



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

Correspondence 3A.3
Meeting -13/12/2012



Oifig an Ard Rúnaí
Office of the Secretary General

11 December 2012.

Mr Ted McEnery
Clerk to the Committee of Public Accounts
Leinster House
Dublin 2



Your Ref: PAC-R-646; Correspondence 3B.1; Meeting – 11/10/2012

Dear Mr McEnery,

I refer to your letter of 17 October 2012 seeking a note on the issues raised in a letter to the Committee from the Irish Environmental Forum of 21 June 2012 in relation to the Environmental Protection Agency (EPA).

Given the nature of the allegations contained in the Forum's letter, the enclosed information note provides comprehensive details in respect of the governance of the Agency and its finances; the formal legislative process followed in respect of the appointment of Directors and the Director General to the EPA; the performance of the EPA in the area of environmental protection; and an explanation of the recommendations of the independent EPA Review Group referred to by the Forum in its letter. Much of the information provided in this note was considered and reported on by the Review Group, whose report can be viewed in full at the following link;

<http://www.environ.ie/en/Publications/Environment/Miscellaneous/FileDownload,26491,en.pdf>

I hope that this information will be of assistance to the Committee.

Yours sincerely,

Geraldine Tallon
Accounting Officer



1.0 Environmental Protection Agency – General Structure

1.1 Introduction

The Environmental Protection Agency was established by the Government in 1993 following the enactment of the Environmental Protection Agency Act 1992. The EPA was established as a non-commercial and independent state-sponsored body with a defined role as set out in statute, including the quasi-judicial role of environmental licensing and permitting.

The EPA's mission¹ is to protect and improve the natural environment for present and future generations, taking into account the environmental, social and economic principles of sustainable development. It has a wide range of functions to protect the environment², and its primary responsibilities encompass:

- Environmental licensing
- Enforcement of environmental law
- Environmental planning, education and guidance
- Monitoring, analysing and reporting on the environment
- Regulating Ireland's greenhouse gas emissions
- Environmental research and development
- Aspects of strategic environmental assessment

The Agency is managed by a full-time Executive Board consisting of a Director General and four Directors, and its activities are organised into four Offices with each Office reporting to a Director:

- Office of Environmental Enforcement (OEE)
- Office of Climate, Licensing and Resource Use (OCLR)
- Office of Environmental Assessment (OEA)
- Office of Communications and Corporate Services (OCCS)

2.0 EPA Review

¹ Text available at <http://www.epa.ie/about/roles/mission>

² Text available at <http://www.epa.ie/about/roles/>

The Minister for the Environment, Heritage and Local Government, in February 2010, established an independent Review Group to review the EPA's scope, mandate, structures and performance, having regard to the central role played by the Agency in monitoring, maintaining and improving Ireland's environmental performance. Given the comprehensive, independent nature of the review, key findings of the Group, which reported to the Minister in May 2011, are quoted throughout this information note.

The Review Group found that while the EPA, like most organisations, has some critics (a number of which referred to specific issues, or individual cases, some of which were historical), "the achievements of the Agency since its foundation are widely recognised. The Agency has grown and matured, providing considerable benefit for Ireland's environment, and for the health and well-being of its people."

2.1 Stakeholder Consultations

The Review Group reported that a comprehensive public and stakeholder consultation process was undertaken as an integral part of the review exercise. In addition to considering the written submissions received, 13 in-depth engagements were undertaken with key stakeholders, which included the *Irish Environmental Forum*.

3.0 EPA Functions

The initial legislative base for the EPA was set out in the Environmental Protection Agency Act 1992 (the 1992 Act). However, the growth in the corpus of environmental law in Ireland since then, significantly driven by the domestic implementation of EU law, has seen the number of statutory functions assigned to the EPA also increasing considerably. The Waste Management Act 1996, the Water Services Act 2007 and the Protection of the Environment Act 2003 are the most significant pieces of legislation that expanded the EPA's remit, but it has also been impacted by a broad range of secondary legislation. The evolution in the number of Agency functions can be seen from Figure 1 below.

