AN EXAMINATION OF THE INTERFACE BETWEEN THE PLANNING CONTROL AND INTEGRATED POLLUTION CONTROL LICENSING SYSTEMS

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Dedication

This thesis is dedicated to my wife Penny and children Sharon and Graham who encouraged me through the entire course programme with their interest and support.

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ABSTRACT

Prior to the introduction of Integrated Pollution Control (IPC) licensing in 1994 environmental control was operated at local level by local authorities. For most developments planning permission was required and there were separate licensing systems controlling air, water and waste.

IPC licensing was introduced for a limited number of larger scheduled activities and is now operated by the Environmental Protection Agency (EPA). In cases where there is a licensable activity, planning control is the responsibility of the planning authority and, in the event of an appeal, an independent appeals board An Bord Pleanála. Legislation defines the extent and nature of the responsibilities of the planning authority and the EPA in operating these two separate control systems. Experience to date reveals a number of 'problem areas' which have arisen in the interface between the planning control and IPC licensing systems.

This thesis details the legislative background to the new dual system of control and examines the role of the various bodies involved in environmental control. The 'problem areas' at the interface are identified and discussed under the general headings of land use decision making, construction vs activity, environmental impact statements and assessments and other procedural matters. Under the dual system of control which is applied when a proposed activity is licensable, the planning authority and An Bord Pleanála are prevented from considering matters relating to the risk of environmental pollution. It is submitted that this restriction has significant consequences with regard to land use decision making, the importance of the statutory development plan as a tool in development control, environmental impact assessments, and public participation in the decision making process.

The systems of control applied in the UK (England and Wales) and Holland are examined and comparisons with the Irish systems of control are made.

The final chapter draws conclusions and makes recommendations for overcoming the 'problem areas' identified in Ireland. It is recommended that there should be a clear and readily identifiable demarcation of responsibilities between the planning authorities and the EPA. Land use decision making should be based on the consideration of all matters relating to the proper planning and development of the area, including those relating to environmental pollution. The contents of Development Plans should be strengthened and expanded. The EPA should have statutory roles to play in the drafting and making of development plans and the land use decision making process where a licensable activity is concerned. IPC licensing should apply to all phases of a development. Consideration should be given to a 'two-stage' IPC licensing system or, alternatively, to a requirement that planning and IPC licence applications be made simultaneously. Public participation in the decision making process should be encouraged. There should be one competent authority for Environmental Impact Assessment (EIA) and this should be the planning authority. There should be a formal consultation process between the planning authority and the EPA for EIA. If, in the case of proposed local authority landfill sites, the land use decision making function is to be the responsibility of the EPA, the Agency should be required to engage land use expertise in order to carry out this function. Scheduled activities should be more clearly defined and guidelines issued on methods of calculating threshold capacities.

1. INTRODUCTION

Prior to 1994 the principal environmental control system in Ireland was operated through planning legislation by the planning authorities. The principal planning act was passed in 1963, and since then all private developments, with the exception of a relatively small number of specified 'exempted developments', have required planning permission. During this period regulatory controls were introduced under water pollution and air pollution legislation for specified discharges to waters and sewers and for emissions to air from listed industrial activities. Licensing was introduced under the Waste and Toxic and Dangerous Waste regulations.

In 1993 a significant change was made to the environmental control system through the introduction of Integrated Pollution Control (IPC) licensing operated by a newly formed Environmental Protection Agency. Licensing commenced in 1994. Effectively a new 'dual control' system now operates for a large number of specified activities with potential for significant environmental impact. Since the introduction of this dual system of control a number of 'problem areas' have become evident.

The aim of this dissertation is to identify the more obvious 'problem areas' and to make recommendations as to how they might be remedied. In order to achieve this aim, this dissertation sets out the following objectives:

- to examine the planning control, and air and water pollution licensing systems prior to IPC licensing in Ireland,

- to describe the origins of the 'dual control' system,

- to detail the main legislative instruments shaping the dual

system of control,

- to examine the role of the various bodies operating the planning control/licensing system,

- to identify the 'problem areas'.

- to briefly examine the planning and environmental control systems used in the U.K. (England and Wales) and in Holland,

- to make recommendations as to how the 'problem areas' could best be addressed.

The interface between the planning control and IPC licensing systems is relatively new, and is still developing. The topic has not been widely written about, although it has featured on several occasions in the Irish Planning and Environmental Law Journal. It has also been addressed in Planning Inspector's reports on appeals to An Bord Pleanála. I have examined these sources in detail. In detailing the legislative background reference has been made to sourcebooks on planning and environmental law in Ireland.

2. ORIGINS OF THE PLANNING CONTROL/LICENSING SYSTEM IN IRELAND

2.1 INTRODUCTION

While environmental legislation in Ireland has its origins in public health legislation dating from the last century, the introduction of the 1963 Planning Act heralded a new approach to the planning and control of our environment. Brought into operation on October 1, 1964 the Local Government (Planning and Development) Act, 1963 provided, in the interest of the common good for the proper planning and development of cities, towns and other areas, whether urban or rural, including the preservation and improvement of their amenities. The planning legislation was initially perceived merely as a licensing code under which development, which was considered to be contrary to proper planning and development, was prevented or permitted subject to restrictions (1). It subsequently assumed a greater developmental role.

2.2 THE EUROPEAN INFLUENCE

In more recent times the European Union has been greatly influential in the development of Irish environmental law and policy, particularly as it relates to pollution control. The first Programme of Action of the European Community on the Environment was approved in 1973, and since then four further programmes have been adopted for the periods 1977-81, 1982-86, 1987-92 and 1993-2000 (2). During the period of these programmes a series of new regulatory controls have been introduced in Ireland. The Local Government (Water Pollution) Acts 1977 and 1990 provide for the licensing of certain discharges to waters and sewers and principally govern the protection of water quality by ensuring its maintenance to a standard consistent with its various beneficial uses (3). The Air Pollution Act, 1987 introduced a licensing system for specified

industrial processes having a potential for major emissions. The Environmental Impact Assessment Regulations of 1989 (SI349 of 1989) introduced the Environmental Impact Assessment (EIA) process into Ireland for large scale scheduled developments. Initially, this process was administered principally through the planning system. The Environmental Protection Agency Act, 1992 provided for the setting up of the Environmental Protection Agency (EPA) which was formally established on the 26th July, 1993.

The EPA regulates and controls specified private and public sector activities carrying a serious risk of environmental pollution, and is responsible for the issuing of Integrated Pollution Control (IPC) licences for scheduled activities under the 1992 Act. The Agency considers the risk of environmental pollution for these scheduled activities in the context of the IPC process and this consideration includes those sections of any EIS relating to environmental pollution. Under the EPA Act, 1992, the Local Government (Planning and Development) Regulations, 1994 (SI No.86 of 1994) and the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1994 (S.I. No.84 of 1994) Planning Authorities and the Planning Appeals Board (An Bord Pleanála) are prevented from considering matters relating to environmental pollution in cases where a licence or revised licence is required under the EPA Act. Thus, a new dual regulatory control system has been introduced for a significant number of developments which, by their size and nature, have the capacity for significant environmental impact. This dual control system will also be utilised for scheduled waste disposal and recovery activities under the Waste Management Act, 1996 the licensing sections of which have been brought into operation by the Waste Management (Licensing) Regulations, 1997 (S.I. No. 133 of 1997).

There are significant differences in the nature of a planning permission and an IPC licence. Unless otherwise stated by way of a

specific condition, a planning permission, once granted, is not open to review unless a revocation procedure is followed. Similarly any conditions attached to a permission are not open to review. The IPC licensing system allows for regular reviews of licenses and any conditions attached. This more flexible system allows introduction of revised environmental standards from time to time through the review of an IPC licence.

3. LEGISLATIVE BACKGROUND

3.1 INTRODUCTION

The major regulatory tools employed in Ireland for controlling the environmental impact of developments and activities are the following -

- Planning permission
- Licensing of emissions under the Water Pollution Acts.
- Licensing of emissions under the Air Pollution Act.
- Environmental Impact Assessment.
- Integrated Pollution Control (IPC) Licensing.
- Licensing proposed under the Waste Management Act, 1996.
- Permitting under the Waste Regulations,
- Certain other records, documents, notifications.

The legislation giving rise to these regulatory tools may be detailed as follows:

3.2 PLANNING ACTS

Planning and Development in Ireland is governed largely by the Local Government (Planning and Development) Acts, 1963-93 and numerous sets of Regulations; in total there are seven Acts of the Oireachtas dealing with planning matters. The Acts operate on twin levels -

1. Providing for the making and implementation of schemes regulating land use (Development Plans, Special Amenity Area Orders) in a general way.
2. Prohibiting the development of land unless authorised and carried out under, and in accordance with, the permission or

licence of the appropriate planning authority (4).

The administration and enforcement of planning legislation is primarily the responsibility of 88 local planning authorities, including County Councils, County Borough and Borough Corporations, and Urban District Councils. First and Third party appeals of planning authority decisions are decided by an independent appeals board, An Bord Pleanála.

3.2.1 Development Plans, SAAOs.

Under section 19(1) of the 1963 Act every planning authority is required to make a plan indicating development objectives for its functional area. A development plan must provide for the development and renewal of obsolete areas and for the preservation and extension of amenities. Plans for towns must indicate objectives for the use solely or primarily of particular areas for particular purposes, as well as for securing greater convenience and safety for all road users. Plans for areas outside towns must indicate objectives for the provision or extension of water supplies and sewerage facilities (5). The making of a plan is a reserved function (function of the elected members) and there is a requirement to review the plan and make any variations (whether by way of alteration, addition or deletion) considered proper.

Public participation is encouraged in the making of plans. The draft Plan is publicly advertised and placed on public display, and any person has the right to make objections or observations to the planning authority. In the case of a ratepayer, there is the right to have any objection or representation heard in person. The draft Plan must also be served on authorities as prescribed under Article 5 of the 1994 Regulations, and these include certain government ministers, Bord Fáilte Éireann, Central Fisheries Board, the appropriate Regional Fisheries Board, Forfás/SFADCO, the ESB, An

Taisce, contiguous planning authorities, and An Bord Pleanála.

Under sections 42 and 43 of the 1963 Act, as amended by section 40 of the 1976 Planning Act, planning authorities may make special amenity area orders (SAAO's) where the planning authority considers that an area is an area of special amenity by reason of a) its outstanding natural beauty or b) its special recreational value, or c) a need for nature conservation.

An SAAO may include objectives for the preservation or enhancement of the character or special feature of the area, and the preservation or limitation of development in the area.

The making of an SAAO is a reserved function and there is a requirement under the Act to review the Order at least every 5 years. The public have a right to view any draft order and to make objections. A public local enquiry must be held to consider any objections, and the Minister for the Environment must consider these before confirming the Order with or without modifications, or refusing to confirm it.

Development plans may include objectives for the protection of other areas such as Areas of Scientific Interest, Conservation Areas etc. but there are no separate legislative procedures for the making of such designations under the Planning Acts.

3.2.2 Planning Permission

Part IV of the 1963 Act makes provisions for the control of development and the retention of certain structures. Section 24 states that permission shall be required - a) in respect of any development of land, being neither exempted development nor development commenced before the appointed day, and b) in the case of a structure which existed immediately before the appointed day and is

on the commencement of that day an unauthorised structure, for the retention of a structure. The appointed day is 1st October, 1964.

Under Section 3 (1) of the 1963 Act, "development" is defined as follows:
"Development" in this Act means save where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other lands.

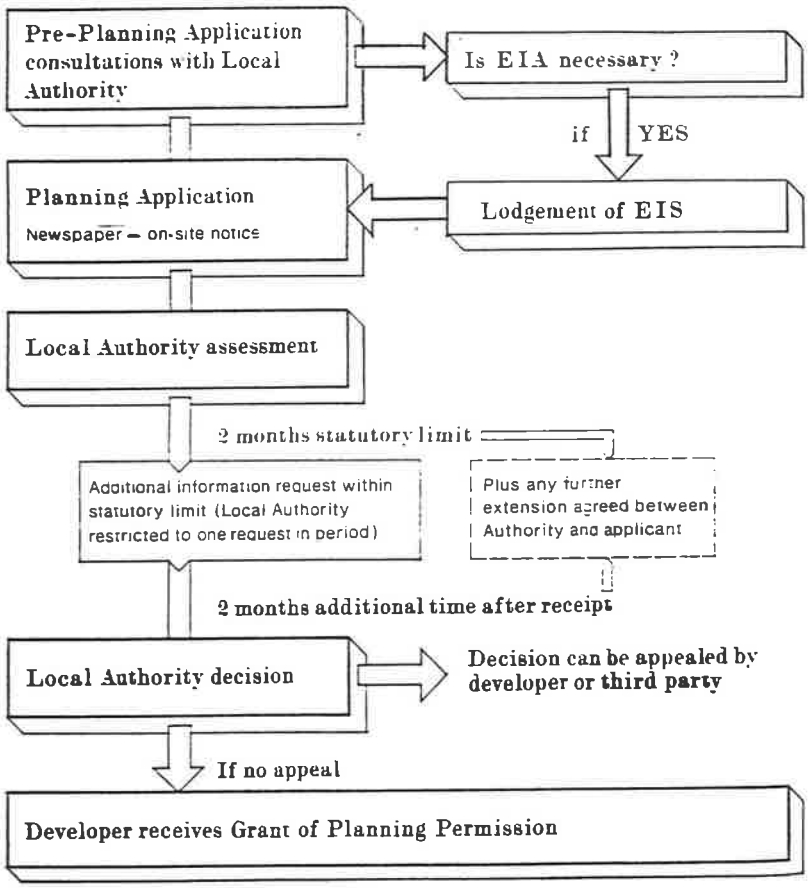
Any person carrying out any development in breach of the obligation to obtain planning permission is guilty of an offence.

