan responded that he would go back to the County Development Plan. The

whole issue of the industry of the harbour area, and particularly the chemical and pharmaceutical industry, is linked with the need to have waste disposal facilities for this industry, which are all included in the same policy. He stated that one really could not have one without the other. The proposed development was essentially a servicing process for the chemical and pharmaceutical industry, and this is the context in which it was set out in Chapter 2 of the County Development Plan.

Mr. Sreenan asked Dr. Meehan to accept that the interpretation of the phrase 'industrial process' in the Regulations could not be dependent on any one County Development Plan. Dr. Meehan replied that he had given evidence on the relationship between this activity as a service industrial type activity for the pharmaceutical and chemical industries. In his view the proposed facility is a natural part of that industry. One could not have this industry developing into the future if you did not have the back-up service of waste disposal, and this is what the plan states.

Mr. Sreenan asked Dr. Meehan whether he had heard Dr. Brendan Kelleher's evidence. Dr. Meehan stated that he had. Mr. Sreenan stated that Mr. Kelleher was firmly of the view that the proposed development was not an industry. Dr. Meehan stated that he had no reason to disagree with Mr. Kelleher's view.

Mr. Sreenan asked Dr. Meehan whether he was familiar with the 2002 Draft Development Plan, and the issue of incineration. He asked him whether he agreed that there was no reference at all to incineration in the 2002 Draft Plan. Dr. Meehan stated that that was true.

Mr. Sreenan stated that on Friday, Dr. Meehan had stated that the whole process of the Development Plan was that the public, through their politicians, could have ultimate control on planning issues in their area, and that where the public had expressed concern about contract incineration, the most appropriate place for the politicians to alleviate those concerns was in the arena of amending the Development Plan.

Dr. Meehan stated that this was so, but that under the terms of the 2000 Planning and Development Act, County Development Plan content, had to have regard to national policy.

Mr. Sreenan stated that it was important for local democracy that local people could tell their politicians that they don't want contract incineration. He asked Dr. Meehan whether this was reasonable, and whether County Development Plans should not reflect the concerns of local politicians. Dr. Meehan stated that this was only acceptable providing what was set out in the Development Plan was consistent with what had been stated in national policy frameworks.

Mr. Sreenan asked Dr. Meehan whether he was familiar with Indaver's submission on the Draft Development Plan in November 2002. He asked him whether he was involved in this and in the preparation of the letter. Dr. Meehan stated that he was familiar with it, but he was not involved in its preparation.

At this point the Inspector intervened and asked Mr. Sreenan to supply him a copy of the Indaver letter to which he was referring. Mr. Sreenan handed in a copy of the letter to the Inspector, and also a copy to Dr. Meehan for reference. (This letter is included at Appendix 2 - IND 11). There was a short recess for Dr. Meehan to read the letter.

Mr. Sreenan stated to Dr. Meehan that he had now had an opportunity to look at the letter, and that it had been written in November 2002. Dr. Meehan had stated that he had been retained by Indaver in September 2002. He asked Dr. Meehan whether he had had any involvement in the submission. Dr. Meehan stated that he had not.

Mr. Sreenan asked Dr. Meehan when he had first seen the submission. Dr. Meehan replied that he had first seen it two to three weeks before the Oral Hearing.

Mr. Sreenan asked Dr. Meehan whether he disagreed with the contents of the submission. Dr. Meehan replied that he would broadly say that what was now in the County Development Plan, which says that contract incineration is not permitted in industrial zonings, was the subject of the submission. The letter sought, at draft stage, an amendment to this. Dr. Meehan stated that what the document was outlining was that there would be ambiguity, conflicting objectives in the County Development Plan. What the document in broad terms was trying to do was to outline that if this wording and the precise objective in relation to contract incineration were to be retained in the Development Plan then there would be problems. Mr. Sreenan asked Dr. Meehan therefore whether he agreed or disagreed with anything in the document. Dr. Meehan responded that he agreed with the general message which had been set out in this submission.

Mr. Sreenan asked Dr. Meehan whether he had been involved in the applicant's written submission on the appeal. Dr. Meehan responded that he had not been involved in this and it was given to him by the applicants in preparation for the Oral Hearing. He did not know who had prepared the document, he assumed it was Indaver and its consultants.

Mr. Sreenan put it to Dr. Meehan that at paragraph 4.2 on page 13 of Indaver's written submission on the appeal, under the heading "Alleged Material Contravention", it set out Indaver's view of what zoning objective ZON3-13 means. At paragraph 4.3 of the submission, entitled "Difficulties Arising from Other Possible Interpretations of the Zoning Objective" Indaver felt that ZON3-13 must be taken to mean that there is no absolute exclusion of contract incineration and that part of the reasoning for this interpretation was that if it were to be read otherwise, then there would be certain difficulties in relation to waste management and what not, as detailed in the paragraph 4.3. He asked Dr. Meehan whether he felt this was a fair summary.

Dr. Meehan stated that in his evidence, he stated that if one takes it to the ultimate conclusion, was the Development Plan saying or was it not, that there is to be no contract incineration in County Cork anywhere, or was it saying that there was to be no contract incineration in industrial zones. If it was saying the latter, was the Council saying that contract incineration was allowable outside industrial zone. If it

was saying this, was it effectively saying that contract incineration would be allowable outside industrial zones in for example residential zones.

Mr. Sreenan stated that that was the view put forward by Indaver in its written submission to the Board. He suggested to Dr. Meehan that Dr. Meehan's evidence tied in remarkably with the submission to the Board, even though Dr. Meehan stated that he had not prepared it, nor had seen it until just before the Oral Hearing.

Dr. Meehan stated that it did line up with the submission submitted by Indaver. However, Dr. Meehan stated that in his evidence to the Oral Hearing, he has gone further than that view. Having looked at all of the sections of the Development Plan, he had reached a conclusion, this conclusion was that, taking the Development Plan as a whole, including the written statement, the intentions regarding the chemical and pharmaceutical industries, and servicing these with disposal facilities, the logical conclusion was that the Development Plan does provide, in principle, for contract incineration. Otherwise, there would be conflicting objectives for the chemical and pharmaceutical activity and other aspects of industrial promotion.

Mr. Sreenan put it to Dr. Meehan that the similarities between his evidence and the submission made by Indaver to the County Development Plan some 12 months earlier were remarkable. Dr. Meehan stated that it would be surprising if it didn't. His evidence took the whole Development Plan, with all the extracts that are relevant to the issue, and concluded that overall, the plan does anticipate waste disposal facilities for the chemical and pharmaceutical industries, and in that respect, it is contradictory to the zoning objective. Dr. Meehan stated that the zoning did not conform with national policy in relation to waste management. It also did not conform to the 1999 Cork Waste Management Plan, which makes a very clear and definite commitment to provide, in a review, for the provisions of the National Hazardous Waste Management Plan.

Mr. Sreenan asked Dr. Meehan whether he was aware that the 1999 Waste Management Plan for Cork had not been amended in any way. Dr. Meehan replied that he had checked whether or not there had been an amendment to the 1999 Waste Management Plan and noted that Mr. Daly, of the Council, had confirmed at the hearing that no amendment had yet been made. However, he felt that the key point was that the 1999 Waste Management Plan had made a commitment to incorporate the findings of the National Hazardous Waste Management Plan into it, and that this was not therefore a neutral comment but a positive one in favour of incineration.

Mr. Sreenan quoted page 110 of the Cork Waste Management Plan, 1999, which states "*when the National Hazardous Waste Management Plan is published, Cork County Council will review its own plan in relation to hazardous waste, and will amend this Waste Management Plan accordingly*". He asked Dr. Meehan to accept that the plan had not yet been amended. Dr. Meehan stated that he accepted that as yet it had not been amended.

Mr. Sreenan asked Dr. Meehan whether he would accept that the 1999 Waste Management Plan does not provide for hazardous waste incineration. Dr. Meehan

stated that while he accepted that it did not provide for it, it stated an intention to provide for it by indicating that it was proposed to incorporate the provisions of the National Hazardous Waste Management Plan, but he accepted that as yet it had not been amended.

Mr. Sreenan stated that he now wished to deal with the history of the amendment, and Indaver's submission to the County Development Plan process. He asked Dr. Meehan whether he was correct in saying that the proposed amendment presented difficulties for Indaver, which believed that members of the public and the media had an interpretation of that which would prevent any contract incineration. Indaver was concerned about this possible interpretation and hence made a submission. Dr. Meehan stated that that was the situation.

Mr. Sreenan asked Dr. Meehan whether he was aware that that submission had gone to the County Manager, and to the elected members, and that Indaver's submission had not been accepted. Dr. Meehan stated that he was aware of this.

Mr. Sreenan stated that therefore Indaver's concerns had been made known to the elected members, and the elected members had made it quite clear that it was their intention that contract incineration was not to be included in the plan.

Dr. Meehan stated that if that was the intention of the Council members, the other relevant sections of the Development Plan about which he had given evidence were not amended. Accordingly one ended up with a plan which was internally contradictory, with contradictory objectives, and in the submission he made, these contrary objectives had to be left to the Board to resolve.

Mr. Sreenan put it to Dr. Meehan that every plan has broad statements that would appear to be contradictory, but in this particular case the Council members had gone further and had identified one particular type of activity - contract incineration, not waste management generally or incineration generally, - and specified that this particular type of activity would not be permitted in the county of Cork. He asked Dr. Meehan whether he considered that this was most unusual in a Development Plan for type of activity to be singled out in this way, and specified that it would not be permitted.

Dr. Meehan stated that all he could say was that, in that context, the Development Plan was contradictory within itself, and was also not in accordance with national policy, as it was required to be.

Mr. Sreenan stated that Councillor Kelly, earlier at the Oral Hearing, had confirmed that it was the firm intention of the elected councillors to exclude contract incineration, and that this was what was reflected in the zoning objective ZON3-13. Dr. Meehan responded that one had to look at the entirety of the Development Plan, in addition to the zoning objective, and other sections where the opposite is inferred.

Mr. Sreenan asked Dr. Meehan whether he could take it that he would not disagree with him in its interpretation of zoning objective 3-13, but he would disagree if you

took the zoning objective and considered it in the light of all of the other objectives in the plan. Dr. Meehan stated that would be a fair assessment.

Mr. Sreenan put it to Dr. Meehan that it would be fair to say that in the 2003 Development Plan, the only reference to contract incineration, where it exists at all, is phrased in the negative. Dr. Meehan stated that was true, it was phrased in the context of industrial zoning for any industrial zoning in the county as a whole.

Questions by Inspector for Dr. Meehan

The Inspector asked Dr. Meehan whether he had stated, in response to Mr. Sreenan, that the County Development Plan was "not in accordance with national policy". Dr. Meehan stated that he had said this. The Inspector asked Dr. Meehan whether he was aware of Section 10.2 (b) of the 2000 Planning and Development Act. This stated that the Development Plan should include, inter alia, "*objectives for the provision or facilitation of the provision of infrastructure, including waste recovery and disposal facilities, regard being had to the Waste Management Plan for the area made in accordance with the Waste Management Act, 1996*". Dr. Meehan stated he was aware of this section.

The Inspector asked Dr. Meehan whether a County Development Plan had to be in accordance with national policy, or to have regard to it. Dr. Meehan responded that under the legislation, a Development Plan had to have regard to national policy.

The Inspector put it to Dr. Meehan that the term "have regard to" had been judicially reviewed recently in a High Court decision relating to the Meath County Development Plan. Dr. Meehan stated that he was familiar with this case.

The Inspector put it to Dr. Meehan that, as decided in the Meath case, Council members are entitled to take advice from their officials and from their County Manager, as to the content and meaning of national and regional policy, and having listened to that advice, the Council members are free to come to a contrary view. He asked Dr. Meehan wasn't that the nub of the Meath case. Dr. Meehan replied that it was.

The Inspector asked Dr. Meehan that, having heard what had been said at the Oral Hearing, and read Councillor Kelly's submission, would he accept that the Council members in Cork had been very clearly advised by the County Manager in relation to the Waste Management Plan, and to their responsibilities from that for inclusion in the County Development Plan, and had considered the submission made by Indaver, and nonetheless had decided to take a contrary view to the advice that had been given in relation to this issue. Dr. Meehan replied that he accepted that that was the case.

Turning to the decision on the material contravention, the Inspector asked Dr. Meehan whether the elected members had similarly had regard to national policy. Dr. Meehan stated that in his view they had regard to it, but they may not have given it due regard.

The Inspector put it to Dr. Meehan that the evidence given by Councillor Kelly, who had considerable knowledge and experience in this area, was that the County Manager

and County Planning Officer had given very detailed advice on all aspects of national policy relating to this issue, and on the content of the planning application, and that the Council members had debated the matter for a considerable period of time. He noted that, having listened to that advice, the Council members had, by a considerable majority, decided not to grant a material contravention in this case. He asked Dr. Meehan whether that met the legal requirement of "having regard to", as set out in the Meath case.

Dr. Meehan stated that, in the light of that judgement, the Councillors did meet their legal requirements and had regard to national policy.

The Inspector stated that the second issue he wished to ask Dr. Meehan about related to the proposed development. He asked Dr. Meehan whether he accepted that the proposed development constituted "contract incineration". Dr. Meehan responded that this was the view and that of the company.

The Inspector stated that therefore, as defined in zoning objective ZON3-13, the proposed development would be in conflict with the zoning objective. He understood that Dr. Meehan had come up with other things in the Development Plan, but asked Dr. Meehan whether he accepted that, on the zoning issue, the development was in conflict. Dr. Meehan stated that he accepted that the proposed development was in conflict with the zoning objective.

The Inspector then asked Dr. Meehan whether he would accept that this conflict was a material conflict to the Development Plan. Dr. Meehan responded that he would say it was, because of the wording that was used, and the reasons behind the wording.

The Inspector stated that the third issue he wished to address with Dr. Meehan was concerning the interpretation of Development Plans. He asked Dr. Meehan that, in his many years of experience, whether he would accept that one goes from the general to the particular, you start with the general statements at the start of a Development Plan, vision statements, aims and so on, then you go on to general objectives and then you go down to zoning. Dr. Meehan responded that that was the normal way of interpreting Development Plans.

The Inspector asked Dr. Meehan whether, in interpreting Development Plans for any particular type of development, and in advising his clients, would not the first thing he would do would be to go to the zoning objective, and see whether or not the proposed development would conflict with that zoning objective. Dr. Meehan stated that this was true. The Inspector asked whether, if in addition to the zoning, there was a site specific objective, would not Dr. Meehan consider that that was moving from the particular to the more particular. Dr. Meehan stated that that was so.

The Inspector stated that in the case of this particular County Development Plan was it not a case that there was a general industrial zoning, followed by a detailed objective for the particular site in question. Dr. Meehan stated that was the position. The Inspector asked Dr. Meehan whether he would consider it appropriate that more

weight should be given to those particulars that are site specific, such as zoning and specific objectives, rather than to general statements of objectives in the Development Plan. Dr. Meehan stated that that was so, provided they were consistent.

The Inspector asked Dr. Meehan whether it was his submission that, if they were not consistent, one was entitled to take the general over the particular. Dr. Meehan replied that in his submission, where he had a serious problem with the Development Plan was that it was not clear. Was it saying that there would be no contract incineration within industrial zoned areas, or was it stating that there would be no contract incineration in County Cork at all. This was the dilemma that had not been resolved, and which the applicants were putting to An Bord Pleánala to decide.

The Inspector put it to Dr. Meehan that he had already accepted that the proposed development was contract incineration. Was he suggesting that because the Development Plan was worded in the way it was, it breached national policy, which does not at any point mention contract incineration.

Dr. Meehan stated that national policy mentions a treatment facility for hazardous waste, which in his view was a contract incineration facility.

The Inspector asked Dr. Meehan, when he looked at the National Hazardous Waste Management Plan, was the word 'contract incineration' used anywhere. Dr. Meehan replied that this word was not used, but that the plan talked about a plant or a number of plants for each industrial activity.

The Inspector stated that the third area that he wished to put to Dr. Meehan, as a practising planner, related to what was called in layman's terms the Frascati test. He asked Dr. Meehan to outline what this was.

Dr. Meehan replied that simply put, the Frascati test was that to make a valid planning application, one had to have sufficient interest in the land to make that application. One did not have to own the land, but could merely have an option or agreement to purchase that land.

The Inspector asked Dr. Meehan whether he was satisfied, from the evidence that he had heard and the documentation that he had seen and that had been sent to the Board, that the applicants in this case met the Frascati test.

Dr. Meehan stated that he hadn't seen any contract documents, but would feel that an applicant that makes an application such as this would certainly have satisfied themselves, as this company has, that they have such an interest.

The Inspector asked Dr. Meehan if the title documents showed no evidence on them of any right of way but that afterwards somebody claims that there is a right of way, would this nullify the Frascati test from the point of view of dealing with the planning application.

Dr. Meehan replied that, broadly speaking, he didn't think that it would. He stated that it was often said in Board decisions that planning permission of itself does not

give one a right to develop. If there is another aspect, such as a right of way, that you do not have control over, then you may well have your planning permission but could not implement it, for perhaps civil law reasons.

The Inspector stated that the final issue which he wished to address with Dr. Meehan related to national and regional policy. He noted that Dr. Meehan stated that the Board has to be made aware of national policy under the 1976 Act. He had stated that the National Hazardous Waste Management Plan was national policy and that there was a letter on file from the Department indicating that this was the case. Dr. Meehan stated that that was so.

The Inspector asked Dr. Meehan whether he would consider that CASP was a regional strategy, within the meaning of the 2000 Planning and Development Act. Dr. Meehan stated that he would so consider. The Inspector asked Dr. Meehan whether the Board was required to have regard to that, in a similar way to national policy. Dr. Meehan stated that that was the law.

The Inspector asked Dr. Meehan whether he felt that the Forfas document that had been quoted at the hearing was Government policy, or was merely advisory. Dr. Meehan stated that he did not known this document.

The Inspector asked Dr. Meehan, from his experience, if he found a site that was zoned for a particular purpose, in this case industry, did that mean automatically that permission would be granted for industry on it? Dr. Meehan responded that that was not the case. In most Development Plans there would be a whole pile of other factors that had to be taken into account. The Inspector asked would that include a protected structure. Was it legitimate to assume that if one had a site, with a protected structure on it, that one would be entitled to build industry on it in any event. Dr. Meehan replied that in this case, the Martello Tower, albeit a protected structure, was outside the proposed site.

The Inspector noted that during the Oral Hearing, a number of parties had raised the issue that a protected structure included the setting of the structure, which could extend outside the line of the site of that structure.

Dr. Meehan stated that he would accept, that if there were a protected structure on a site, albeit a site zoned for industry, this would be a constraint. However, he stated that there is a section in the Cork County Development Plan that says that where there is an industrial zoning, and it adjoins an amenity zoning, as it does here with the open space zoning of the Martello Tower, the implication is that the industrial zoning is the dominant one. This is stated clearly in Chapter 9 of the Development Plan.

Further Cross-Examination of John Ahern (Indaver)

At the commencement of this section, Mr. Ahern circulated two documents, the first being 2001 figures, and the second being documents relating to meat and bone meal from the Department of Agriculture. (These are included in Appendix 2 as Indaver-12 and Indaver-13).

The Inspector asked Mr. Ahern what these documents were. Mr. Ahern stated that the first document showed hazardous waste which was exported by MinChem/Indaver in 2001. He stated that this showed that the company had exported 24,646 tonnes of hazardous waste for incineration in 2001, the EPA database indicated that 46,205 tonnes were exported nationally. This showed that the company had a market share of 53% for that year. The second table on the document showed that of the 24,646 tonnes that the company exported nationally, 14,877 tonnes came from County Cork, and this was 60.4% of the waste exported by them from the state.

Mr. Ahern stated that the second document was in response to the query that the Inspector had raised regarding meat and bone meal, in the context of the proximity principle. The document was an E-mail which the company had received from the Department of Agriculture. It was headed "Rendering Plants in the Munster Area".

The Inspector put it to Mr. Ahern that this second document did not tell him what he wanted to know. Mr. Ahern replied that what the document gave was waste arisings in the meat and bone meal area from Munster. There were four plants in the Munster area, which between them generated 36,000 tonnes of meat and bone meal. In the applicants application they had mentioned that the facility would be able to take meat and bone meal.

The Inspector asked Mr. Ahern whether he was correct in assuming that the applicants were proposing to burn meat and bone meal in Phase 1. Mr. Ahern responded that meat and bone meal was listed as a possible waste that could be dealt with in Phase 1. He stated that he didn't think it ever would be, as it should be dealt with in a power plant. He stated that the company were currently exporting meat and bone meal to power plants in Germany.

The Inspector asked Mr. Ahern whether it was part of his proposal before the Board to burn meat and bone meal as part of Phase 1. Mr. Ahern stated that it was.

The Inspector put it to Mr. Ahern that what he had been asking the previous day was in relation to the proximity principle, and how much meat and bone meal was generated in Cork. The submission that Mr. Ahern had given was what meat and bone meal was generated in Munster, and there was also no information as to the national figure so that this document did not tell him what percentage meat and bone meal was generated in Cork. What it did show was that there was no meat and bone meal plant in Cork at all. The four plants were in Cahir, Cashel, Waterford, and Limerick. Mr. Ahern stated that the national figure, as he understood it, was 140,000

tonnes, which could be compared to the 36,000 tonnes coming from these four plants. Mr. Ahern stated that the applicants had not argued anywhere that the proximity principle applied, other than to the hazardous element of the proposal.

The Inspector asked Mr. Ahern whether it was the case that he was basically saying that the proximity principle applied only to the hazardous element of the proposed development. Mr. Ahern confirmed that that is what they had always said, and that was why it was the National Hazardous Waste Facility. However, for reasons of pure economics, to build up the capacity of it to make it an economic entity, they had included other waste streams so as to justify it.

The Inspector stated that he wanted to be clear on this matter, was is it the case that the proximity principle was only argued for the hazardous component of the proposed development, and that the balance (whatever that might be, and there were many arguments as to its size) was not based on the proximity principle but only on the economic viability for the applicant company in running the process.

The Inspector stated that that was not entirely the case, since there was also an economic argument for it from a national point of view. The EPA database indicated that Cork generated 438,000 tonnes of industrial waste, and Cork had an industrial waste problem in that it could not find adequate landfill capacity. He stated that there was adequate waste, sludge, industrial, etc., to fill the plant.

The Inspector stated that we had already noted from the EPA waste database, that Cork had the highest level of non-hazardous industrial waste in 2001, if one excluded mining waste. He put it to Mr. Ahern, that from the information that he had now given, was it not clear that none of that industrial waste constituted meat and bone meal, since there were no rendering plants in County Cork, but only in other parts of Munster. Mr. Ahern responded that that would be true, if meat and bone meal was classified as industrial by the EPA. He did not know. In any event, he stated that meat and bone meal was not a big issue for the applicants, and that the appropriate location for dealing with it was in power plants and not in his incinerator.

The Inspector stated that he was asking this issue since the Board may come to a view that meat and bone meal was not an appropriate waste stream to permit in the development, in the event they decided to grant permission for this development.

Continuation of Cross-Examination of Frank O'Mahony (Indaver)

At this point, Declan McGrath for Indaver, stated that the landscape architect, Mr. Hallinan, would be in attendance later. The cross-examination of Frank O'Mahony now continued.

Marcia D'Alton (Group 3) asked Mr. O'Mahony about the proposed cladding on the building. She stated that if one looked at the EIS, and looked at the photomontages in

the EIS, could one see those claddings represented in the photomontages. Mr. O'Mahony stated that they had looked in great depth at the approach to this building, because of its scale and size, and had decided to apply a random panelling effect to the building surface, and above this a translucent sheeting material, which blurred the image of the panels. This translucent material blurred the colours into one colour.

Mr. O'Mahony stated that, looked at from a distance, those colours would not be visible as separate distinct colours, but they would be visible up close. Most of the panels were small, 1 metre by 2 metre, but from half a kilometre they would not be visible as separate colours. The photomontage views were mainly taken from a distance, and would show it as a blend of those colours. The overall approach came from the "Gestalt Theory", which was the German approach towards the perception of colours in the landscape. He stated that this was how the philosophy of the design of the building came together. He stated that it was an accurate representation from a distance, insofar as photographic techniques could reproduce reality.

Ms. D'Alton asked Mr. O'Mahony whether he agreed that permission for this development, in an area zoned industrial, was subject to restraints other than visual impact. Mr. O'Mahony stated that he would accept this was so.

Mrs. Joan Masson (Group 24) asked Mr. O'Mahony about the lighting of the building, and whether this was part of his area of responsibility. Mr. O'Mahony replied that this was part of his area of responsibility.

Mrs. Masson asked what kind of lighting was proposed, as there was no indication in the EIS on the amount of night-time lighting. Mr. O'Mahony stated that the lighting would be to operational safety standards within the plant boundary, but that the fittings would have a high cut-off value. This meant that the lighting standard itself would be 5.5 metres high, and the fittings would ensure that the light shined downwards only. Such light fittings had been used recently in the Novartis facility.

Mrs. Masson asked whether there was any night-time image of the plant in the EIS. Mr. O'Mahony responded that Mr. Hastings would deal with that matter.

Mrs. Masson asked Mr. O'Mahony whether there would be a lot of lighting at night during the construction period. Mr. O'Mahony responded that it was normal under planning conditions that construction was limited to times between 8am and 6.30pm.

Mrs. Masson stated that she did not agree that this was so, as that some construction industries now in Ireland work quite a bit at night. Mr. O'Mahony replied that once the external skin of the building went on, it was normal that people could work overtime at night. However, for the groundworks and main frame construction, construction would be normally limited to daylight working hours and this was often conditioned by the local authority as part of its planning permission.

The Inspector asked Mr. O'Mahony whether he was responsible for the construction phase of the development, as the architects for the scheme. His witness statement had stated that he was dealing with landscape and visual aspects, but now we understood

that Mr. Hallinan was coming in to deal with landscape. Mr. O'Mahony stated that they had been appointed as the design architects.

The Inspector asked Mr. O'Mahony whether rock removal was proposed for the foundations of the development. Mr. O'Mahony responded that there was levelling-off of the currently sloping rockface of the site.