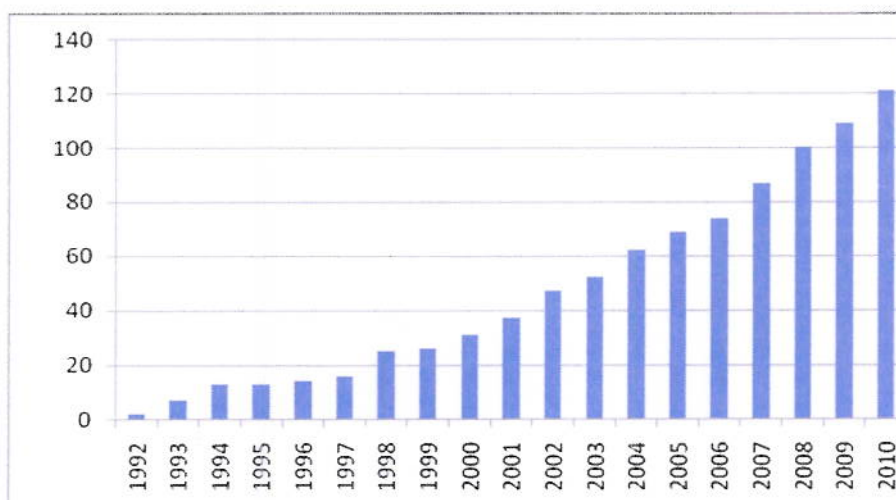


Figure 1: Cumulative total of legislation assigning functions to the EPA 1992 to 2010
(Number of Acts and Statutory Instruments)

3.1 Licensing, Monitoring and Assessment

Some activities that potentially impact on the environment require licences; notably industrial activities, waste management, and urban waste water discharges. The EPA gathers extensive information on waste and greenhouse gas emissions and runs hydrometric and air and water monitoring programmes.

The effectiveness of EPA licensing procedures has been verified through the internal EPA audit of the Environmental Licensing Unit, and external reviews by the OECD in 2010³ and NESC in 2010⁴. The National Economic and Social Council (NESC) (2010) report cites the EPA Office of Environmental Enforcement (OEE) as an example of an organisation that has successfully responded to the demands of EU legislation and previous criticisms of Ireland by the Court of Justice.

A research study by Trinity College, Dublin, published in 2010 and funded under the EPA's STRIVE Research programme⁵, found that pollution emissions from licensed industry have fallen due to regulation. Between 2001 and 2007 there were aggregate pollution reductions of 22% for the Chemical sector, 28% for the Food & Drink sector, 40% for the Pharmaceutical sector and 45% for the Power Generation sector.

The study analysed annual emissions data submitted to the EPA by licensed industrial installations in accordance with the requirements of Integrated Pollution Prevention and Control (IPPC) legislation. The study found that while EU member States were given a 2007 deadline for full implementation of the IPPC system, Ireland's EPA had implemented similar regulation through its Integrated Pollution Control (IPC) licensing system since 1994. As part of the study, industry indicated that direct regulation under integrated licensing was the largest single driver of emission reductions, contributing more than voluntary regulation and corporate responsibility actions.

³ OECD (2010) *OECD Environmental Performance Reviews – Ireland*. Paris: OECD Publishing

⁴ National Economic & Social Council (2010) *Re-finding Success in Europe: The Challenge for Irish Institutions and Policy, Report 122*. Dublin: National Economic & Social Council – text available at: <http://www.nesc.ie/dynamic/docs/NESC-122-Refinding-Success-Europe.pdf>

⁵ See http://www.epa.ie/news/pr/2010/september/name_30317.en.html for Press Release and link to study

3.2 Environment and Human Health

The EPA's website details its primary remit in this area, which is in relation to the prevention and control of environmental pollution from activities that it regulates. Environmental pollution, which is defined in the Protection of the Environment Act 2003, covers the control of substances, heat or noise, which may be harmful to human health or the quality of the environment. Accordingly, the legislation that the EPA is working within specifically provides for the protection of human health, and the EPA must ensure that human health is protected in the execution of its licensing functions. This is achieved through a combination of the use of performance standards, which set emission limit values for specific substances, practice standards, which set operational conditions, and technology standards, which set technical requirements.

This standards-based approach, and, in particular, the use of performance standards, is a cornerstone of environmental regulation world-wide⁶. Emission limit values for substances are derived taking into account the risk to human health and the environment, and the protection of human health is provided for by ensuring that these standards are met. The EPA has published a series of Best Available Technology (BAT) guidance notes and BAT reference documents (BREFS), which specify best available technology and emission limit values for a range of substances, based on international standards including those set by the EU and World Health Organisation.

Statutory arrangements are in place for IPPC, Waste and Genetically Modified Organism (GMO) licensing whereby the EPA must notify the Health Service Executive of all applications for a licence under these codes. The Health Service Executive can then make observations in relation to the application and deal with any issues in relation to public health, and the EPA must have regard to any submissions received. In this way, the authorities with expertise in areas such as public health protection and epidemiology have an opportunity to engage with the EPA in relation to the licensing process. Similarly, in the area of drinking water regulation, the Health Service Executive has a statutory role in relation to public health issues.