3.2.3 Planning Appeals

Under the 1976 Planning Act, an independent statutory appeals board, An Bord Pleanála was set up. The Board was established in 1977 and is responsible for the determination of appeals, references (questions as to whether a particular development is or is not exempted development) and certain other matters under the Planning Acts, 1963-1993. It is also responsible for dealing with appeals under the Building Control Act, 1990, the Local Government (Water Pollution) Acts, 1977 and 1990, and the Air Pollution Act, 1987. The Board is obliged to keep itself informed on the policies and objectives of the Minister, Planning Authorities and other prescribed authorities whose functions have, or may have, a bearing on the proper planning and development (including the preservation and development of amenities) of cities, towns and all other areas (6).

In cases where IPC licensing is required, the Board no longer considers appeals relating to water and air emissions. These are now the responsibility of the EPA.

The planning control process is outlined in Figure 1.



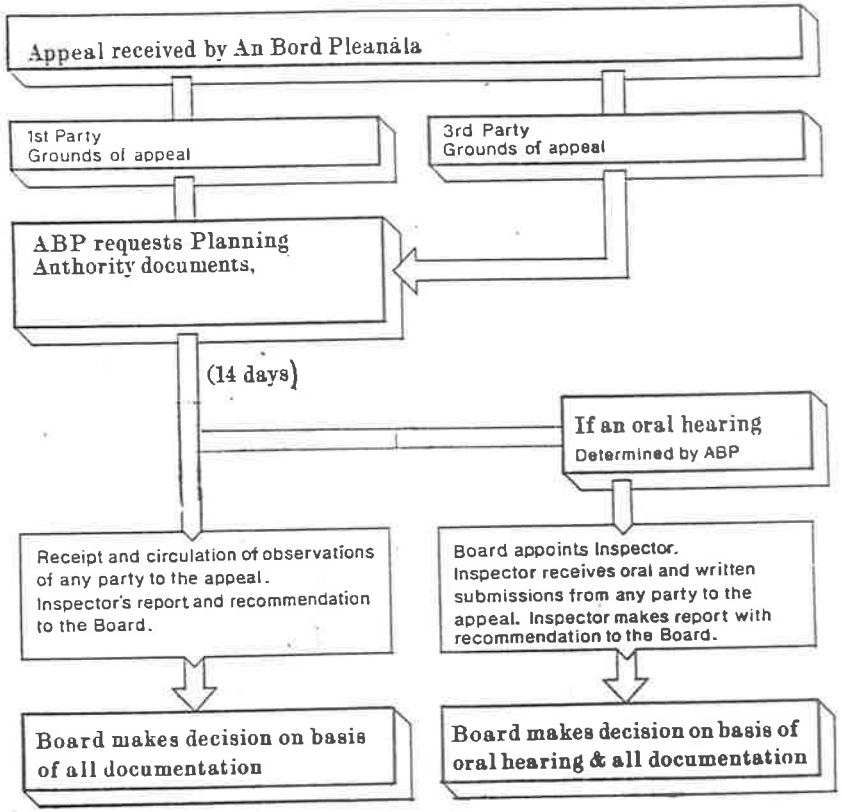


Figure 1: **The Irish Planning Process**

Source: **Adapted from the Benson Report**

3.2.4 Local Authority Developments

Under section 4(1) of the 1963 Act, development carried out by local authorities within their own functional areas is exempted from the obligation to obtain planning permission. Under the Local Government (Planning and Development) Regulations, 1994, there is a requirement for the planning authority to publish a notice in a newspaper circulating the area of the development, to send notice of the proposed development to specified bodies, to make plans and particulars available for public inspection, and to prepare a report on the proposed development for submission to the elected members. The report describes the nature and extent of the proposed development, evaluates the likely implications of the proposed development on the proper planning and development of the area, summarises the planning issues raised by any submissions made by interested persons and bodies and gives the response to those submissions, and indicates whether it is proposed to proceed with the proposed development, either with or without modifications or not to proceed. The elected members make the final decision to proceed or not to proceed. Under section 39 of the 1963 Act there is an obligation on the planning authority not to effect any development in their area which would contravene materially the development plan.

Where a local authority wishes to carry out a development within it's own functional area, and where this is a development to which Part IX of the Local Government (Planning and Development) Regulations, 1994 applies and which is specified development under Article 24 of the European Communities (Environmental Impact Assessment) Regulations, 1989 an environmental impact statement (EIS) must be prepared and forwarded to the Minister for the Environment. Furthermore, the Minister has the power to request a local authority to submit an EIS where a development would have been a specified development under the 1989 Regulations but falls short of the

threshold laid down in these regulations, and where in his opinion the proposed development would be likely to have significant effects on the environment. The local authority must apply to the Minister for certification, and the Minister is obliged to have regard to the EIS submitted, together with any submissions made to him by interested persons and bodies through public participation, and also to any submissions from member states which have been consulted, before making his decision. Local authority development cannot be undertaken unless the Minister has certified that the proposed development will not in his opinion have significant and adverse effects on the environment and that it will embody the best practicable means to prevent or limit such effects.

Under the Waste Management (Licensing) Regulations, 1997, waste licensing by the EPA replaces the present system of certification by the Minister in respect of landfill development by a local authority within its functional area. Determination of all environmental and planning issues in such cases are to be matters for the EPA. (7).

3.3 WATER POLLUTION ACTS

Under these Acts it is a statutory offence for any person to "cause or permit any pollutant matter to enter waters". The legislation sets up a licensing system whereby certain discharges into waters are permitted (8). Application for an effluent discharge licence is made to the local authority.

3.3.1 Licensing

Types of licence which may be issued by the local authority are as follows:

- A licence to discharge trade or sewage effluent to waters (S.4 of the 1977 Act).

- A licence to discharge trade effluents or other matter (other than domestic sewage or storm water) to sewers (S.16 of the 1977 Act).

- A licence for domestic sewage exceeding in volume 5 cubic metres in any period of 24 hours which is discharged to an aquifer from a septic tank or other disposal unit by means of a percolation area, soakage pit or other method (S1 No.108 of 1978).

The procedure for applying for a licence is similar to the planning process. The applicant must publish a newspaper notice and the application must be available for public inspection. Any person may appeal the local authority's decision to An Bord Pleanála, except in the case of a licence to discharge to sewers where there is no third party right of appeal.

Licences are normally valid for at least a 3 year period. After that period the licensing authority may review and revise a licence at its own discretion (9).

Where an IPC licence is required, licences to discharge trade effluent and sewage are no longer granted under the Water Pollution Acts 1977 - 1990 but form part of the IPC licence issued by the EPA.

3.4 AIR POLLUTION ACT

The Air Pollution Act, 1987 sets out a system of licensing for certain listed industrial activities which have the potential for major emissions, and gives the Minister for the Environment and the relevant local authority conditional powers to deal with Air Pollution.

3.4.1 Licensing

Application for an air pollution licence is made to the local authority. The procedure for applying for a licence is similar to the planning process. Among the criteria which must be satisfied before an atmospheric emission licence can be issued are compliance with any relevant air quality standards, and the use of Best Practicable Means (BPM) (10). Any person may appeal the local authority decision to An Bord Pleanála.

Most of the processes which were covered by the Air Pollution Act, 1987 are now subject to IPC.

3.5 ENVIRONMENTAL IMPACT ASSESSMENT

The European Communities (Environmental Impact Assessment) Regulations, 1989, and the Local Government (Planning and Development) Regulations, 1994 transpose the requirements of the European Communities Council Directive (85/337/EEC) into Irish Law. Environmental Impact Assessment is a process which aims to minimise the environmental impact of certain new or expanding projects by a detailed review of the proposed development prior to permission for construction and licensing for operation (11). If the proposed development is covered by the EIA Regulations, the developer is required to prepare an EIS. This document should play an important role in providing basic information to the planning authority as part of the planning application, and to the EPA where an IPC licence is required. An EIS is mandatory for certain "specified developments", where the development exceeds the relevant size threshold, or regardless of size where an IPC licence is required.

The planning authority may require an EIS for any "specified development" regardless of size where it considers that it is likely to

have significant effects on the environment; An Bord Pleanála may request an EIS in similar circumstances. In the case of a local authority carrying out development within its functional area and where the Minister considers that the development would be likely to have significant effects on the environment, he may require the local authority to submit an EIS to him.

An EIA may be required in the case of certain projects outside the development control system. For example salmonid breeding is an activity where member states save a discretion to require an environmental impact assessment. If output exceeds 100 tonnes per annum and an EIS is required, it must be submitted with an application to the Minister for the Marine for an aquaculture licence. The same Minister has the power to exempt a project from the requirement of an EIS. In the case of drainage schemes carried out by the private sector an EIS may be required under the development control system. If a similar development is being carried out by the Commissioners of Public Works it is exempted from planning control but an EIS may have to be submitted to the Minister for Finance under the Arterial Drainage Act 1945, as amended.

The mandatory and optional content of an EIS is specified in 1989 Regulations in Schedules 2 and 3 (see Appendix A).

In cases where an IPC is required, neither the planning authority nor An Bord Pleanála are permitted to consider those aspects of an EIS which "relate to the risk of environmental pollution from the activity". In such cases the planning authority will send of copy of the EIS to the EPA who consider matters relating to the risk of "environmental pollution". In cases where an IPC is not required, there is an obligation on the person or body on whose behalf the EIS is prepared to send a copy to the EPA. The EPA can then make submissions or observations to the planning authority and the planning authority, and An Bord Pleanála must have regard to these

submissions or observations.

The EIA process is illustrated in Figure 2.

The total number of EIS's submitted between the years 1988-1995 is shown in table 1 below. Table 2 illustrates the competent authorities to which the EIS's were submitted during the same period. In 1996 in excess of one hundred EIS's were submitted to various competent authorities and this included the submission of eleven EIS's to both the EPA and planning authority.

Year	1988	1989	1990	1991	1992	1993	1994	1995
EISs	12	41	69	83	83	71	82	94

Table 1: Total number of EIS's submitted between the years 1988-1995.

EISs submitted to	1988	1989	1990	1991	1992	1993	1994	1995
Minister for Environ.	1	2	2	11	12	6	9	9
Other Ministers		3	2	2	7	1	1	1
Total to Ministers	1	5	4	13	19	7	10	10
County Councils	9	32	49	60	53	55	65	62
County Borougns	1	1	9	8	2	3	6	9
Other	1	3	7	2	9	5	1	14
Total Planning	11	36	65	70	64	63	72	85

Table 2: The competent authorities to which EIS's were submitted between the years 1988-1995.

Department of the Environment.

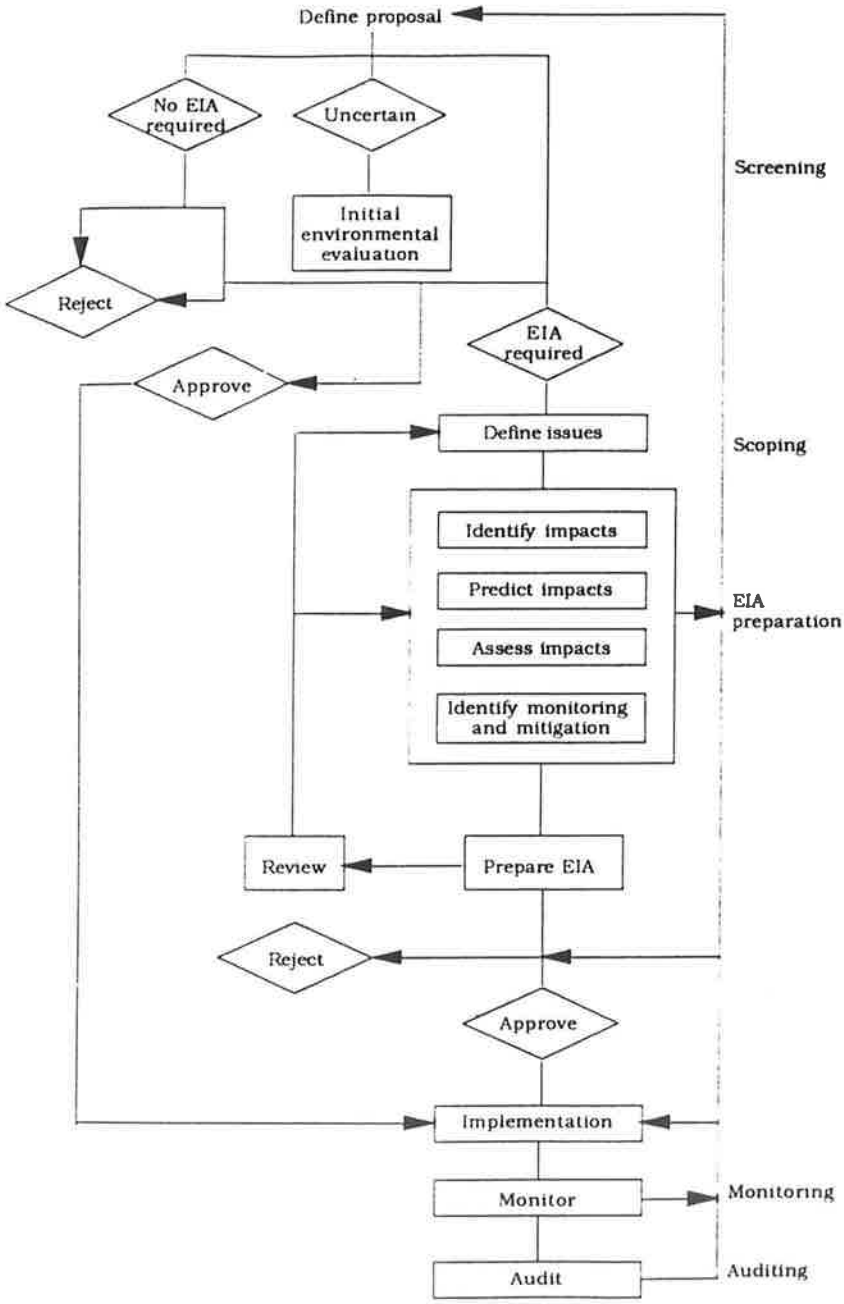


Figure 2. **The EIA Process**

Source: **Environmental Impact Assessment, a Handbook, (ed. M.O'Sullivan), U.C.C.**

3.6 INTEGRATED POLLUTION CONTROL LICENSING

The Environmental Protection Agency Act 1992 allowed for the introduction of IPC licensing for a significant range of activities which are listed in the First Schedule of the Act. Licensing under Part IV of the EPA Act came into operation on the 16th May, 1994. An operative date for IPC licensing for each class of activity is determined by ministerial order in the form of statutory instruments. To date the majority of the activities listed in the First Schedule are licensable. The EPA is responsible for the issuing of IPC licences. For scheduled activities the IPC licence takes the place of other forms of media specific licensing including licensing under the Air Pollution Act, 1987 and the Local Government (Water Pollution) Acts, 1977 and 1990 and permits under the European Communities (Waste Regulations), 1979 and the European Communities (Toxic and Dangerous Waste) Regulations, 1982. The IPC licence takes an overall approach to the control of emissions. It covers air, water, waste and noise, and also requires the use of best available technology not entailing excessive costs (BATNEEC) for their protection (12).