The Inspector stated that it was indicated in the EIS that the ground conditions were such that one point it was up to 9 metres down to bedrock, and at another location it was 1 metre to bedrock. It was also indicated in the EIS that site modelling would take place. It appeared from the drawings that the main waste to energy building would have a 5 metre deep basement. It was also mentioned in the documentation that the type of soil that was there was not appropriate for foundations. The Inspector asked Mr. O'Mahony whether they would be taking the foundations into the bedrock. Mr. O'Mahony stated that he assumed so but that the Arup engineers would be doing the foundations.

The Inspector stated that there hadn't been a witness from the applicants in relation to this aspect of the development. He stated that he would need somebody else to answer questions on this matter, if Mr. O'Mahony could not answer these questions.

There was a recess for five minutes to allow the applicants to consider this request.

At the resumption, the Inspector stated that he understood that the applicants would be making a witness available that afternoon on the issue of foundations. He stated that he would continue with his questions of Mr. O'Mahony on other aspects.

The Inspector noted that the planning application was only for Phase 1, but the design was for Phases 1 and 2. He asked Mr. O'Mahony, if the Board were to decide to grant permission but to limit the development to Phase 1, what impact that would have on the actual size, height and bulk of the waste to energy building. Mr. O'Mahony stated that it would entail removing one process line from the building. That would reduce the width of the building by between 15 and 16 metres on its northern side. It would not reduce the height of the building because effectively the building would be cut lengthways two-thirds of the way across and hence the vertical face would be higher.

The Inspector asked whether the length of the building as viewed from the front would not alter but the depth would, - was that Mr. O'Mahony's evidence. Mr. O'Mahony replied that was so and that the height of the building would not alter.

The Inspector asked Mr. O'Mahony whether the top height of the building, where it rises near the stack, was a function of the need to provide sufficient working height for the machinery inside, or was it simply architectural design. Mr. O'Mahony stated that the height was due to the requirement to provide adequate working height for the equipment within the building, the cranes and the bunkers/hoppers.

The Inspector stated that his next question related directly to what Mr. O'Mahony had stated at the hearing and in the EIS and related to the design philosophy for dealing with the external appearance of the building. He quoted paragraph 5.8.1 of the EIS which stated as follows:-

> *"Considerable research has been undertaken over the past half century into techniques to help blend large installations into the landscape. The most effective methods involve the use of disruptive patterns and materials".*

He asked Mr. O'Mahony whether he had any written documentation on this research. Mr. O'Mahony replied that research information was based on the Gestalt Theory through military "dazzle painting" on ships during the war. It was military-based. In this case what they were seeking to do was not to camouflage the building but try to integrate it with its surroundings. He had applied these techniques to several buildings over the years, including the Blarney Business Park in Cobh and the Merck, Sharpe and Dohm building in Tipperary.

The Inspector stated that Mr. Deasy, the Council's architect, had outlined to the hearing that there were two approaches to this matter, and in the Inspector's experience the other approach to Mr. O'Mahony's that had been used very effectively on most industrial buildings of a large scale in Ireland was to go for a colour that blended into the background and provided no external construction clues. Apart from Blarney Business Park and Merck, Sharpe and Dohme, he asked Mr. O'Mahony whether there were other examples of his particular approach. Mr. O'Mahony stated that there were none to his knowledge.

The Inspector stated that it had been indicated that the stack for the proposed development, on the photomontages, was of a silver colour. He noted that Mr. Deasy, the Council's architect, had felt that this colour was not appropriate, and that the stack should also be in the green/grey colour. He asked Mr. O'Mahony would he agree. Mr. O'Mahony stated that he would not agree. He felt that the stack in this case will be viewed against the sky, and so a light silver-grey colour was the most non-intrusive.

The Inspector put it to Mr. O'Mahony that the model which had been produced at the Oral Hearing, and indeed the photomontages, showed the building as having a generally grey green colour. There was no single indication of blue on it, yet it would appear from the drawings that blue was one of the three colours in the "speckle pattern" proposed. He asked why was this. Mr. O'Mahony responded that the blue - a mountain blue colour - was a generally grey blue and when the opaque translucent cladding was overlaid on it, it looked grey. He stated that the building, when looked at from a distance, would appear to be grey/green.

The Inspector asked Mr. O'Mahony when then bother putting in the blue colour if one has the greys and the greens already which are then covered up by the translucent cladding.

Mr. O'Mahony replied that the issue went back to the fact that the building has to be interesting when one approaches it close up and the speckle effect would do that. It needs to have a "close-in impact". He stated that the blue would give a level of interest and human scale to the building as one approached it.

The Inspector asked Mr. O'Mahony on the issue of human scale, wasn't it normal on most designs for the exteriors of very large buildings, to try and get away from human scale, because if one could see human scale, one would realise how big the building was. If one could not see human scale, one would think the building is actually smaller than it is. Mr. O'Mahony replied that his approach was that it was a matter of progression of scale. As one approached the site, the buildings at the front were smaller, and the façade of the main building rises behind that. He stated that he felt that the colour would help that gradation.

The Inspector asked Mr. O'Mahony why then had he a large expanse of effectively unrelieved blue cladding on the side of the building. If the "speckle theory" applied, why were they having this large non-speckled area. Mr. O'Mahony stated that this was site specific. They had looked at the view from Ringaskiddy Village, and felt that it was better to separate the front process building from the reception hall at the back by making it a different colour. The Inspector asked why blue had been used as opposed to dark green for example. Mr. O'Mahony replied that the hill behind the building sloped down and part of that was blue, between the front building and the hill. The architects had proposed blue to create a visual break between the building and the hill so as to break down the overall scale of the building. He felt that dark green was not as appropriate as blue to give an appropriate contrast.

The Inspector stated for the record, that he would be asking Mr. O'Mahony to give him, for his own information, the technical basis for the Gesalt Theory.

Cross-Examination of Bill Hastings (Indaver)

Mr. Hastings presented a series of photomontages of the development, without landscaping, as had been requested by the Inspector. These were circulated to the parties in attendance at the hearing (see Appendix 2 - IND-14).

Mr. Hastings explained that these photomontages had been produced at the request of the Inspector. Those circulated were a selection of the photomontages in the EIS, excluding the very distant ones, where the difference would not be readily discernible. He explained the views concerned, Nos. 3, 4, 5 (two versions, one with the National Maritime College inserted), 7, 8 (with the College), 9, 15, 17, 19 (with both the college and Ringaskiddy Logistics inserted), 21 (ditto), 31 and 44. He stated that the light and dark greens on the photomontages show berms.

There were a number of questions of Mr. Hastings by Mr. J. Noonan (Group 1) in relation to the details of these photomontages. Mr. Noonan asked for the basis for the choice of the locations, and for the selection of the photomontages now circulated. (These are included in Tracks Q and R).

Mr. Noonan asked Mr. Hastings, in reproducing the images, how he dealt with the pylons along the ridge behind. He asked Mr. Hastings whether he had done anything with the software in the computer system to soften or delete or otherwise interfere with the appearance of the existing pylons. Mr. Hastings replied that he needed to see the pylons in the views because they were used as survey information, as was the Martello Tower, to ensure accurate positioning of the building. However, he stated that one of the things was that when one took a photograph, and there were pylons in the photograph, because the photograph was balanced to show foreground detail in terms of brightness, sometimes objects like pylons become less apparent than they would be in reality because the human eye was capable of zooming in, whereas the camera could not give a wide angle view and a telephoto view at the same time.

Ms. M. D'Alton (Group 3) asked Mr. Hastings what was his brief in the project. Mr. Hastings responded that his brief was to provide photomontages, and that it was an unusual brief for this particular case, in that the number of photomontages that were prepared were considerably more than they would normally do for a development of this size.

Ms. D'Alton asked Mr. Hastings about the detail of the sizes of negatives and the resolution that the photographs were scanned. She argued that the photomontages did not give a realistic view of the development, due to the low resolution used for printing purposes. Mr. Hastings stated that that was not the case, and that one could not compare photomontages with what one would see on the ground, because of the difference between the reproduction in a photomontage and what a human eye can do.

Ms. D'Alton put to Mr. Hastings that the photomontages should only be considered in conjunction with a visit to the site. However, she stated that the normal person reading an EIS would not be in the harbour. Mr. Hastings responded that he would expect that the Council officials and the Board's Inspector would get an opportunity to go to the places from which the photomontages had been taken.

Ms. D'Alton stated that the purposes of an EIS was not only to convince Council officials and the Board's Inspector but also for the public as well, in order to help the public see what the development would look like. She suggested to Mr. Hastings that what was needed were a series of photographs which were more than "amalgamations of dots". Mr. Hastings stated that photographs had been taken, very many of them, but that what was seen in the photomontages depended to some degree on the way in which the printing process worked.

There were further questions of Mr. Hastings from Mr. A. Navratil (Group 5), Mrs. A. Hogan (Group 7), Ms. M. Hurley (Group 9), Mr. J. Masson (Group 24), and Mr. P. Sweetman (Group 22), all in relation to specific views, and the technical aspects of the photographic and printing processes. It is not proposed to detail these here. Should the Board require, they may be heard on Tracks T, U, V, W, and X.

Evidence of M. Hallinan (Indaver)

Mr. Hallinan outlined his qualifications and experience relating to landscape architecture. He stated that he had 30 years experience practising in Northern Ireland and the UK. He was also Director of a Masters Programme at UCD. For the preceding 12 years he had worked in the Ringaskiddy area, including Novartis, two plants for dePuy, and Pfizers. He stated that these had exactly the same conditions and sea locations as the present site, and were also large scale buildings. He stated that he used the same approach to design and landscape on those projects as he was proposing to use in this case.

Marcia D'Alton (Group 3) asked Mr. Hallinan what species of native tree would grow to a height of 60 feet in these soil and location conditions. Mr. Hallinan responded, outlining his approach to dealing with landscape. He stated that he would survey trees that were already growing in the area, and use these species for the development, since they had already proven that they were successful in this environment. This was described as the "borrowed landscape". It had the effect of making the site seem smaller. He stated that in terms of success, much would depend on the location at which one planted. At the top of the hill, he stated that he would not be getting a big tree because of the conditions of wind and so on, whereas at the bottom of the hill he could create a sheltered area by increasing the depth of the soil and using large numbers of whips. He stated that in best conditions, he would expect most of the trees to grow to about 20 metres over time.

Ms. D'Alton noted that the height of the stack was 60 metres, rather than 20 metres.

Mr. A. Navratil (Group 5) asked Mr. Hallinan about the types of trees he was proposing to use, and how much topsoil was going to have to be imported from elsewhere to assist with the planting process. He also asked what area of the site will be planted.

Mr. Hallinan stated that the area available for planting, having regard to the area to be covered by buildings, and the area to be left for ecological purposes, would be 17 acres out of the total site area of 30 acres. Some would be left as grassland, and about 12 acres will be planted. The main areas of planting were an open area beside the coast close to the headland, and areas in front of and to the sides of the main building. At the front of the building there would be a berm, which would be planted up. He stated that the philosophy was to create a woodland screen, and this would use salix and alter, as the two fast growing species, and then pines and oaks. He noted that the site had very little topsoil and he would have to bring in a large proportion of soil to assist. This would help to mould the site, and to provide the mounds and berms towards the front of the building, which would help to establish the landscaping and to provide a visual screen from the front.

Mr. P. Sweetman (Group 22) stated that he understood a baseline tree survey had been carried out. He asked Mr. Hallinan whether he had such a survey. Mr. Hallinan

responded that he did not have a document that was a baseline survey. There was an ecological survey carried out. What he was doing was a landscaping scheme which involved planting species he knew were indigenous to the area, and which he knew through his experience, would be likely to work on this site.

Mr. Sweetman stated that this was a very exposed site, and asked Mr. Hallinan how long evergreen oak would grow to a height of 10 metres. Mr. Hallinan responded that it was a very slow growing tree. It was probably the perfect tree for the site because of its toughness, but he stated that he would not be relying upon it to create an instant impact. Mr. Sweetman queried as to whether he intended to plant much evergreen oak. Mr. Hallinan stated that he would probably plant about 1%.

Mr. Sweetman put it to Mr. Hallinan that it stated in the EIS that the planting of the waste transfer station would be dominated by evergreen species such as evergreen oak, pine, etc. (page 11 of 22 of the EIS). He stated that there appeared to have been a major misrepresentation in the EIS of what Mr. Hallinan was proposing. By reading the EIS one would assume that at least one-third of the species would be evergreen oak.

Mr. Hallinan responded that while evergreen oak was one of his favourite trees and was perfect for coastal conditions, it was very slow growing so he would keep its percentage quite low.

Mr. Sweetman asked Mr. Hallinan to go to View No. 4, from beside the Martello Tower. He stated that this view showed quite large trees in the proposal for post-construction, between the stack and the pylon. He asked Mr. Hallinan how he would propose to actually provide trees that would grow, and grow to this height within the five years specified on the photomontage. He assumed that the trees shown in the photomontage did not in fact reflect Mr. Hallinan's plan because he didn't have the space at the top of the hill in which to grow trees of this size. Mr. Hallinan responded that he considered that the space would be about 10 metres wide at this point.

The Inspector pointed out that on Drg. No.C05/APP/92/111, the planting proposal showed a slope behind the main waste to energy building. He asked that, as he understood Mr. Sweetman's question, was there sufficient space on that sloping section to provide the trees that would grow to the height shown on the photomontage view?

Mr. Hallinan responded that the strip was 10 metres wide behind the stack but that as one moved along the slope, the strip became narrower.

The Inspector stated that the strip measures 4.3 metres wide at its narrowest rather than 10 metres, and if this was so, and it was steeply sloping (crossing 5 to 6 metres depth of contours in that distance) he presumed that Mr. Hallinan would not be able to get sufficient soil or space to put in the trees that he was talking about. Mr. Hallinan accepted that where the strip was at its narrowest he would not be able to get as many trees to grow as was shown on the photomontage, but he would still get some trees to grow in this area. He stated that his conclusion was that perhaps the photomontage

was overstated. He felt that a small percentage of the trees would reach 5-10 metres height but most would not given that they were on top of the hill.

Mrs. Joan Masson (Group 24) stated that she had a question for Mr. Hallinan on a site selection issue. She noted that the site was beside a beach, and she did not think it was appropriate that trees would be planted on the top of the cliff, which was beside the beach. Mr. Hallinan stated that when he had first seen the site he went to the beach and the sea. He noted that there was indeed a cliff there - not a particularly large one, and more like a mud cliff rather than a stone cliff. Initially the design had roads much closer to the cliff than is now the case, and in his discussions with the clients, he asked them to try and keep this road as far back as possible from the coastal edge. The end result was that there was a triangular area between the road and the cliff which would remain as grassland and he has tried to plant up the area of the road. On the cliff-side it is only 3-4 metres in height. He did not feel that trees at this location would be as dominant as perhaps Mrs. Masson felt they would be.

Mrs. Masson asked Mr. Hallinan whether he had gone out in a boat to look at the site from this side. Mr. Hallinan responded that he had not. However, he accepted that the view from that angle was the weakest point because one was looking at the narrow end rather than the broad end of the site, and it was quite difficult to landscape. You have the cliff face on the left-hand side and because the building was sitting in the landscape it would be difficult to hide, compared to the front, where berms and such like could be provided.

Mrs. Masson asked Mr. Hallinan about the triangle that he was going to plant the trees on above the cliff. She noted that sea erosion was becoming a problem here and she asked whether he thought that the trees would contribute to the erosion. Mr. Hallinan stated that he did not think that the trees would contribute to erosion, if anything they would help to stabilise and create a milder climate.

The Inspector asked Mr. Hallinan about the importation of topsoil onto the site. He asked how much topsoil was coming in. He noted that of the site area of 30 acres, approximately one-third to two-fifths would be kept clear for ecological and planting reasons. This was the 13 to 17 acres. On the remainder, he felt that what was there in terms of soil did not appear to be particularly productive.

Mr. Hallinan replied that there was a lot of subsoil which could be used to build up levels but that he would need to bring in topsoil to give about a foot depth for planting of the trees. He would need to bring this in for about 50% of the area.

The Inspector stated that, of the 13 acres, Mr. Hallinan would need approximately 300 millimetres depth. He asked how many tonnes or lorry loads this would amount to roughly. Mr. Hallinan replied approximately 50 lorry loads of 22 tonne lorries.

The Inspector asked Mr. Hallinan about the triangular piece of ground on the coastal side of the building. This appeared to be in the south-eastern corner of the site. He asked Mr. Hallinan was this not right on top of the mud cliff. Mr. Hallinan stated that

was true. The Inspector stated then to go back to Mrs. Masson's question, he appeared to be planting on top of the cliff. Was this to hide the building from the West Channel. Mr. Hallinan accepted that it was beside the coast. The Inspector asked then if one were standing on the beach after 20 years one would see woodland. He asked whether this was appropriate in a maritime setting.

Mr. Hallinan stated that around the bay, one would find a number of locations and examples where woodland comes right down to the bay so it is not unusual. He stated that the planting was primarily designed to try to screen this development from the sea and to screen the road going around it. However, he stated that woodland does come to the top of the cliff and it does occur naturally in the environment of the harbour.

Further Questions for J. Ahern

Mr. John Masson (Group 24) asked Mr. Ahern about the document he had submitted earlier that day on the 2001 figures. He asked Mr. Ahern why he had changed the category "amount exported for incineration", as in the 2002 figures he had given this category was "hazardous waste exported for disposal".

Mr. Ahern replied that he had changed this because the Inspector had asked him to change it as he was not happy with the heading on the 2002 figures.

Mr. Masson put it to Mr. Ahern that because of this change in terminology, there was no way in which one could compare the 2001 figures he had given now, with the 2002 figures he had given the previous day.

Mr. Ahern stated that he disagreed. The purpose of providing figures from the company for 2001 was so they could be compared with the EPA waste database figures for 2001. The company's figures were that they were exporting 24,600 tonnes for incineration during 2001. The EPA indicated that in the same year 46,000 tonnes were exported for incineration. So these were comparing like with like.

Mr. Masson asked where the figure of 46,205 tonnes in Table 1 of Mr. Ahern's submission had come from. Mr. Ahern stated that that had come from page 32, Table 418 of the EPA database report.

The Inspector stated that he had asked for the 2001 figures, as these could be compared with the EPA statistics. He stated that he would not be placing any emphasis in his report whatsoever on the 2002 figures that Mr. Ahern had given, because he did not consider them to be of any value for this purposes.

Mr. Masson asked Mr. Ahern whether the figures that he had produced were audited. Mr. Ahern stated that they were not. Mr. Masson stated that he was still not happy with these figures, because they were not audited. He felt that it was surely possible to provide audited figures.

Questions for Ms. L. Burke (Indaver)

Mr. Declan McGrath (Indaver) stated that Ms. Burke had prepared some material, responding to the various queries that had been raised by the Inspector in relation to geology. He asked that perhaps she could deal with this first.

The Inspector asked Mr. McGrath whether this documentation was answering questions that he had asked to be responded to in relation to Dr. Neville's evidence, or was this the KT Cullen document that Mr. Noonan objected to being brought into evidence.

Mr. McGrath stated that it wasn't the KT Cullen document. He stated that Ms. Burke can clarify the issues raised, including geology. He stated that it was not the applicant's intention to submit to the hearing the KT Cullen report. It was available, and was also in the possession of some of the objectors. However, he did not feel that it was now information that the applicants wished to bring to the hearing, but if the Inspector wanted it, it was available.

J. Noonan (Group 1) stated that he wished to outline his procedural point on this matter. He stated that he objected to the provision of any additional information which, under the law, is a matter for the Board to request formally. He stated that he wished to reiterate that he did not consent to any such information being put in when his clients had presented their case and they were now supposed to be cross-examining the witness. He asked the Inspector to maintain careful scrutiny on this matter to prevent new information being provided. He confirmed that he did not object to the Inspector clarifying matters but did object to new information. It seemed at this stage that we were now getting new witnesses.

The Inspector stated in relation to Mr. Noonan's request, that he had noted it. However, the Oral Hearing was an information-gathering exercise, and it was up to the Inspector to decide whether or not evidence was relevant. On the matter of other witnesses, he had asked questions that morning of Mr. O'Mahony, who had stated that he couldn't answer them. Hence he had asked for another witness who could answer them. Similarly, the previous week he had asked questions about landscaping and had been told that the person could not give answers, so we had Mr. Hallinan here and the same gentleman was made available to all parties for cross-examination. The Inspector stated that this met the requirement for fair procedures. The same procedure would apply to any other witnesses coming later. He stated that these witnesses were dealing with issues on which he wanted information for the assistance of the Board in making its decision on the matter.

A five-minute adjournment was then given to all parties so that they could read the submission by L. Burke (this submission is included in Appendix 2 as item IND-15)

The Inspector stated to Mr. Noonan that having read Ms. Burke's document he could see nothing that was not an answer to a question that either he or somebody else had raised. The only additional item that he could see was a letter from the ESB. That

may or may not amount to very much, and if Mr. Noonan objected to him taking this into account he would so advise the Board.

Mr. Noonan stated that he entirely agreed with the Inspector regarding the other aspects on the basis that he had said. However, he asked the Inspector to exclude the ESB letter from the information at the Oral Hearing, and to so advise the Board. He also objected to consideration of the section entitled "Rebuttal of Dr. Neville's Evidence" on the basis that it would be contrary to fair procedures. In this instance he stated that what was happening was that there was a chemical engineer, who had clearly indicated that she had no expertise in geology, reporting to another chemical engineer on geological matters, which he also had no expertise in. He stated that it appeared to be a selection of geological evidence apparently gleaned from a report prepared by another party who was not present for cross-examination. He felt this to be a fundamental breach of the fairness of procedures.

Mr. McGrath (Indaver) stated that this section of the document was entirely grounded in the EIS and that the attention has been drawn to the relevant sections of the EIS in this. He stated that the fundamental point being made was that Dr. Neville's evidence was predicated on the site being limestone. It was quite clear, and was stated in the EIS, that this was not the case. He stated that there was no new evidence here, and in relation to the KT Cullen report this was available and if anybody wanted it they could have it. However, he was not tendering it as evidence because of the objections of Mr. Noonan. However, he had no problem with the document that Ms. Burke was putting forward, as it was grounded in the EIS.

Mr. Noonan noted that Mr. McGrath had stated that there was no new evidence here. However, he submitted that the EIS was devoid of any information as to the number and location of boreholes, and there was a paragraph in the text about trial pits and boreholes. In addition, it was being put in now in this manner that Dr. Neville's evidence was somehow deficient. The proper manner to attack a witness was by means of cross-questioning, but he noted that the applicants adopted not to question Dr. Neville on this point after he gave his evidence.

The Inspector stated that he would report these points to the Board but that he wished to go ahead and hear the evidence.

Mr. McGrath stated that he wished to make one further point of clarification, which was in relation to boreholes. He stated that these were actually mentioned in Chapter 7 of the EIS, and so Mr. Noonan's suggestion that this was entirely new information was not correct. No numbers were given, but the fact that they were boreholes and trial pits is referenced in the EIS. He stated that the reason that the KT Cullen report was not being submitted to the hearing was that the applicant takes the view that the EIS in the relevant portions adequately states the significant effects of the development on the environment in relation to these matters, and so there was no necessity to bring forward additional evidence on those points.

The Inspector stated that he would report this point to the Board as well.

Ms. Burke's evidence was then handed in, and with the exception of the section relating to the ESB letter, was accepted by the Inspector.

Questions for Laura Burke by J. Noonan (Group 1)

Mr. Noonan asked Ms. Burke whether she was familiar with the material that had been submitted and was happy with it. She stated that she was. Mr. Noonan asked her whether there was anything in the documentation that had been submitted to the Board that she would now wish to change, amend, delete or alter having heard what had been stated at the Oral Hearing. Ms. Ahern stated that there was nothing she could think of.

Mr. Noonan asked Ms. Burke whether there was anything she would now do differently, knowing what she now does at this point in the process than what was already before the Board in documentary form. Ms. Burke said there was nothing that she could think of.

Mr. Noonan asked Ms. Burke about her qualifications and experience. He asked had she any experience of project managing the design and construction of a facility of this level and scale. Ms. Burke stated that she had no experience of a development of this scale but had experience of smaller facilities and had also been involved in the Carranstown project, but that this was not yet gone to construction or design stage.

Mr. Noonan asked Ms. Burke had she any experience of managing an incinerator of this type in terms of being responsible for its safe construction or operation. Ms. Burke stated that she had not, because as yet they hadn't built any in Ireland. However, she stated that the Board of Indaver had qualified her for the job of being project manager, and believed her suitable to do so. Therefore, as far as she was concerned she was able to meet their requirements. She stated that the company would also be able to utilise the experience of their parent Flemish company, Indaver NV.

Mr. Noonan stated that he now wished to query the matter of site selection. He referred Ms. Burke to paragraph 2.6.6 of the EIS (page 24). He stated that the EIS described how one site in Charleville showed some promise, but it was considered that the development was "*not a medium/large stand-alone industry due to the number of potential jobs and therefore the site was not considered any further*". He asked her was she satisfied that that statement was accurate. Ms. Burke responded that the reason for that came from discussions they had had with Cork County Council of the type of industry they would be looking for there, which was one with a large number of jobs. The Council did not consider that 57 jobs would be sufficient.

Mr. Noonan stated that that particular rider did not appear in the text of the EIS, did it? Ms. Burke stated that no, this was not in the text of the EIS.

Mr. Noonan stated that he now wished to refer to the WHO document "Site Selection for New Hazardous Waste Management Facilities". He referred Ms. Burke to page 23 of the document entitled "Overview of Siting Processes". Mr. Noonan stated that,

as would be obvious, his clients relied on these guidelines. He noted that the guidelines had been mentioned by the applicants in their EIS.

Mr. Noonan quoted from the second paragraph on page 23 of the Guidelines, as follows:-

> *"Facility siting involves: the search for suitable locations, securing support for and acceptance of the need for the facility and the location selected, and the licensing of the facility by Government. Siting is not a matter of meeting minimum standards. Final approval by health and environmental authorities must rest on the meeting of valid and demonstrated technical criteria and on demonstrated capability. From an overall perspective, however, broad social support is desirable or even vital. The acceptability or desirability of a facility in the prospective host area rests on factors that are important to the population but difficult to codify. Prominent among these factors is the creation of both a climate of openness or trust, and acceptance of the validity and fairness of the siting process".*

Mr. Noonan asked Ms. Burke whether she considered that the siting process set out in the EIS met the test of validity and fairness that had been set out in these guidelines. Ms. Burke stated that she thought it does.