⁶ The setting of standards governing a whole range of environmental factors that impact on our lives such as drinking water quality, bathing water quality, air quality, food hygiene and industrial emissions, is a fundamental part of the international framework for protection of human health.

On a broader scale, the introduction of Strategic Environmental Assessment has now introduced the concept of environmental and human health risk assessment into strategic and spatial planning. The EPA has published guidance and other information on the use and application of SEA in Ireland. Environmental Impact Assessment also requires that human health aspects be considered and the EPA has published guidance on this also. The health authorities are also statutory consultees for Environmental Impact Assessment and Strategic Environmental Assessment.

The EPA Review Group concluded that the issue of potential human health risk assessment in the criteria currently used in practice should be examined and recommended that an Advisory Committee on the interface between the environment and human health be established to make recommendations, building on the expertise currently available in the various regulatory authorities. This committee has since been established in the context of the implementation of the Review Group's report and includes experts from a wide range of public bodies with responsibilities for protecting public health, e.g. the HSE, the Health & Safety Authority, the Radiological Protection Institute of Ireland, the Department of Agriculture, local authorities, An Bord Pleanála and the Department of Health. Its primary objective will be to advise the EPA in relation to the public health implications of matters pertaining to environmental protection.

3.3 Enforcement

In 2011, the EPA completed 169 audits and 658 inspections of waste and IPPC licensed facilities. In total for the year, 870 notifications of non-compliance (NONCs) were issued by the EPA and 122 meetings were held with licensees to address non-compliance issues⁷. The number of IPPC and waste inspections and monitoring visits averaged 1,882 a year between 2006 and 2008⁸. The Office of Environmental Enforcement prioritises visits and formal inspections to licensed industries based on a systematic risk assessment taking into account the complexity of the activity, emissions, environmental sensitivity (the activity location in relation to human beings, groundwater, surface water, air quality, protected ecological species and sensitive agricultural receptors) and operator management and compliance history.

The EPA Review found that large scale illegal waste disposal, tackled through liaison between the key stakeholders, including the OEE, local authorities, An Garda Síochána and

⁷ Environmental Protection Agency (2011) EPA Annual Report and Accounts 2011. Wexford: EPA. Text available at <http://epa.ie/downloads/pubs/other/corporate/name.34025.en.html>, p. 32

⁸ Figures confirmed with EPA in April 2011.

other public bodies represented on the Network for Ireland's Environmental Compliance and Enforcement (NIECE), is no longer considered the very serious problem it once was. It also found that, "demonstrable improvements in respect of the environment and the standards of operations of relevant facilities have resulted from the introduction of the EPA's licensing regimes."

The Review Group notes that the establishment of the OEE in 2003 is recognised by many stakeholders as a turning point in the EPA's relationship with local interest groups. The Group concluded that, in recent years, stakeholders recognise the Agency's willingness to respond quickly to complaints and to involve local residents as witnesses in legal proceedings against non-compliant licensees. For example, in 2011, the Agency received some 1,200 complaints in relation to waste and IPPC licensed sites, with 80% of these related to odour issues. In relation to legal enforcement, the Agency brought 22 successful prosecutions cases, all of which were heard in the District Court, with costs and fines imposed amounting to €133,707.02⁹.

The Agency's website has continually been improved and offers the user more access to all significant licensing documents produced by the Agency, by licence applicants and by third parties. It is now also possible to make a submission online to the Agency. The website provides an environmental complaints hotline, lists of prosecutions undertaken by the Agency, online access to research reports and publications, and an enormous variety of environmental information.

4.0 Exchequer Funding

The EPA is subject to the *Code of Practice for the Governance of State Bodies* (2009) and an annual external audit is undertaken by the Comptroller and Auditor General (C&AG). An internal audit committee is also in place.

A survey by the Network of the Heads of Environment Protection Agencies (2009) of the profiles of 29 agencies across Europe showed that Ireland's EPA is similar to the majority of the agencies in having as its main field of work "pollution prevention" and "sustainable development". But, in terms of major work areas within these fields, Ireland's EPA, jointly with those of Northern Ireland, England and Wales, and Germany, has the highest range, embracing research; monitoring and information systems; assessment; advice; licensing;

⁹ Environmental Protection Agency (2011) EPA Annual Report and Accounts 2011. Wexford: EPA. Text available at http://epa.ie/downloads/pubs/other/corporate/name_34025_en.html, p. 32

and enforcement. The EPA Review Group found that, while obtaining like-for-like comparisons can be difficult, it may be noted that relative to similar bodies in Northern Ireland and Great Britain the EPA is a slimline organisation.