Where the proposal is for development where an IPC licence is required, the matters to which the planning authorities and An Bord Pleanála may have regard are redefined under section 98 (1) of the EPA Act, 1992. This stipulates that a planning authority or the Board shall not, when dealing with such development, decide to refuse a permission or an approval under Part IV of the Local Government (Planning and Development) Act, 1963 for the reason that the development would cause environmental pollution, or decide to grant permission under Part IV of the 1963 Act subject to conditions which are for the purposes of the prevention, limitation, elimination, abatement or reduction of environmental pollution from the activity. Section 98 goes onto state that the planning authority or

the Board cannot consider any matters relating to the risk of environmental pollution from the activity proposed, or any submissions or observations made insofar as they relate to the risk of environmental pollution from the activity proposed.

The effect of section 98 is that a planning authority or An Bord Pleanála, dealing with development proposals comprising or for the purposes of an activity which has or requires a licence from the EPA, must confine itself to matters relating to the proper planning and development of the area concerned, other than matters relating to the risk of environmental pollution from the activity. Planning authorities and the Board are required to consider issues such as landscape, visual and landuse effects, traffic implications, etc., but any matters relating to the risk of environmental pollution fall to be dealt with by the EPA.

In the case of any scheduled activity requiring an IPC licence and for which an EIS is submitted, the EPA deals with the EIS insofar as it relates to the risk of environmental pollution from the activity, and the planning authority concerned (and An Bord Pleanála in the event of an appeal) deals with the EIS in relation to matters other than the risk of environmental pollution from the activity. Thus, there are two competent authorities. The above changes are reflected in various articles contained in the Local Government (Planning and Development) Regulations, 1994.

The procedures for IPC licensing are detailed in figure 3. There are many similarities with planning permission procedures including the requirement for the publication of notices, availability of documents for public inspection, provisions for the holding of oral hearings and the period for the submission of First and Third Party objections. One significant difference is that there is no independent appeal procedure in the case of the IPC licensing; the EPA considers submissions or objections to its own proposed decision before

issuing its final verdict to grant a licence without conditions, grant a licence with conditions, or to refuse a licence. This procedure would appear to conflict with a rule of natural justice which states that no person shall be a judge in his own cause (nemo index in causa sua).

3.7 WASTE MANAGEMENT ACT

The Waste Management Act, 1996 was enacted on the 20th May, 1996. This is essentially enabling legislation relating to waste management planning, measures to reduce production and promote recovery of waste, the holding collection and movement of waste, and the recovery and disposal of waste. It is interesting to note that the Act applies to mining activities where an objective may be to maximise waste in order to attain a sustainable activity.

A Ministerial Order made on the 24th June, 1996 gave effect to certain provisions of the Act including the following:

- The Environmental Protection Agency is mandated to prepare the National Plan in relation to hazardous waste.

- Local authorities are required to adopt moderate and systematic local waste management plans.

- Local authorities have strengthened powers as to the monitoring and inspection of waste activities, and the procurement of information regarding waste production and management.

- Local authorities and the Environmental Protection Agency are able to recoup costs incurred in carrying out investigations, taking legal proceedings and preventing environmental pollution from waste (13).

IPC Licencing Procedure

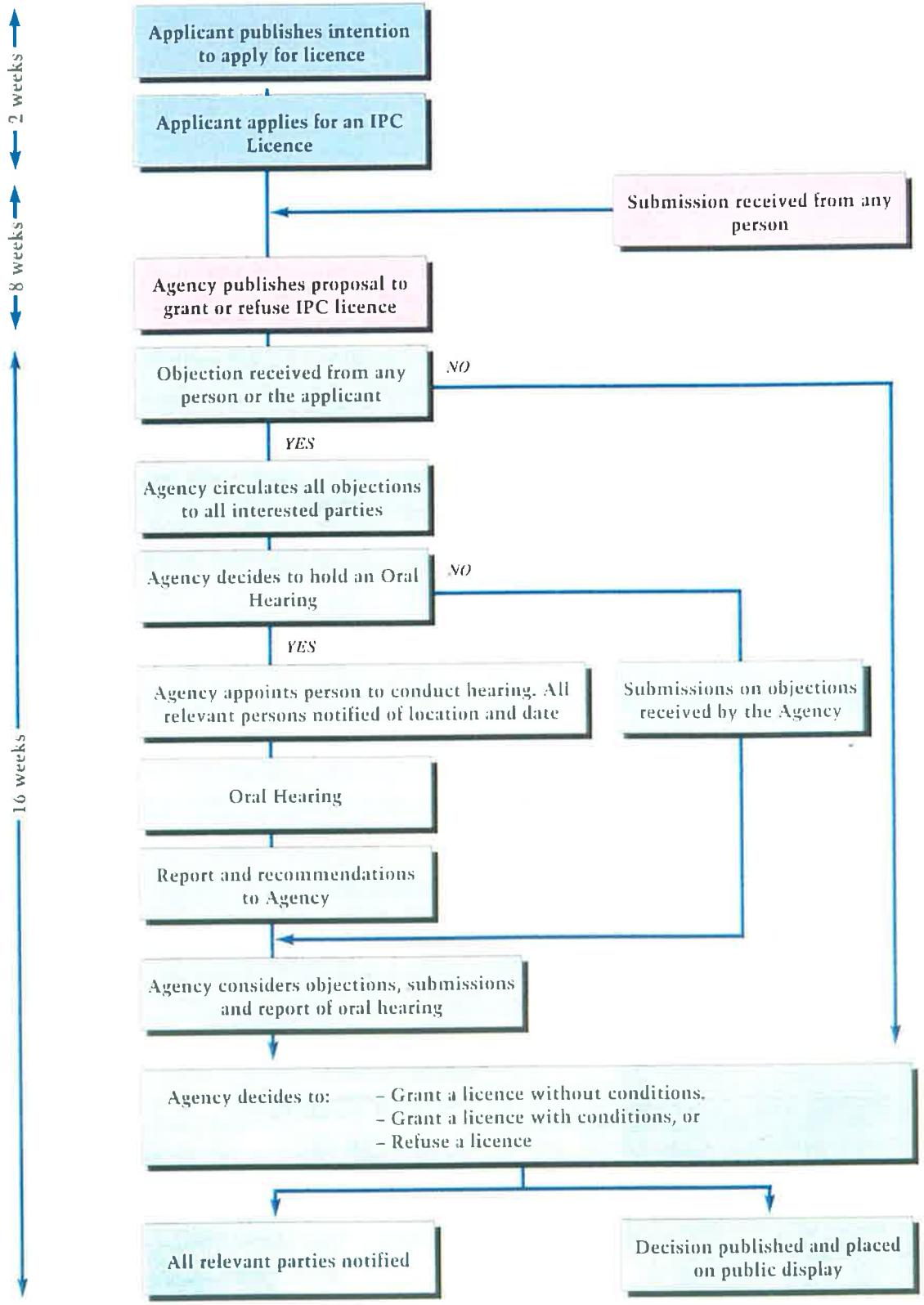


Figure 3. IPC Licensing Procedure **Source : EPA Mission Statement**

3.7.1. Licensing

A central feature of the Act is a system of licensing to be operated by the EPA in relation to all significant waste recovery and disposal activities (including all landfills). The licensing system is outlined in Part V of the Act and applies to private sector and local authority facilities. The Waste Management (Licensing) Regulations, 1997 (S.I. No. 133 of 1997) prescribe dates on or after which specified classes of waste disposal activity require a licence, and set out procedures for the making of applications for licences, the review of licences, and consideration by the EPA of objections including the holding of Oral Hearings.

The introduction of waste licensing by the EPA replaces the present system of certification by the Minister in respect of landfill development by a local authority within its functional area.

Under Section 54 of the Act, where a waste licence is granted in relation to an activity and permission has been granted under the planning code in respect of development comprising or for the purposes of that activity, any conditions attached to the planning permission relating to the prevention, limitation, elimination, abatement or reduction of environmental pollution, cease to have effect. Where a waste licence is granted, or is or will be required in relation to an activity, the planning authority or An Bord Pleanála cannot, in considering any development comprising or for the purposes of the activity, decide to refuse a permission for the reason that the development would cause environmental pollution, or decide to grant permission subject to conditions relating to environmental pollution from the activity. The planning authority or An Bord Pleanála cannot consider any submissions or observations insofar as they relate to matters concerning environmental pollution.

Where planning permission has been granted, or an application for

permission made in relation to any development comprising or for the purposes of a waste recovery or disposal activity, the carrying out of which requires a waste licence, the EPA is required to consult the planning authority. Where the conditions of the Waste Licence would require the carrying out of development which would be exempted development under planning legislation, the Agency may attach, in relation to that development, conditions specified by the planning authority for the purposes of the proper planning and development of the area. There does not appear any mechanism within the Act whereby the EPA can attach conditions relating to planning matters not referred to by the planning authority, but raised by third party objectors.

4. THE ROLES OF VARIOUS BODIES IN THE PLANNING CONTROL/LICENSING SYSTEMS

4.1 Planning Authorities

There are 88 Planning Authorities throughout the country. These are made up as follows: -

- 5 Corporations
- 29 County Councils
- 54 Urban District Councils

Town Commissioners are local authorities but are not planning authorities. In this case the relevant planning authority is the county council of the county in which the town is situated (14).

Under the Planning Acts, planning authorities are constituted protectors of the environment (15). Planning Authorities have many functions and duties, and these include the following: -

(a) the making of a Development Plan, and reviewing it at least every five years. (This timescale is not always observed and the Minister has the power to grant an extension of time for the making and reviewing of a Plan).

(b) the consideration and determination of applications for outline planning permission, planning approval and planning permission.

(c) the enforcement of planning control through enforcement notices, warning notices, prosecutions and injunctions.

(d) the keeping of a planning register in which all planning decisions are recorded.

(e) the making of orders in the interest of amenity e.g. Tree Preservation Orders, Special Amenity Area Orders, Conservation Orders.

(f) the payment of compensation in appropriate cases.

(g) the acquisition and disposal of land in exercise of its functions and duties as a planning authority.

Planning Authorities are obliged to "have regard" to the provisions in their development plans when considering planning applications, whether or not to revoke or modify permissions, and whether or not to enforce or impose planning controls (16). A planning authority may not carry out development which is in material contravention of its development plan.

4.2 An Bord Pleanála

An Bord Pleanála was established in 1977 under the Local Government (Planning and Development) Act 1976. The principal responsibilities of the Board include the following:

a) the determination of First and Third Party Planning Appeals. Appeals may be against the planning authority's decision in its entirety or against conditions proposed to be attached to a permission by the planning authority.

b) the determination of references. These arise under section 5 of the 1963 Act which provides that any question as to what, in any particular case, is or is not development or exempted development shall be referred to and decided by the Board.

c) the determination of certain contributions which may be

attached to a permission or approval by way of condition.

d) the determination of purchase notices. Where permission has been refused on appeal to develop land, or granted subject to conditions, the owner of this land may, in certain circumstances, serve a purchase notice on the planning authority requiring the authority to purchase the interest in the land. If the planning authority is not willing to comply with the purchase notice the matter may fall to be determined by the Board.

e) the determination of appeals against proposed Tree Preservation Orders.

f) the determination of appeals in relation to the grant, refusal, withdrawal or continuance of a licence or to the conditions specified in relation to a licence permitting the erection, construction, placement and maintenance of petrol pumps and other specified types of appliances and structures on public roads.

g) the determination of appeals against notices served on the owner and on the occupier of land over which the planning authority proposes to create a right of way.

h) the determination of appeals against decisions of a building control authority relating to fire safety certificates and dispensation from or relaxation of any requirement of building regulations.

i) the determination of appeals against licensing decisions under the Water Pollution Acts.

j) the determination of appeals against licensing decisions

under the Air Pollution Act.

In the determination of any appeal or reference the Board may decide to hold an Oral Hearing, and in some cases may call a meeting.

In 1995 An Bord Pleanála received the following numbers of appeals etc: -

Normal (S26) Planning Appeals	2778	
References	42	
Determinations of Contributions etc.	19	
Purchase Notices	7	
Tree Preservation Orders	1	
Licences under S89	2	
Rights of Way	1	
Building Control	16	
Water Pollution	3	
Air Pollution	0	(17)

An Bord Pleanála is obliged to keep informed on policies and objectives of the Minister, planning authorities, and other prescribed public authorities.