Mr. Noonan stated that the next page of the WHO Guidelines went on to describe two models - the voluntary model, where the process is engaging with a search for a volunteer host community, and the technical model. He stated that it was clear that Ringaskiddy and the harbour were not a volunteer host community and it was evident that the technical model had been used here. Ms. Burke confirmed that that was what was stated.

Mr. Noonan stated that, on page 26, the technical model was outlined, and it anticipates that a location will be selected from a group of candidate sites. It states "*a site search in the technical model normally uses screening and exclusionary criteria, and successive investigation of sites, in increasing detail*". He asked Ms. Burke did she consider that the EIS showed that Indaver followed that approach.

Ms. Burke replied that she considered the EIS showed that Indaver had followed that approach. The EIS made it clear that they had specified a number of criteria, and in addition had used two documents - the WHO Guidelines and the Basel Convention Guidelines for establishing other selection criteria for the development. So she felt that this approach had been used.

Ms. Burke stated that page 26 of the WHO Guidelines deals with a technical model which was the model that Indaver stated they had followed. This model normally uses screening and exclusionary criteria and then successive investigation of sites in increasing detail. There are then a series of 11 steps to be followed. Item 1 of this list of steps was that the "*public is involved in the siting process at a broad level*". He asked Ms. Burke whether the public was involved in the siting process. Ms. Burke replied that Mr. Ahern had gone into a lot of detail on the effort that the company had made to involve the public. Page 3 of the WHO Guidelines refer to informed public comment and consent and Mr. Ahern had indicated that a vigorous programme to inform interested parties and mass media had been engaged in.

Mr. Noonan put it to Ms. Burke that the Guidelines require consultation with all of the public in all of the potential sites. He stated that she would recall in his questioning of Mr. Ahern, that he had put it to him that no public information operation had been gone into, other than in the Ringaskiddy area, and that Mr. Ahern had confirmed that there had been no public leafleting in Charleville or Mallow or anywhere else outside the harbour area. Ms. Burke replied that Mr. Ahern had also stated that there was both national and local media coverage. Section 2.6.3 of the EIS makes it clear that, with regard to the WHO Guidelines and Basel Convention, that while some of the screening methods outlined in both documents were used in this preliminary investigation of each potential site, the main selection criteria were used during the detailed investigation of the four preferred sites.

Mr. Noonan stated that he was not going to take Ms. Burke through the full list of the 11 steps under the technical model, but he noted that the second step was "screening and exclusionary criteria". The book provides a list of the screening criteria and the list of exclusionary criteria, No. 5 of which states "the people of potential host areas are involved in the siting process". No. 6 states that "the criteria formulated earlier are used to evaluate the potential host areas". No. 8 says "preferred sites are chosen". No. 9 states "each site is studied". No. 10 states "one site is selected" and No. 11 "the process of securing final approval begins".

Mr. Noonan wanted to put it to Ms. Burke that it appeared to him that the screening and exclusionary criteria had not in fact been applied. He put it to her that the EIS only disclosed technical tables of comparison relating to four sites in the Ringaskiddy area (Table 2.9 of the EIS). Ms. Burke stated that that was so.

Mr. Noonan asked therefore was it true that the technical comparison only kicks in at the level of the site selection process and not previously. Ms. Burke stated that it applied at that level, but if one looked throughout the EIS it showed that the applicants had gone into the benefits of each area as was indicated in relation to Charleville and others. However, she accepted that at that level of detail it was those four sites in Ringaskiddy.

Mr. Noonan stated that at page 31 of the Guidelines, which listed the criteria used for site selection, it stated that "*screening criteria and exclusionary criteria guide the search for a site*" and "*screening criteria assist in judging the overall suitability of a location and in differentiating candidate sites, but are not necessarily decisive in the choice of location*". Examples are given in Annex 2 of the book in relation to the finding of suitable locations.

Mr. Noonan wished to stress that Step 1 was to eliminate generally unsatisfactory areas. These would include a number of factors and the first one is "*coastal areas subject to floods*". Table 2.9 of the EIS, under the heading of site geology, hydrology and hydrogeology, refers to the two sites and the text indicates that the applicants' finding was that "*groundwater beneath the site is affected by seawater influences, some flooding due to the closeness of bedrock can occur during the winter months"*. Ms. Burke responded that they then go on to indicate that the preferred ones are Sites 1 and 3, according to said criteria.

Mr. Ahern asked whether those criteria were set by the WHO or by Indaver. Ms. Burke responded that it was a combination of the two. The WHO was certainly referred to, but Indaver did a combination of types of soil and other criteria. On the issue of flooding during winter, she stated that there was a drainage problem on one area of the site, which would be where the transfer station is, and that area would be cloggy. However, that problem had now been resolved because the drain had been cleared out, and so it wasn't a case that one had seawater flooding the site, it was merely poor drainage of the site itself. Mr. Noonan pointed out that the table in the EIS stated that it was due to the closeness of the bedrock, not due to a blocked drain. He asked whether the table was incorrect. Ms. Burke responded that there was close bedrock but it was a combination of both that and the drain. The overburden cover ranges between 1 and 9 metres and where it is 1 metre it would be quite low. She stated that Indaver had looked at site geology, hydrology and hydrogeology, and from that assessment they were happy that Site 1 satisfies the criteria.

Mr. Noonan asked Ms. Burke whether she was aware that the site has an extremely vulnerable aquifer underneath it. Ms. Ahern stated that it doesn't have an extremely vulnerable aquifer, in Chapter 11 of the EIS it is stated to be a poor productivity aquifer which is the lowest grade of aquifer referred to by the Geological Survey of Ireland, so it is not in any way an important aquifer. She stated that the site itself, because it is such a poor aquifer, would be suitable for building a facility such as a landfill because the aquifer is so unimportant as per the GSI Guidelines.

Mr. Noonan stated that Step 2 in the WHO Guidelines is to highlight promising areas that have survived the first step. The first step was to exclude sites due to the factors listed there. Step 3 is, if you have got through Steps 1 and 2, to assess promising sites in more detail. Step 3 lists a number of factors that should be taken into account that normally pose risks to health and the environment. These include areas with flood hazards, coastal waters for shellfish and fishing, areas with subsurface mining, riverine areas subject to floods. In addition, the document states that the characteristics of the soil and groundwater of each site should be assessed, as should factors affecting the community.

Mr. Noonan stated that the final step, Step No. 4, was to evaluate and rank sites, taking into account population density, response time of rescue squads, habitat, groundwater and soil characteristics and slope. Ms. Burke stated that she was aware of these.

Mr. Ahern stated that he wished to bring Ms. Burke's attention to what was stated on page 33 of the document, which related to exclusionary criteria. He stated that while she had said that they had adopted a combination of Indaver and WHO criteria for deciding what was the most suitable site, she would see in the document that it states "*the exclusionary factors in Table 2 are recommended for consideration in all cases*". Ms. Burke responded that the full section followed on with the following quotation "*neither screening nor exclusionary criteria can replace a thorough site investigation…suitable sites may sometimes be found in previously excluded areas, since exclusionary criteria may not apply to every part of the land*".

Mr. Noonan asked Ms. Burke whether she had considered the exclusionary factors set out in Table 2. Ms. Burke replied that she thought Indaver had satisfied them. They considered the WHO criteria along with other criteria for each of the four sites and she was satisfied that Indaver complied with them.

Mr. Noonan asked Ms. Ahern when had she first read the WHO criteria in relation to this development for the first time. Ms. Burke replied that it was some time in 2000, at the early stages of site selection. Mr. Noonan asked when did the company become aware that ISPAT were willing to sell the site to them. She stated that it was just before November 2000. Indaver had identified that it would be a possible site and accordingly approached ISPAT. ISPAT stated that at the time they were thinking about selling but did not do anything about it until later in that year. Mr. Noonan asked so it was early 2000 that the ISPAT site was first looked at. Ms. Burke replied that as they looked at other sites, they approached other landowners.

Mr. Noonan asked was it a case that Indaver had relied solely on objective criteria and having gone through those criteria they came back full circle and within the year they bought the site which was the first place they had looked at. Ms. Burke replied that they had looked at every piece of industrially zoned land, and had started in Ringaskiddy, moving outwards from there as described in the EIS and then they came back to Ringaskiddy. She stated that that was how it had happened, because she was involved in all stages of the site selection process.

Mr. Noonan referred Ms. Burke to Table 2 in the WHO Guidelines (page 34). This table lists 14 exclusionary factors in site selection. He asked Ms. Burke whether there were any of the exclusionary factors in site selection listed there that do not have a bearing on the proposed development site. Ms. Burke replied that she didn't think that there was anyone that she would have a concern about.

Mr. Noonan stated that Table 2 set out the exclusionary factors that were recommended for consideration in all cases. He asked Ms. Burke could she tell the Oral Hearing when she had first looked at these exclusionary factors in the context of the application. Ms. Burke stated that she could only say that it was some time in early 2000, around the time of the Kilcock Oral Hearing.

Mr. Noonan quoted exclusionary factor No. 1 in Table 2 on page 34, which stated "*unstable or weak soils, such as organic soil, soft clay or clay sand mixtures, clays that loose strength with compaction, clays with a shrink/swell character, sands subject to substance and hydraulic influence, and soils that loose strength with setting or shock*". He put it to Ms. Burke that from the evidence that had come out at the Oral Hearing, and from the EIS, that this site doesn't even pass the first of these exclusionary factors. Ms. Burke responded that the disagreed with this point. The site investigation referred to in the EIS did not raise an issue with regard to development on the site, which is underlain by sandstone. In addition, in the construction activity section of the EIS, Indaver also referred to the site investigation and how the plant would be constructed on it.

Mr. Noonan asked Ms. Burke had she seen the photomontages provided by Mr. Hastings, one of which was taken from the West Channel - View No. 44. Mr. Hastings had confirmed to him in cross-examination that he hadn't changed or touched up the appearance of the land surface in any way. Mr. Hastings agreed that there are areas showing here on the cliff-face which are devoid of vegetation. He asked Ms. Burke had she looked at the site from this perspective. Ms. Burke replied that she had looked through the photomontages, for example. She stated that if Mr. Noonan was referring to coastal erosion, or the possibility of erosion, she had discussed that in detail with KT Cullen, because one of the things is that you get erosion particularly where you would have a lot of soil or overburden and one of the features of this site was that you have only a very small area of overburden. She stated that she had seen the photomontage but had not looked at the site from a boat.

Mr. Noonan stated that had she been and gone close to the pink area, as it appears in Photomontage No. 44, she would have seen that the area was crumbling as they spoke, it would come away in your hand. He asked whether Ms. Burke would dispute that. Ms. Burke stated that she would have to disagree, and go out and look at it. She stated that because it was a sandstone area, with little overburden cover, it was not the type of area suitable to coastal erosion. She stated that they would just have to agree to disagree on the point.

Mr. Noonan stated that the second exclusionary factor related to subsidence owing to solution prone subsurfaces. He asked Ms. Burke had she heard Dr. Neville's evidence in this matter. Ms. Burke replied that this was not considered an issue, as they had said.

Mr. Noonan stated that exclusionary factor No. 3 stated "*saturated soils, as found in coastal or riverine wetlands*". He stated that the EIS says that the site is liable to flooding. In response to his question earlier, he stated that Ms. Burke had now said that the site was liable to flooding, not for the reason given in the EIS (bedrock proximity), but it was due to a combination of both bedrock proximity and blocked drains. Ms. Burke responded that it was also important to note that it wasn't because the site was beside the sea, it was because of the combination of little overburden cover which led to flooding on site.

Mr. Noonan stated that exclusionary factor No. 4 says "*groundwater recharge, as in areas without crops of aquifers of significant or potential use, considering water availability and regional geology (where an impermeable or retarding layer shields the aquifer from the land surface*)". He stated that Ms. Burke had accepted that it was an extremely vulnerable aquifer, although, of limited productivity of local importance. He was not making the case that the aquifer was of regional importance. Ms. Burke responded that it was a poor aquifer with poor productivity and that is what was stated in the EIS.

Mr. Noonan stated that exclusionary factor No. 5 said "*flooding, as in floodplains or hydraulic encroachment, coastal or riverine areas with a history of flooding every 100 years or less, and areas susceptible to stream channel or storm encroachment*".

He asked Ms. Burke if there was within the EIS any examination of the history of flooding on this site for the past 100 years. Ms. Burke replied that she couldn't say in relation to the past 100 years. Within the EIS, it was noted that some flooding occurred due to bedrock, and because of poor drainage. It was also stated in the EIS that the site was suitable for construction, and was one of the two preferred sites of the four in Ringaskiddy for that.

Mr. Noonan stated that exclusionary factor No. 6 stated "*surface water, which precludes sites above an existing reservoir or a location designated as a future reservoir* - which doesn't apply or "*above an intake for water used for human or animal consumption or agriculture* – she had heard Mr. Hugh Jones' evidence in relation to oysters" - *and within a distance that does not permit response to a spill based on high flow most rapid time of travel*". He asked Ms. Burke whether she had any problem with that factor. Ms. Burke stated that she believed that the company complied with it, as they were not above an existing reservoir designated as a future reservoir, again it is a poor productivity area. Mr. Noonan asked Ms. Burke whether she accepted that the oysters live in Cork Harbour and that this is over Cork Harbour. Ms. Byrne replied that the oyster bays referred to by Mr. Hugh Jones were at Cuskinny, and this wasn't in the general area of the site. Mr. Noonan noted that the proposed development involved discharging into the Council sewer, and that that in turn discharged into the harbour. Ms. Burke responded that that would not be the case in the event of a spill, as the applicants had stormwater retention so there has to be analysis of any waters leaving the site.

Mr. Noonan stated that in the event of an emergency, where the retention capacity is overborne, had the applicants done any study of what the consequences would be within the harbour water area? Ms. Burke responded that the applicants would have to do a stormwater retention study as part of their waste licence application to satisfy the EPA with their stormwater retention. Mr. Noonan stated that they were looking at exclusionary factors and site selection, and that he must put it to Ms. Burke that her last answer was entirely unsatisfactory in that context.

Mr. Noonan stated that exclusionary factor No. 7 was "*atmospheric conditions such as inversions or other conditions which would prevent safe dispersal of an accidental release*". He stated that Ms. Burke had heard the evidence of Mr. Hession yesterday, who had indicated that 5% of the time there are inversion conditions. He stated that this would equate to one and a half days since the starting of the Oral Hearing. He asked Ms. Burke had she any problem with this exclusionary factor. Ms. Burke responded that they had a detailed air model carried out by their air quality modelling consultants, and those consultants did not believe there was any problem with air emissions with regard to the site. Mr. Noonan stated that that was a different question and that it appeared that these consultants had not been on board at the time that the site selection was being carried out. He asked Ms. Burke when these consultants had joined their team. Ms. Burke responded that it was probably in and around January 2001. Mr. Noonan stated that Ms. Burke had already stated that the site selection had begun in January 2000 and that the exclusionary factors would have applied at the start of that process. He asked was there any data in the EIS addressing the incidence of inversions so that the public could make an informed assessment as to the

acceptability of the site in relation to exclusionary factor No. 7. Ms. Burke responded that there was a detailed air quality study which talks about the air quality and all of this is in the EIS.

Mr. Noonan stated that exclusionary factor No. 9 in the WHO related to "*natural resources, such as the habitats of endangered species, existing or designated parks, forests and natural or wilderness areas*". He stated that there had been cross-examination of Indaver's ecologist. It was quite evident that he was brought in after site selection. He stated that he must put it to Ms. Burke that this exclusionary factor had not been taken adequately into account when selecting the site. Ms. Burke stated that she disagreed with that. These guidelines were part of a number of things that the applicants had looked at, including the fact that the site was industrially zoned in the Development Plan.

Mr. Noonan asked Ms. Burke when Mr. Morgan had joined the team. Ms. Burke stated that he had joined it at the same time, in January 2001. She reiterated that the applicants had looked at the four sites and had also looked at other factors, including the fact that it was industrially zoned and hence deemed suitable for industry.

Mr. Noonan stated that it was his submission that he was taking the EIS as suggesting that the WHO Guidelines had some weight and should be respected. He had no problem with Ms. Burke stating that she had considered other factors as well. However, the scheme set out in the WHO was quite plain - one started at the beginning, worked through the process methodically, and then came out at the end. One did not begin at the end and then work through to the beginning. Ms. Burke responded that she disagreed and felt that the applicants were in compliance with the guidelines. In the EIS, she stated that they had looked at the four sites and looked at the guidelines.

Mr. Noonan stated that exclusionary factor No. 12 said "*sensitive installations, such as those storing flammable or explosive materials*". He asked Ms. Burke whether she had seen Hammond Lane recently. Ms. Burke stated that she had. Mr. Noonan asked whether she would consider that it stores flammable materials. Ms. Burke replied that it stores parts of cars that were previously sent to landfill. Mr. Noonan commented that he would think that this is particularly dangerous flammable material.

Mr. Noonan stated that exclusionary factor No. 13 says "*stationary populations such as those in hospitals and correctional institutions*". He asked whether Ms. Burke was aware of the location of Spike Island. Ms. Burke stated that she was.

Mr. Noonan stated that it was mentioned in the EIS, and was also reflected in some of the views of the County Council, that somehow the WHO Guidelines are happy since there are not more than a particular number of dwellings within 500 feet of the site boundary. This is quoted as part of the EIS, in Step 4, Table 4 on page 78. Ms. Burke said that she did not think they had said that. One of the things in Step 4 of the site

screening process at page 81 of the WHO Guidelines states that the analysis in Step 4 of the site screening process differed from that in Steps 1-3, in that it recognised trade-offs among the characteristics of a candidate site, and gave positive, negative or neutral factors for each rating. She stated that that is where they dealt with the dwellings. It was not an exclusionary factor and it was not stating that the WHO was happy or not happy. It stated it was one of the elements you should use in ranking a site.

Mr. Noonan stated that looking at the table at page 74, this sets out the four steps, and the first step's objective is to eliminate environmentally unsuitable areas. That is where the exclusionary factors in the text come in. The second step is to highlight areas with potentially suitable features. The third step is to eliminate areas with adverse effects on the community. The fourth step is then to rank sites. Mr. Noonan stated that he had to put it to Ms. Burke that by leapfrogging in something from Step 4 (the 500 foot criterion) she was in fact misrepresenting the question of whether or not the site selection criteria tally with the method and process described in the WHO Guidelines. Ms. Burke responded that she disagreed, since it was stated in the EIS that Indaver used the WHO and Basel criteria, along with other factors, as part of the site selection process. They also state that they were used in the ranking of the different sites. Step 4 is all about ranking different sites.

[There was further discussion and questioning by Mr. Noonan of Ms. Burke in relation to Annex 2 to the WHO Guidelines (pages 73-83). This may be heard on Track TT.]

Mr. Noonan stated that from Ms. Burke's answers could he take it that she was now only claiming that she applied the WHO or Basel approaches whenever she got to the stage that they had four sites in the Ringaskiddy area, or was it her case that she applied this approach to other sites such as Charleville and Mallow and the other sites mentioned earlier. Ms. Burke stated that the EIS indicated that these matters were dealt with. On the issue of Charleville and the other sites, the EIS stated that "*while some of the screening methods outlined in the WHO and Basel Guidelines were used in the preliminary investigation of each site, the main selection criteria were used in the detailed investigation of the four preferred sites*". She stated that the detailed criteria were used primarily on the four sites. The applicants didn't go into that level of detail for the other sites but did look at industrially zoned lands throughout County Cork. They felt that this would be an important factor since the zoning of lands for industrial purposes meant that the Council was saying that the sites were suitable for industrial type activities.

Mr. Noonan asked whether it would be fair to say that they had started with finding industrial lands, which was Step 2 in the WHO Guidelines. Ms. Burke stated that they had looked at a range of things but concentrated on the industrial.

Mr. Noonan asked Ms. Burke about the exclusion of Little Island. He noted that at paragraph 2.6.5 the EIS stated that Little Island had been excluded because it was

visible from the N25, and due to its scenic nature. He asked her to explain why Ringaskiddy was not excluded on exactly the same basis. Ms. Burke replied that this was because the type of industry in Little Island was mainly small scale industry, and looking at the visual impact, the applicants had felt that the development would have a high impact, whereas in Ringaskiddy it would have a lesser impact because of the presence of the heavier type industry in the area.

Mr. Noonan asked Ms. Burke, why, in dealing with Carrigtwohil, sites were excluded because they were owned by the IDA, and the IDA refused to sell any land to Indaver. He asked Ms. Burke was he right in assuming that that was the reason why Carrigtwohil was not suitable. Ms. Burke stated that that was the case. Mr. Noonan stated that it also said in the EIS that the Council's Planning Department was contacted and from those discussions it was concluded that the area was not suitable based on the Council's requirements for job creation. He asked Ms. Burke was that broadly correct. She stated that it was.

Mr. Noonan stated that therefore, based on the Council's view as to the number of jobs, albeit in an industrial zone, this was sufficient to rule out Carrigtwohil. Ms. Burke said that that was the case as the Council had wanted an industry that would employ a large number of people.

Mr. Noonan stated that, in relation to Whitegate, the EIS said that there were a number of pylons crossing the site and that they had wayleave requirements that made it unsuitable. He asked wasn't there a high pressure gas main running through the proposed site which has to be relocated. Ms. Burke responded that the pylons at Whitegate were going right through the site making it difficult to develop, whereas the high pressure gas main at Ringaskiddy is at the edge of the site and only has to be relocated very slightly.

Mr. Noonan stated that in relation to Carrigaline, the EIS indicated that the industrially zoned lands were ruled out because the Council had a desire to see the land developed as a technology park. In fact the land was later sold to Pepsi Cola. He asked was the exclusionary factor in this case the Planning Department's views. Ms. Burke responded that part of the land had already been developed for light industry, and the land bank was owned by the County Council. The Planning Department had stated that they wanted to develop the land for a technology and business park.

Mr. Noonan asked whether it was true that the initial decision, having examined sites around the harbour, was to go for Ringaskiddy. After this it was decided to look at other sites such as Ballincollig and Macroom. In the case of Macroom the EIS stated that the site was not suitable because of the lack of other large industries and the proximity of the site to the Lee Valley Tourist Amenity Area. Ms. Burke stated that that was so.

In the case of Mallow, Mr. Noonan stated that the water supply appeared not to be satisfactory and also a further factor was the views of the Council, who had a

preference for a food type industry. Again it appeared that the knock-out was the Council's attitude. Ms. Burke responded that that was not totally the case as the water supply was a problem there as well.

Mr. Noonan then asked Ms. Burke about the site at Mitchelstown. According to the EIS, this was excluded also for the same reason as was used in Mallow, relating to the Council's preference for a food-type industry.

Mr. Noonan stated that it was difficult to understand how the applicants, and their company, could stand over a site selection procedure where many of the sites that were excluded were excluded merely on the basis of opinions expressed by the County Council's Planning Department. The applicants then plumped for the one site which was not only opposed by the local community but was also the site where the planning process leading to the County Development Plan specifically required them not to go. He asked Ms. Burke how she could explain this.

Ms. Burke responded that the County Planning Officer's report says that the site that they propose is in accordance with the proper planning and development of the area, and the County Manager had twice recommended a material contravention for the Development Plan in order to grant permission for the facility.

Mr. Noonan stated that he wished to put it to the Inspector, who could then put it to the Board, that central to his client's case was the matter of site selection. It had been asserted repeatedly in the EIS, in somewhat ambiguous language, that reliance was placed on the WHO and Basel Convention Guidelines. He had to assume, on the precautionary principle, that the County Council officials were not furnished with these guidelines, and may have relied on the assertions given by the applicants.

[The next section of the questioning of Ms. Burke by Mr. Noonan related to the Basel Convention Guidelines "Basel Convention Document No. 4 - Technical Guidelines on Incineration on Land". This discussion dealt mainly with the types of incineration considered appropriate for different types of waste streams, and also issues relating to the air quality modelling and air dispersion modelling that the applicants had included in the EIS. It is not proposed to itemise these questions here. The Board may wish to review them. They are outlined in Tracks VV, beginning at time reference 6 minutes, and Track WW, up to time reference 9 minutes.]

[The following area of questioning of Ms. Burke by Mr. Noonan related to EPA BAT guidance notes for the waste sector in relation to landfill activities and transfer activities. Again, it is not proposed to give a précis of this questioning. Should the Board wish to listen to this area, it is contained in Tracks WW (beginning at time index 9 minutes) and Track XX.]

Following this questioning, Ms. Burke was released for some time to allow questions of John O'Mahony, a further Indaver witness.

Questions for John O'Mahony (Indaver)

Mr. John O'Mahony stated that he worked with Arups, and had been called since the architect of the project, Frank O'Mahony, had been unable to answer some of the questions that the Inspector had asked that morning. The Inspector stated that he would ask these questions at this point and then open Mr. O'Mahony for questioning by the other parties.

The Inspector asked Mr. O'Mahony whether he was involved in the design of the scheme at substructure level. Mr. O'Mahony confirmed that he was.

The Inspector noted that the EIS indicated that the site has a level of overburden/subsoil above bedrock level of between 1 in 9 metres. He asked where was the 1 metre section and where was the 9 metre section, as no map appeared to have been provided in the EIS. Mr. O'Mahony responded that the 1 metre depth of overburden was closest to the Hammond Lane site, and the 9 metre level would be up on the southern edge of the site.

The Inspector asked Mr. O'Mahony what was the depth to bedrock in the area where the proposed waste to energy plant was indicated on the plans, almost due east of Hammond Lane. Mr. O'Mahony responded that at that point the depth of overburden over bedrock was approximately 1 metre, as the bedrock was at a fairly constant level. The Inspector asked Mr. O'Mahony whether he could take it that the bedrock was essentially flat, and that the depth to overburden was where it hadn't been excavated in the past. Mr. O'Mahony stated that that seemed to be the situation, as he understood it from the site investigation report.