4.1 Funding Levels

The EPA's income derives primarily from three sources: Oireachtas grants (Exchequer income), the Environment Fund, and directly earned income. Total income has fallen from over €70 million (of which Exchequer funding amounted to €35 million) in 2008¹⁰ to a budgeted figure of €57 million (of which Exchequer funding totalled €17 million) for 2012. The Agency's approved staff numbers reduced from 340 to 313 in the same period. To protect the environment, and to ensure that the EPA can play its part in protecting the State from the risk of having fines imposed by the Court of Justice for non-implementation of EU environmental law, the Department seeks to ensure that the EPA's resources are commensurate with its legal obligations, particularly under EU Directives.

4.2 Comptroller and Auditor General Audit

The EPA is subject to an annual audit by the C&AG, and no issues of concern have been raised in his Reports included in the EPA's Annual Reports which are laid before the Oireachtas. In his opinion on the 2011 Financial Statements, the C&AG reports that they, "have been properly prepared in accordance with Generally Accepted Accounting Practice in Ireland, give a true and fair view of the state of the Agency's affairs," and, "proper books of accounts have been kept by the Agency."

5.0 Corporate Governance

5.1 General corporate governance

The full-time executive Directors of the EPA have responsibility for both executive and non-executive functions, including oversight of corporate governance. The Review Group noted that the EPA compliance with the *Code of Practice for the Governance of State Bodies* (2009) was reviewed by the Institute of Public Administration, which issued a report to the EPA in May 2010 with the following opinion:

"[I]t is our opinion that corporate governance standards are given high priority within the Agency, that there is high levels of management awareness of corporate governance obligations and that these are kept under regular scrutiny and that, as

¹⁰ Environmental Protection Agency (2009), *EPA Annual Report and Accounts 2008*. Wexford: EPA. Text available at <http://epa.ie/downloads/pubs/other/corporate/name.27487,en.html>, p. 63

appropriate, the Agency's governance policies and practices are consistent with the Code of Practice for the Governance of State Bodies."¹¹

The EPA's Internal Audit Committee comprises an external Chairperson and other external legal and financial expertise. The Committee has full, free and unrestricted access to all Agency activities, records, property and personnel. All systems and activities within the Agency may be audited and over twenty areas have been subject to internal audit, with follow-up on audit recommendations.

5.2 Independence

The EPA Review Group noted that three priorities or essential characteristics for the EPA were set out when the Bill to establish the Agency was introduced: "independence from Government, public authorities or any other interested bodies; power to carry out their functions effectively; and transparency in all their decisions"¹² and also that its scientific integrity should be beyond reproach.

A subsequent comparative assessment of the EPA's independence showed that it fell into the middle of the range of independent Irish regulatory agencies, but that it had more formal, structural independence than environment agencies in other European countries (Shipan 2006)¹³.

The independent review of the EPA concluded that the EPA has the independence to arrive at informed and objective decisions, based on the facts (scientific integrity), and to undertake objective assessment and reporting on the state of the environment. This independence is one of its key strengths and is well provided for in existing legislation.

5.3 Transparency

The Review Group considered that the EPA is very progressive in the transparency of its licensing functions. It uses the Internet to make available current licence application documentation, submissions, Inspectors' reports and the relevant extracts from Board minutes, in addition to the final decisions on licensing; this has been referred to as a model

¹¹ Turpin, P. (2010) *EPA Compliance with the Code of Practice for the Governance of State Bodies*, (IPA report privately commissioned by EPA). EPA Archives.

¹² See 127 *Seanad Debates* Col 684 (23 January 1991).

¹³ Shipan, C.R. (2006) *Independence and the Irish Environmental Protection Agency: a comparative assessment*. Blue Paper (20), Policy Institute. Dublin: Trinity College, Dublin.

of best practice by the European Commission¹⁴. In relation to enforcement, the EPA maintains public files available for inspection in order to provide transparency in its enforcement activities, even though it is not required under legislation to do so. In addition, the Annual Environmental Reports (AERs) from Integrated Pollution Prevention and Control (IPPC), waste and urban waste water treatment facilities are currently available on the EPA website, and the European Pollutant Release and Transfer Register (PRTR) information was made available during 2011.