4.3 Environmental Protection Agency

The Environmental Protection Agency was formally established on 28th July, 1993 under the EPA Act, 1992. The main responsibilities of the Agency include the following:

- the licensing and regulation of large/complex industrial and other processes with significant pollution potential, on the basis of integrated pollution control (IPC), and the application of best available technologies for this purpose,

- the monitoring of environmental quality, including the establishment of databases to which the public will have access, and the publication of periodic reports on the state of the environment.

- advising public authorities in respect of environmental functions and assisting them in the performance of their environmental protection functions,

- the promotion of environmentally sound practices through, for example, the encouragement of the use of environmental audits, the establishment of an eco-labelling scheme, the setting of environmental quality objectives and the issuing of codes of practice on matters affecting the environment,

- the promotion and coordination of environmental research, and

- generally overseeing the performance by local authorities of their statutory environmental protection functions (18).

In recent times the Agency has been given the control of genetically engineered organisms.

In carrying out its function the Agency is obliged as follows: -

a) to keep itself informed of the policies and objectives of public authorities whose functions have, or may have, a bearing on matters with which the Agency is concerned,

b) to have regard to the need for a high standard of environmental protection and the need to promote sustainable and environmentally sound development, processes or operations,

c) to have regard to the need for precaution in relation to the potentially harmful effect of emissions, where there are, in the opinion of the Agency, reasonable grounds for believing that such emissions could cause significant environmental pollution,

d) to have regard to the need to give effect, insofar as it is feasible, to the "polluter pays" principle, regarding cost allocation and action by public authorities on environmental matters,

e) to ensure, insofar as is practicable, that a proper balance is achieved between the need to protect the environment (and the cost of such protection) and the need for infrastructure, economic and social progress and development (19).

The Agency is required to specify and publish criteria and procedures for the selection, management, operation and termination of use of landfill sites for the disposal of domestic and other wastes.

The Agency has also been given the responsibility of preparing guidelines on the information to be contained in EIS's for scheduled developments.

4.4 Local Authorities

Under the Local Government (Water Pollution) Acts local authorities have primary responsibility for ensuring the preservation, protection and improvement of water quality. In this case 'local authority' means County Council, Dun Laoghaire Corporation, Co. Borough Corporations and UDCs but not Town Commissioners. Dun Laoghaire Corporation no longer exists and is now part of Dun Laoghaire-Rathdown County Council.

The main responsibilities, some of which are carried out by the local authority and others by the local authority in its role as sanitary authority include the following:

a) the issuing or refusing of licences for the discharge of any trade effluent or sewage effluent to any waters.

b) the issuing or refusing of licences, for the discharge of any trade effluent or other matter (other than domestic sewage or storm water) to a sewer.

c) the reviewing of licences.

d) the revocation of certain licences.

e) the enforcement of control relating to discharges to waters or sewers.

f) the making and reviewing of Water Quality Management Plans.

g) the making of bye-laws to prohibit or regulate the carrying on of a specified activity in the whole or in a specified part of the local authority's functional area.

h) the monitoring of waters, effluent and other matter.

i) consultation with the EPA and other public bodies.

Where an IPC licence is required for scheduled activities, licences under the Water Pollution Acts do not apply and licensing is the function of the EPA. Where a licence is granted under Part IV of the EPA Act 1992 any extant relevant water pollution licence ceases to have effect. The EPA has a general supervisory power over

monitoring carried out by local authorities and sanitary authorities.

The Air Pollution Act, 1987 is administered by local authorities, defined in the Act as county councils, borough corporations and Dun Laoghaire Corporation. The main responsibilities are as follows : -

a) the issuing or refusing of licences for emissions to air from specified types of industrial activity.

b) the reviewing of licences.

c) the revocation of certain licences.

d) the making, amendment, review and revocation of special Control Area Orders.

e) the making, review and varying of Air Quality Management Plans. (None have been made to date).

f) the enforcement of air pollution control.

g) the monitoring of air quality and emissions, and the keeping and maintenance of records.

Where an IPC Licence is required for scheduled industrial activities licences under the air pollution Acts do not apply and licensing is the function of the EPA. Where a licence is granted under Part IV of the EPA Act, 1992 any relevant air pollution licence ceases to have effect. The EPA has a general supervisory power over monitoring carried out by local authorities.

Under the European Communities (Waste) Regulations 1979 and the European Communities (Toxic and Dangerous Waste) Regulations, 1982 local authorities are responsible for the issuing of permits.

These regulations will be revoked in full when the Waste Management Act becomes fully operational.

5. INTERFACE BETWEEN THE PLANNING CONTROL AND IPC LICENSING SYSTEMS.

5.1 Introduction

The introduction of the IPC Licensing System on 16th May, 1994 brought about a fundamental change in the permitting and licensing of specified developments with the potential for significant environmental impact. Up to that point the planning system was used to decide whether or not proposals for development should be permitted, having taken all relevant matters relating to the proper planning and development of the area into account including the preservation and improvement of its amenities. The Water Pollution and Air Pollution Acts provided licensing mechanisms for specified activities and circumstances. Planning control was implemented by individual planning authorities, with an independent appeals board, An Bord Pleanála, to decide First and Third party appeals. Licensing was carried out by individual local authorities, and there was a similar appeal procedure in place. In the case of some large scale developments, appeals against Water Pollution and Air Pollution licences and planning permission were dealt with simultaneously by the Board.

With the enactment of the EPA Act, 1992, Section 98 expressly precluded a planning authority and An Bord Pleanála, from the consideration of matters relating to the risk of "environmental pollution" associated with a licensable activity. The term "environmental pollution" is not specifically defined in planning legislation, but is defined in Section 4 of the EPA Act, 1992 as follows:

"Environmental pollution" means -

(a) "air pollution" for the purposes of the Air Pollution Act,

1987.

(b) the condition of waters after the entry of polluting matter within the meaning of the Local Government (Water Pollution) Act, 1977.

(c) the disposal of waste in a manner which would endanger human health or harm the environment and, in particular -

(i) create a risk to waters, the atmosphere, land, soil, plants or animals,

(ii) cause a nuisance through noise or odours, or

(iii) adversely affect the countryside or places of special interest.

or

(d) noise which is a nuisance, or would endanger human health or damage property or harm the environment.

The Air Pollution Act, 1987, defines "air pollution" as - a condition of the atmosphere in which a pollutant is present in such a quantity as to be liable to

(i) be injurious to public health,

(ii) have a deleterious effect on flora or fauna or damage property

(iii) impair or interfere with the amenities or with the environment.

Section 7(1) of the Act is amended by the Third Schedule of the EPA

Act, 1992 which defines "pollutant" as follows:

> "pollutant" means any substance specified in the First Schedule or any other substance (including a substance which gives rise to odour)or energy which, when emitted into the atmosphere either by itself or in combination with any other substance, may cause air pollution.

This definition would appear to include both noise and vibration.

The term "polluting matter" is defined in the Local Government (Water Pollution) Act, 1977 as -

> any poisonous and noxious matter and any substance (including any explosive, liquid or gas) the entry or discharge of which into any waters is liable to render those or any other waters poisonous or injurious to fish, spawning grounds or the food of any fish, to injure fish in their value as human food, to impair the usefulness of the bed and soil of any waters as spawning grounds or their capacity to produce the food of fish, or to render such waters harmful or detrimental to public health or to domestic, commercial, industrial, agricultural or recreational uses.

The same Act defines "waters" as including -

(a) any (or any part of any) river, stream, lake, canal, reservoir, aquifer, pond, watercourse or other inland waters, whether natural or artificial,

(b) any tidal waters, and

(c) where the context permits, any breach, river bank, and salt marsh or other area which is contiguous to anything

mentioned in paragraph (a) which is for the time being dry, but does not include a sewer.

The 1990 Water Pollution Act defines "acquifer" as "any stratum or combination of strata which stores or transmits ground water". This definition would appear to include most groundwaters.

Clearly, the matters which can no longer be considered by the planning authority, and An Bord Pleanála on appeal, in cases where an IPC is required, are very wide ranging. But is such a division in the responsibilities of the planning authority and the EPA practical or workable? Since the introduction of the IPC licensing system a considerable amount of controversy has arisen with regard to the division of responsibility between the two systems. An editorial in the Irish Planning and Environmental Law Journal (20) expresses the opinion that instead of promoting an integrated approach to project assessment, the Environmental Protection Agency Act, 1992 has created a much greater chasm between planning and environmental controls than previously existed. The remainder of this chapter considers the validity of this statement, by examining, in some detail, the interface between the two systems under the following headings:

- Land use decision making
- Construction vs Activity
- Environmental Impact Statements and Assessments.
- Other Procedural Matters

5.2 LAND USE

5.2.1 Development Plans - General

Land use planning is centrally concerned with the location of development and with its characteristics, with what goes where and on what terms (21). The statutory development plan provides a framework within which criteria for making regulatory decisions can be established, as well as providing a strategic and long term context for decision making. Each statutory plan contains both mandatory and optional objectives relating to the proper planning and development of the area including the preservation and improvement of its amenities. Many current development plans include a wide range of objectives relating to "environmental protection", which is defined in the EPA Act, 1992 as including -

(a) the prevention, limitation, elimination, abatement or reduction of environmental pollution, and

(b) the preservation of the quality of the environment.

Scannell refers to the Third Schedule of the 1963 Act, and states that it is clear that planning objectives may legitimately relate to the provision and siting of such matters as sanitary services (e.g. dumps, sewage treatment facilities), nature conservation, waste disposal, water pollution, noise, etc.(22). It is interesting to note that under Section 106(3) of the EPA Act, 1992 the 1963 Planning Act is amended to the effect that objectives for "securing the reduction or prevention of noise" may be indicated in a development plan.

A statutory development plan is a very important document. Its significance was described in the Supreme Court by McCarthy J as follows -

> when adopted, it forms an environmental contract between the planning authority, the Council and the community, embodying a promise by the council that it will regulate development in a manner consistent with the objectives stated in the Plan and, further, that the Council itself shall not effect any development which contravenes the Plan materially (23).

While the use of the term 'contract' may be open to question because of the availability of a material contravention procedure and the fact that An Bord Pleanála may grant a permission in material contravention of a statutory development plan, the thrust of the Supreme Court statement is nevertheless correct as the material contravention procedure permits public participation. The appeals procedure also permits participation by the public through first and third party submissions in addition to observations made by those not a party to an appeal. It is the exception rather than the rule that An Bord Pleanála grants permission in material contravention of a statutory development plan.

The Department of the Environment states that it cannot be overstressed that the purpose of development planning is fundamentally to secure the wise use of resources, either permanently or for later use. Development must be encouraged but not at the expense of the environment. A careful and reasonable balance must be maintained between the two.

In determining a licence application the EPA is not obliged to have regard to a development plan.

5.2.2 Development Plan Zonings

A fundamental tool of development plans relating to urban areas is the zoning objective. In the case of County Boroughs, Boroughs,

Urban Districts and Scheduled Towns, the legislation requires the inclusion of objectives for land use zoning, that is the use solely or primarily of particular areas for particular purposes, whether residential, commercial, industrial, agricultural, or otherwise. But what criteria is used for the formulation of zoning objectives? Many factors may be taken into account by planning authorities and important amongst these could be the nature and extent of existing uses in the area to be zoned, the need to protect features and areas of high amenity or environmental sensitivity, and compatibility with the zoning objectives assigned to surrounding areas. Common threads running through each of these considerations are the issues of environmental protection and risk of environmental pollution.

In listing zoning objectives many development plans detail permitted uses and uses "open for consideration" in each zoning category. This is in line with guidelines issued by the Department of the Environment who advise that "where primary uses are stated these should be defined in relation to uses which are compatible(24). This may be done by way of performance criteria - for instance in an area to be primarily residential, other uses which increase traffic, noise or other environmental nuisance, or alter the value of residences as such, would normally be unacceptable. Alternatively, specific uses may be listed as compatible (or, negatively, as incompatible)". Implicit in this advice is the taking account of matters relating to environmental protection and the risk of environmental pollution.

5.2.3 Decision Making

It is submitted that in the case of a development proposal where an IPC licence is required, the statutory development plan can no longer be relied upon as providing a framework for the fundamental land use decision. Under the Planning Acts the planning authority is required to have regard to its own development plan. It cannot permit or carry out development which is in material contravention

of its plan (see McGarry v Sligo County Council). However, under the EPA Act 1992 and the 1994 Planning Regulations, there may be significant sections of the Development Plan, including specific objectives, which a planning authority and An Bord Pleanála are precluded from considering. For instance a development plan may include objectives for securing the reduction or prevention of noise, but in considering a proposal for which an IPC is required, the planning authority is prevented from considering this objective insofar as it relates to the licensable activity. One piece of planning legislation requires the planning authority to have regard to the provisions of its development plan and not to permit any development which would be in material contravention of the plan, but other legislation, including the EPA Act, Waste Management Act and the 1994 Planning Regulations, prevents the planning authority from considering any provisions of its plan insofar as they relate to the risk of environmental pollution. This appears to lead to a considerable reduction in the importance of the Development Plan.

An Bord Pleanála may grant permission in material contravention of a development plan. In such cases the Board considers the reasonableness of the relevant provisions of the plan before making its decision in the interests of the proper planning and development of the area. In cases where an IPC licence is required, it would not appear to be possible for the Board to give consideration to relevant plan provisions if they relate to the issue of environmental pollution. For instance a planning authority may refuse permission for a particular activity because it is in material contravention of a zoning objective. The Board is required to consider the reasonableness of the zoning objective and also reasons why the proposed activity would not conform with it. It is submitted that the restrictions placed on the Board would appear to limit comprehensive consideration of these matters.