The Inspector stated to Mr. O'Mahony that the EIS had indicated that the overburden was not sufficient to take that building, and that therefore the developer would have to go down to bedrock, he asked was this the case. Mr. O'Mahony stated that that was so.

The Inspector stated that the design appeared to involve a 5 metre deep "pit" under the main section of the waste to energy building. He asked would that mean that it was intended to excavate pretty much 5 metres into the bedrock at this point. Mr. O'Mahony stated that the excavation would typically be about 4 metres depth into the bedrock, allowing for the removal of the overburden.

The Inspector asked Mr. O'Mahony to indicate, roughly, how many tonnes of rock had to be taken out to achieve this. Mr. O'Mahony stated that he did not know in detail, but was satisfied that the amount of rock to be excavated would be able to be used within the site. He thought the amount of rock to be removed was roughly 300-400 cubic metres.

The Inspector asked Mr. O'Mahony to indicate what that would be likely to be in tonnes given that the rock appeared to be sandstone. Mr. O'Mahony's initial reply

was that it would be approximately 2.2 tonnes. However, this was later amended, following further questioning by Mr. Noonan, approximately 10,000 tonnes.

The Inspector then asked Mr. O'Mahony whether, in the design, any of the rock that had to be investigated would actually be leaving the site to go somewhere else, as opposed to being used on the site. Mr. O'Mahony stated that it was their expectation that all of the rock would be reused on the site, as a fill material for the berms and landscaping, and for the area behind retaining walls. He stated that he would expect the rock to be excavated in quite small sizes, so it would be reusable as a fill material, in addition to the overburden that could also be used for that purpose.

The Inspector asked Mr. O'Mahony whether he could take it that this work would only be on the areas that were described in the EIS as the building areas, and that the areas to the west/south-west of the Hammond Lane facility would not be used. Mr. O'Mahony confirmed that that was the case.

The Inspector asked Mr. O'Mahony how was it proposed to take out that amount of rock. Mr. O'Mahony responded that the rock just underneath the overburden would be quite weathered and could be taken out using a large excavating machine. Further down it would be proposed to use a chisel or hammer-operated rock excavator. From his knowledge of the site, he thought it would be unlikely that it would be necessary to do blasting.

The Inspector then asked Mr. O'Mahony whether he was involved in the construction/site operations. Mr. O'Mahony stated that yes they had looked at that as part of their process. The Inspector asked Mr. O'Mahony where it was proposed that the construction workers would park their cars during the construction period. Mr. O'Mahony responded that the site establishment would be set up in such a way that there would be car parking provided so that it would not impinge on the roadway.

The Inspector stated that he had read that in the EIS, but that he had also noted that Mr. Morgan's evidence was that there were certain parts of the site that were not to be touched because of their ecological importance. In the light of this, and given that the developer was building on one part of the site, and reserving other parts for ecological purposes, where was there sufficient space left to accommodate up to 350 workers' cars, given that there was effectively very little public transport in this area.

Mr. O'Mahony stated that they would look at a staged approach to the construction, where they would concentrate all activities on one area of the site, hence releasing another area for activities such as contractors' set-up in which car parking could be included. The Inspector asked whether that was what was proposed in the EIS. Mr. O'Mahony replied that that would be established later in dealing with the contractor.

The Inspector stated that the EIS said that the development was going to be a 24-month construction period. He asked Mr. O'Mahony how, if it was now proposed to phase the construction, where on the site would not be phased for construction while the main buildings are under construction and if that was the case whether he needed

to look again at the estimate of 24 months construction period. Mr. O'Mahony responded that there were two parts on the site, the second being the transfer station which had quite a large area of flat land which could be used. In the waste to energy section, there were long stretches of roadway and yard areas to the rear which could also be reused. He stated, in relation to the 24-month contract period, that that may need to be reassessed.

The Inspector asked Mr. O'Mahony to confirm that he was confident that it would still be possible to ensure that all construction workers' cars would be parked on the site throughout the construction period, and would not be parked on the public road. He asked whether this was something that could be conditioned in the event that the Board should decide to grant planning permission. Mr. O'Mahony stated that he was confident that would apply.

Mr. Noonan referred Mr. O'Mahony to Drg. C05/APP/92/300 entitled 'Section BB through Process Building'. He asked whether this would provide details for the Inspector on the amount of rock to be excavated. Mr. O'Mahony replied that there were a number of areas that would be excavated. There was an underground retention tank between gridlines 2 and 3, and an additional area between gridlines 5 and 9. Both of these would be approximately 5 metres in depth involving 4 metres excavation of rock. Under the main building it was not intended to go down to bunker depth and the amount of excavation would be small. In the case of the bunker the volume would be approximately 12,000 cubic metres. The bunker will be approximately 5 metres deep below existing ground level. Mr. O'Mahony stated that having done the calculations, the overall area to be excavated was approximately 4,800 cubic metres of rock, which amounted to approximately 10,000 tonnes.

Mr. Noonan asked Mr. O'Mahony whether he had carried out any examination of the rock to assess its suitability for excavation by means of hammer and chisel. Mr. O'Mahony replied that no examination had been carried out as yet on the particular site, but that they had experience of other sites in the area, with rock which had to be excavated, and no difficulties were encountered. At present they had a site investigation report on boreholes. The detailed examination of the rock would take place as part of the detailed design process. This would be later than the planning application, where only an outline design would have been done. He stated that the construction would involve grading the larger and smaller particles of rock so that they could be used for fill purposes.

Mr. Noonan asked Mr. O'Mahony whether there was not a noise component associated with grading, in addition to the rock breaking. Mr. Noonan stated that there would be a noise component, but that any contractors would have to operate under codes of good practices on sites and open areas, on which there would be noise restrictions and requirements. This would be a matter to be dealt with in due course.

Mr. P. Sweetman (Group 22) asked Mr. O'Mahony where would the contractors' compound be located. Mr. O'Mahony replied that this would be the same issue as had been mentioned earlier with the Inspector regarding the car park. An evaluation

would be done on the approach to construction, and an area designated for the compound.

Mr. Sweetman asked Mr. O'Mahony how big the compound would be. Mr. O'Mahony replied that in the early stages it would be mainly plant so there would be simply parking areas for earthmovers and excavators and that would be quite small. Typically one would stack portacabins if the site is small and it is now quite a common practice to do so in order to reduce the plan area.

Mr. Sweetman asked how many excavators and dumper trucks would there be on the site. Mr. O'Mahony stated that this would be an issue that would be established at the start of construction, and would be discussed with the contractor.

Mr. Sweetman asked Mr. O'Mahony what was the depth to the groundwater. Mr. O'Mahony stated that he couldn't recall the figure off-hand, but that the developers were happy that it did not impact on any construction or design activities that were being undertaken for the project. Mr. Sweetman asked Mr. O'Mahony whether he had seen the borehole logs. Mr. O'Mahony stated the had seen these logs, there were three boreholes for the project. Mr. Sweetman asked how far above sea level was the bottom of the pit that was proposed to be dug. Mr. O'Mahony stated that the bottom of the pit was approximately at sea level or just above it.

Mr. Sweetman asked Mr. O'Mahony whether he knew the composition of the rock. It appeared from the evidence given to be sandstone. He asked whether the sandstone was fractured or solid. Mr. O'Mahony stated that the rock was solid. He stated that he was not really competent to be sure on this, as they had simply obtained the site investigation report and were satisfied that they could progress their foundation design based on the information in it.

Mr. Sweetman asked Mr. O'Mahony what would be the level of noise made by the rockbreakers and how many rockbreakers would be used. Mr. O'Mahony stated that this could only be established when a detailed construction plan had been put in place, and it would be discussed with the contractors. He stated that the rockbreakers would be working only at specific times, and mitigation measures for specific sources of noise can be made which the contractor would have to comply with.

Mr. Sweetman put it to Mr. O'Mahony that it was a legal requirement of the EIS that the proposed mitigation measures be included in the EIS. He noted that there was no mention of rockbreakers in the EIS, let alone mitigation measures to deal with the noise from such rockbreakers.

Mr. Sweetman asked Mr. O'Mahony what impact the use of rockbreakers on the site would have on the badger sett. Mr. O'Mahony stated that this was not his area of expertise. Mr. Sweetman pointed out that Mr. Morgan, who had given evidence on the badger sett, did not know that there was going to be a rockbreaker. Mr. O'Mahony stated that he couldn't comment on badgers, other than to say that the

contractor would have to operate under conditions of good practice in terms of noise on site.

Further Cross-Examination of Laura Burke by J. Noonan (Group 1)

Mr. Noonan stated that Ms. Burke had been through the process of an appeal in relation to the Carranstown facility. He stated that he wished to ask her a question in relation to process water demand. A number of figures had been given on this matter and conflicting evidence as to whether the development was a high water user or not. He asked Ms. Burke was there much difference in this regard between the present application and Carranstown. Ms. Burke stated that it depended. In the case of Phase 1 of this development, 9.3 cubic metres per hour of water would be required. In Carranstown the requirement was 12 cubic metres per hour.

Mr. Noonan asked Ms. Burke whether it surprised her that Meath County Council had stated at the Carranstown hearing that the development was a low water user. Ms. Burke replied that in Carranstown the applicants were not getting their process water from the County Council, they were taking it from wells. It all depended on what one meant by a high water demand. She stated that the present development would need considerably more water than some of the other industries in the area, such as dePuy, but would need much less water than Pfizer, all of which sites are zoned for industrial use so it was all relative.

Mr. Noonan put it to Ms. Burke that that response didn't fit in well with the Inspector's report in Carranstown, which indicated at page 189, that Meath County Council said that process water requirements were low. It appeared to him that Carranstown involved a greater water demand than the present scheme and that yet it had been described as low. It seems strange to him that the applicants were saying now in Cork that the development, which needed less water usage than Carranstown, was being described as a development requiring a high water demand. Mr. Noonan put it to Ms. Burke that essentially what Indaver were doing were making opposing claims to suit the circumstances of the case. Ms. Noonan replied that she was not saying this, and that when the proposed development was being compared to other industries in the same zoning, which were port-related and high water using, the proposed development used less than some and more than others.

Mr. Noonan asked Ms. Burke why Indaver had not seen fit to do any gravity modelling as they had done in Carranstown on kilometre tonnes haul distances by quantity and by location in relation to the site. Ms. Burke stated that Mr. Ahern had already gone into this matter in some detail, in his comments on the need for the scheme. The development in the current case is primarily a facility for hazardous waste, and the first step that the applicants had taken was to look at where the hazardous waste was being generated. Since this was a national facility, one looks at the state as a whole. In the case of Carranstown, what was involved was a regional facility. What the applicants chose to do in this instance, which would not have been relevant in Carranstown, was to look at the EPA database, and the figures it gave on the generation of hazardous waste. That was what directed the company to Cork.

Mr. Noonan asked Ms. Burke, at the time of doing the site selection for this development, whether any professional planning advice had been obtained. Ms. Burke responded that they had engaged Project Management, a firm of consulting engineers, to do this work. She was not sure whether or not this firm had any specific planning staff on it. She stated that she did not know. The brief for this firm was to look at industrially zoned sites, in the Cork County area, and hence the company had looked at the then Cork County Development Plan.

The Inspector intervened at this point and asked Ms. Burke to clarify the situation. He asked whether the company had had any professional planners on their team until Dr. Meehan had come along. Ms. Burke responded that for the site selection purposes, they had used the project management company. She did not know if they had any planners on their staff, probably not. In any event the sites that had been looked at in Cork were ones which were industrially zoned. The Inspector stated that was it the case that because the company were merely looking at zoned land, they did not need a professional planner. Ms. Burke responded that they assumed that Project Management had the necessary skills.

Mr. Noonan asked Ms. Burke whether she recalled making the case in Carranstown that two furnaces were better than one, because it meant that you could have continuity of operation in the event of breakdown of one furnace. Ms. Burke stated that the case they had made there was that there was a requirement for 150,000-200,000 tonnes per annum, in accordance with the Waste Management Plan for that region. They stated that they decided to have two separate incinerators, each handling half of that amount. This provided the benefit of two lines. In the case of the hazardous waste incinerator, as it is a national incinerator, only one would be needed for the State. Accordingly, one line is being proposed for the hazardous waste incinerator.

Mr. Noonan asked whether there was a consequent disadvantage in going for one line in terms of shutdown, maintenance down time and disruption. Ms. Burke responded that they would have gone for two lines had it been economically viable to do so. But there was not sufficient hazardous waste to fill up to lines and accordingly it was not economically viable.

Mr. Noonan stated that he now wished to address the issue of the EPA Guidelines on the information to be contained in Environmental Impact Statements. He reminded Ms. Burke of questions that he had asked of other witnesses regarding health and safety and he referred her to page 23 of the Guidelines. Page 23 of the Guidelines talks about making assessments of worst-case scenarios where impacts of a development would pose significant threats to the environment, and/or human health. He asked whether the EIS contains such assessments.

Ms. Burke asked did this relate to the prevention and control of abnormal operations. Mr. Noonan quoted from the fourth paragraph on the right-hand column of page 23, which states as follows:-

"The Likelihood of Impacts.
This decision can be supported by judgement based on documented experience elsewhere, or by a systematic risk assessment. Such assessments are usually employed only where the "worst-case" impacts pose significant threats to the environment and/or human health. It should be noted that such risk assessments should only be undertaken where there is reasonable cause for it, as they can be a very time consuming complex and expensive".

Mr. Noonan asked Ms. Burke whether the EIS contains such an assessment for the proposed development. Ms. Burke responded that as far as she was concerned they considered they had considered this issue. By putting in both Phases 1 and 2, they had given a worst-case scenario for the description of the whole development. In addition, in the air modelling section of the EIS, the applicants had put in the scenario of expected operating conditions and also maximum operating conditions.

Mr. Noonan asked Ms. Burke if, as she stated, the EIS does contain the assessment of the worst-case impacts, how many people are likely to be killed or seriously injured in the event of a major accident on the site.

Ms. Burke responded that a major accident was covered under SI 476 of 2000, which was under the remit of the HSA. A separate risk assessment – HAZID - was provided to the HSA on the basis that the development would be a lower tier Seveso site. In relation to major accident hazards, this report had looked at 111 different accident scenarios, double-walled tanks were put in and a number of different things, and it was estimated that there would be no off-site incidents with fatalities. However, she stated, it was up to the HSA to assess that and come back with any additional queries or questions which they had and then state whether or not they objected to the development. They wrote to the local authority and stated that they did not object to a grant of permission for the facility.

Mr. Noonan stated that her answer had been a very long one to a very short question, he had not asked about the HSA, the HSA were not mentioned in the EPA Guidelines on the content of E.I.S.'s. He asked Ms. Burke whether, within the EIS, there was a statement of worst-case impacts on humans. Ms. Burke responded that from their calculations there was not a risk of death from a major hazard. She stated that the EIS, in the non-technical summary, stated that the HSA had been contacted.

Mr. Noonan stated that he had explained that there was no mention of the HSA in the EPA's Guidelines on the content to be included in EISs. He asked Ms. Burke whether she would now answer his question on how many people would be at risk if there was a major accident on the site, and what the applicant studies show to be the result of that type of event, or was he to take it from her answer that the applicants had decided there was no risk capable of bringing about such deaths or injuries off-site.

Ms. Burke responded that what she had stated was that the applicants had looked at that issue in the HAZID and that the major risk of an off-site effect would be the puncture of a drum in the transfer station. If such a drum were holding nitric acid, the potential of that would be the release of vapours, but there was not a risk of fatality.

Mr. Noonan stated that page 24 of the EPA Guidelines stated that the worst-case impact should be "stated and explained". Where there was a danger that the failure of a project, or its mitigation measures, could lead directly to profound irreversible or life-threatening consequences. He took it from Ms. Burke's answer that this was not contained within the EIS.

Ms. Burke stated that the study that she had been referring to was not within the EIS. What had been stated in the EIS, at paragraph 3.1.5 was as follows:-

> *"The operation of the waste to energy plant will involve hazards associated with the handling of combustible materials, etc. During the design phase, hazard and operability studies would be carried out, identifying hazards and mitigation measures".*

Mr. Noonan stated that he would refer Ms. Burke to page 24 of the Guidelines under the heading of 'Description of Impacts'. This outlines a method, a system, so that the community and regulators can be informed as to the dangers posed by the proposed activity. The Guidelines state that the receptors which could be affected, should be identified, indicating their sensitivity and significance. It states that the E.I.S.'s should indicate whether the impact can be avoided, mitigated or remedied. It states that the EIS should indicate whether compensation is available.

At this point the Inspector intervened and drew Mr. Noonan's attention to the footnote at the base of page 26, indicating that the term compensation referred to environmental rather than physical matters, and accordingly he did not see its relevance.

Mr. Noonan stated that he would look at compensation, and would explain later the relevance of this in the light of Mr. Ahern's answers earlier. The Inspector stated that he could go ahead, but he would have to cover this matter in his summing up.

Mr. Noonan asked Ms. Burke what was the ceiling of the company's public liability insurance. She responded that Mr. Ahern had already dealt with that. She stated that they would have to put in a financial bond as part of their waste licence. Mr. Noonan stated that that bond was for remediation at the end of the project's life. He asked what the company was insured for. Ms. Burke stated that at present it was insured for c. €12.5 million, but as yet they had the facility in operation. She stated that they also had an environmental liability insurance.

Mr. Noonan stated that he was talking about public liability, was suggesting that the company's cover ceiling was €12 million under their parent company's insurance. He suggested to Ms. Burke that the ceiling was per occurrence, and included property damage to third parties. He stated that if that was that case, and it had not been controverted by Mr. Ahern, in the event of a major accident scenario arising, what would be the likely level of compensation claims that would be landed on the door of the company, if people were killed or injured as a result of a major accident at this

site, and in particular had Ms. Burke any sense or evidence to support the suggestion that ε12 million was going to be anywhere near fitting the bill for such claims?

Ms. Burke stated that that was the level of insurance that the company had. They also had other insurance that had been found satisfactory by the Belgian Authorities for the incinerator there. She stated that this would be a matter for the company's insurance people here, and would also be an issue for the EPA in dealing with the waste licence application.

Mr. Noonan then referred back to page 26 of the Guidelines, where it suggested that EIS should "*highlight irreversible impacts…highlight when the consequence cannot be determined*". Mr. Noonan stated that he was inviting Ms. Burke to say where in the EIS this simple and understandable list of information could be found. Ms. Burke responded that throughout the EIS the applicants detail what they believe will be the potential impacts, and any significant impacts, including mitigation measures. They employed a leading firm of engineering consultants to compile the EIS, and that company had done numerous E.I.S.'s in the past. The company believed that the EIS complied with all the statutory requirements, and it would be up to the Board to assess it as part of the EIA process that they were now in.

Mr. Noonan asked Ms. Burke how many drums would be in the waste transfer station warehouse. Ms. Burke responded that it was calculated at approximately 1,800, and that this was set out in Section 3.5 of the EIS.

Mr. Noonan referred Ms. Burke to Drg. No. C05/APP/92/700 entitled "Transfer Station Floor Plans". He asked Ms. Burke to indicate how many storage compartments were on that drawing. Ms. Burke responded that there were approximately 12 as far as she could see and in each compartment there were potentially 160.

Mr. Noonan stated that that gave a figure of 1,920 rather than 1,800 that had been set out in the EIS. Ms. Burke admitted that that was so.

Mr. Noonan said accordingly what were the Board to depend upon, the drawings that had been submitted or the EIS, when they were trying to figure out how much toxic and hazardous waste was going to be stored in the proposed warehouse. Ms. Burke stated that she would prefer to go with the figure of 1,800 in the EIS. The drawings were intended to show the potential number of drums. She stated that they would be unlikely to store the full number of 160 drums in each compartment at any one time.

Mr. Noonan stated that that was an unacceptable answer. At the planning stage one was trying to get a fix on the consequence of a major hazard and he asked Ms. Burke to accept that if the quantity was plus or minus 7%, this was a significant ambiguity that needed to be cleared up. Ms. Burke responded that she would go with the 1,800 figure. She noted that there would, in some of those areas, be ancillary storage of about 160 drums which would be empty.

Mr. Noonan attempted to ask Ms. Burke a question about their application to the HSA and to page 11 of the application letter from that submission. However, the Inspector intervened and ruled that Mr. Noonan could not ask questions about documents that the Board did not have, unless he was prepared to circulate that document to the Inspector and to the other parties.

Mr. Noonan stated that he did not wish to do so and instead would read out the relevant section of the letter so that all could hear it. The Inspector stated that was acceptable.

Mr. Noonan stated that the relevant quotation of the applicant's letter to the HSA of 4/1/2003 stated as follows:-

> *"Elements likely to cause a major accident or to aggravate the consequences thereof:- Hammond Lane operates a metal reclamation facility employing 12 people, which is located between the sites for the waste to energy plant and the community recycling park, and so shares some common borders with this site"*

Mr. Noonan stated that he would pause at that point. He asked Ms. Burke what the drawings show as boundary treatment between the site and the Hammond Lane. Ms. Burke stated that the drawings show a palisade fence.

Mr. Noonan said that the applicants go on to say "there are no activities at Hammond Lane which could cause or escalate a major accident at Indaver". Ms. Burke stated that that was so.

Mr. Noonan asked whether Ms. Burke believed that that was a true statement. Ms. Burke responded that she did. She stated that in the letter from the HSA to Cork County Council, it was noted that the consultation distance included the Hammond Lane site itself.

Mr. Noonan put it to Ms. Burke that the statement was incredible. Ms. Burke responded that she didn't agree, and that it was a reasonable statement. She stated that it was information that the applicants had submitted to the HSA, and the HSA had come back with a number of queries, not in relation to that, but in relation to other matters. The applicants had met the HSA on 21st February, and the HSA had subsequently given their advice to Cork County Council.

Mr. Noonan stated that he wished to come back to page 11. The very next line of the letter begins with the sentence "*the distances to the nearest occupied dwellings are shown in Table 6*". That table has the legend "distances to nearest occupied buildings off-site". The closest building that was identified on that table to the main tank farm is "*distance to nearest occupied house is 490 metres*". He put it to Ms. Burke that they were aware now, and were also aware in January 2002 when they wrote this letter to the HSA, of the National Maritime College. Ms. Burke stated that they were.

Mr. Noonan asked Ms. Burke whether this was referred to in the letter. Ms. Burke responded that it had been identified in the HAZID. The applicants looked at the distance to the nearest house, to the nearest number of dwellings, and to the Maritime

College. In the discussion of any major accident hazards, the applicants look at those, and the Maritime College is dealt with in detail.

[The next area of questioning of Ms. Burke by Mr. Noonan related to the experience she, and the applicant company, had in managing emergency shutdowns in an incinerator. For reasons already mentioned above, this is not detailed in this summary of the Oral Hearing proceedings. The Board may wish to listen to this. It is contained in Track HHH.]

Mr. Noonan asked Ms. Burke what there was in the material before the Board to ensure that circumstances would not arise in terms of quantities of flammable materials that would not put the proposed development into Tier 1 of the Seveso Directive. Ms. Burke responded that the materials the Board had in front of them was the letter from the HSA to Cork County Council which stated that they did not object to planning permission being granted for this development.

Mr. Noonan asked Ms. Burke what was the material before the Board which ensured that circumstances could not arise where there was a quantity for example of extremely flammable material in the plant at a particular time that would put the development into Tier 1. He noted that the HSA letter said nothing about this question.

Ms. Burke stated that the HSA are the Central Competent Authority, to assess the site in the context of major accident hazards. As part of that, the applicants had to notify them, and also had to provide HAZID. In addition to that there were a number of other requirements that had to be done as part of the notification process. The information is the technical advice to the Planning Authority. The HSA will provide more information, and the background to that technical advice, at the Oral Hearing.

Mr. Noonan reiterated his question. He stated that he would like to know whether there was anything before the Board to guarantee that circumstances would not arise in terms of quantities of materials that would make the plant a Tier 1 establishment rather than a Tier 2 establishment under the Seveso Directive. Ms. Burke responded that what she would say was to refer back to the letter which was the HSA's assessment of the development. This letter stated that it was satisfied with the information that had been given to it, so far, and that they did not advise against the granting of planning permission. She stated that they were the Competent Authority to ensure that the applicants notify them, and have a major accident prevention policy, a safety management system and so on.

Mr. Noonan asked Ms. Burke what was the lowest point of the plant structure going to be. Ms. Burke responded that it was the 2,000 cubic metre water retaining pit.

Mr. Noonan noted that from the drawing that had been put before Mr. O'Mahony earlier, it appeared to him that the levels of the retention tank and the ash bunker were about the same. He asked whether this was the lowest level in the plant. Ms. Burke

stated that she thought it was so. Mr. O'Mahony had already gone into it in some detail. Mr. Noonan stated that he understood the bunker capacity to be about 12,000 cubic metres, as already indicated by Mr. O'Mahony. Was this correct? Ms. Burke stated that this was correct. Mr. Noonan asked whether the bunker will be compartmentalised. Ms. Burke stated that she understood that it would be.

Mr. Noonan asked whether there would be a sump arrangement under those compartments. Ms. Burke stated that there would be. At the bottom of the bunkers. Mr. Noonan asked whether there would be a sump under the ash bunker. Ms. Burke replied that it was a relatively small sump, and one did not need to have a sump underneath the bunker as well.

The Inspector intervened at this point. He stated so that he could be clear, there seemed to be a further drawing, Drg. No. 310, which shows the bottom waste bunker having a level of +2.777, 2 metres above. He wondered whether this altered Mr. Noonan's question. Mr. Noonan stated he was puzzled by that. It appeared to him that there were different drawings showing the level differently, one was at 2.777 and the other was at 0.777. Ms. Burke replied that there was the waste bunker and the ash bunker and the ash bunker was at 0.777. Mr. Noonan asked whether there was a sump under the ash bunker. Ms. Burke replied that there was no sump under the ash bunker as it was a water retaining structure.

Mr. Noonan asked what the capacity was of the ash bunker. Ms. Burke stated that she would have to check that. Mr. Noonan stated that Ms. Burke was well aware that the monitoring regime which the company stated that they would undergo, will entail sampling of the bottom ash. Ms. Burke stated that that was so. Mr. Noonan asked whether this sampling would include occasional sampling for dioxins. Ms. Burke stated that the applicants would have to agree a sampling regime with the EPA and the types of materials that would be sampled for. She stated that she would accept that there would be occasional dioxin sampling but this would be a matter for the EPA.