The European Environment Agency (EEA) assesses the annual performance by its member countries in delivering specified priority data. The EPA is the EEA National Focal Point for Ireland and co-ordinates the delivery of data. The performance score for Ireland improved from 68% in 2000 to 90% in 2010.¹⁵

5.4 Accountability

The EPA Directors are appointed by Government and the Agency is required to lay an Annual Report before both Houses of the Oireachtas. The EPA Review Group noted that there have been regular attendances by the EPA at Oireachtas Committees, for example to discuss issues such as climate change, waste and water management. While accountability to citizens is achieved through its interaction with the Oireachtas, the EPA has a good record also of direct engagement with citizens on key matters, such as engagement at a senior level with concerned residents at local meetings in relation to licensed activities.

6.0 Appointment of Directors

6.1 Method of appointment of Directors

The Director General and other Directors are appointed by Government based on the recommendations of an independent selection committee, the membership of which is set down in section 21(2) of the 1992 Act and comprises:

- (a) the Secretary to the Government,
- (b) the Secretary of the Department of the Environment,
- (c) the Chairperson of the Council of An Taisce—the National Trust for Ireland,
- (d) the Managing Director of the Industrial Development Authority,

¹⁴ This reference relates to comments made at a Licensing (Impel) Meeting 2006, Riga, Latvia. Marianne Wenning of DG Environment referred to the approach by the Irish EPA to making all information available as a model for other countries.

¹⁵ European Environment Agency (2011) *Eionet priority data flows May 2010–April 2011 Report*. Table 1 - Performance history, p. 5, EEA: Copenhagen.

- (e) the General Secretary of the Irish Congress of Trade Unions, and
- (f) the Chief Executive of the Council for the Status of Women.

Vacancies are advertised publicly under an open competition managed by the Public Appointments Service (PAS) and interviews are held by the independent statutory committee, who then make a recommendation to Government. The committee is required to have regard to a potential appointee's specialist knowledge and experience including, in the case of Directors, relevant experience in environmental matters. The EPA Review Group concluded that this process has, overall, been successful to date, that its general features are robust, conform to the criteria in the White Paper *Regulating Better* (Department of the Taoiseach, 2004) and should remain unchanged.

7.0 Specific Issues Raised in Letter from the Irish Environmental Forum

7.1 Recommendations from EPA Review Group

Mr. Geoghegan refers to two specific recommendations of the EPA Review Group in his letter. He suggests that the Irish Times reported that there were allegations of maladministration that were to be investigated by the Ombudsman; this is incorrect. The Review Group actually found that:

"At present, the EPA is not subject to the Ombudsman's jurisdiction and a number of submissions to the Review Group suggested that the EPA should be subject to this oversight. The Group noted that the Ombudsman has considerable experience in dealing with complaints concerning alleged maladministration...and has proven to be an accessible and effective avenue of redress in this context... The Group concluded that the EPA should be subject to the Ombudsman's jurisdiction. This development would provide a free, independent complaint mechanism in the case of alleged maladministration by the EPA."

This recommendation has been included in the implementation report prepared by the Department and the EPA to implement recommendations of the Review Group; see:

<http://www.environ.ie/en/Environment/EPAReview/PublicationsDocuments/FileDownload,29313,en.pdf>

Mr. Geoghegan also refers to a further finding which recommends that the EPA's statutory immunity from prosecution should be withdrawn. It should be noted that a similar immunity or indemnity has been granted to other public bodies in respect of the discharge of certain functions; it is not unique to the EPA. The Implementation Plan for the Review also includes

an action to examine this recommendation in conjunction with the Office of the Attorney General. It will be important to examine the potential impact of any change in this provision on the ability of the EPA to effectively discharge its statutory functions.

7.2 European Environment Agency Report on Air Quality

The report referred to by Mr. Geoghegan identifies the most polluting companies across Europe, as reported to the EU Pollutant Release and Transfer Register. All companies in Ireland are subject to the licensing, monitoring and enforcement requirements relevant to their sector; in the case of the Irish entities referenced by Mr. Geoghegan, this is generally the Integrated Pollution Prevention and Control (IPPC) regime. The activities of companies operating with an IPPC licence are monitored by the Agency to ensure that the terms of their licences are respected, including in relation to emissions. It is vital to note that the EEA state in their report that, “[i]n using E-PRTR data, this study does not assess whether the emissions of a given facility are consistent with its legal requirements.” While Mr. Geoghegan might contend that these operations have the highest emissions in Ireland, it does not follow that these emissions are above the levels permitted to ensure adequate protection of human health and the environment.