5.2.4 Public Participation

This situation gives rise to a significant change in third party rights in cases where an IPC licence is required. Under the planning control system, prior to IPC, there was a right of objection to a planning authority, before the authority made its land use decision taking all relevant factors into consideration. The planning authority's decision was open to appeal to an independent board, An Bord Pleanála, who made its decision having taken all relevant matters into consideration, including submissions and the relevant Development Plan. Under the dual system the land use decision made by the planning authority is based on criteria which precludes matters relating to the risk of environmental pollution, and any submissions made to the planning authority relating to such matters cannot be taken into consideration. The planning authority's decision may be appealed to an independent body, An Bord Pleanála, but any submission from a party or observer addressing matters relating to the risk of environmental pollution cannot be taken into account by the Board. Under the IPC licensing system a third party has the right to make a submission to the Agency once an application for a licence has been made and also after the Agency publishes its proposal to grant or refuse a licence. However, the Agency is not the appropriate body to make a fundamental land use decision which is very much a planning consideration and the Agency's decisions are not open to appeal to an independent body. The Agency does not have to have regard to the development plan.

5.2.5 Land Use Decision

The question arises, in cases where an IPC is required, as to who makes the fundamental land use decision as to the acceptability of a proposed development and activity on a particular site, having taken all relevant factors into account. Under the current dual system it would appear that neither the planning authority or the EPA is in a

position to make such a unilateral decision. This matter was referred to in the report on the Masonite planning appeal when the Inspector concluded that the division of functions between the EPA and the planning authority "results in two separate balancing acts in which the benefits of the development are weighed against separate sets of drawbacks or disadvantages, and that these two separate balancing acts might give a different result from one such exercise taking all advantages, benefits, drawbacks and disadvantages into account" (25)

In specified limited circumstances section 84(4) of the EPA Act 1992 does make provision for the Agency consulting with the relevant planning authority and attaching to a licence or revised licence conditions specified by the planning authority for the purposes of the proper planning and development of the area, or stricter conditions as the Agency may consider necessary for the prevention, limitation, elimination, abatement or reduction of pollution. This is necessary because, once an IPC licence is issued, any conditions on a planning permission relating to matters concerned with the risk of environmental pollution cease to have effect, and any water or air pollution licences relating to the IPC licensed activity cease to have effect. There does not appear to be any provision in the EPA Act 1992 whereby the Agency could refuse to issue a licence for reasons relating to the proper planning and development of the area on the advice of the planning authority. This could be important in a case where a planning authority has permitted an activity but imposed a condition limiting the life of the activity to a specified time period for reasons relating to the need to reassess the environmental impact after a prescribed period. If an IPC licence is subsequently issued in relation to this activity, the condition in the planning permission limiting the effective life of the permission would cease to have effect. This would leave a planning permission, unlimited in time and not open to review, contrary to the original intentions of the planning authority. The right of the planning authority to refuse

permission for the construction or the use for reason of significant adverse environmental impact would be lost.

The legitimacy of a planning authority refusing permission solely for the reason that it materially contravenes a zoning objective in the development plan must be open to question in the dual control system. Criteria used in assigning zoning objectives clearly include, in many cases, matters relating to the risk of environmental pollution or, at least, the perception that existing or zoned activities in one area may impact adversely on another e.g. residential zonings would not normally be found interspersed with general industrial zonings. Where the planning authority is precluded from considering matters relating to the risk of environmental pollution it would seem unreasonable for it to refuse permission for reason of material contravention of a zoning objective when an important consideration in formulating that zoning objective was the risk of environmental pollution.

Further problems arise in non urban areas where zonings do not apply. In the past planning authorities have refused permission on land use grounds where a proposed activity would be incompatible with an existing land use in the vicinity e.g. an industrial activity proposed in close proximity to existing residential development may not be deemed compatible because of the potential or perceived adverse impact which the activity could have on the amenities of the residential development. It would appear that the same approach could not be adopted under the dual system unless it could be shown that the incompatibility related to matters other than the risk of environment pollution. For instance serious injury to the amenities of an area resulting from noise nuisance would no longer be a legitimate reason for refusal of a planning permission in cases where an IPC licence is required.

The question of peoples perception of a development due to the

possibility of pollution is an important one. In the planning appeal relating to the Masonite development at Derryoughter Drumsna, Co. Leitrim the inspector accepted that issues such as water and air pollution could not be considered by the appeals Board but queried if the question of peoples perception of the development due to the possibility of water or air pollution was a relevant planning consideration under the planning code(26). In his report to the Board the inspector offered the opinion that perception of the development due to the possibility of water or air pollution was a matter relating to the risk of environmental pollution and could not be considered (27). He also considered that peoples perception of this danger of water or air pollution could not be considered in any realistic way without considering the level of risk and likely possibility of such pollution arising. He stated that these were clearly not matters which could be considered under the planning code according to Section 98 of the EPA Act, 1992. While the Board decided to overrule the recommendation of its senior inspector, Brassil states that the Board's decision did appear to endorse the interpretation of the Senior Inspector with regard to matters it could and could not consider (28). As will be seen in an examination of the planning system in England and Wales in the next chapter, a different interpretation of this issue is taken and it is accepted that the perception of risk of pollution can have land-use consequences.

In the same Masonite planning appeal, the division of responsibilities gave rise to problems in relation to site selection criteria. One of the criteria listed by the applicants was the availability of an adequate body of water for the disposal of effluent (29). At the oral hearing the applicants accepted that this criteria could not be considered by An Bord Pleanála in coming to its planning decision. This was also the view of the Board's inspector as expressed in his report. This gave rise to problems with regard to considering the suitability of the site and assessing arguments put forward with regard to alternative sites.

5.2.6 Division of Responsibilities

The introduction of the Waste Management (Licensing) Regulations, 1997 adds confusion to the division of responsibility under the planning and licensing codes. Under these regulations, where a local authority is proposing a landfill development within its own functional area, it must apply to the Agency who will determine all environmental and planning issues.

This gives rise to extraordinary circumstances whereby any objections raised against a local authority's proposal for landfill development on planning grounds would be considered by the Agency only. The adequacy of any Environmental Impact Statement submitted would be determined by the Agency, including all matters concerned with the proper planning and development of the area and not just with the risk of environmental pollution.

In the past such a proposal by a local authority would have been subject to certification by the Minister. Under the Waste Management (Licensing) Regulations, 1997 it is intended that all of the Minister's functions, including his planning functions, would transfer to the EPA. The Agency would effectively make both the land use decision, as well as determining the licensing of the proposed landfill. The Agency is effectively being given a land use function which was clearly never intended. This view is supported in the Department of the Environment document on Sustainable Development which states that land use considerations are properly a function of planning authorities (31). This blurring of the planning and licensing functions also has major significance for third parties wishing to challenge the basic land-use decision. While previously third parties could challenge such a decision by making submissions to the Minister, who had the benefit of professional planning advice before making his decision, under the new system the Agency, which does not otherwise have a land use function, is required to make the basic land-use decision.

5.3 CONSTRUCTION VERSUS ACTIVITY

5.3.1 Introduction

The EPA sees a clear distinction between the construction phase and operational phase of a development. The construction phase is the responsibility of the planning authority, and the operational (or activity) phase is a matter for the Agency. This matter arose in the Masonite appeal when the EPA notified the local authority prior to its determination of the application that the Agency was not charged with the responsibility for the licensing of the construction phase of the development. The local authority was charged with assessing the risk of environmental pollution and framing conditions to control same. The local authority attached conditions to the planning permission relating to issues of water pollution, noise and waste disposal during the construction phase (32).

On first consideration, the split in responsibilities between the planning and licensing codes seems reasonable, although there is apparent irony in the fact that a planning authority is responsible for controlling environmental pollution in the construction phase, but the same planning authority is specifically excluded from considering environmental pollution aspects in a long-term land use context (33). In practice, the split has given rise to several problem areas.

6.3.2 When does activity commence

In some developments, it is obvious where the construction phase finishes and the activity phase commences, but in others it is not so obvious. Examples of the latter would include extraction and processing of minerals, and the extraction of peat involving an area exceeding 50 hectares. In these activities there is no clear cut line which can be drawn between what might be termed construction and what might be termed activity. The two phases merge into each

other, and preparatory works in the initial stages could have significant potential for environmental pollution which would not be licensable through IPC.

The above comments may be illustrated by reference to a specific proposal. The issue of development and activity phases arose in a recent proposal for the construction and operation of a zinc/lead mine with ore processing and related facilities at Barnalisheen, Co. Tipperary. There were both first and third party appeals against the decision of the planning authority (Tipperary (N.R.) County Council) to grant permission. An Bord Pleanála granted permission for the proposed development on the 30th May, 1997 (34). The project, should it proceed, would also be subject to IPC licensing. In correspondence to the planning authority in its capacity as statutory consultees to the planning process, the EPA stated that the IPC license, should it be granted, would take effect the day the first ore-grade Zn-Pb is mined. The Agency noted that "this project involves a substantial construction phase prior to the commencement of the "activity" with a number of potential significant divisions comprising effluents, noise, vibrations, wastes and air", but that "the IPC license cannot control any construction related emissions that arise prior to the licence taking effect" (35).

The planning inspector's report relating to this project refers to the demarcation between the construction and activity phases and a number of problems arising (36). The report refers to a proposed decline, which will provide access to the mine workings, and which would involve the extraction of mineralised rock and other materials, their stockpiling, and their use in association with borrow materials in the construction of a tailings dam. Stockpiling of extracted materials on the site would certainly have the potential for pollution. The decline, during construction, would require the dewatering and grouting of surfaces again having the potential for pollution. The extraction/separation/grading and washing of borrow materials, with

settling ponds and discharge of water from such ponds, would also have the potential for water pollution which would not be controlled by an IPC licence.

The proposal includes the provision of a tailings dam, described by the inspector as an item of major construction which in itself "may not be a significant potential source of water pollution". The inspector's report notes that the EPA seek that the standard of construction on this dam be controlled at planning stage, on the basis that "it is essential that these installations be properly designed and their installation properly supervised and certified, as it will be practicably impossible for any IPC licence condition to retrospectively require this control, especially given the size and nature of the installations". In other words conditions are required at construction phase, the primary purpose of which would be the prevention of water pollution during the activity phase. In his report, the Inspector raises the question as to whether the Board is prohibited from even considering and, more so, applying conditions by way of planning control to ensure the adequacy of such installations.

5.3.3 Demarcation of Responsibilities

In this case, the demarcation between the responsibilities of the planning and licensing bodies is not clear cut. The inspector's report highlights the differences in interpretation of the responsibilities of the planning authority and the EPA by the various parties to the planning appeal. During the course of the application, the planning authority sought additional information on various aspects of the proposal, but the applicants claimed that some of the information sought was ultra vires as they were matters to be properly considered by the EPA. The Agency made a number of recommendations to the planning authority regarding matters needing to be addressed by construction phase conditions, and these matters included noise and

vibration, air emission controls, air emission monitoring, construction of tailings management facility (TMF), waste rock storage area, mine water treatment and well watering conditioning ponds, water emissions and waste emissions. In its final decision, the planning authority did not include specific conditions relating to environmental pollution (with the exception of noise), although it did include one general condition requiring the proposed development to be carried out and completed in accordance with submitted documentation including the Environmental Impact Statement. On appeal, An Bord Pleanála decided to grant permission subject to 45 conditions. These included conditions to be construed as relating to the period between the commencement of site development works and the day the ore body is intersected, the extraction for reward, and the post closure period. It is specifically stated that none of the conditions shall relate to matters which are the subject of IPC licence.

Section 3 of the EPA Act 1992 defines "activity" as meaning "any process, development or operations specified in the First Schedule". If an IPC licence is to cover the activity phase of licensable development, questions arise as to the precise scope of the term "activity". For example, many of the activities listed in the First Schedule may generate significant amounts of traffic with the potential for noise generation. This noise, which is directly related to the activity, but is not directly part of it, occurs both on and off the site and could have serious adverse impact on the amenities of the area. The question arises as to which body is responsible for conditioning the control of noise generation from such traffic both on and off the site. The licensable activity may be one of a number of activities or operations on the same site. In the Clarecastle Incinerator planning appeal (37), queries were raised as to whether or not the carrying out of test burns in the incinerator formed part of the licensed activity or was more properly related to the construction phase of the development. The Planning Appeals Board took the

view that test burns were part of a licensable activity.

5.4 EIS/EIA

5.4.1 Introduction

Turner and Morrow describe the Environmental Impact Assessment process as having a 3-fold role (38). Firstly, it is essential as a means of securing a pro-active or preventive approach to the question of environmental damage. Secondly, it could be used to give effect to the "polluter pays" principle by placing a burden of evaluating the environmental effects on those promoting development, and thirdly the process is, at least in part, geared to securing informed open and transparent decision making in environmental issues.

Turner and Morrow describe the concept of Environmental Impact Assessment as fitting into the wider EC policy of, whenever possible, taking action to prevent damage to the environment in preference to allowing damage to occur and taking remedial action. The Royal Commission on Environmental Pollution highlighted the fact that the development control process lends itself particularly well to this pre-emptive approach since an informed planning decision could actually go a long way towards preventing serious environmental problems arising, whereas an ill-informed decision can actually aggravate the adverse environmental consequences of a particular development (39). Turner and Morrow state that through environmental assessment the decision making process in development control is extended to cover environmental as well as more traditionally accepted social and economic processes (40).

But under the dual system what is the role of environmental impact assessment and how effective is the process?