Mr. Noonan asked whether he understood it correctly that it would take up to 15 days for dioxin results to come back. Ms. Burke stated that at present it was likely to take between seven to 12 days and she hoped that it would be improved in due course.

Mr. Noonan stated that the question he was asking was in relation to the testing for dioxins. He asked, if it took 12 days to get an answer to a test for dioxins, where would the ash go while awaiting this test. Essentially his question was, in terms of volume, was the ash bunker large enough to keep 12 days' worth of waste.

Ms. Burke stated that she believed it was, as it was a quite large ash bunker. She stated there was a lot of additional detailed information within the waste licence application and that the EPA would be looking at that in due course.

Mr. Noonan stated that it was evident from witness statements earlier that the capacity of the storm and fire water retention tank was about 2,000 cubic metres. He put it to

Ms. Burke that she had heard Mr. Hession, the Fire Officer with the local authority, indicate that a flow rate of 5,000 gallons per minute would generate about 1,400 cubic metres per hour. This would amount to 2,100 cubic metres in an hour and a half, at which point the applicant's tank would overflow. Ms. Burke responded that Mr. Hession had referred specifically to the Hickson fire.

Mr. Noonan stated that that was correct. The assumption was that it would only be overflowing by a small amount after one and a half hours, is based on an assumption most favourable to the applicants, that the tank would already be empty to begin with. Hence it would not be raining when the fire was on. He stated that he wished to suggest to Ms. Burke that a combination of those unfortunate circumstances is not one which it would be safe for the Board to rely on. Ms. Burke stated that she did not agree with this view, as the matter had been looked at in great detail. As part of the applicant's waste licence, they would have to do a stormwater retention study so that the EPA could be satisfied.

Mr. Noonan stated that he was addressing the situation of the planning application, and he was putting it to Ms. Burke that there was no margin for error at all, and that all of the assumptions that were most optimistic to the applicant had been relied upon on the issue of fire protection.

Ms. Burke stated that they had looked at the matter in some detail and it is set out in Section 11 of the EIS. The applicants believed that the matter was satisfactory, but it would be doing a detailed study as part of its waste licence to satisfy the EPA.

Mr. Noonan stated that the final question he had for Ms. Burke related to the reliance that the applicants placed on the Department of the Environment and Local Government's letter of 22nd August, 2001, which was referred to in the previous discussions and was part of the written material. He stated that he believed from looking at the submission, that the letter did not include the enclosure originally sent to the County Council, which was a copy of a speech of a Cork TD, Councillor Dan Wallace, of 5th July. He stated that he was mentioning this in the context of whether or not it was consistent with national policy. Mr. Noonan stated that Deputy Wallace had said, speaking of the National Hazardous Waste Management Plan, the following *"the plan recognises that my Department establishes an Implementation Committee, including representatives from producer organisations, location authorities and the EPA. We will act on this quickly because effective early implementation is a challenge we must meet*". Mr. Noonan suggested to Ms. Burke that this challenge remains to be met. Ms. Burke replied that the Implementation Committee has now been set up, and had its first meeting in July of this year. Mr. Noonan stated that this was two years after the Minister had identified it as the first urgent step.

[note: a copy of Minister Wallace's speech, referred to above, is included with the copy of the National Hazardous Waste Management Plan in Appendix 3 to this report.]

Questions for L. Burke by Marcia D'Alton (Group 3)

Ms. D'Alton stated that she wished to check with Ms. Burke regarding the procedure used in site selection. In Section 2.6.3 of the EIS, the EPA report highlighted the need for Ireland to have its own hazardous waste management facility. So then the EPA report highlighted most of the industries were located in Cork so hence the applicants decided to look at County Cork. She asked Ms. Burke whether this essentially was the situation. Ms. Burke stated that that was so.

Ms. D'Alton stated that therefore, in Section 2.6.4 of the EIS, the applicants say that the major industrial development is in the lower harbour, and therefore the site selection process is concentrated on available land in this area. Ms. Burke stated that this was the case, and they had looked at Ringaskiddy, Little Island, etc.

Ms. D'Alton asked whether they had looked at Ringaskiddy and contacted the IDA. Ms. Burke replied that the reason the IDA said it wouldn't sell land to the applicant was because the proposed development was not a manufacturing process.

Ms. D'Alton stated in respect of Little Island, the County Development Plan identified that there wasn't much land available, in Carrigtwohil the County Council said that it wasn't available, and the ESB said they weren't selling land at Whitegate. In Carrigaline again the County Council identified land wasn't available. That left land that was not in IDA ownership, in Ringaskiddy.

Ms. Burke stated that the applicants had looked at each of those areas and then had returned to Ringaskiddy.

Ms. D'Alton stated that then the applicants went through Phase 2 and returned to Ringaskiddy. She asked when the project management team that the applicants had used were appointed. Ms. Burke stated that they were appointed in December 1999. Ms. D'Alton asked at what stage had the applicants reached then. Ms. Burke stated that at that stage they were starting.

Ms. D'Alton stated that at that stage the applicants had identified the four sites in Ringaskiddy and then decided to implement their own guidelines and those from the WHO. She stated that her concern was not that which of those sites would be considered to be the best but that any of those sites would be considered to be suitable, especially because of thermal inversions. She stated that the Indaver company were based in Dublin and hence she was concerned about whether the consultants they had used were familiar with the Cork situation. She stated that it seemed extraordinary, particularly in the light of all the best guidelines and practice, that the only area for a detailed search was in an area prone to thermal inversions.

Ms. Burke replied that they had employed Project Management's Cork office, who would have been aware of the situation. In addition, as part of the EIS, the applicants retained a company to go into detail in the EIS to look at worst-case scenarios and all of that with regard to air dispersion modelling. These consultants found that there was not an impact on air quality, even taking into account worst-case scenarios.

Ms. D'Alton asked where in the EIS was the term 'thermal inversion' mentioned. Ms. Burke responded that it was in Section 9 of the EIS, and that is the particular type of air dispersion model that is used specifically for air dispersion modelling which takes thermal inversion into account.

Ms. D'Alton asked Ms. Burke why, in preparing the air dispersion model, meteorological baseline data was used for Cork Airport, rather than the harbour area.

Ms. Burke stated that that was the advice of the consultants.

Ms. D'Alton asked Ms. Burke whether she agreed that Cork Airport is at 100 O.D., whereas the site is in the bottom of a valley. Ms. Burke responded that the reason for choosing Cork Airport for baseline modelling as opposed to Roches Point was detailed in the EIS.

There was further detailed discussion and questioning between Ms. D'Alton and Ms. Burke in relation to the modelling, and the choice of Cork Airport rather than Roches Point for meteorological information. At this point the Inspector asked Ms. Burke to respond to Ms. D'Alton's question, which was, if the baseline criteria for the air modelling was not representative of their site, did this not call into question the conclusions reached? Ms. Burke responded that the applicants did not believe that the information from Cork Airport was not an accurate reflection of the type of meteorological conditions that would be found in Cork Harbour.

Ms. D'Alton stated that she wished to look at this matter from a site selection perspective, where thermal inversion was listed in the WHO Guidelines as an exclusionary factor. Ms. Burke responded that she believed that the information in the model and the criteria in the model are perfectly adequate.

The Inspector asked Ms. Burke whether she was saying that in the site selection process the company had depended on the air modelling to make that decision or did the applicants in fact do the site selection process before the modelling was done. Ms. Burke stated that they did the site selection prior to engaging the site modelling consultants.

Ms. D'Alton asked Ms. Burke where in the EIS does it describe the waste that is to be delivered to the transfer station or the waste to energy plant. Ms. Burke responded that under Section 3 of the EIS, the transfer station was described and the applicants go into details of industrial hazardous waste. It is described as industrial, hazardous and non-hazardous waste. With regard to each and every waste type, that is then described in detail in the waste licence application.

Ms. D'Alton put it to Ms. Burke that she would have considered it essential in an assessment of the environmental impact of a development to know what wastes were involved. Ms. Burke responded that the EIS described the waste as industrial,

hazardous and non-hazardous waste. In the planning drawings, it can be seen that it flammable toxic material.

Ms. D'Alton asked Ms. Burke whether there would be solid waste accepted into the transfer station. Ms. Burke stated that there would. Ms. D'Alton asked where the facilities were for solid waste in the transfer station. She noted that Section 3 of the EIS lists drum storage, repacking area, emptying drums into bulk tankers, etc., and container parking. She asked where were the solid wastes going to be handled. Ms. Burke stated that some may be in drums.

Ms. D'Alton asked Ms. Burke where the applicants intended to store such things as asbestos, contaminated soil, infectious healthcare waste, things like that, which were not liquid.

Ms. Burke stated that asbestos would be stored in closed containers, which would be parked in the yard area. She stated that such waste is not likely to be in a drum. It is normally stored in a 40 foot box container.

Ms. D'Alton stated that accordingly it appeared there would be waste other than in IVC's or drums. Ms. Burke replied yes.

Ms. D'Alton asked Ms. Burke where and how do they proposed deal with the storage and handling of infectious health waste. Ms. Burke replied that the infectious healthcare waste would be stored in refrigerated containers.

Ms. D'Alton asked where was this detailed in the EIS. Ms. Burke responded that this was not detailed in the EIS, it was detailed in the waste licence.

The Inspector asked Ms. Burke at this point where, on the planning application drawings, was the structure that was going to be used to contain these wastes. Ms. Burke responded that they would be moveable structures, not permanent structures. The healthcare waste would be in containers which would be moveable, and which would be stored in accordance with EPA requirements.

Ms. D'Alton asked Ms. Burke how this waste would be transferred from its truck into the applicant's containers. Ms. Burke responded that the waste would in fact stay in its truck and container and would be handled using a forklift. Again this matter would be detailed in the waste licence.

Ms. D'Alton asked Ms. Burke did she not consider that the presence of healthcare waste on a facility relatively close to housing and schools would be of concern to those houses and schools. Ms. Burke replied that it would be of no more concern than any other one of the hazardous wastes which the applicants specified they were taking in for example. Anything that came onto site would have to comply with transport regulations and have to be in particular types of containers.

Ms. D'Alton asked Ms. Burke if she could list the waste that could be exported from the transfer station. Ms. Burke stated that these would include materials such as asbestos and laboratory chemicals, which they currently take small amounts of from schools and facilities like that. She stated that Mr. Ahern had talked about this and he stated that it wouldn't be suitable for incineration, like mercury-containing waste. Ms. D'Alton asked what volume of this material would be exported. Ms. Burke stated that it would be between 2,000 and 3,000 tonnes per year at most.

Questions for L. Burke by G. Casey (Group 14)

Mr. Casey asked Ms. Burke, in relation to site selection how the applicants considered the Seveso Directive and the Hazardous Materials Directive. Ms. Burke stated that they did, as they knew they would be storing large amounts of solvents and would be a Seveso site.

Mr. Casey asked Ms. Burke whether, in site selection, the applicants had looked at the question of the proximity of the site to other Seveso sites. Ms. Burke replied that they had looked at the proximity of the site to the pharmaceutical companies, and whether they could potentially be a problem because of domino and other effects. In relation to the four sites, they did not look specifically at the domino effect, but they did look at it from an industrial plant storing solvents point of view. They also took into account that, as the site was zoned industrial, it was suitable for this development. She stated that the applicants also believed that the type of technical criteria that they would employ would ensure that they wouldn't have large consultation distances or have an effect on other plants. She stated that they had not carried out detail modelling at the time they bought the site and it was a risk one had to take in business.

Mr. Casey asked whether he could take it in fact that the applicants had long since purchased the site before they had considered anything to do with the Seveso Directive by reference to other Seveso sites in the area. Ms. Burke replied that they had looked at the siting as compared to other pharmaceutical plants, but had not gone into any detailed modelling or specific notification on Seveso. She stated that if there was an issue with regard to that, or if the applicant company did not get planning or something else, that that was a risk as a company that they had to take. She stated that the applicants believe it was a good site.

Mr. Casey referred to page 15 of the applicant's written submission to the Board in response to the appeals, in relation to matters and places that they took into consideration in the Seveso Directive. He noted that the village of Ringaskiddy was mentioned, the National Maritime College was mentioned, and so were a number of other places and things. However, he did not see any mention in the submission of the Hammond Lane site, which is within the boundaries of and is surrounded by the proposed development site.

Ms. Burke responded that, in the written submission, they didn't refer back to the Hammond Lane, and the reason was that it was a response to third party appeals

which had raised the issue of closeness to the Maritime College and Ringaskiddy so they were merely responding specifically to that.

Mr. Casey asked Ms. Burke, in considering the design criteria for their storage tanks, he noted that they had mentioned that they would have double skins and bunding, but the documentation appeared to talk mostly of internal failures. He asked Ms. Burke whether the applicants had considered at all the risk of a fire or explosion coming from the Hammond Lane facility. Ms. Burke responded that the double-walled tanks weren't simply a risk of an internal failure but were more a risk of external failure. If you were worried about an internal failure, you would have to look at having an extra thickness of wall to prevent corrosion. One of the reasons you go with a double wall tank was to deal with the risk of an external object hitting the tank, and the double wall gives the tank greater safety in that context.

[The next group of questions from Mr. Casey related to Ireland's failure to implement the directive on the transportation of hazardous wastes, and the company's response to this issue. As these matters relate to the Waste Management Act, it is not proposed to summarise them here. They may be heard, should the Board wish, on Tracks OOO (beginning at time index 6 minutes) and Track PPP.]

Questions for L. Burke by P. Sweetman (Group 22)

Mr. Sweetman asked Ms. Burke about her qualifications. She stated that she was a chemical engineer. Mr. Sweetman asked Ms. Burke whether she had studied geology. Ms. Burke stated that geology was not part of her degree. Mr. Sweetman asked Ms. Burke had she seen the boreholes. Ms. Burke responded that she had, as they were part of the KT Cullen report that was in the waste licence and that this report had also been offered to anyone that wanted it at the Oral Hearing.

Mr. Sweetman asked Ms. Burke why this report was not in the EIS. He asked did the applicants find limestone on the site and how deep did they go. Ms. Burke responded that five boreholes had been done, around 7-15 metres deep. The applicants had found sandstone.

Mr. Sweetman asked Ms. Burke whether they had hit water. Ms. Burke stated that they hit water in two of the boreholes. Mr. Sweetman asked at what depth. Ms. Burke stated that she would have to check……having read the report, Ms. Burke stated that one of the boreholes was down to 7.6 metres, and there was water at 5 metres. Another borehole went down to 8.5 metres, and there was water entry between 6 and 6.5 metres, with clay below that between 6.5 and 8.5 metres.

The Inspector intervened at this point, asking Ms. Burke whether she was saying that groundwater was discovered above the bedrock. Ms. Burke responded that there were simply water entries, not groundwater. There was mudstone below each water entry.

The Inspector asked Ms. Burke whether this mudstone was permeable or non-permeable. She replied that she didn't know. The Inspector stated that if water enters below ground level, it is groundwater. He asked what was the density of the mudstone and was it adequate to base the foundations upon. Ms. Burke responded that Mr. O'Mahony considers it is.

Mr. Sweetman asked Ms. Burke whether she could tell him, as she had varying water entry levels, whether any of those water entry levels were above sea level. Ms. Burke stated that she didn't know. She stated that she could tell Mr. Sweetman the type of material, but she couldn't tell the levels. Mr. Sweetman stated that this evidence would show whether or not the site is limestone or sandstone. Ms. Burke stated that she would have to go back and say that it isn't a limestone area, and that the EIS indicated that the area is sandstone. On the issue of suitability of construction, she stated that Mr. O'Mahony had already given evidence on this. Mr. Sweetman asked was the mudstone below the sandstone. The Inspector intervened and stated to Mr. Sweetman that if he had read Section 11.2.1 of the EIS, it stated that the mudstone was on top of the sandstone.

Mr. Sweetman asked Ms. Burke whether the sandstone was consistently at the bottom of each borehole. Ms. Burke responded that yes all of them are mudstone, also known as shale or slate.

Mr. Sweetman asked Ms. Burke where was the container park relative to Hammond Lane - the container park for the solid waste that had been mentioned earlier by her in response to questions from Ms. D'Alton. Ms. Burke stated that the container park was in the transfer station.

Mr. Sweetman asked how far this was from the Hammond Lane facility - how close was it, less than 50 metres? Ms. Burke stated that the container park was approximately 40 metres from the Hammond Lane facility.

Mr. Sweetman asked whether all of the containers would be double-skinned. Ms. Burke responded that there were two types of containers, in the solvent storage area in the incinerator facility, and also in the tanks for bulking up and storage of liquids in the transfer station. She stated that the permanent tanks are double-skinned. In the case of the storage for tankers coming in with solid waste, she stated that these will be mobile tankers with ISO or IMO tanks, and would be used for the transportation of dangerous goods, whether hazardous or not. Hence these would have to have met certain UN criteria, but they were not double-walled.

Mr. Sweetman asked Ms. Burke whether she was aware of what had happened in the Hammond Lane plant in Dublin, East Wall. Ms. Burke stated that it went on fire, because their shredded car material exploded and went on fire. Mr. Sweetman asked whether this was likely to happen in the Hammond Lane facility in Cork. Ms. Burke stated that she didn't think so.

Mr. Sweetman put it to Ms. Burke that there were two of these Hammond Lane plants in Ireland, and one of them had gone bang and the likelihood of the second one going

bang was probably better than 50%. Ms. Burke responded that any building can go on fire.

Mr. Sweetman stated that what he was saying was that the tank storage area was being placed adjacent to a plant of a type which already has a predilection of going on fire.

Mr. Sweetman stated that he now wished to ask Ms. Burke a question about construction noise. He stated that in the non-technical summary relevant to noise (page 21), under the heading of 'Noise and Vibration', it used the terms 22dB(A) and 29dB(A)$_{Leq}$. He asked what were the equivalent noise levels in layman's terms for these. Ms. Burke replied that the EIS goes on to say that the noise levels expected to be imposed are a night-time level of 45dB(A) and a daytime limit of 55dB(A). She stated that the EIS indicated that the predicated noise levels at the residential receptors were well within these limits.

Mr. Sweetman asked Ms. Burke whether she could tell him what level and dB(A) was considered to be basic silence. Ms. Burke responded that she could not off-hand, she would check with the noise expert. She felt it was probably in the early 30s dB(A). Mr. Sweetman asked how one could have a predicted noise level below silence. Ms. Burke responded that that was his opinion.

Mr. Sweetman put it to Ms. Burke that she had been very careful, in relation to noise, to say "at the nearest residential receptor". He stated that when one was dealing with noise, the noise level that might be required to be at a residence was considerably more than the noise level that was allowable at an educational institution. Educational institutions require to be at a quieter level than a residence. Ms. Burke stated that the applicants had based theirs on the EPA requirements of 45 and 55, which was typically conditioned to be at the nearest residential receptor.

Mr. Sweetman said that that would normally be the case, but in this instance one had a development proposed directly opposite an educational institution. Accordingly, the noise level that one might be expected to comply with was not 55dB(A) in daytime but rather 45dB(A). He put it to Ms. Burke that it would not be possible to achieve those kinds of levels with two rockbreakers working on site during the construction phase. Ms. Burke responded that these were operational levels that she had been talking about. 45 and 55dB(A) were operational levels.

<u>Inspector's Questions for L. Burke re noise</u>

At this point the Inspector stated that he had a couple of questions for Ms. Burke on the matter of noise. He referred her to page 1 of 16 of Volume 8. He noted that this stated that the appropriate measure would be at the nearest residential receptor. He asked Ms. Burke to tell him why, when the noise measurements were done for the nearest dwelling, they were in fact done not at the house, but at the gate to the road to the house. Ms. Burke replied that it was private property.

The Inspector stated that he was aware of that, but that he had gone through the EIS, and that he could find no provision to take account of the fact that if one took a baseline noise measurement at a road, the noise of traffic on the road was going to be

somewhat higher than at the house. If the applicant's baseline noise measurement assumed a higher noise level, there did not appear to be any correction for the fact that there is a considerable distance between the gate at the roadside and the house itself. The Inspector stated that this did not appear to have been corrected for in the baseline data, and asked Ms. Burke to account for this. Ms. Burke stated that she did not know.

The Inspector asked Ms. Burke whether she would accept that it was not good practice to assume a baseline beside a road when one was trying to assess what it would be at a house, and that there didn't appear to be any correction to take account of the distance when one was doing one's test. This meant that the conclusions on the predicted noise level would not be accurate. Ms. Burke stated that she did not know the answer to this.

The Inspector then referred Ms. Burke to Section 11.2.2 of the EIS. He stated that she would recall his question to Mr. O'Mahony as in relation to the levels of bedrock varying between 1 and 9 metres across the site. He asked why no map had been submitted in the EIS showing this, and would this not normally be expected. Ms. Burke responded that she admitted that it would have been better to put in a map.

The Inspector referred Ms. Burke to the geological map attached to paragraph 11.2.1 of the EIS. He noted that this stated "geology". However, on the previous page of the EIS, it stated that "the geology of the site and the surrounding area is shown in Figure 11.1". On Figure 11.1, the site is shown on the map as being "late Devonian and carboniferous Cork group slate and grits". He asked Ms. Burke how anyone reading this would understand that the site is underlain by sandstones and mudstones. Ms. Burke responded that she would have to say that although slates and grits are the same as mudstone the EIS does not state this.

The Inspector asked Ms. Burke whether this was the case. Slates are non-porous, whereas sandstones and mudstones are, in certain cases depending on the thickness, porous. He stated this was very relevant to the hydrology question, and was why he had asked the question about the boreholes.

The Inspector asked Ms. Burke if one had water just above the rock level, as she had indicated in her evidence, could this be because the rock was not porous. Ms. Burke stated that was possible.

The Inspector stated therefore, in theory, if there was a spillage on the site, it wouldn't go down, into the rock, but would go sideways and very possibly into the harbour and wasn't that so. Ms. Burke stated yes that this was a possibility.

Questions for P. Coughlan (Indaver)

Mrs. A. Hogan (Group 7) asked Mr. Coughlan about the evidence that he had submitted at the Oral Hearing. Mr. Coughlan had stated in his evidence that the applicants did not take into account the ferry traffic in their roads assessment, as the ferry does not sail every day. She asked Mr. Coughlan to tell the Oral Hearing when the ferry in fact sails. Mr. Coughlan replied that the times are variable, both for times and days.

Ms. Hogan handed in the timetables for the ferries to the Inspector. (These are included in Appendix 2, as appendices to Ms. Hogan's witness statement – see Appendix 2 – Group 7 – 7)).

Mr. Coughlan stated that he wished to comment on the ferry issue. He stated that when the applicants were preparing their Transport Impact Assessment, they had to carry out traffic surveys and these were done in February 2001. He stated that he accepted that the ferries do not run until March. The process of preparing the application took longer, and the applicants looked to see if there were issues which would alter the conclusions that they had already reached. The conclusion that the applicants had come to in regard to the ferry was that they didn't alter their conclusions. The reason for this, Mr. Coughlan stated, was that the key peaks had been identified for the traffic analysis. The peaks for operational analysis were 0745-0845, 1300-1600 and the evening peak. They looked at the ferries, and found that those came in mostly after 7am. They felt that in traffic generation times the ferry arrival would have dispersed by 0745, which was the first peak time for the analysis so the applicants did not consider it significant.

The Inspector asked Mr. Coughlan whether they had made the assumption that the traffic from the ferry would have dispersed from 0745. Mr. Coughlan stated that was so. The Inspector put it to Mr. Coughlan that the applicants had also assumed that construction traffic, in order to avoid the commuter peak, would be required to come in much earlier, just when the ferry traffic was coming through.

Mr. Coughlan responded that the construction peak was from 6am to 7am, so he felt that most of the construction workers would be on-site by 7am, before the ferry comes in.

The Inspector asked Mr. Coughlan whether the applicants were assuming that every construction worker would be there by 7am, and all of the construction trucks would be lined up, ready to bring in topsoil and so on by 7am. He put it to Mr. Coughlan that surely the construction traffic for this very extensive site would be arriving after 7am, when the work began.

Mr. Coughlan stated that they were not saying this. When they chose peaks for analysis, they picked three operational peaks and two construction peaks. They felt that this was the best way to relate the impact to the baseline figures. The other factor about the 7am ferry arrival, was that it didn't happen every day, but about one in every three days.

Ms. Hogan stated that the ferry sails every day, whether it arrives at 7am or 9am, it will depart at 7pm or 9pm. It takes ten hours to cross the Irish Sea and comes in seven days a week, every day, from early March until late January the following year. She stated that there was on average 400-500 vehicle movements coming off the ship, which equate to one per resident in Ringaskiddy. As she had indicated earlier, one would need an appointment to cross the road, and a Garda is on point duty to deal with the ferry traffic.

Mr. Coughlan responded that in preparation for the hearing he had checked the 2002 ferry timetable since the matter had been raised in the written submissions. He totted up the arrivals at 0700 and there are 120 of them in the year. This is roughly one-third of the total days in the year. The applicant's consultants were tasked in the EIS with carrying out an impact assessment for the development, and that required them to look at the traffic movements from the development at the relevant times on the network. The conclusion that they reached, was that the period between 0700 and 0745 was not a particularly important time from the point of view of traffic from the development. Therefore, it wasn't incumbent on them to analyse that in addition to all the other peaks that they had analysed.

The Inspector asked Mr. Coughlan whether it was the case that they had looked at the times the ferry comes in, and whether they had looked at the times the ferry departs, because presumably as the ferries are loading, there was an increase in traffic in the area. He asked whether this loading coincided with the normal commuter morning peak.

Mr. Coughlan stated that he had looked at this matter. The pattern of loading ferry traffic was more diffuse than the departure pattern. The departure times ranged from 0700 to 2300. There were 13-14 departure times throughout the year, with the largest, 77 departures, being at 2100 and there are 56 departures at 0900.

Ms. Hogan stated that Mr. Coughlan had mentioned the ferry departure at 0900. She stated, however, that to be on that ferry, one had to be in Ringaskiddy for 8am, so that the ferry traffic was at the same time as the workers were going to the local industries. She stated that there was regularly a Garda on duty at the end of the N28 to deal with the ferry traffic.