Ambient air quality monitoring and assessment in Ireland is carried out in accordance with the requirements of Directive 2008/50/EC on ambient air quality and cleaner air for Europe, also known as the CAFE Directive, which has been transposed into national legislation by the Air Quality Standards Regulations 2011. These regulations set limit values/target values for the following pollutants: Sulphur Dioxide; Nitrogen Dioxide and Oxides of Nitrogen; Particulate Matter (PM10 and PM2.5); Lead; Benzene; Carbon Monoxide; and Ozone. In addition, the Arsenic, Cadmium, Mercury, Nickel and Polycyclic Aromatic Hydrocarbons in Ambient Air Regulations 2009 transpose the fourth “daughter” Directive 2004/107/EC and specify target values and monitoring requirements for arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons.

The EPA publishes a comprehensive annual report on air quality, the most recent being “Air Quality in Ireland 2011 – Key Indicators of Ambient Air Quality”, published in September 2012. This report provides an overview of ambient air quality trends in Ireland in 2011 based on data from 29 monitoring stations. The Report confirmed that air quality in Ireland is of a high standard and remains among the best in Europe. In 2011, measured values for the above mentioned pollutants were all below limit and target values set out in legislation.

However, levels of particulate matter and nitrogen dioxide continue to remain of concern in some areas.

A recent report published by the EPA on Dioxin Levels in the Irish Environment: Ninth Assessment (Summer 2011)¹⁶ showed that the dioxin levels in all of the samples tested were well below the relevant EU limits. The report is based on dioxin levels measured in cows' milk in a survey carried out in 2011. The report also shows that dioxin levels measured in this survey compare favourably with those taken from similar surveys in the EU and other countries; the average dioxin levels were less than 10 per cent of the EU limit.

7.3 Appointment of EPA Director General

As set out in paragraph 6.1 above, the appointment of the Director General involves an open recruitment process carried out by an independent statutory selection committee. Ms. Laura Burke had served as a Director of the Agency for 7 years in the Offices of Communications and Corporate Services & Climate, Licensing and Resource Use prior to her appointment to the post of Director General by the Government in 2011, following a recommendation from the independent selection committee, who deemed that she met all of the requirements for the post.

Mr. Geoghegan also refers to an interview that Ms. Burke provided to the Irish Times newspaper, which was published on 17th April 2012. Ms. Burke wrote to that publication further to clarify that:

"While welcoming the overall thrust of the editorial in Monday's edition of the Irish Times, I want to make it clear that the EPA does not have a policy that favours economic growth and that moves the EPA away from its environmental watchdog and policing role, as suggested in your editorial. The EPA will continue to play its central role in protecting Ireland's environment for all of the people of Ireland. The EPA has repeatedly stated ... that Ireland needs to develop as a low carbon economy and that, in order to ensure that future economic growth is sustainable it must be more resource efficient. The type of economic growth envisaged by the EPA is very different to the resource intensive and carbon intensive growth of past decades. Low carbon and resource efficient growth is entirely dependent on a clean and well protected environment.

¹⁶ http://www.epa.ie/downloads/pubs/other/dioxinresults/Dioxin%20Report_web.pdf

In addition to its core licensing, enforcement, monitoring and research roles, the EPA also has an important role to play in supporting and nurturing the growth of a low carbon and resource efficient economy and will continue to encourage debate and discussion in relation to this important issue.”

Mr. Geoghegan’s contention that, “a cosy relationship exists between the EPA and big business,” is unsubstantiated and not borne out by the independent review of the EPA completed following extensive public and stakeholder consultation.

7.4 Appointment of An Bord Pleanála Chairperson

Mr. Geoghegan also questions the appointment of the current Chairperson of An Bord Pleanála, Dr. Mary Kelly. The statutory provisions governing the appointment of a new Chairperson are set out in Section 105 of the Planning and Development Acts 2000 - 2012 and Articles 57 to 63 of the Planning and Development Regulations 2001, as amended. Similar to the appointment of the Director General of the EPA, while the appointment is made by Government, it must choose from candidates selected by an independent statutory selection committee. The composition of this committee is specified in the aforementioned legislation and, where a vacancy arises, the committee is required to select a maximum of three suitable candidates from among those who compete in an open competition. With regard to the appointment of the current Chair, the vacancy was advertised publicly and was handled by the Public Appointments Service.