5.4.2 Role and effectiveness of EIA in the dual system of control

In the cases where an EIS is required for a scheduled development and the activity is subject to IPC licensing, both the planning authority and the EPA are the legally competent authorities for assessing the EIS submitted. The planning authority is the competent authority insofar as the statement relates to the proper planning and development of the area, but not including environmental matters for which the EPA is the competent authority. There is no requirement for the developer to apply for planning permission and an IPC license simultaneously, and experience to date seems to indicate that the planning application is made first. A logical explanation for this approach would be that the developer wishes to know whether the project is acceptable on planning grounds before going to the expense (which may be considerable) of preparing an application for an IPC licence.

It is submitted that under the dual system of control considerable problems arise with regard to the content of Environmental Impact Statements, and that the effectiveness of the assessment by the competent authorities is open to doubt. The split of responsibilities between the planning and licensing systems insofar as it applies to the EIS/EIA process is confusing, and not conducive to public participation.

5.4.3 Scoping/Contents

An EIS must contain the information referred to in paragraph 2 of the Second Schedule of the 1989 Regulations, and may include information set out in paragraph 3 of that Schedule. The specified information is relatively wide-ranging and often a considerable level of technical detail is required. The level of detail required under the various headings varies from project to project. Before compiling an EIS the developer may consult with the competent authority with

regard to the level of information required. The level of information required by the planning authority under several of the headings specified will differ from the requirements of the EPA. Indeed it must be doubtful if the planning authority, in advising on the scoping of the EIS document, can give advice with regard to any information relating to the risk of environmental pollution as the authority would not be in a position to assess this information if submitted. The EPA is the appropriate body to advise on the scoping of an EIS insofar as it relates to matters concerning the risk of environmental pollution, where an IPC licence is required, but no application has been yet made. There is no formal requirement for a developer to consult either the planning authority, or the EPA or both before preparing an EIS. There is no legal requirement for scoping the EIS.

Where an IPC licence is required, the planning authority is required to send a copy of the EIS submitted to the EPA who consider matters relating to the risk of environmental pollution. The EPA, or any other party, cannot make written submissions to the planning authority in respect of matters relating to the risk of environmental pollution. In this vacuum the planning authority is required to determine the adequacy of the EIS insofar as it relates to matters concerning the proper planning and development of the area other than environmental pollution. It is submitted that it is neither practical or rational. By way of example, to demonstrate the inadequacies of this approach, circumstances could arise where a developer submits an EIS for a development with considerable potential for environmental pollution, but only makes sparse reference to matters relating to the risk of environmental pollution in the statement. The planning authority, in determining the adequacy of the statement, cannot have regard to this aspect of the EIS and objectors cannot make submissions to the planning authority regarding this aspect. The value of such a document in providing a useful tool to comprehensive decision making, and also encouraging public participation in a transparent decision making process is

questionable.

An examination of the specified information to be included in an EIS indicates that the EIS/EIA process was designed to facilitate an informed planning decision based on a comprehensive assessment of all of the likely significant effects of a proposed development. Under the dual system, which excludes the planning authority from considering a substantial portion of the EIS, it is submitted that this is not possible.

5.4.4 Practical problems in separation of detail

It is submitted that there is no clear cut separation which can be applied between planning criteria and criteria relating to environmental pollution. For example, many planning authorities have objectives as expressed in their Development Plans, for the protection of habitats and areas of scientific interest which are of ecological importance. Properly the protection of these areas is a planning consideration to be applied by the planning authority, yet where an IPC licence is required, significant impacts on these areas, identified in an EIS, cannot be considered by the planning authority.

The new Natural Habitats Regulations (41) require a local authority or An Bord Pleanála to seek an EIA in cases where a planning application is made for a development which, by itself, or in combination with other developments, is likely to have a significant effect on a European site. The local authority or the Board must have regard to the conclusions of the assessment before making the land-use decision and can only grant permission after having ascertained that the proposal would not adversely effect the integrity of the European site concerned. In cases where an IPC licence is required the EPA must also have regard to the conclusions of the EIA before making its decision. However, it is submitted that the restrictions placed on the local planning authority or An Bord

Pleanála in such cases are such as to severely limit the usefulness of the EIA to land use decision making where a European site is concerned.

Article 25 of the 1989 Regulations refers, in paragraph 3, to information which may be contained in an EIS, and this includes an outline of alternatives studied and an indication of the main reasons for choosing the development proposed taking into account the environmental effects. The usefulness of this type of information to the making an informed land use decision based on comprehensive information, including the comparison of alternative sites, is readily apparent. Such an exercise does not appear possible under the dual control system. In the case of the Masonite appeal, one of the criteria listed by the applicants for site selection was the availability of an adequate body of water for the dispersal of effluent. The inspector concluded that such criteria could not be considered by the Board, and stated that the omission of this criteria gave rise to problems in considering the suitability of the site and the various arguments about alternative sites.

5.4.5 **Public participation**

In cases where both planning permission and an IPC licence is required, the division of responsibilities in the Environmental Impact Assessment procedure is not conducive to public participation in the decision making process. There is no one body to which the public can make submissions regarding all aspects of the EIS, and the fact that two separate bodies are making separate decisions based on different criteria, including that contained in the EIS, is confusing. Experience indicates that an important public concern, in the case of major projects, is the suitability of the proposed site as compared with possible alternatives. In cases where the dual system applies, the EIS may not address this concern and the planning authority's assessment will be based on limited considerations, excluding some

of which the public may consider to be the most important in arriving at a land use decision. It is submitted that this has potential to erode public confidence in the decision making process.

5.4.6 Local authority landfill development

Under the Waste Management (Licensing) Regulations, 1997 there is a significant change with regard to landfill development by a local authority within its functional area. Previously the local authority was obliged to apply for certification by the Minister, and in cases where the proposal was for an installation for the disposal of industrial and domestic waste with an annual intake greater than 25,000 tonnes or where the Minister so instructed, the application had to be accompanied by an Environmental Impact Statement. With the introduction of waste licensing by the EPA, the determination of all environmental and planning issues will be a matter for the Agency. This appears to extend the responsibilities of the Agency to include land use considerations, in the case of local authority landfill developments.

5.5 OTHER PROCEDURAL MATTERS

5.5.1 Introduction

The activities for which an IPC license is required are listed in the First Schedule of the Environmental Protection Agency Act, 1992 (see Appendix B). A number of problem areas have been identified with regard to the wording and precise meaning of several of the activities listed. Some of these are defined by capacity, but there appears to be no guidance given in the Schedule as to how capacity is to be calculated. Planning and licensing applications do not have to be made simultaneously, and invariably are not. There is a need for a defined procedure whereby it may be determined in advance of a planning application if an IPC licence is required. This is essential

so that the planning authority can be sure of the parameters for its decision making, having regard to Section 98 of the EPA Act, 1992, and also of the extent to which it may consider an EIS, having regard to Article 58 of the 1994 Planning Regulations.

5.5.2 Schedules Activities

There is difficulty with the wording and precise meaning of several of the activities listed in the First Schedule of the EPA Act, 1992, and this may be illustrated by the following examples.

Scheduled Activity 1.3 reads;

The extraction and processing (including size reduction, grading and heating) of minerals within the meaning of the Minerals Development Acts, 1940-1979, and storage of related mineral waste.

Detailed examination of the wording of this activity shows that it only relates to scheduled minerals as set out in the Minerals Development Acts, 1940-1979. Derham observes that it excludes most stone quarries and sand and gravel pits regardless of their size (42). There is no threshold given, and so a small "one man" operation removing very small quantities of minerals would require an IPC licence in the same way as a large multi-million pound operation involving the mining of minerals. It is doubtful that this is what was intended, and Derham states that the scope of Class 1.3 is too prescriptive, and states that it is likely that the Agency will in the future seek an amendment setting size of operation thresholds below which an activity is exempt from IPC licensing (43). He also concludes that there are a number of huge rock quarries as well as sand and gravel operations that present a far greater pollution potential, which are currently outside the scope of the IPC licensing, which should be included in a revised wording of the scheduled

activity. A second difficulty in the wording of 1.3 identified by Derham is the matter of mine waste storage (44). The Agency takes the view that storage of mineral waste is licensable only when related to IPC'ed extractive and processing operations. "Related" could mean waste either produced in the same operation by the company operating the processing plant, or it could mean waste storage by a separate company on contract where the waste originates from an active IPC'ed operation. Historic mineral waste storage is not included.

Schedule Activity 8.6 reads :

The fell-mongering of hides and tanning of leather in installations where the capacity exceeds 100 skins per day.

This wording lists two separate operations, and gives a capacity figure. One interpretation is that both operations, namely the fell-mongering of hides and tanning of leather would have to take place on the site before the activity became licensable, whereas a second interpretation would be that either or both of the operations would be licensable if the capacity of 100 skins per day was exceeded.

There is need for clarification as to how the capacity figure is determined. Is this actual capacity or potential capacity? The capacity of the plant could fluctuate depending on demand and availability of raw materials. Precision is needed at the outset to enable the planning authority to know what parameters it must confine itself to in assessing a planning application.

Scheduled Activity 6.2 reads;

The rearing of pigs in installations, whether within the same complex or within 100 m of that complex, where the capacity exceeds 1,000 units on gley soils and 3,000 units on other soils

and where units have the following equivalents -

1 pig = 1 unit

1 sow = 10 units

The wording of this activity does not make reference to stocking densities, or to the nature of the lands on which the pig manure and wash waters are to be spread. It is unclear if IPC licensing can control land spreading on lands outside of the specific site, although the EPA BATNEEC Guidance Note for the pig production sector (45) does refer to the spreading of pig manure and wash water. The method of calculating capacity as detailed in the BATNEEC note, where a sow is taken to be the equivalent of 10 units and no additional allowance is made for the progeny of the sow, could be open to legal challenge.

5.5.3 Timing of planning/licence applications

There is no requirement to make applications for planning permission and an IPC licence simultaneously. In practice the planning application is usually made first, and once permission has been obtained the IPC licence is applied for. This system is open to problems.

If a planning application is made for a development, and a statement made that the activity to be carried on will be subject to IPC licensing because it exceeds a capacity level set in the First Schedule of the EPA Act, 1992, the planning authority is obliged to assess the proposal within the constraints of Section 98 of the EPA Act. If permission is granted and subsequently, due to a change in circumstances, the applicant indicates that the level of activity is reduced to the extent that it no longer reaches the capacity set in the First Schedule, an IPC licence may no longer be required. In such a case planning permission would exist for a development including a use, but where the planning authority had not considered any matters

relating to the risk of environmental pollution in its assessment.

In the Masonite appeal, a question arose as to the extent to which (if at all) the planning control system could take account of the possibility that the EPA in granting a licence might require certain alterations to a development e.g. an increased height of chimney stacks (46). Development which is required to comply with a condition of an IPC licence may be exempted development under the planning regulations. Section 84 (4) of the EPA Act, 1992 seeks to deal with such a situation and requires the Agency to consult with the planning authority in whose functional area the activity is located. Where the Agency considers that any development which is necessary to give effect to any conditions attached to a licence or revised licence, and which is not the subject of a permission or an application for permission under the Planning Acts, it may attach to the licence or revised licence conditions specified by the planning authority concerning the proper planning and development of the area and which relate to the development concerned. There does not appear to be any mechanism whereby the EPA may refuse a licence for reasons relating the proper planning and development of the area. It is easy to foresee circumstances where an application for an industrial use on a site over which views and prospects are listed for preservation in the Development Plan, would not show chimney stacks on the planning application drawings, on the basis that this would be the matter for consideration under the IPC licence. Should this happen, the planning application would be decided on incomplete information and the public would be unable to assess the full planning implications of the proposal at planning permission stage.

5.5.4 **Overlap of roles**

The Department of the Environment states that the separation of planning and environmental control functions in respect of activities

which require an IPC/Waste licence avoids, as far as possible, a duplication of effort between regulatory authorities (47). It clearly separates land use considerations, properly a function of planning authorities, from environmental pollution considerations which are the concern of the EPA. In general, the relevant legislation details the separation of responsibilities, but there are several areas where there is an apparent departure, and the planning function becomes the function of the EPA. Examples are as follows:

a) The definition of "environmental pollution" in both the EPA Act, 1992, and the Waste Management Act, 1996 refers to the disposal of waste which would adversely affect the countryside or places of special interest. This would appear to be a planning issue tied in with land use considerations.

b) Section 62 of the EPA Act, 1992, requires the Agency to specify and publish criteria and procedures for the selection, management, operation and termination of use of landfill sites for the disposal of domestic and other wastes. The issue of site selection for a landfill is to a great extent a planning issue concerned with land use considerations.

c) It is intended to introduce regulations which will require the waste licensing of local authority landfills within their functional area by the EPA. The Agency will determine all environmental and planning issues, including the fundamental land use issue.

d) Section 84(4) of the EPA Act, 1992 gives discretion to the Agency to apply conditions to a licence, specified by a planning authority, for the purposes of the proper planning and development of the area.

e) Noise has traditionally been a planning consideration. The

EPA Act, 1992 amends the 1963 Planning Act specifically providing for the inclusion of objectives in a development plan for securing the reduction or prevention of noise. However, in the case of IPC'ed activities noise becomes the concern of the EPA and cannot be considered by the planning authority.

6. AN EXAMINATION OF THE PLANNING CONTROL AND IPC LICENSING SYSTEMS IN THE U.K. AND HOLLAND

6.1 INTRODUCTION

This chapter examines the systems adopted for planning control and IPC licensing in two other European countries. The U.K. is chosen as it is our nearest neighbour and the Irish planning system has been greatly influenced by planning practices in the U.K. The section on the U.K. refers specifically to England and Wales; Northern Ireland and Scotland have somewhat varied planning systems. Holland has a well defined spatial planning system based on development plans. The two countries have pollution control systems which differ in interesting ways from the system which has been developed in Ireland.

6.2 THE U.K. SYSTEMS

6.2.1 The Planning System

The Town and Country Planning Acts set out the framework for the planning system. There are two central elements in the system; these are the provision of indicative guidance through Development Plans and the control of development proposals on a case-by-case basis through development control (48).