The Inspector asked Mr. Coughlan was it the case that he was saying that the applicants had looked at the ferry timetables, and that they felt that these did not alter the conclusions that they had made in the EIS. Mr. Coughlan stated that that was the situation.

The Inspector stated that the second question that had arisen during the hearing in relation to the traffic study, was that in February 2001 when the survey was carried out, secondary schools were off at mid-term break. He asked Mr. Coughlan, from his experience as a road traffic engineer in the area, what percentage should be applied to peak traffic volumes to take into account the number of people who would be bringing their children to school by car.

Mr. Coughlan responded that to the best of his knowledge, when the count was done on 19th February, 2001, the schools were not off. He stated that the company had much experience in the field and would be aware of school times.

The Inspector asked Mr. Coughlan was it the case that on the single day on which the surveys had been taken the schools were open. Mr. Coughlan stated that to his knowledge that was the case.

The Inspector then pressed Mr. Coughlan a second time and returned to his question. He asked from Mr. Coughlan's experience as a traffic consultant working in the Cork area, if the schools were in fact closed, what additive factor he would put in to allow for this aspect in the morning AM peak. Mr. Coughlan stated that he wouldn't apply factors such as this, as the traffic patterns were different in Ringaskiddy compared to the urban areas.

The Inspector asked Mr. Coughlan whether he would accept that there would be quite a number of people bringing school children to school going through the Shannonpark Roundabout at the time that the peak traffic flows exist. Mr. Coughlan stated that he couldn't answer that question.

Mrs. Hogan asked Mr. Coughlan what knowledge he had about the shift times, as she stated that the dePuy plant changes its shift at 7am and not 8am. Mr. Coughlan stated that he accepted that not all of the Ringaskiddy factories start at 8am but the majority of them do. Ms. Hogan stated that there are only two factories at the end of Ringaskiddy. All of the office workers come in at 9am and in addition around that time there are people going to the schools, going to the shops and so on. She asked Mr. Coughlan whether he could clarify that the changeover times for shifts on a Friday afternoon, as these patterns were completely different on Fridays to the rest of the week. Mr. Coughlan stated that he knew they were different, as the shifts in some of the factories change on Fridays. He was not sure of the relevance of the question.

Mrs. Hogan stated that the relevance of the question was that it didn't appear to have been covered in any of the surveys carried out in the EIS. If there was a different peak time on a Friday, then the impact assessment should have covered it so as to assess the impact of the development in a reasonable practical way for the full week. Mr. Coughlan stated that he did not do this. He stated that by looking at other patterns it would have led to more analysis but that not much would be gained from such analysis.

The Inspector stated to Mr. Coughlan that he would have heard Mr. Noonan and others quoting the EPA's Guidelines on the preparation of EISs. One of the points in the EPA Guidelines that they had raised was that an applicant was required to look at the "worst-case scenario". He asked Mr. Coughlan could he take it from the answer that he had given that he didn't look at the worst-case scenario but rather looked at the typical scenario. Mr. Coughlan stated that that would not necessarily be the case, as they would have built in sufficient conservatism in the working assumptions to make sure that the worst-case scenario would have been dealt with.

The Inspector asked Mr. Coughlan would he not accept that when there was ferry traffic coming in, of 700-800 vehicles onto the road at the same time as peak morning traffic, between 7.30 and 8.30, that that would be the worst-case scenario. He noted that the third parties had raised the issue of the ferry traffic which Mr. Coughlan had dismissed as "not being typical". The Inspector stated that he was now asking Mr. Coughlan was that not the worst-case scenario which should have been considered in the EIS as per the EPA Guidelines.

Mr. Coughlan stated that he did not agree, because the nature of Traffic Impact Assessment is that if one were to look at the worst-case scenario, one would get an unrepresentative assessment of impact.

The Inspector asked Mr. Coughlan about the methology used for the survey. He stated that much of the discussion at the hearing related about the fact that the applicants were giving numbers of vehicles. Some of those vehicles were big car transporters, while others, many of them related to this development, would be very large HGVs. Yet, in the traffic assessment, all of these large vehicles were counted the same as small motor cars, which would be considerably smaller is size, and areal extent on the road surface. He asked Mr. Coughlan why the figures had not been done in pcu's. Mr. Coughlan stated that he could not remember any reason why vehicles were used rather than pcu's.

The Inspector asked Mr. Coughlan whether he would accept that, had all the vehicle movements been converted to pcu's, the percentages given by the applicants for the impact of the development would be somewhat larger.

Mr. Coughlan stated that he did not know. If the applicants had converted everything to pcu's, they would have converted the existing traffic also. He stated that the HGV traffic at peak time would be nil, because deliveries to the plant and the operational phase are not going to be permitted until 9am.

The Inspector asked Mr. Coughlan whether he was saying that it was true that the HGVs would not be "permitted" during the operational phase until 9am. In fact, the EIS stated that the waste "would not be received" until 9am. He asked Mr. Coughlan would it not be reasonable to assume that if trucks were coming in to Cork, they would arrive before 9am, and also that if the construction workers had to be on site by 7am, they were not likely to be waiting around for the trucks. Was it not more likely that the trucks would be coming in before then since it has already been indicated that they would not be queuing up waiting for the site to open. If the baseline HGV content at the early hours were low, the applicant's HGV content will be correspondingly higher.

Mr. Coughlan stated that that would be so. His response to those points was that the predicted number of HGVs in the operational phase in the first hour would be quite low. Mr. Coughlan stated that he accepted that the position with the construction phase will be different and that the traffic levels during the construction phase will be considerably higher during the AM peak. That was the reason for the mitigation proposal of starting construction early to keep it out of the commuter peak.

Mrs. Hogan asked Mr. Coughlan about the issue of Ringaskiddy Logistics, which in the EIS had been estimated as having one vehicle movement during the construction peak and three during the operational period. She asked Mr. Coughlan whether he was aware of what was going on there at the moment. Mr. Coughlan stated that he hadn't been there recently. Assumptions would have been made in the Traffic Impact Assessment regarding these matters. The information in the EIS was based on the planning file in 2001. He would accept that these traffic estimates are now low, having regard to the development that has happened at Ringaskiddy Logistics since then.

Ms. Hogan stated that the EIS also had mention of the warehouses that are now being used for fertiliser by R&H Hall, which involve a lot of trucks every day. Mr. Coughlan responded that that development wasn't there when they did their baseline surveys in 2001.

Ms. Hogan asked Mr. Coughlan when he did the projections for traffic for the Shannonpark Roundabout, had they taken into account the major developments in Carrigaline both of housing and of the Pepsi Cola factory. Mr. Coughlan stated that they had not taken this into account, and that for the Shannonpark Roundabout, they had simply used a 4% annual growth rate.

Ms. Hogan put it to Mr. Coughlan that the traffic study was out of date. Mr. Coughlan stated that the EIS was done in 2001, and it was not his fault that we were now in October 2003.

The Inspector referred Mr. Coughlan to page 13 just above Table 6.8 of the EIS, which related to the community recycling park. He noted that Mr. Coughlan had used the TRICS database. He asked Mr. Coughlan whether there were any Irish examples in the TRICS database for this type of development. Mr. Coughlan stated that there were none.

The Inspector stated therefore that we were talking about a UK usage of their community recycling parks as a basis for the profile used in the EIS for the planning application. Mr. Coughlan stated that was not the case as the applicants' agents had looked at the TRICS database first and found that this was not satisfactory. They had ended up looking at the Navan Town bring bank as an example, and used information from that to simulate traffic volumes.

The Inspector stated that the EIS indicates on the previous page that Navan deals with 5,000 visits per month from a catchment area of 15,000 households. It seemed to him that Mr. Coughlan was making the assumption that the catchment for Ringaskiddy would be a maximum of 2,500 households. He asked Mr. Coughlan to justify that given that Cork City was quite close by and had a population of over 100,000 people. In response, Mr. Coughlan stated that they assumed people were not likely to come from Cork to Ringaskiddy with their recyclables.

The Inspector asked Mr. Coughlan whether they had been given that figure of 2,500 households on which to base their estimates, or was that their view that Navan was an appropriate comparable. Mr. Coughlan responded that they had used figures that they had been given by Indaver.

Mrs. Joan Masson (Group 24) asked Mr. Coughlan about the National Maritime College. She noted that the EIS had assumed traffic volumes based on 150 car parking spaces. She asked Mr. Coughlan was this not rather low, as the Maritime College would have 750 students and 75 teachers.

Mr. Coughlan responded that the applicants had looked at the outline planning permission, for the Maritime College, and that is where the figure of 150 had been obtained. He stated that he knew that since then there had been a detailed planning permission and the scheme now had 348 car parking spaces, generating approximately 250 trips in the AM peak. That information had come to light since the EIS was written. He stated that the traffic from the National Maritime College would, in any event, still be much higher than from the proposed development.

Mrs. Masson put it to Mr. Coughlan that the bus timetable for the area indicated only one bus came into Ringaskiddy each day and one bus left it. She concluded from this that the traffic generation would have to be much higher. Mr. Coughlan reiterated that he had taken the information from the planning application at the time.

Mrs. Masson asked Mr. Coughlan, when he did his surveys, and mentioned the focus for the AM peak, he concentrated on the Shannonpark Roundabout. There seemed to be no mention of Carr's Hill, which is a particularly narrow section of the N28 and has major traffic congestion problems in the morning, with one lane and right-turning lane. She asked Mr. Coughlan why he had not dealt with this area.

Mr. Coughlan stated that they had considered this area to be way outside the area of influence of the development.

Mrs. Masson stated that surely the huge construction trucks coming to the site would have to pass Carr's Hill and cause major mayhem there.

The Inspector asked Mr. Coughlan to clarify this matter, since the area of influence of the development had to include traffic on either the N28 or the R613 since traffic to Ringaskiddy would have to come in on one or other of those roads. Whether it be construction trucks, construction workers, or operational trucks, they would be coming from various places using either one of those roads. Carr's Hill was on the N28 between the Southern Ring Road and the Shannonpark Roundabout.

Mr. Coughlan responded that the traffic has to go through the Shannonpark Roundabout, and that the congestion is worst at the AM peak.

The Inspector stated that he had carried out an inspection there the previous week which he had stated that he would inform the hearing about. He stated that at that time in the early morning peak, the road was extremely congested.

Mr. Coughlan stated that that confirmed his view, that the major peak for congestion was in the morning. He stated that the issue of impact related to construction traffic which would be put in before 7am to mitigate congestion, and quite minor levels of operational traffic, before 9am.

Mrs. Masson put it to Mr. Coughlan that there had been several factories opened since their surveys had been done, and accordingly the report was out of date. Mr. Coughlan responded that the report had made an allowance for traffic growth between 2001 and 2005 by adding 4% per annum to the background traffic levels. He considered that these were reasonable and best estimates.

Mrs. Masson referred to the narrow part of the road, the LP2545, which was the section of the road from the end of the N28 to the site. She asked how Mr. Coughlan envisaged all of this construction traffic negotiating its way along this narrow road. She asked was the road to be replaced. She noted that the roadside was regularly used by Hammond Lane trucks awaiting the opening of that facility, and at the present time was used by travellers for parking their caravans. She asked Mr. Coughlan whether this matter had been taken into account. Mr. Coughlan responded that the construction levels are relatively low.

The Inspector asked Mr. Coughlan whether he would accept, with the level of construction that is proposed in this development, that it would be reasonable that the applicants will be required, in the event of the Board granting permission, to pay for the relaying and if necessary the widening of that road, after construction is complete.

Mr. Coughlan stated that he took the point, but he was not sure that the developer should have to pay all of the costs, since the National Maritime College was also using the road for its construction and access. He considered that it would be reasonable and in principle common practice to levy some level of contribution. What level of contribution this should be, he did not wish to say.

This ended the day's hearing, at 11 pm.

ORAL HEARING PROCEEDINGS

9th OCTOBER, 2003.

Questions for Planning Authority Witnesses

Questions for Brendan Kelleher, County Planning Officer

Mrs. A. Hogan (Group No. 7) asked Mr. Kelleher, of all the industrial planning applications how many of them were turned down for the Ringaskiddy area. Mr. Kelleher replied that he didn't know, as he wasn't involved in all of them. He felt that there would have been very few refused, since the area is zoned for industry.

Ms. Hogan asked Mr. Kelleher whether Cork County Council had a long-term plan for Ringaskiddy, pertaining to the residents of Ringaskiddy as opposed to industry. Mr. Kelleher replied that the policy enunciated in successive Development Plans from 1986 onwards tried to grapple with this issue. Officials had recommended limitations and residential growth in Ringaskiddy, because of the difficulties of trying to accommodate residential with heavy industry needs in the area. The policy of containment had gone through these successive plans, and the elected members had accepted this and that the Council should cater for local residential need. Mr. Kelleher stated that officials had tried to interpret this in a way that on the one hand did not bring unnecessarily residential development into the area from outside into the industrialised area, but at the same time provides for housing for the local community.

Mrs. Hogan asked Mr. Kelleher when the village would get an amenity park. It stated in the Development Plan that it was a policy of the Council to enhance amenities. Ms. Hogan asked could the residents have some swings rather than the roundabouts.

Mr. Kelleher stated that it had been expressed in all of the Development Plans, including the current one, to try and protect the community in various ways, like getting traffic out of the village and setting a new road in, which would segregate the industrial from the residential traffic flows. Mr. Kelleher stated that he had been involved in the laying out of the amenity areas, such as the car park at Paddy's Point, and Gobby Strand. He had tried, with the port of Cork, to have the land in front of the village made into a park. The problem essentially was that the road was extremely congested, and made it difficult to use this park. The Council had done their best with the resources that they had. In addition, companies in the area had been generous in relation to public access to certain facilities, whether golf courses or other amenities.

Ms. Libby Bowen (Group No. 3) asked Mr. Kelleher whether he was concerned that if the proposed incinerator came to the area, it would unbalance the whole harbour area, that the balance of people versus industry would go. Mr. Kelleher replied that he did not fear this. He stated that planning was a process of trying to achieve balance between different activities and land uses. The Council may be criticised for not getting the balance right, but they do try to get it right. He considered that the incinerator would be part of that balance, and he did not see it undermining the proper planning and sustainable development of the area.

Ms. Bowen asked Mr. Kelleher about the National Maritime College, and what had happened to the aspirations of the college for residential accommodation, which is a very normal thing for third level educational establishments. Mr. Kelleher replied that the general policy in the Development Plan was one of containment of residential development, and that there was a restriction, in the planning permissions that were granted for the Maritime College which precluded residential accommodation on the site. He stated that the Council would not be unfavourably disposed to residential accommodation in Ringaskiddy or in the neighbouring towns of Passage, Monkstown or Carrigaline.

Ms. Bowen asked Mr. Kelleher why residential accommodation had been precluded on the National Maritime College site. Mr. Kelleher responded that it was felt that it would be inappropriate to have residential development in an industrial setting, surrounded by industry on three sides.

Inspector's questions for Mr. Kelleher

The Inspector asked Mr. Kelleher whether he would accept the view, that when one is interpreting a Development Plan, one goes from the general to the particular. One starts with the general aims, then the general objectives, and then one goes to the zoning and then site specific objectives. And if there are any contradictions or inconsistencies between those, as Dr. Meehan had suggested in his evidence, that one should give greater precedence to the particular over the general.

Mr. Kelleher stated that there was generally a relationship between broad objectives in a Development Plan and zoning and specific objectives, and that it would be difficult to separate the two. However, he accepted if there were inconsistencies, as Dr. Meehan had suggested, then one would take the site specific policies and objectives over general policies elsewhere in the plan.

The Inspector asked Mr. Kelleher whether he would hold with the view that the phrase "have regard to" does not mean "shall comply with", and that the Council members, when they considered Indaver's submission on the County Development Plan, and when they considered the present planning application, in each case they considered the advice given by him, as County Planning Officer, and by the County Manager. When they decided to reject this advice, did Mr. Kelleher accept that the members had nonetheless fulfilled their legal obligations to have regard to that advice, and that they were entitled to make a decision that went beyond that advice. Mr. Kelleher stated that that will of course be the case.

The Inspector asked Mr. Kelleher whether he considered, in his professional opinion, that the proposed development lay within the visual setting of the Martello Tower. Mr. Kelleher responded that certainly part of the proposed development would be visible from the Martello Tower. He stated that the Tower was a Recorded Monument under the National Monuments Act which had a curtilage around it. However, this curtilage was not impacted by any part of the proposed development. The Martello Tower was also a protected structure under the 2000 Planning and

Development Act, in the Record of Protected Structures, and the definition of that does not include any attendant grounds. Under the Development Plan, the Martello Tower consists basically of the structure itself, and the moat around it.

Mr. Kelleher stated that if one were relying on views from the monument, you would be relying on something that wasn't listed in the Development Plan. The only provisions that directly impinge on the Martello Tower are that it is a protected structure, and that there is a right of way from the local road to the west, which is shown in the plan and was developed by the IDA some years ago.

The Inspector noted that the Howard Holdings decision had been mentioned by the third parties. One of the reasons for refusal related to prematurity in the context of the proposed N28 realignment, which is currently at route selection stage with the National Roads Authority. He asked Mr. Kelleher to explain this reason for refusal.

Mr. Kelleher stated that this was one of the reasons for refusal, of three in that decision. The reason for refusal stated:-

> *"Development of the kind proposed would be premature pending the determination by the Planning Authority/Road Authority of a road layout for the area".*

The Inspector asked Mr. Kelleher whether he could take it that this wording of the refusal referred to the N28 realignment proposal, rather than the widening of the N28 as it currently is in front of that site. Mr. Kelleher replied that that was the case.

The Inspector asked Mr. Kelleher to indicate what was the Howard Holdings Development. Mr. Kelleher replied that the development was for a mixed industrial and service development of 15 units and ancillary works, and was on a site that was largely unzoned under the 1996 Plan, immediately to the west of the subject site. The reasons for refusal were largely driven by land use zoning issues and residential amenity. In the case of the roads prematurity refusal, it wasn't until July 2001 that the Council had obtained the Arup report on Strategic Road Access Options for Ringaskiddy, at which stage there had not been proper clarification of the potential alignments of this road as it comes back in to hit the coast road.

The Inspector asked Mr. Kelleher whether the reason for refusal was based on the fact that the site might have been affected by those possible road corridors. He stated that the refusal reason was open to a number of interpretations, in that the site might be affected by the road line and hence might be premature in case the road line was going through the site, or alternatively that the development was refused on the basis that the traffic generated by the development could not be accommodated on the existing road network, and hence you had to wait until the new road was built to take the traffic. Mr. Kelleher replied that it was the former - the protection of a road line, and an option for the construction of the new road.

The Inspector asked Mr. Kelleher was this why, in his professional view, the Howard Holdings refusal was not relevant to the present planning application. Mr. Kelleher stated that that was the case.

The Inspector stated to Mr. Kelleher that there had been a lot of evidence at the Oral Hearing that the Irish Steel site was likely to be cleared. From a planning point of view, looking forward, he asked Mr. Kelleher what he felt was likely to happen with that site. Mr. Kelleher stated that at this stage it was not clear. It was a contaminated site, and there was a lot of deposited material in the harbour from that site. He felt that the most likely future use for the site was another industrial activity, but the University had moved into part of the Naval premises at Hawlbolen Island, and it was also possible that there could be a mixed use development there. He stated that the future use of this site was uncertain until the Council could determine what could be done with the contamination there.

Questions for Michael Lavelle, Sanitary Services Section of Planning Authority

The Inspector asked Mr. Lavelle whether he had prepared a report on the planning application. Mr. Lavelle stated that he had. The Inspector stated that it had been suggested in evidence that the sewage facilities in Ringaskiddy were substandard. He asked Mr. Lavelle whether that was the case or not.

Mr. Lavelle replied that the Council had an intention of linking the Ringaskiddy sewerage system into a Lower Harbour Sewerage Scheme, for which the preliminary report had been completed, as had an EIS. It is intended by the Council to have public meetings on the scheme soon. This scheme includes Cobh, Passage, Monkstown, Carrigaline, Crosshaven, and Ringaskiddy, so it is quite an extensive scheme.

Mr. Lavelle explained that all of the sewage systems in Ringaskiddy and in these other areas were not of a standard that they would wish them to be. There is a sewage system currently in Ringaskiddy, along the road slightly west of the current site, there is an 18 inch sewer running back almost to the ferry, and a 21 inch outfall from that out through the reclaimed land to the harbour. This is a combined sewer, taking rainwater and foul sewage. He stated that there was also a storm sewer outside the Hammond Lane facility going out to Gobby Beach. There is some other material in that other than rainwater and surface water run-off.

The Inspector asked Mr. Lavelle to clarify where the 18 inch sewer ended in relation to the site. Mr. Lavelle replied that the 18 inch sewer ended just beside the site, on the opposite side of the road. He handed in a drawing, showing the location of this (see Appendix 2 - PA - 5).

The Inspector stated that he took it that the Lower Harbour Scheme would not be completed by 2005/6 which was the projected completion date for the proposed Indaver project. Mr. Lavelle stated that it would not. He stated that the developer in this case would have to treat his own sewage. Treated effluent could go in a 3 inch rising main by pumping to the 18 inch main, in the interim before the Lower Harbour Scheme is built.

The Inspector asked Mr. Lavelle what was the sewage situation with the Nautical College. Mr. Lavelle stated that the developers there were asked to put in their own

treatment plant and were investigating the possibility of providing a direct discharge to the sea, or else pumping it back into the 18 inch sewer.

The Inspector asked Mr. Lavelle how the Council was currently treating sewage in Ringaskiddy. Mr. Lavelle replied that the Council was not currently treating sewage at all as this was discharged directly into the harbour.

The Inspector asked Mr. Lavelle whether he would require the developers in this case to treat their sewage on site, prior to discharge to the Council's combined main, and to what standard. Mr. Lavelle stated that he would recommend a 20/30 effluent.

The Inspector asked Mr. Lavelle whether there was sufficient hydraulic capacity in the combined 18 inch pipe to take both the treated effluent and the surface water run-off from the application. Mr. Lavelle replied that surface water would go out to Gobby Beach after attenuation, or to a separate outfall, independently of the Council's surface water main. The Council's 18 inch combined sewer does not function at the outfall, due to a defective flap valve, and seawater is coming in at high tide. On that basis it might be considered to be overloaded. The cost of fixing the flat valve controls would be of the order of ε100,000.

The Inspector asked Mr. Lavelle whether there was any problem, arising from the activity proposed, that there might be contamination of the surface water discharges and hence for monitoring and control reasons, it would be preferable that it would discharge to the public system, rather than to a private outfall to the sea. Mr. Lavelle responded that his understanding was that all of the surface water was to be channelled into the firewater retention pond, that this would be dealt with on a batch basis, being tested prior to periodic discharge. He stated that the Council would prefer, in the future, not to have surface water going into its sewers.

The Inspector asked Mr. Lavelle what was the situation regarding the watermains. There had been evidence from Mr. Hession, from the Fire Service, as to the amount of water he would need to fight a fire in the development. Was the amount he had quoted - 5,000 gallons per minute for an hour, available here.

Mr. Lavelle responded that the Iniscarra scheme serves the area, and has a reservoir near Shannonpark Roundabout at Straw Hall. A 4 foot main runs through the Raffeen area and then through the IDA lands to a point opposite the ferry port. That is connected into an 8 inch main which goes from Shannonpark Roundabout along the road to the ferry port, and then runs past the site to Irish Steel.

The Inspector asked Mr. Lavelle whether he was satisfied that, with this pipe and the capacity of the reservoir, that there would be sufficient water in the event of a fire, for 5,000 gallons per minute for an hour. Mr. Lavelle stated that he was so satisfied. There was 200 feet of head from the reservoir which has 15 million gallons. He stated that one could have 5,000 gallons per minute on the site for 20 hours.

Mr. J. Noonan (Group 1) stated to Mr. Lavelle that he had mentioned that all of the surface water would drain into the firewater retention pond and be tested for suitability before discharge into the Council's system. He stated that his understanding was that this was not the case, and that the retention pond would operate only for a portion of the surface water system, but that particularly in the waste transfer station, there is a separate sump and independent discharge, and that there is also in that area a portion of the system that may not even go through the sump. He asked Mr. Lavelle how much he knew were the applicants proposing to discharge into the Council's system in terms of the surface water and stormwater.

Mr. Lavelle stated that he didn't recall the numbers, but what the Council would be asking him to do was to attenuate the run-off, so that the rate of run-off after the development would not be greater than the run-off before the development. He stated this was a standard condition to protect streams and things like that which had been put on in planning permissions for the last five to six years. He stated that the Council puts the onus on developers to ensure that storage and attenuation and discharge mechanisms are put in place so that it essentially does not have a major impact on the Council.

Mr. Noonan asked Mr. Lavelle whether by attenuation he meant delaying the flow into the system. Mr. Lavelle stated that that was what he meant.

Mr. Noonan stated that the applicants were looking, in Section 14 of the application form, to discharge from their waste transfer station alone at a rate of 120 litres per second, and from the waste to energy facility to discharge surface water at a peak rate of 288 litres per second. He asked Mr. Lavelle would he agree that those figures were likely to exceed the current run-off rates from the site at it now is. Mr. Lavelle responded that he would expect the current run-off rates from that site to be of the order of 15 litres per second per hectare. That is the figure that the Council would use as its starting point, and the Council would expect the developers to control the rate of run-off to that level.

Mr. Noonan stated to Mr. Lavelle that he had explained that the Council does not want rainwater to be fed back into the Council's system for sensible reasons, and that he had indicated that the Council would prefer that stormwater and surface water would go to the sea at Gobby Beach. He stated that the applicants were looking at this as a possibility, rather than feeding it back into the public system. Mr. Lavelle responded that if the applicants wanted to come to the Council, the levy which the Council would be imposing would be such that they might find it more economic to organise their own discharge for surface water.