Planning operates at a number of different levels. Central Government is responsible for legislation and the issuing of policy statements and planning policy guidance. County Planning Authorities make structure plans. These address topics such as major industrial developments and waste treatment and disposal facilities. At district level the planning authority is responsible for the preparation and implementation of local plans.

6.2.2 Development Plans

Planning authorities are responsible for the making of Development Plans. There is no national plan. Outside of metropolitan areas, development plans comprise the county structure plan and various local plans (49). In metropolitan areas these elements are combined into unitary development plans. All plans contain provisions relating to environmental protection and the risk of environmental pollution.

In preparing development plans, planning authorities must have regard to national planning policy guidance as well as regional guidance, and must comply with EU requirements. Structure plans set the framework for local plans. They provide a means of balancing the needs of potential polluting activities with other priorities such as the improvement of the physical environment, the conservation of the natural environment and amenity, the protection of natural resources, and for economic development (50). They include strategic land use policies relating to the location of potentially polluting developments and the location of sensitive developments in the vicinity of existing polluting developments. Local plans provide the framework for most development control decisions. They must take account of the policies and proposals set out in the structure plan. Local plans normally include a combination of site specific policies for potentially polluting development and criteria against which applications for such developments may be determined. Planning Policy Guidance 23 (51) detail the following factors which the planning authority should take into account in preparing local plan policies

- Constraints on development resulting from the need to comply with any statutory environmental quality standards or objectives.

- The need to identify land, or identify criteria for industrial

uses with the potential to pollute.

- The need to separate potentially polluting and other land uses.

- The possible impact of potentially polluting development on land use, including effects on health, the natural environment, or general amenity, resulting from releases to water, land or air, or of noise, dust, vibration, light or heat.

- The environmental consequences where known of former land uses.

- Completed landfill sites which would be suited to development or other use,

- The need to secure restoration and pollution control standards sufficient to ensure that land is capable of an acceptable afteruse.

- The need to protect natural resources and improve the physical environment.

- The economic and wider social need for potential polluting development and the requirement to identify appropriate locations for such developments.

County Councils and National Park Authorities are required to prepare waste local plans, or combined minerals and waste local plans. These indicate areas intended for mineral working, the disposal of spoil and proposals for environmental protection, after-treatment of workings and longer term reserves; and development associated with the deposit, treatment, storage of refuse or other (non-minerals) waste materials (52).

Planning authorities must make public the matters to be included in a Development Plan, and must consider any comments made. A public inquiry may be held on a Draft Development Plan. County planning authorities are responsible for adopting structure plans, and local plans are adopted by the local authority.

6.2.3 Development Control

The planning authority's decision must be made in accordance with the Development Plan, unless material considerations indicate otherwise (53). In addition to the potential, economic and social benefits of the development, PPG23 refers to other material considerations which may include:

- The availability of suitable land for potentially polluting development, having regard to the proximity to other development or land use,
- The sensitivity of the area as reflected in landscape quality, nature, conservation or archaeological designations,
- The loss of amenity which potential pollution would cause,
- Any particular environmental benefits,
- Site design and visual impact of the development,
- Site condition,
- The proposed afteruse of the site,
- The potential use of mineral workings sites for landfill,
- The hours of operation required by the development and

their possible impact on neighbouring land use,

- The possibility that nuisance might be caused, for example, by the release of smoke, fumes, gases, dust, steam, smell or noise, where not controlled under other legislation,

- Transport requirements arising from the need to transport polluting substances or waste.

The guidance refers to other considerations which may have land use implications but which are likely to be the responsibility of the Pollution Control Authority. The Pollution Control Authority can address these considerations through its own mechanisms. Planning authorities are advised to consult the Pollution Control Authority in the case of particularly sensitive developments.

Interestingly, PPG23 indicates that the perception of risk of pollution should not be material to the consideration of a planning application unless the land use consequences of such perceptions can be clearly demonstrated. Where such consequences are considered unacceptable and cannot be overcome by appropriate planning conditions, permission may have to be refused. However, a lack of confidence in the effectiveness of controls imposed under pollution control legislation is not deemed to be a legitimate planning ground for refusal of a planning permission.

The Secretary of State may "call in" a planning application and make its own decision; this is normally done when the proposal is not in accord with the Development Plan. In other cases, the person seeking permission can, if permission is refused, or if conditions imposed are unacceptable, appeal to The Secretary of State. Others affected by the application have no right of appeal.

6.2.4 Integrated Pollution Control (IPC)

The EPA Act 1990 introduced IPC which came into operation in April, 1991. This is now operated by the Environmental Agency which was set up in 1996 bringing together the responsibilities of Her Majesty's Inspectorate of Pollution (HMIP), the national rivers authority (NRA) and the waste regulation functions of Local Government. IPC imposes pollution control standards over a range of processes which have the greatest potential to pollute, and requires operators to consider the total impact of all releases to air, water and land.

In granting authorisations the Agency must ensure that:

- The operator is using BATNEEC to prevent or minimise releases of substances prescribed for any environmental medium, and to render harmless any prescribed substances which are released and any other substances which might cause harm if released into any environmental medium.

- Where a process involves likely releases to more than one medium BATNEEC must be used to minimise pollution to the environment as a whole having regard to the best practicable environmental option (BPEO) as regards the substances which may be released.

- Authorisations where necessary include conditions which secure compliance with any direction from the Minister of State to implement EU or international obligations, or any statutory environmental quality standards or objectives, or other statutory limits, plans or other requirements (54).

IPC can be varied at any time and must be reviewed at least once every four years. The operator has the statutory right of appeal to the Secretary of State for the Environment.

6.2.5 Environmental Assessment (EA)

Certain projects specified in the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 require an EA to be carried out before planning permission may be granted. The Environmental Agency is a statutory consultee, and may make representations to the planning authority. The planning authority considers all of the information contained in the environmental statement (ES), together with any representations made by a statutory consultee, or any other person. This information enables the planning authority to determine whether planning permission should be granted in the light of any likely adverse environmental effects or whether conditions, which are properly the responsibility of the planning authority, should be imposed requiring the applicant to take steps to reduce likely adverse effects.

6.2.6 Integration/Demarcation of Systems

The planning and pollution control systems are separate but complementary. Both are designed to protect the environment from the potential harm caused by development and operations, but with different objectives.

PPG23 advises that the planning interest must focus on any potential for pollution, but only to the extent that it may affect the current and future uses of land. The potential for pollution affecting the use of land is capable of being a material consideration in deciding whether to grant planning permission. The planning system should also control other development in proximity to potential sources of pollution. In this way the occupants of new development may be protected from pollution, and existing potentially polluting industry should not face unreasonable constraints.

Planning authorities are advised to consult with the Agency in order

that they can take account of the scope and requirements of the relevant pollution controls.

The Environment Agency is a statutory consultee for planning applications relating to specified developments. The Agency may assist in the public inquiry for a planning case providing expertise on pollution control.

Planning authorities are advised to consult with the Agency when preparing Development Plans and to involve the Agency in strategic planning decisions where appropriate.

6.3 THE DUTCH SYSTEMS

6.3.1 The Planning System

The basic legal framework for spatial planning is provided by the Spatial Planning Act 1965, as amended by subsequent Acts in 1986 and 1994. The Dutch System is plan centred and there is no specific requirement to obtain planning permission for proposed developments. Spatial planning operates at 3 levels, each with different responsibilities as follows:

National Level	National spatial planning policy document.
	National structure plan for a specific policy sector.
	Directives.
	Exemption Provisions.

Provincial Level (12 Councils)	Regional spatial plan.
	Approval of local land use plans.
	Regulations.
	Directives
Local Level (625 Municipalities)	Structure plan.
	Local land use plan.
	Building and construction permits.
	Exemptions

6.3.2 Development Plans

At national level structure plans may be adopted for different policy sectors e.g. National Structure Plans for Traffic and Transport and Rural Areas. These plans contain guidelines and principles important to national spatial planning policy, and policy guidelines on the spatial aspects of the particular sector in the medium and long-term (55). The preparation of regional plans is the responsibility of Provincial Councils. These plans outline the main aspects of future spatial development, and provide the basis for local land use plans. It is not obligatory for a provincial council to prepare a regional plan, unless directed by the Minister. Regional plans are indicative rather than binding, but limits of departure from the provisions of the plan must be stated in the plan itself. Once made, a regional plan must be "reported" to the Minister. Regional plans must be reviewed at least once every 10 years.

Structure and local land use plans are prepared by the Municipal Council, and are implemented by the Municipal Executive. The structure plan contains a broad outline of the future development of the entire municipality. It is descriptive and general. It must be reviewed at least once every 10 years. Local land use plans provide the framework for most spatial planning decisions at local level. The Municipal Council must draw up a local land use plan for the part of the municipality outside the built-up area but it is not compulsory to prepare a plan for built-up areas. Local plans are legally binding on citizens and Government bodies. Insofar as it is necessary for spacial planning, a local land use plan outlines the designation of the land covered by it and, if required as part of the designation, issues regulations for the use of land and buildings within the plan area. It provides a legal basis for construction permits, obliging private developers to contribute to the costs of providing certain public services, claiming compensation for loss of value, and for compulsory purchase. There is a provision for public participation in the preparation and making of local plans and in their review which must be at least once every 10 years.

Higher tier authorities have powers to oblige the municipality to amend its local land use plan to comply with national or provincial spatial planning policy. If there is a project of national or regional importance, the Provincial Executive or the Minister may intervene and advise the municipality to grant the necessary permits e.g. for a waste disposal site.

Central Government plays a direct role in the implementation of plans. In the majority of cases Central Government finances a minor (but indispensable) part of the implementation. In 1991, there was an annual budget of 15 million guilders (IR£4.98 in July, 1997) for the implementation of physical planning policy (56). The following priorities are set for investments:

a) the competitive position of the Netherlands,
b) co-ordination with residential accommodation/ work/ amenities and public transport,
c) maintenance, modification and renewal of the rural area,
d) implementation of integrated physical planning and environmental policy.

6.3.3 Development Control

There is no separate system providing for the grant of planning permission. Building permits may be required under housing legislation. In the case of a proposal on land not covered by a local land use plan, a building permit has the character of a broadly based technical permit (safety, health, utility of the proposed building works). When the application concerns land which is covered by a local land use plan, then the provisions in the plan must be applied. In this case, the building permit has the character of the combination of a technical permit and a planning permission. The test with regard to the Building Regulations includes some aspects which would normally be considered planning matters, such as visual appearance and change of use from residential function.

6.3.4 Environmental Control

Environmental problems in the Netherlands are classified in three ways as follows:

a) on the basis of target groups. These are identifiable groups which make a large and relatively homogenous contribution to the environmental burden,

b) on the basis of 'compartments' (water, air, soil, and waste substances).

c) on the basis of environmental themes. Eight themes are identified as follows:

- climate change
- acidification
- eutrophication
- dispersion
- waste disposal
- nuisance
- desiccation (groundwater depletion)
- resource dissipation (57)

In order to tackle these environmental problems, policies are formulated and realised through regulation (legislation and regulations), the development of financial incentives (e.g. levies and subsidies) and indirect measures (e.g. the provision of information) (58).

The First National Environmental Policy Plan (NEPP1) outlined the environmental problems and listed action points for the period 1990-1994. This was an integrated plan covering air, water, soil, noise abatement and waste substances. The main principles applied in the first NEPP are:

- sustainable development
- two-track policy: i.e. that use be made of effect-orientated measures (e.g. environmental zoning) and source-orientated measures (e.g. requirements imposed on products and businesses)
- the 'polluter pays' principle
- the application of the best available techniques
- the standstill principle: objectives should aim to avoid any further deterioration in environmental quality

- internalisation: i.e. taking account of the environment must become second nature.

The overall aim of NEPP1 is to achieve sustainable development within one generation (25 years). The plan sets quality objectives for each environmental theme by the years 2000 and 2010 and defines the percentage reductions in key pollutants required to meet them. Responsibility for achieving these emission reduction targets is placed with the target groups (59).

NEPP1 was followed up by the National Environment Policy Plan Plus (NEPP+) in 1990, and the Second Environmental Policy Plan (NEPP2) in 1993. NEPP2 is mainly concerned with improvement in implementation.

Figure 4 illustrates the Environmental Quality Objectives and Emission Reduction Targets in the NEPP and NEPP+. Details of the target group approach adopted in NEPP2 are given in Appendix C.

In 1990 the Government introduced an integrated, deregulated and modernized Environmental Management Act (EMA), the first sections of which came into force in March, 1993. This Act introduced provisions for licences (or permits) and general rules with regard to installations (60). Installations are defined as "any enterprise undertaken by man commercially, or of a size commensurate with a commercial enterprise, which is conducted within certain bounds". It is against the law to set up, modify or operate an installation without a permit. Exemptions from this procedure can be given for groups of (usually smaller) installations by national government which can introduce general rules concerning installations in an administrative order.