Mr. Noonan asked Mr. Lavelle, as the engineer responsible for the safe management of this type of effluent, whether he had looked at the frequency and nature of the monitoring that the applicants were proposing to do before deciding to release the surface water either to the public system or to Gobby Beach. Mr. Lavelle responded that the quality of that liquid would be controlled by the EPA as part of the waste licence, and discharged where it was classified as clean stormwater. He stated that this would not be within the Council's remit, but for the EPA to decide.

Mrs. A. Hogan (Group 7) asked Mr. Lavelle whether he was aware that there are currently sewage problems in Ringaskiddy. Two points that she would immediately mention were just outside the oratory on the N28, and at the community centre in Ringaskiddy. She stated that there had been new housing developments in Ringaskiddy which had been connected to the existing sewage system, and this had made the situation worse. Mr. Lavelle responded that he was not disagreeing with Mrs. Hogan.

Mrs. Hogan asked Mr. Lavelle about the water capacity. She asked him whether he could guarantee that in the event of fire there will be sufficient water. She noted that at the Hickson fire in 1993, stones had gone into the watermain and reduced the flow so much that the fire blazed for hours. Mr. Lavelle stated that it was very difficult to guarantee anything, but that the system was set up so it was the most reliable one that it can be. There may have been specific problems at the time of the Hickson fire, which he could not recall now. However, he stated that there had been changes in direction of the pipe at that time and that this is not now a problem, as there is a straight run in the 18 inch pipe past the proposed premises.

Questions for Dan Ryan (Roads Department of Planning Authority)

Mrs. A. Hogan (Group 7) stated that Mr. Ryan had mentioned in his evidence that the new bypass road would be completed by 2007. Mr. Ryan stated that that was not what he had said. He stated that it could be completed by 2007.

Mrs. Hogan asked how Mr. Ryan had come to that conclusion, as the NRA had indicated to her that they had not got any funding, that no preferred route had been fixed and wouldn't be fixed until 2004. In addition, the EIS had not been done, nor the cost benefit analysis, and the date for the Compulsory Purchase Orders had not yet been decided. Once these were done, there would have to be a new Oral Hearing, and even then there would need to be funding available before the work began.

Mr. Ryan stated that the route selection phase would probably take about one year, and that the design and CPO would hopefully take about a year after that. Then there would be a two-year construction period. He stated that funding would depend on priorities, and as this was a national route to a port, it was likely to be given higher priority than other scheme elsewhere. He stated that the road was not just important at the Ringaskiddy end, but also at the Carr's Hill area, and that in volume terms the Carr's Hill section was fairly significant.

Mrs. J. Masson (Group 24) asked Mr. Ryan whether he had been given a copy of the EPA report "Climate Change - Scenarios for Ireland 2003". Mr. Ryan stated that he was not aware of this document.

Mrs. Masson stated that this EPA document indicated that areas along the coast and beside marshes were not suitable places for roads to be built in the future, because of potential climate change. The report specifically flagged Cork Harbour as one of the areas that would be most at risk.

Mr. Ryan stated that he didn't think it would be reasonable simply to abandon the road, since the road served a number of properties.

Mrs. Masson asked Mr. Ryan about Carr's Hill, which he had stated was significant, and that the NRA had considered significant as well. She asked why the developer's people had excluded Carr's Hill from the traffic study for the project. Mr. Ryan stated that in a sense, it hadn't been excluded, since the applicants take counts on the N28 north of the Shannonpark Roundabout. Mrs. Masson pointed out that the worst part of the N28 was along the section where the right-hand turn to Donnybrook is, and that this area had not been looked at by the developers. Mr. Ryan responded that he considered that the worst point in terms of volume was the approach to Shannonpark from the north. This area had a morning peak of 3,000 vehicles.

The Inspector stated that this issue had been raised the previous day with Mr. Coughlan, the applicant's roads engineer. It was evident that the EIS had shown that the N28 (north), which gives the figures coming down to the Shannonpark Roundabout, with a 119% capacity by 2005, with or without the development. He asked Mr. Ryan to explain, in layman's terms, what 119% of capacity means.

Mr. Ryan stated that it means the traffic speeds would be low, and that one would move in a convoy situation. There were different levels of service on a road of this type, with the optimal level being 'C'. Levels of service go from very little traffic at 'A' up to very heavy traffic at 'F', which is the worst-case.

The Inspector asked Mr. Ryan what 119% capacity would be in terms of level of service. Mr. Ryan responded that that level of capacity would equate a level of service of 'E', which brings traffic down to 10mph.

The Inspector asked Mr. Ryan would it be a fair layman's interpretation of the term 'convoy' that it would be traffic congestion, in other words traffic moving in a line at very low speeds, which is what you get going into Ringaskiddy when the ferries are loading and unloading. Mr. Ryan stated that that was it.

The Inspector asked Mr. Ryan whether he would feel, in the light of that, that it was reasonable for the applicant's traffic consultant to exclude, in his calculations of the baseline situation and the projected situation, the impact of ferry traffic on the area.

Mr. Ryan stated that seeing that the ferry comes in very often, but not for 365 days per year, that one could say that it was an omission from the study.

The Inspector asked Mr. Ryan to address an issue on which he couldn't get a straight answer during his cross-examination of Mr. Coughlan yesterday, the issue regarding traffic levels when schools are closed. He asked Mr. Ryan what his estimate would be, in relation to the South Cork suburban area, of the factor that one would add to traffic levels as between the times when schools are closed, and when they are open, to take account of the fact that in these modern times many people drive their children

to school. Mr. Ryan responded that Douglas is a huge problem area in this regard, but Ringaskiddy tended not to be.

The Inspector stated to Mr. Ryan that the issue related to the N28 coming up to the Shannonpark Roundabout, which was the area that was at 119% capacity. He stated that the traffic surveys done for the EIS had been carried out in one day in February 2001. The evidence which had been given at the Oral Hearing was that the secondary schools were closed for their mid-term break at that time. The Inspector stated that he would assume that there would be quite an amount of traffic coming to and from Carrigaline, where there had been extensive housing development, on this stretch of the N28 north of Shannonpark Roundabout. He asked, in this context, what factor of increase Mr. Ryan would use in the Council's own traffic studies to take this point into account.

Mr. Ryan stated that the Council tended to take it own counts in September, when the schools are open, and that he felt that the effect of schools on the N28 north of Shannonpark Roundabout in February 2001 would be somewhat less than the situation in Douglas. He stated that one could perhaps add about 10% to the figures to account for when the schools would be open.

FORMAL SUBMISSIONS BY OBSERVERS

The Inspector, at this point in the hearing, invited those observers who had not already participated as witness for one or other of the third party groups, to make their formal submissions. He reminded participants, as had been indicated at the commencement of the hearing, that these submissions would not be open for cross-examination or questions.

Ms. Carol Daly read a text which was subsequently handed to the Inspector. This included a number of photographs taken from Cobh, which she compared to some of the photomontages submitted by the applicants (see Appendix 2 - OBS - 1).

Mr. Ruairi Allen, Secretary of the Board of Management of Walterstown National School, Cobh, had presented a paper, which was read by Mary Herlihy. This was handed to the Inspector at the close of the presentation (see Appendix 2 - OBS - 2).

Mr. John Landers, Secretary Killeagh IFA, read through a text, which he then gave to the Inspector (see Appendix 2 - OBS - 3).

Mr. Kevin Barry, Universal Health and Safety Company Ltd., read a text which he subsequently handed to the Inspector (see Appendix 2 - OBS - 4).

Mr. Edmond Lynch, Secretary of Ballymacoda Branch of the IFA, read a text which he subsequently handed to the Inspector (see Appendix 2 - OBS - 5).

Joan Hayes, on behalf of Liz Kenny and Joan Hayes, read a text which she subsequently handed to the Inspector (see Appendix 2 - OBS - 6).

Dr. Philip Michael, Irish Doctors Environmental Alliance, read a text which he subsequently handed to the Inspector (see Appendix 2 - OBS - 7).

Ms. Christina Brownlow, Midwives Association of Ireland, read a text which she subsequently handed in to the Inspector (see Appendix 2 - OBS - 8).

CLOSING STATEMENTS

The Inspector stated at this point in the hearing, it was open to parties to make closing statements. These would be taken in reverse order, beginning with the applicants, then going through the Planning Authority and the third parties in reverse order, beginning with Group 24 (John and Joan Masson), and ending with Group 1 (Chase Carrigaline).

[All of the closing statement are included in Appendix 2, in the order as outlined above. Some of these are original typed submissions that were handed in at the hearing. Others are typed versions of hand-written submissions. Where the participants gave a verbal rather than a written submission, these verbal submissions have also been typed. Accordingly there is a full set of closing submissions from all of the parties that chose to give such submissions in Appendix 2].

The following closing statements were made:-

1. P. Gardner (Indaver).
2. P. Sreenan (Planning Authority).
3. John and Joan Masson (Group 24) (two submissions).
4. Mrs. Natasha Harty (Group 23).
5. P. Sweetman (Group 22) (read by Marcia D'Alton).
6. Oliver O'Leary (Group 18).
7. Cathy Sinnott (Group 15).
8. Dominick Donnelly (Group 13).
9. Dan Boyle TD.
10. Kate Corcoran (Group 10).
11. Mary Herlihy (Group 9).
12. Rosie Cargin (Group 8).
13. Audrey Hogan (Group 7).
14. Greg Casey (Group 14).
15. A. Navratil (Group 5).
16. Derry Chambers (Group 4).
17. Marcia D'Alton (Group 3).
18. Elly O'Byrne (Group 2).
19. Joe Noonan (Group 1).

ORAL HEARING PROCEEDINGS

10th OCTOBER, 2003.

Introduction by Inspector

The Inspector introduced the day's proceedings, he stated that the purpose of this module of the Oral Hearing was to deal with issues relating to the HSA's advice to the Planning Authority of 7th March, 2002. A number of parties had raised the question of what had been before the HSA when it gave this advice. In addition, there was the map which had been prepared by the County Planning Officer, indicating the notification distances of the other Seveso sites in the vicinity. As had been discovered from this map, the notification distance of one of those sites overlaps with the site for the proposed development. The Inspector stated that this information was not available to the Board from the documentation that was originally submitted with the application. Hence the HSA representatives had been invited to the Oral Hearing. These were Mr. Conneely and Mr. Colreavy, accompanied by their solicitor, Ms. Broderick.

Submission by HSA

Mr. Conneely read out a text (see Appendix 2 - HSA - 1, including Appendices 2 and 3. Appendix 1 of Mr. Conneely's submission was not read out as this was a copy of the HSA letter to the Planning Authority of 7th March, 2002, which was on the planning application file, and had consequently been seen by all parties). The text was circulated to all the parties present at the hearing.

The Inspector asked Mr. Conneely about Appendix 3. This appeared to be a set of notes of a meeting held between the HSA and Indaver and their consultants, Byrne O'Clerigh. It appeared to him that the notes were taken by Messrs Byrne O'Clerigh. The Inspector asked Mr. Conneely whether the notes had been circulated and agreed, and whether he was happy that they accurately represented the content of the meeting. Mr. Conneely stated that they were approved, and they did represent the content of the meeting to his satisfaction.

The Inspector asked Mr. Conneely, when he had made his advice to the Planning Authority on 7th March, 2002, whether he had received all the necessary documentation from Indaver, in a sufficient final form, to enable him to make that decision, or had there been other documentation submitted afterwards, by the applicants, which differed from that which he had received prior to him sending out the letter.

Mr. Conneely stated that he was satisfied to proceed with the information available. A final version of the documentation did not come in until later, but the HSA had the draft document, and the documents presented at the meeting, that were to be included in the final documentation. He stated that the HSA had had sufficient information to proceed.

The Inspector then asked Mr. Conneely about the information that had been provided to the hearing by the County Planning Officer (see Appendix 2 PA – 2C) – a copy of which he handed to Mr. Conneely. This noted a number of Seveso II sites in the general area, and their respective consultation distances. In particular, the Inspector noted that the consultation distance from a nearby plant (Pfizer Loughbeg) overlapped with the subject site for the proposed development. He made a comment that some of the consultation distances on the map, all of which would appeared (from Mr. Kelleher's evidence) to have been notified to the Planning Authority by the HSA, were measured from the centre of those facilities, while others were measured from the edges of the facilities. The Inspector noted that if the consultation distance from the Pfizer development were measured from the northern edge of that development, the consultation distance will encompass the entire Indaver site.

The Inspector asked Mr. Conneely whether the HSA had in mind, and were aware at the time they gave their advice to the Planning Authority, of this overlap.

Mr. Conneely replied that the HSA had been aware of the overlap, and that this issue had been considered. He stated that the HSA's view was that there were no domino effect issues either way.

Questions for HSA

Mr. Gardner asked Mr. Conneely what were his qualifications and how long he had been assessing major accident hazard reports. Mr. Conneely stated that he had a honours degree in chemistry, and a number of safety and welfare diplomas. He also had a diploma in management. He stated that he had been employed with the HSA for six years, and have assessed many major accident hazard reports of that nature in that period.

Mr. Gardner asked Mr. Conneely what were the qualifications and experience of other members of the staff in his section. Mr. Conneely replied that in general staff had an honours degree in the physical or natural sciences, and a level of industrial experience of about ten years. He stated that he himself had worked in industry for 16 years before going to work with the HSA.

Mr. Gardner stated that the HSA submission seemed to detail very complex modelling. He asked Mr. Conneely whether he could take it that the HSA personnel were familiar with this modelling. Mr. Conneely responded that some persons in the office would be, the persons who carried out this modelling.

Mr. Gardner asked Mr. Conneely whether, in the conclusion reached by the HSA, that it did not advise against the grant of planning permission for the proposed development, had they taken into account the presence of the National Maritime College. Mr. Conneely responded that they had, and in their letter of 7th March to the Planning Authority they had actually referred to this point, and noted that residential accommodation was precluded in the planning permission for the National Maritime College.

Mr. P. Sreenan, for the Planning Authority, noted that in the HSA letter of 7th March, 2002, in the final page at paragraph 5, a consultation distance was specified for the proposed plant, which was shown on the attached map. He asked whether this had been taken from maps furnished to the HSA by Indaver. Mr. Conneely responded that that was the case, as had been noted in the minutes of the meeting of Appendix 3 of their submission to the Oral Hearing, the HSA had asked Indaver to supply them with a map showing certain locations which would be hazard sources. He stated that he had prepared the consultation distance map using this map.

Mr. Sreenan asked Mr. Conneely whether he had inspected the site. Mr. Conneely stated that he had inspected the site, and he had also inspected the adjoining Hammond Lane site.

There was then an adjournment to allow all parties to read the submission that the HSA had made to the hearing.

A number of questions were asked by Mr. Derry Chambers (Group 4) in relation to the operations of the HSA's Cork Office, the duration and frequency of inspections of Seveso sites, and the role of the HSA in dealing with occupational safety and health.

Mr. Conneely outlined that the main role of the HSA was to deal, under the Major Accident Hazard Regulations, in relation to planning, and the impacts of Seveso sites in terms of major accident hazard, off-site. Other than this, the HSA generally dealt with occupational safety, including employee safety.

In response to a further question from Mr. Chambers, Mr. Conneely stated that the HSA's role was to deal with individual incidents, such as a fire or explosion, and that they were not responsible for the long-term effects of releases in the event of an accident. He felt that this was more a matter for the EPA or the health boards. Mr. Chambers asked Mr. Conneely to outline how the HSA assessed risk in relation to major accident hazards. Mr. Conneely responded that the assessment was to look at potential accidents, to look at the effects that they would have, and to decide if they considered that the risk was acceptable or not, and that was what they had done in this case.

Mr. Chambers asked Mr. Conneely whether the longer term health effects of substances such as dioxins, which might be released in a major incident, would be assessed by the HSA. Mr. Conneely confirmed that this was not the HSA's responsibility.

Mr. Chambers referred Mr. Conneely to page 9 of his submission, where it stated that a major accident prevention policy had to be submitted by the applicants prior to operation. He asked whether this policy was subject to public input and would it be put in the public arena for consultation. Mr. Conneely responded that it was public insofar as the documents could be obtained under FOI.

Mr. Chambers referred to Appendix 3 of the minutes (first page, paragraph 1.1), where Indaver had been asked by the HSA to quantify the dioxins in the event of a

bunker fire in the waste reception area. He asked Mr. Conneely what was this quantity. Mr. Conneely responded that this was quantified in Indaver's HAZID report, as the HSA had asked them to model a 1,000 tonne fire in the bunker. He stated that he recalled that the levels were below the WHO Tolerable Daily Intake Level.

Mr. Chambers pointed out that the minutes stated "which would be released in the event of a bunker fire". He asked Mr. Conneely what would be the actual levels of dioxins coming out, since what had been quoted was a level based on bodyweight. Mr. Conneely responded that the total amount that would be released in the event of a fire was in the Indaver report, but he couldn't recall what it was.

Mr. A. Navratil (Group 5) asked Mr. Conneely would it be possible to circulate a copy of the HSA's Mission Statement, so that this could be read by the parties. Mr. Conneely stated that he didn't have it with him, but he would attempt during the day to obtain copies from the office.

Questions by P. North (Group No. 5)

Mr. North asked a number of very detailed technical questions of Mr. Conneely in relation to aspects of the proposed development, and the assessment of it by the HSA. It is not proposed, in this short précis of the proceedings, to outline all of the questions and answers given. Should the Board require, they may be listened to on Tracks K, L, M, N and T. However, a number of points became clear as a result of this questioning, which is of relevance to this appeal.

1. It was submitted that the consultation distance for all Seveso sites should be set from the edges of the sites, rather than from the centres of sites. This was because there was very little restriction in the location of plant and equipment within a site, which could measure acres in extent, and hence the edge of the distance of impact could vary, depending on the location of such plant. This was particularly important, in the context of off-site impacts from major accidents.

2. It was evident, and was accepted by Mr. Conneely and Mr. Colreavy, that the information supplied to the HSA at planning application stage was extremely preliminary, and that very little detailed information had been supplied in relation to the design of the development, and to the waste inputs in detail. It was noted by Mr. Conneely that the applicants would be required to submit a major accident prevention policy before they commence operation, and that under the Regulations this had to be submitted at least six months before beginning operation.

3. It was indicated that the HSA had categorised the proposed development site as a lower tier establishment under the Seveso Directive. It was submitted by Mr. North that this judgement could not be conclusive at this point, for a number of reasons. Mr. North felt that it was incumbent on the HSA, on the basis of the precautionary principle, to designate this site as a higher tier

establishment. This was because the applicants would be dealing with wastes coming from the chemical industry which were not fully analysed. There was a possibility that there could be toxics in some of the wastes which Indaver would either not know, or would miss, depending on the level of testing proposed. Mr. Conneely stated that the HSA did not have discretion on the matter, because if the quantities were as were stated by Indaver, they would have to come in as a lower tier establishment.

4. It was indicated by Mr. Conneely that they had concerns regarding the issue of mixed wastes/incompatible wastes, which Mr. North indicated was his greatest concern in relation to major accident hazard, and that was why in their letter to the County Council, they had stated that they wanted the developers to be required to have a satisfactory system of waste screening, and to demonstrate that incompatible waste would not be mixed. This procedure was to be included to the HSA's satisfaction.

5. Mr. North submitted a document (Guidelines on Land Use Planning as required by Council Directive 96/82/EC) published in 1999 (see Appendix A - HSA - 2). He stated that this document recommended the use of a number of principles such as ALARA (as low as reasonably achievable), ALARP (as low as reasonably practicable) and 'state of the art'. Mr. Conneely stated that they had a duty under the regulations to take all necessary measures to prevent major accidents but that they had to distinguish between credible accidents and incredible accidents. For this purpose they used the 'purple book' (Guidelines for Quantitative Risk Assessment) which gave figures for the likelihood of events. He noted that the provision within the tank farm/waste transfer station of double-skinned bulk storage tanks, as had been recommended to the Planning Authority in the 7th March letter, would considerably reduce the likelihood of catastrophic failure, fire or explosion in this area, as compared to single skin tanks.

6. It was clearly established after a number of questions, that in modelling fires in the bunker, the HSA had made assumptions, based on submissions by Indaver's consultants, that the bunker would contain municipal solid waste (MSW). This was pointed out by Mr. North in Appendix 3, Sections 1.2 and 1.3 of the HSA's submission to the Oral Hearing. Mr. North argued that this was inappropriate, as the planning application before the Board was not for MSW, but for hazardous industrial waste. He also noted that in the Byrne O'Clerigh minutes in Appendix 3, at paragraph 1.4, it was accepted that the maximum quantity of chlorine in MSW was less than 1%, and that this may be burned at 850 degrees. He pointed out that this was not a temperature that would destroy dioxins, as that would be done in the post-combustion burner at 1,300 degrees. Mr. Conneely responded that in terms of incineration, they had looked at the MSW operation to give them something that might have an off-site effect, and that the materials suggested by Indaver were used for modelling purposes.

7. It was confirmed by the HSA representatives that they had not looked at environmental effects. They stated that they had looked at the worst situations that they could envisage to model and that environmental modelling was not

as well developed as other types of modelling. Mr. North put it to them that some of the major off-site impacts could be pollution of the nearby harbour, and the creation of new chemicals or release of chemicals into the air which would disperse over a large area around the harbour at concentrations well above background levels.

8. It was confirmed that the HSA had not modelled for biological impacts, for example viruses or biologically active pharmaceuticals, despite the fact that the applicants were proposing to burn meat and bone meal and contaminated hospital waste. Mr. North stated that this was a very major lack in the analysis, given the types of waste that was proposed. He stated that in an accident event, there could be an explosion laced with viruses of various types or from biologically active pharmaceuticals going off-site. When asked why these were not considered, Mr. Conneely stated that the HSA looks at what they think are the accidents that were most likely to have an off-site effect, and that they had looked around to see what type of incidents had occurred in these types of facilities elsewhere. They had used their own judgement and experience to come up with scenarios. They did not come up with some of the scenarios that Mr. North had mentioned, because they did not foresee them as potential causes of major accidents. In addition he pointed out that biologics were not dangerous substances under the terms of the Directive, and that the HSA had to operate entirely within the legislation.

9. Mr. North had a number of questions regarding the method of analysis used by the HSA. It was confirmed that the HSA had not examined any other hazardous waste incinerator in Europe, nor contacted their counterparts in other countries with such incinerators for advice, nor had they looked at data from any other large mixed hazardous waste incinerator in Europe.

Questions by K. Sinnott

Mrs. Sinnott asked a large number of questions of the HSA about their operation, and the make-up of the HSA generally. Many of her questions related to occupational health, and the impacts of accidents on particularly sensitive people or vulnerable parts of the population. Her questions, and the responses of the HSA witnesses, are contained on Tables N, O, P, Q and R. There were also a number of questions of Mr. Conneely in relation to the HSA's role in relation to ongoing health/industry problems at Askeaton, County Limerick. These are not detailed in this Oral Hearing report.

During Mrs. Sinnott's questioning, the Inspector asked Mr. Conneely about the particular type of incinerator proposed in this case. He stated that evidence had been given at the Oral Hearing that this particular type of facility, and this particular type of incinerator, was new to the applicants but was in use elsewhere. Examples had been given of a plant in Dundee which uses this process, and which was out of commission on a number of occasions, due to two fires. He asked Mr. Conneely whether the HSA looked at events that have happened in other EU countries relating to the type of development that they were assessing, to give advice or whether it took the word of the applicant company. In response, Mr. Conneely stated that the HSA looked at

databases where accidents are reported, published sources and their own judgement. They modelled several events involving fire, irrespective of how they start, as they are potentially dangerous. However, he admitted that they had not looked at the Dundee situation at all.

Questions by J. Noonan

There was very lengthy questioning of Mr. Conneely by Mr. Noonan (see Tracks U, V, W, X, Y, Z, AA, BB, CC and DD).

A number of the questions raised by Mr. Noonan followed on from those raised by Mr. North. In relation to the bunker fire, which had been modelled using MSW, Mr. Noonan noted that the model had been based on a 1,000 tonne fire. He noted that the capacity of the bunker was 12,000 tonnes, so that the modelling had only been based on 8.5% of the size of the bunker. No explanation was forthcoming as to why a bunker fire with a greater level of waste was not modelled. Mr. Noonan was also critical of some of the assumptions that had been put forward by Indaver, and accepted by the HSA, in relation to what would be in the bunker. This included a 50% void level, and assumptions in relation to meteorological/rainfall conditions at the time of such a fire.

It was established that the HSA representatives, who had indicated on page 5 of their paper, that there weren't any European or international standards for the provision of land use planning advice under Seveso, were not aware of or familiar with the WHO Site Selection Manual on Hazardous Waste Incineration, nor the Basel Convention Technical Guidelines on the Siting of Toxic Waste Incinerators. It was also indicated that they were not familiar with the EPA Draft Guidelines for Site Selection for Hazardous Waste Establishments, nor the UN Economic Commission on Europe Convention provisions regarding decision-making on siting. These issues were considered by Mr. Noonan to be of significance. Mr. Noonan submitted that the firewater retention in the development, and especially the waste transfer station, appeared to be grossly inadequate, and that this could lead to releases of potentially harmful substances into the harbour. He submitted that this matter did not appear to have been fully investigated by the HSA, nor adequately modelled for.

It was established that the HSA representatives were not aware that the site had a problem of inflow of seawater, which flooded the site. It was noted by Mr. Noonan that the site is only 3 metres above the sea level at its lowest point, and that the EIS admits that some seawater comes in under the site. Mr. Conneely accepted that it would have been useful had the applicants informed him of this matter, and of the dangers of flooding on the site.

There was considerable discussion about the analysis and modelling of the impacts of potential fires in the tank farm (to the rear of the incinerator), and it was submitted by Mr. Noonan that the HSA, in setting its consultation distance, had not considered the impact on Gobby Beach (which has no shelter and hence would be within the 1% lethality/fatality criterion). The response from Mr. Conneely was that the HSA had not accepted Indaver's argument regarding the need for shelter, but had taken a more conservative approach and assumption.

One key point that emerged during Mr. Noonan's questioning of Mr. Conneely was that the HSA had not considered the location of the Bord Gais gas main running through the site. Mr. Conneely stated that in general pipelines were not covered under the Directive. However, in detailed questioning by the Inspector, he accepted that its existence had not been mentioned to him by Indaver, although reference to it was included in the EIS and on the planning application drawings. He stated that the underground gas pipeline would not be a significant risk, but when asked how deep the pipeline was on the site he did not know. It was put to Mr. Conneely that if one was looking at the risk of an accident, the fact that there would be a gas main on the site would have to be considered in the event of a fire or explosion, as it might impact on the severity of the accident.

There was a considerable level of questioning of Mr. Conneely by Mr. Noonan in relation to the impact of the development on the National Maritime College of Ireland. Various footprints for dangerous doses of potentially toxic chemicals such as acetonytrile (used as a marker) were given, ranging from 272 metres from the tank farm/waste transfer station to 126 metres. It was submitted by Mr. Noonan that the off-site impact of a major accident hazard would certainly reach well within the site area of the National Maritime College. In addition, Mr. Noonan argued that assumptions made by Indaver in their models, which had been accepted by the HSA, implied that there would also be potential danger to persons in the open area of this development, including the car park, and waiting for public transport on the roadside.

It was accepted by the HSA representatives that the terrain modelling that they had used for their air dispersion was not site specific. They had not taken into account meteorological conditions, nor were they presented with any information by the applicants on the prevalence of calm/temperature inversion conditions on the site. In US EPA Guidelines for modelling, which the HSA stated that they had used, the probability of occurrence of an accident increased substantially in such circumstances with calm/inversion conditions, as opposed to buoyant meteorological conditions.

In response to questions from Kathleen Ryan (Group No. 2), Mr. Conneely stated that on the basis of the documentation they had submitted, and of their own experience, they were satisfied that there would be no structural damage to the National Maritime College. However, the did indicate that the Indaver submission had indicated that in the event of an accident the windows might break in the college.

Mrs. Ryan also asked about the impact on the Martello Tower from structural damage in the event of a major accident. In this context Mr. Conneely stated that the events that had been modelled were in relation to fire rather than an explosion, and one would need an explosion to cause damage to the Martello Tower rather than heat radiation. He stated that this was his assumption, as he was not aware if it had been modelled specifically, since the Martello Tower was outside the contours that the HSA had placed on the map.

Subsequent Questions by Ms. M. D'Alton (Group 3)

There was further discussion about the issue as between the site being a higher tier or a lower tier establishment. Ms. D'Alton submitted that it was likely, in view of the fact that the applicant company wished to expand their market, that there would be changes in the waste streams over time, and that there would not be, as suggested in paragraph 3.2 of Appendix 3, a low risk of unexpected constituents in the waste streams. She felt that it was highly likely that there would be changes in the quantities and composition of the wastes, which would bring the subject development from a lower tier to a higher tier criterion.

In this context, the Inspector asked a number of questions of Mr. Colreevy in relation to whether or not the change from lower tier to higher tier establishment, as a result in increase in quantities of specified materials, or alterations in the composition or classification of materials, would require a new planning permission (see Track FF, beginning at time index 4 minutes). Mr. Colreevy stated that the HSA were of the opinion originally that any change, including a change in inventory levels in a development, would require planning permission. He stated that as a result of a court case earlier this year, they had now been informed that the term 'development'. as used in the Planning and Development Regulations, would not apply to an inventory change, and hence planning permission might not be required. He stated that the Department of the Environment, Heritage and Local Government were currently considering a review to these Regulations to deal with this anomaly.

Ms. D'Alton asked Mr. Conneely why was it that the HSA had advised that there should be no residential accommodation in the National Maritime College. Mr. Conneely stated that they formed a view that although it was outside the consultation distance, it was prudent not to have a residential element within the college.

Ms. D'Alton asked Mr. Conneely why the HSA would put in such a restriction on the College, to benefit an establishment which, at the time they had made their submission to the Planning Authority about the College proposal, had not even obtained planning permission. Mr. Conneely responded that at the time they were considering making a submission on the National Maritime College, they had become aware of the Indaver proposal (in December 2001).

Ms. D'Alton asked Mr. Conneely why the modelling that had been done in the event of a fire or a toxic gas release had assumed that there would be no impact beyond the consultation distance. She noted that the National Maritime College buildings were just beyond that boundary. Mr. Conneely responded that the fire modelling that they had carried out indicated, using dioxin as a marker, that the levels in the air beyond the consultation distance would be below the tolerable daily intake level, and therefore it could be argued that there was minimal risk. He stated that in relation to fire radiant hazards that they would not extend off-site.

In relation to modelling of a fire plume accident, Ms. D'Alton was critical of the fact that the HSA were not aware whether the modelling was for a hot gas or a cold gas release.

In response to questions from Mrs. A. Hogan (Group 7), Mr. Conneely stated that they were classing the National Maritime College as a non-residential facility. However, Ms. Hogan made the point that while there was not residential accommodation permitted in the college, as a result of the planning permission that had been referred to, there would be students in the building on a 24-hour basis, and hence liable to be affected by a major incident.

In response to questions from Mr. G. Casey (Group 14), Mr. Conneely indicated that he considered the National Maritime College of Ireland not to be a "sensitive category of development" as outlined in page 5 of his submission, as it was not a school. He stated that this was a different situation than one would apply were it to be a primary school where there would be young people of higher sensitivity who would need to be further back from any source of hazard.

Mr. Casey argued that Gobby Beach was a well used recreational area for the people of Ringaskiddy and beyond, and that therefore this should be categorised as an area of public access which was a sensitive category of development. Mr. Conneely responded that, from the modelling that the HSA had carried out, a heat flux (which was the likeliest source of hazard), would not have impacts beyond 100 metres and that accordingly the risk of danger to people using the beach would be non-significant.

During the questioning of Mr. Connelly by Mr. Casey, the issue of the restriction on residential accommodation within the National Maritime College was again raised. In order to save time at the hearing, and to get an accurate response, the Inspector invited Mr. Brendan Kelleher (County Planning Officer) to give evidence in relation to the planning file for the National Maritime College.

Mr. Kelleher stated that there were two planning applications relative to the Maritime College. The first of those was an outline planning application and the second was an approval application. The approval application was the one that had been referred to by Mr. Casey.

Mr. Kelleher confirmed that, at the time of the making of the outline planning permission for the National Maritime College, the HSA had not been consulted, as at that stage there was no indication that the site would be within a consultation distance under Seveso II. He stated that it was on the outline permission that the restriction on residential accommodation had been placed, and not the approval application.

The Inspector asked Mr. Kelleher why the condition had been placed on the outline permission, restricting residential development if it was not based on advice from the HSA.

Mr. Kelleher responded that the imposition of this condition had been done in anticipation of an application which the Council knew to be made in respect of the Indaver site.

Mr. Casey asked Mr. Kelleher whether it was the normal practice of the County Council to impose conditions in planning permissions in anticipation of other applications which might be made in the future, and on which there could be no indication of success. Mr. Kelleher responded that at the time the outline permission was granted, there was an appeal by the Port of Cork, who were concerned at the development of industrial lands adjoining the site. The site at that time was zoned for industry. The Council had taken into consideration not only the perspective industrial application, but also the fact that the lands alongside the Maritime College were zoned for industry and they didn't think it appropriate that there should be residential use for the college because of the prospect of further industrial development around the site, including the intention by Indaver to construct the proposed facility.

Mr. Casey quoted extensive extracts from the transcript of the first Oral Hearing in the "Corrib Gas appeal" case. In particular he quoted a passage (pages 226 and 227 of the transcript of the Oral Hearing) wherein Mr. Colreevy had indicated that there was a problem in the planning legislation in relation to the levels of information made available for purposes of HSA advice under land use and planning. He asked Mr. Conneely whether he shared the views expressed by Mr. Colreevy at that Oral Hearing. Mr. Conneely responded that the HSA had roles not only in making advice available to Planning Authorities under SI476 of 2000, but also in relation to the operation of plants and could at that point prohibit activities where it felt that there would be a danger of major accident hazard.

Mr. Casey referred to the Hammond Lane facility, which was in the middle of the Indaver site. He asked Mr. Conneely, who had earlier indicated that he had inspected that site, whether he was aware of the slag heap on the site.

Mr. Conneely responded that at the time he visited the site, he did not recall there being a slag heap. This would have been in early 2002. He stated that he did look at the potential impact of an event on the Hammond Lane facility affecting the proposed Indaver facility.

Mr. Casey stated that on the two occasions that he had visited the Hammond Lane facility in the past year, the slag heap had been smoking, with embers coming off in all directions. He asked Mr. Conneely would he consider this to be an unacceptable hazard, and would it alter his view in relation to the Indaver proposal. Mr. Conneely responded that this would obviously be a serious matter, as it could be a source of hazard close to Indaver.

Mr. Casey asked Mr. Conneely whether he was aware of a similar Hammond Lane facility in Dublin where there had been an explosion a few years ago. Mr. Conneely responded while he was aware of that, he noted that the applicants had proposed a firewall at the back of their site where the tanks were and this could deal with matters relating to the slag heap. He emphasised that the slag heap had not been in place when he had given his advice.

There was extensive questioning of Mr. Conneely by Mr. Casey in relation to the information that was made available to him by Indaver, and the date and time at which he had made his recommendation to the Planning Authority on 7th March,

2002. Mr. Casey put into evidence some emails dated 7/3/2002 (see Appendix 2 – HSA – 3), and put it to Mr. Conneely that he could not have come to the conclusion that he had given the information contained in those emails and the lack of information that he had up until that point. Mr. Conneely stated that he did not accept the points being made by Mr. Conneely, as he was happy with the documentation that he had received from the applicants prior to making his recommendation and decision. All the emails indicated was that there had been an exchange of technical information between himself and the consultants for Indaver. However, the HSA had done its own modelling and had used its own results in coming to the decision.

Mr. Casey put it to Mr. Conneely that the emails indicate that in running the model, Indaver were using a spreadsheet which converted MSW into flue gases and did not take into account the fact that what was involved was toxic waste. Mr. Conneely stated that what the HSA were trying to do was to model the most credible accident, and that they felt that there was not a major risk from fires in the bunker.

There were a number of questions from Mr. P. Sweetman (Group 22) of Mr. Conneely. Many of these repeated the questions that had been raised by Mr. Noonan and by Mr. Casey, and covered the same ground.

Mr. Sweetman asked Mr. Conneely what his experience was in relation to co-incineration. Mr. Conneely stated that he had no experience in this area. Mr. Sweetman asked Mr. Conneely what studies he had undertaken regarding the injection of toxic waste solvents into the afterburner. Mr. Conneely stated that he had not undertaken any since he felt that he was unaware that this would be likely to cause a major accident.

There were a number of questions for Mr. Conneely from Mrs. N. Harty (Group 23) and Mrs. Joan Masson (Group 24). Mrs. Harty raised the issue again of the smouldering slag heap on the Hammond Lane site, noting that this was at the end of the Hammond Lane site beside the recycling area and storage tanks. She felt that the firewall was not well positioned if the smouldering slag heap is over the left-hand side of the site. She asked Mr. Conneely whether he would agree with this point. Mr. Conneely confirmed that he would agree.

Mrs. Harty raised the issue regarding the Hickson incident, where there had been large amounts of black smoke with buoyancy in the atmosphere which had then come down in East Cork. She asked whether the risk of that would be within the HSA's brief. Mr. Conneely responded that he had tried to model the effects of fires, but it was not a perfect system. The model suggests that levels of contaminants would be dispersed beyond a certain distance. He stated that there was some possibility that things would come down but they were difficult to factor in and quantify.

Mrs. Masson asked Mr. Conneely whether the HSA, in their assessment of the proposal, had involved outside experts from other countries, such as the UK, which would have experience in this type of development. Mr. Conneely stated that they hadn't done so, and that the use of external consultants depended on whether or not they felt that they were sufficiently competent to deal with proposals in-house.

Mr. Conneely outlined the general approach they took to this matter, which he stated was "relatively narrow". He stated that they look at the site, they look at what is planned there, the storage locations for hazardous material, and identify the types of major accidents that could occur. He stated that they then try to see what the consequences of those accidents would be, and then if necessary put risk figures on them. That leads to the calculation of consultation distances, and leads to advice to Planning Authorities from the point of land use and planning.

Mrs. Masson stated that this process must be difficult if the HSA had not been told what the hazardous materials would in fact be. Mr. Conneely responded that the classes of materials would all probably present the same hazards - all of the solvents would be likely to be flammable, and the toxic would be similar. He stated that in modelling one would have to choose which toxic material to model and generally pick something that was conservative, which would give a margin of safety for their advice.

Mrs. Masson asked Mr. Conneely whether he was aware of the problem of sea erosion around this area, given that Glaxo Smith Cline and Pfizer Loughbeg had already put in rock boulders to protect their foreshores. Mr. Conneely stated that he was not aware of it as a problem.

Mrs. Masson asked Mr. Conneely when he had gone down to the site, and had walked down onto the beach, had he not seen the cliff on the corner of the site visibly eroding. Mr. Conneely stated that he had seen this, but it was not an issue for them, as this was not a factor in major accident hazard. He stated that this would be a matter for other agencies to consider.

There were further questions of Mr. Conneely from Mr. A. Navratil, including questions relating to the mission statement of HSA, which had been circulated earlier (see Appendix 2 – HSA-4) . These questions generally covered the matters that had already been raised by other witnesses, and accordingly they are not outlined here. Should the Board wish to hear them, they are listed on Tracks XX, beginning at time index 3 minutes, and YY, ending at time index 3 minutes 9 seconds.

The Inspector thanked the representatives of the HSA for attending the Oral Hearing, and subjecting themselves to questions for the entire day. He then invited the parties to make supplementary closing statements on what they had heard during the day.

ADDITIONAL CLOSING STATEMENTS

Mr. P. Gardner, for Indaver, stated that the previous day in his closing submission he had suggested that it would be inappropriate to disregard the advice of the HSA. He stated that they had now heard the HSA, and it was clear that they had done a very thorough analysis on the information submitted by Indaver. They had received a submission in January 2002, and had raised additional queries on this. They had obtained answers to the queries and had deemed, in their advice to the Planning Authority, that there were no land use issues with the proposed site. It stated that it would be wholly inappropriate for the Board to seek to go behind that advice. He stated that nobody at the hearing had really gone behind it and suggested that that advice was wrong. Mr. Gardner stated that on the issue of fire, they had heard that there was an adequate water supply to the site, adequate pressure in the water supply at the site, and that there would not be rainwater run-off, in the view of the HSA.

Mr. P. Sreenan, of the Planning Authority, stated that he had no submission to make on the HSA evidence.

Mrs. J. Masson stated that she was not comfortable having heard the HSA evidence, but that perhaps as a lay person she had interpreted some of the discrepancies that she had heard in the wrong way. She hoped that none of her grandchildren would go to the Maritime College, because the idea of them being in the travel distance of a projectile travelling 100 metres from the Indaver plant would be something she would prefer not to think about.

Mrs. N. Harty stated that her family knew about small businesses. The HSA comes along and imposes costs and such extreme requirements on those businesses that they cannot operate. In this case they were talking about cancer from dioxins.

Mrs. Harty stated that she was appalled that the person in charge of this HSA report did not even know what the precautionary principle was. She wondered what were Ireland's priorities when it came to health and safety.

Mr. P. Sweetman stated that escape from a high risk site is a land use planning issue. The HSA stated that it was a matter for the fire service, and the fire service stated it was a matter for the HSA. He submitted that until such time as this was decided, a grant of planning permission would cause an unacceptable risk to public safety as the site was unsuitable.

Mr. G. Casey stated that, having heard the HSA, he was reminded of Mr. Navratil's reference to Dante's inferno. He would refer to Dante's five circles of hell and would describe them as follows: Novartis, Pfizer, Pfizer Loughbeg, Glaxo Smith Cline, and if the fifth circle comes in, it would be Indaver. He stated that this would lead to Dante's inferno.

Ms. Kate Corcoran stated that after listening to the HSA, she felt devastated. She stated that she was a person who lived in Ringaskiddy, with her children, and her grandchildren, who go to school in the local area. She stated that she didn't feel safe but terrified when the incinerator was first mentioned. She stated that she hadn't been able to speak about health at the Oral Hearing, but rather to talk about rubbish, the colour of the box, and the shrubs that we were going to have around it and that we could not discuss serious issues.

Ms. Corcoran stated that after listening to the HSA she felt more nervous and scared than before.

Mrs. A. Hogan stated that she had come to the Oral Hearing without any faith in the EPA or Cork County Council. Having heard the evidence, she stated it now seemed that she could not have any faith in the HSA. She stated that residents had felt all along that there was a smell from this planning application, and in the light of what they had heard today, it seemed that it stank to the high heaven.

Mr. Navratil spoke about fines and breaches of Seveso Regulations, and compared them to breaches of the REPS Regulations. As a farmer, he stated that if he breached REPS Regulations, he would have to pay a penalty of ε33,000. He noted that for any breach of the Seveso Regulations the maximum fine was ε1,500.

Ms. Marcia D'Alton stated that the HSA appeared to be working in an area in which it had incomparably inadequate expertise. They had inadequate in-house information, they had never worked in the area before, nor in any area like it. They had relied virtually in their entirety on information supplied by the applicants. They had not sought to go outside the country to get data or information from those who already run or work with plants like this. They did not appear to have any concept of what the waste industry means nor the concept of material flows in and out of facilities like this transfer station. She noted that Mr. Conneely had said that pollution to the harbour was inadequately assessed. He had said that the models for that incident were not completely developed to enable them to make a complete assessment. She pointed out that there was an SPA less than 1 kilometre from the site and an SAC within the harbour. It was an internationally recognised harbour for populations of wild birds.

Ms. D'Alton stated that it seemed to her that virtually the entire assessment of the HSA had been based on modelling. It seemed to her that this model concentrated virtually in its entirety on a fire in municipal solid waste in the bunker, which was irrelevant to this planning application, which was for a hazardous waste incinerator. She stated that it seemed that most of the modelling was done by Indaver. The third parties were not party to the modelling but they had to prove that the HSA's conclusion was wrong. They could not do this since they hadn't been a party to the modelling. They hadn't been a party to Indaver's modelling either. All they could do was advise the Board to look at the information given by Indaver in its EIS, and to look at its deficiencies, and what appeared to her to be its deliberate emissions, and to draw its own conclusions from the modelling which was done by Indaver and given to the HSA and the model inputs that were given by Indaver to the HSA. She stated that

she would defy anyone to tell her that a plume of smoke from an incident would dissipate at a maximum of 200 metres from the facility and suddenly disappear. It had to go somewhere. She stated that there would be constituents in that plume of smoke that people would not know about. She stated that we would not know what would be in the toxic releases from the plant, and it seemed to her that the HSA didn't know either. Nonetheless, they stated that those would dissipate within this tiny consultation distance around the site. All the physical evidence pointed to it being otherwise.

Mr. P. Russell stated that he had listened to the questions asked of the HSA witnesses, and had been completely shocked by their lack of proper information, lack of proper investigation, lack of consultation, and inadequacy. He stated that he was angry and fearful. He stated that Cork City was in the harbour area with 140,000 people, in close proximity to the development. He stated that he had watched the professionals at the hearing, on both sides, talking about models, theories, statutory requirements and Government bodies. He stated that they do not express what the people, as ordinary people with lungs and immune systems are concerned about.

Mr. Sean Cronin stated that his group felt that the HSA had made a serious error in not undertaking a proper evaluation of the storage facility, the activity on the site, and the impacts on the National Maritime College's staff and students. He stated that Seveso was, after all, originated due to an activity that went horribly wrong. He stated that the activity here, the operation of the incinerator itself, was not adequately investigated, especially when one considered the amount of liquid flammable waste that would be put into the fluidised bed incinerator, causing potential flash fires at a moment's notice.

Mr. Cronin stated that comparison with other such incinerator facilities would have been very easy to do, especially as the problems of the DERL hazardous waste incinerator in Dundee were well publicised a couple of years ago. He stated that due to two fires, that plant was closed down for over five months and had over 26 breaches of emissions for EPA limits in Scotland. He stated that the proposed incinerator is a fluidised bed model, and would have been a very suitable comparison as the most modern of its type in the UK. However, as Mr. Conneely was not even aware of the type of incinerator proposed in this case, he could understand why the opportunity to do a good professional job was lost.

Mr. Cronin stated that his group contended that this Competent Authority does not exhibit the competence needed to conduct a proper evaluation of the implications on public safety of the proposed development. He stated that they suspected a major cover-up may have taken place to hide the paucity of information collected in what was a very superficial activity. A detailed and informed investigation did not occur, and the recommendations of the HSA should be disregarded in evaluating the planning proposal.

Mr. Noonan stated that An Bord Pleanála has a discretion to reimburse expenses to people who contribute to the process, and for the record he stated that he had asked the Board to exercise that discretion in this case.

Mr. Noonan stated that the participants in the hearing had seen today an evolution of those people of blind faith to blind faith cloaked in statutory immunity from the consequences of their action. He quoted Article 6 of SI476, which dealt with immunity. He stated that this explained a lot. One would find the same thing in the EPA, as they have the same immunity. He stated that the people in the area in Ringaskiddy and the harbour did not have statutory immunity.

Mr. Noonan stated that he was not going to recite all of the reasons that led him to the conclusion that there could be only one decision for the Board - to disregard the letter from the HSA on the Board. He stated that they were on the tape - the gas main, the erosion, the WHO Guidelines, the EPA Guidelines.

Mr. Noonan stated that he wanted to come back to the EIA Directive. He stated that An Bord Pleanála was the Competent Authority, and that the residents hoped that it would be competent to unravel fact from fiction, and to make its decision in conformity with the constitution, the law and the directive. He stated that under the directive the Board has to get all the information before it makes its decision to give development consent.

Mr. Noonan stated that he was afraid that the Board might attribute competence to the HSA. He stated that one thing that had minimised his fear of this was Mr. Casey's cross-examination in the hearing at Corrib, where Mr. Colreevy acknowledged that there is a loophole in the law, in the sense that the HSA in fact only does a sort of limited model prediction process at this stage, and does not get to grips with it until six months before the operation begins. He stated that this was critical for the Board to understand. The Board could not assume that the HSA has done anything to assess the safety of this plant in terms of land use planning.

Mr. Noonan stated that the other thing that had reassured him before today was the Statutory Instrument that says that they only do a limited thing now and only do their detailed look much later in the process. That's the system. He stated that the Board could not rely on the HSA giving this development a clean bill of health, because the HSA hasn't itself given it one, it hasn't even considered doing it yet.

Mr. Noonan stated that the hearing had heard the HSA say today, with regard to managerial competence (which is riddled through the guidelines) the essential nature of managerial competence to be demonstrated at site selection level as well is beyond it. The HSA say that they assume that this is a matter for the EPA. Mr. Noonan stated that we know, thanks to Ms. Kelly's candour in that article that had been quoted yesterday, that the EPA only looks at best available technology, and once the plant operates this, they will get their licence.

Mr. Noonan stated that the Seveso land use scheme of things is a pro-active requirement - it's a system for making the member states and their responsible authorities plan ahead. We figure out, in advance, where we are going to be, where we can put these things that kill and have killed people. What had been heard today was the actual converse of that - instead of the HSA helping the Board by advising it about separation distances and land use planning, what had happened was that they were presented, at almost the last minute, with a bit of information about something at a given site shoehorned in beside an educational establishment, and they were asked to do a kind of computer exercise. It was very much a case of "garbage in and garbage out". Mr. Noonan stated that this was not Seveso-type planning, it was not advice under Article 29 of the Seveso Regulations to the Board.

Mr. Noonan stated that there was no consideration about meat and bone meal. There was no consideration about hazardous solid waste being more or less dangerous for the test burn, no consideration of biological matters because they weren't dangerous under Seveso. There was reliance and assertion that the site was not flooded when we know it is. The HSA did not know the prevalence of inversions in the area, even though inversions are the most dangerous meteorological condition in the event of adverse mixing, which is the most likely source of a problem. The HSA had spoken to nobody about it. They had no experience of co-incineration. They couldn't say what they would advise if the National Maritime College were proposed now. They admitted under detailed questioning that yes, perhaps, the windows in the NMCI could be broken on one scenario. Mr. Noonan stated that there is a beach on one side of this site beside the development - the HSA did not seem to know that, or that people went there.

Mr. Noonan stated that the issue really seemed to be coming back to the notion of leapfrogging. In site selection, he stated that we had seen that Indaver leapfrogged the site selection process directly into Step 4 of the WHO Guidelines model. They magicked up four sites, all in Ringaskiddy, and then started doing their comparison, beginning with Step 2 on industrially zoned land only. He stated that what we had here with the HSA was a similar leapfrogging exercise, they jump in and look at the site, where it is, without any view as to whether it should be there at all in the first place.

Mr. Noonan stated that really the issue was amount immunity. Everybody in the firing line was in the firing line. Everybody making decisions had immunity and only those in the firing line hadn't immunity. Mr. Noonan stated that they were relying on the Board to stop this. Only the Board could save us from this craziness.

Mr. P. Sreenan (Planning Authority) stated that it had been suggested that costs might be an issue in this appeal. Insofar as it might be suggested that Cork should pay the costs of this appeal, he stated that he would reject that entirely and feel that it would be completely unfounded.

Mr. Sreenan stated, for the record, that if the Board were to take the suggestion of costs seriously, he would require an opportunity to be heard in relation to that matter.

Close of hearing

The Inspector, in closing the hearing, thanked all present for their participation at the hearing for the previous three weeks. He stated that he would be preparing a report, with a recommendation, in due course and that the Board would then notify all parties of its decision.

NOTE:-

Appendix 2 is a collection of the written submissions handed in during the oral hearing. These are provided in three loose leaf folders, with Folders 1 and 2 comprising the various witness statements and additional documentation submitted by the parties, and Folder 3 having the 20 no. closing statements, 8 observations, and also the documentation submitted on the final day of the hearing, 10th October 2003, which deal with the presentation by the Health and Safety Authority, and questions to the witnesses from the HAS, Messrs Conneely and Colreavy.

Appendix 3 is a collection of documents that were raised at the hearing, including copies of the relevant sections of the County Development Plan and Waste Management Plan, full copies of the National waste documents, and copies of the WHO and Basel Guidelines, as well as the EPA Guidelines on EIA and a few other documents referred to. These documents are all included in a number of pouches with the application documentation.

Appendix 4 contains the photographs of the site taken by me, together with a site key map showing the locations of these photographs.