SCALE	NEPP THEME	QUALITY OBJECTIVE	EMISSION REDUCTION TARGET
Global	Climate change	Restoration of quality of higher air layers such that human health risks negligible; agriculture and natural resources not damaged	Stabilise CO_2 emissions at average 1989-1990 levels by 1995 Absolute reduction of emissions by 3-5% by 2000.
Continental, Regional and Local	Acidification	Improvement of environmental quality in Europe such that ecosystems, cultural heritage, human health, agriculture and groundwater can be protected with 'normal maintenance'	Reduce emissions of acidifying substances (principally SO_2, NH_3, VOCs and NO_x) by 70 to 80 per cent
Continental, Regional and Fluvial	Eutrophication	Lakes, rivers and coastal areas can provide good drinking water, safe recreation and commercial fishing without need for excessive purification costs	Reduce emissions of eutrophying substances (principally P and N) by 70 to 90 per cent
Continental, Regional and Fluvial	Dispersion	Environmental quality of all media such that human health risks kept to acceptable levels and ecosystems, agriculture, natural resources not degraded or in need of elaborate remediation	Reduction in emissions of priority substances (eg heavy metals, pesticides, some hydrocarbons) by 50 to 70 per cent
Continental, Regional and Local	Waste disposal	Risks from waste disposal to humans and the wider environment reduced to an acceptable or, where possible, negligible, level	Decrease in size of the Netherlands waste stream by 70 to 90 per cent; decrease landfill of waste by 80 to 90 per cent; dispose of all waste, with a few exceptions, within the Netherlands' borders
Local	Local nuisance	Only negligible health risks run in the ambient environment and no serious nuisance experienced that would cause people to be excessively restricted in their residential choice	Number of people experiencing noise nuisance in 2000 to be no greater than number in 1985. No more than 750,000 households experiencing odour nuisance by year 2000
Regional and Local	Groundwater depletion	Water consumption in equilibrium with capacity of surface water and ground water resources	Areas with signs of water depletion must be no larger in 2000 than in 1985 and reduced by 25% by the year 2020

Figure 6: Environmental Quality Objectives and Emission Reduction Targets in the NEPP and NEPP+

Source: Ministry of Housing, Spatial Planning and the Environment, The Hague.

For most installations, the provinces and the municipalities are the competent authorities to decide on an application for a permit. The provinces issue permits to larger installations and the municipalities are responsible for the licensing of relatively small industrial premises. When a permit is given, it must contain all the necessary regulations to protect the environment. The regulations must ensure that adverse effects on the environment are "as low as reasonably achievable"; this is called the "alara" principle. This means that the best available techniques must be used unless this cannot be reasonably required. Decisions of the administrative authority may be appealed to an appeal authority, and all interested parties have the right to be heard. The appeal authority must give a ruling within 16 weeks of receipt of the notice of appeal.

6.3.5 Coordination

One aspect not included in an EMA permit is the pollution of surface waters. This aspect is controlled by the Water Boards. When an installation needs both an EMA permit and a permit based on the Pollution of Surface Waters Act, coordination is obligatory. When coordination cannot be reached, the provinces can give a binding instruction to the Water Boards. Any decision on a building permit granted under the Housing Act must also be coordinated with the EMA permit.

In the Town and County Planning Policy, the Environmental Management Act and the Water Management Act the provincial administration is emphatically charged with the responsibility of coordinating the structure plan, municipal environmental policy plan and water management plan. Between them, these plans contain the main principles of the provinces town and county planning policy, environmental policy and water management policy.

6.3.6 Environmental Impact Assessment

The Environmental Impact Assessment Decree of 1987 makes EIA compulsory in practice and determines the scope of EIA. The Order indicates the activities and decisions subject to assessment. In general, these are the ones likely to have the most detrimental impact on the environment and include:

key planning decisions at national level,
water and mineral extraction,
industrial activities,
waste disposal.

Examples of decisions which have to be taken regarding these activities are :

environmental permits and regional, structure and local land use plans (61).

The EIA procedure is illustrated in Figure 5. The competent authority is the Government agency responsible and which is competent to decide about the activity proposed. Interestingly, there is an independent EIA Commission which advises on the scoping of the statement, and also reviews the EIS, checking against legislation, implementary regulations, and scoping guidelines, before reporting back to the competent authority. The EIA Commission, which is a working group of independent experts, does not concern itself with the acceptability of the proposed activity. In making its decision on a proposal, a competent authority is obliged by law to consider all aspects of the EIS, results of the public review, advice and the EIA Commission check. The EIA provides an integral and complete picture of possible negative effects on the environment caused by a planned activity. The primary aim of the Dutch EIA system is to ensure that the interest of the environment can be included in the

decision making process. The competent authorities decision must be reasoned and indicate the weight attached to the environmental interest in relation to other interests.

Another interesting feature of the Dutch EIA system is the requirement of an ex post evaluation. For each prescribed activity, the competent authority must investigate the consequences of the activity for the environment while it is actually being undertaken or after that. The reasoning behind this procedure is to compel the competent authority to focus on the actual environmental impacts of the decision it has taken. The procedure for ex-post devaluation is illustrated in Figure 6.

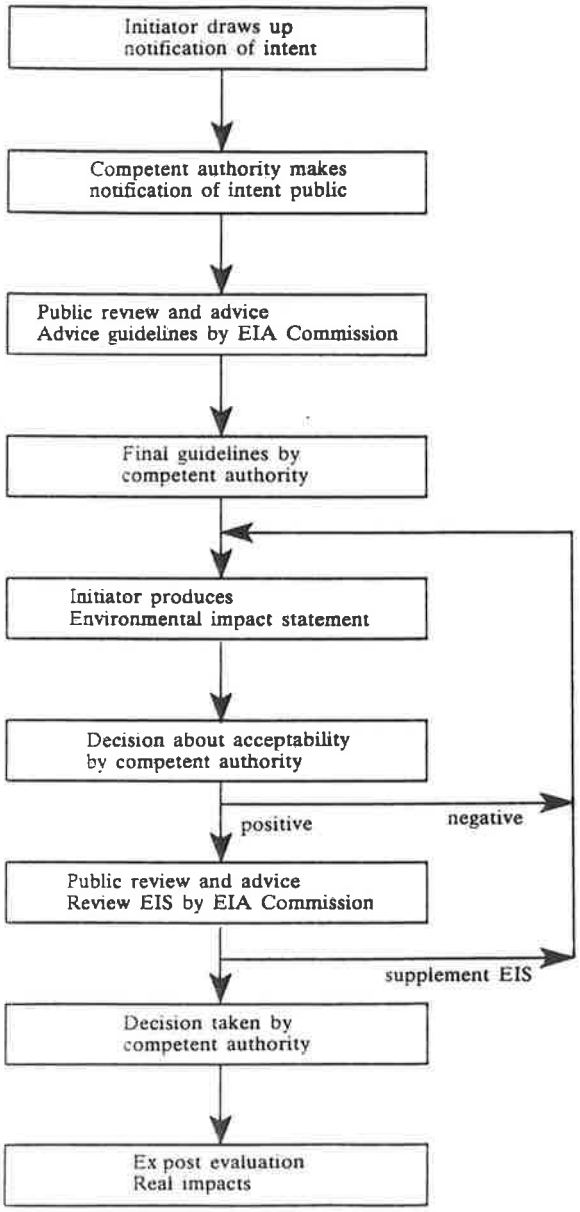


Figure 4: The Dutch EIA Procedure

Source: Jos Arts, in Issues in Envirnomental Planning (1994).

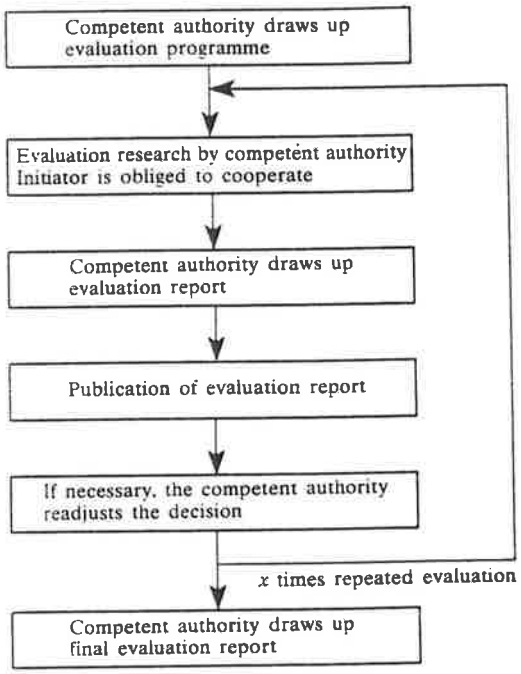


Figure 5: Ex post evaluation procedure.

Source: Jos Arts, in Issues in Environmental Planning (1994)

7.0 CONCLUSIONS AND RECOMMENDATIONS

7.1 INTRODUCTION

The interface between the planning control and IPC licensing systems is relatively new and is still evolving. The Irish Government's strategy on Sustainable Development recognises the need for review (62). It states "unavoidably... the separation of planning and IPC/waste licensing procedures may sometimes create an artificial divide when dealing with a project as a whole", and that "the operation of these complementary procedures will be kept under review and further adapted as appropriate, in the light of experience".

This chapter attempts to draw some conclusions based on the operation of the dual system of control as operated to date, and to make recommendations as to how the system might be improved in the future. The same general headings as outlined in Chapter 5 will be used. It is recognised that many of the recommendations will require legislative changes.

7.2 LAND USE DECISION MAKING

It is submitted that land use considerations and decision making are properly functions of the planning authorities. This is recognised in the Government strategy on Sustainable Development produced in May, 1997 (63). The promotion of an efficient and responsible land use system is required in order to ensure the protection and enhancement of the physical environment and good existing buildings, the provision of new development when and where it is needed, and the achievement of an acceptable balance between allowing and encouraging development and the protection of the environment (64).

In the case of licensable activities, it appears to be intended that planning authorities should be responsible for the land use issues and that the EPA should consider all matters relating to the risk of environmental pollution from the activity. However, it is submitted that under the present system of control the land use decision of the planning authority cannot be made having considered all matters relevant to the proper planning and development of the area. The Development Plan has traditionally played an important role in land use decision making but, significantly, its importance is diminished under the dual control system now adopted.

7.2.1 Development Plans

The Supreme Court has recognised the importance of the development plan and its role in regulating and controlling development (65). The making of a plan gives the public the right to participate in the planning process and the adopted plan provides a degree of assurance as to how an area is to develop over a specified period of time. Development plans may contain objectives relating to a wide range of matters including environmental protection, waste disposal, reduction and prevention of noise, and the protection of sensitive landscapes. This is similar to the situation in England and Wales but contrasts with the Dutch system. In Holland, however, there is a National Environmental Policy Plan, and municipal authorities may adopt Environmental Policy Plans.

The value of the Development Plan in land use decision making is significantly reduced in cases where a licensable activity is concerned. The planning authority and An Bord Pleanála are prevented from considering any matters insofar as they relate to the risk of environmental pollution. This restriction on the planning authority may prevent it taking account of significant sections of the Development Plan where they relate to such matters. Furthermore, the EPA is not obliged to have regard to the development plan in

considering an application for an IPC licence.

In the virtual absence of sectoral or integrated environmental policy plans, and with the reduced importance placed on statutory development plans, it is submitted that the opportunity for public participation in strategic land use decision making is also diminished. It is interesting to note that Ireland is following the course of sectoral environmental management plans (air, water, waste) and integrated pollution control licensing. The Dutch system has turned away from sectoral plans in favour of integrated plans.

While urban development plans include zoning objectives which may stipulate uses which are permitted and open for consideration, most development plans relating to rural areas do not include land use zoning objectives. It is submitted that, under the dual system of control, it may not be possible to refuse permission for the reason that the proposed development materially contravenes the zoning objective. This view is based on the fact that the criteria used for drawing up zoning objectives will often include the consideration of matters relating to the risk of environmental pollution. In the case of rural plans, the planning authority must consider the merits of a proposed development often in the absence of zoning objectives. Where a licensable activity is concerned, coherent land use decision making is not possible. In cases where there is a planning appeal, An Bord Pleanála must decide on the appropriateness of a zoning objective.

Recommendations

1. The planning authority should be permitted to take all of the provisions of its development plan (in addition to all the other matters relating to the proper planning and development of the area) into account in making a land use decision. In cases where a licensable activity is concerned and the planning authority is

considering refusal for a reason or reasons relating to material contravention of objectives in the plan concerned with environmental pollution, or other matters related to environmental pollution, there should be a statutory obligation on the planning authority to consult with the EPA and to take its view into account before making its final decision. There should be provision for a one month extension of time for the planning authority's decision in such cases.

2. An Bord Pleanála should be permitted to have regard to all provisions of a Development Plan in coming to its decision. Provision should be made for formal consultation with the EPA in appropriate cases.

3. All consultation documents between the planning authority, An Bord Pleanála and the EPA should be made available for public inspection on the planning file, and the parties and the public should be given a right to comment.

4. Rural development plans should include either zoning objectives, or general policies where there is a presumption against certain types of development.

5. The EPA should be a prescribed authority to which a draft of a proposed development plan is sent, and should have a statutory right to make representations to the planning authority with regard to the draft. The planning authority should be obliged to have regard to any policy statement made by the EPA in the making of the draft plan, and to any submissions made by the Agency with regard to the draft plan, before adopting a plan. A proposed interface between the planning authority and the EPA is illustrated in Figure 7.

6. Provision should be made for the inclusion in Development Plans of sites reserved for particular types of industry with unique planning requirements and for the infrastructure required to service these sites.

This is in line with a recommendation of the Industrial Policy Review Group (66). Where sites are designated in a development plan, this should establish the principle of the development, and planning permission should not be required. The development plan should include regulations relating to building height, finishes and landscaping.

7. Provision should be made for the required inclusion in local development plans of strategic land use decisions taken at national or regional level. Such decisions could include the reservation of sites for particular industrial uses and landfill sites. It is considered that strategic land use decisions should be made at higher levels, but it is outside of the scope of this thesis to elaborate on this particular argument.

8. Consideration should be given to the concept of Environmental Zonings to replace the traditional land use zonings. Such zonings make provision for environmental loadings and relate these to the sensitivity of the land uses involved.

9. Provision should be made to the making of integrated environmental plans at local level. Local authorities should be encouraged to make such plans. The EPA should be statutory consultees. There should be a right of public participation in the plan making procedure.

10. The competitive position of Ireland should be a consideration to be taken into account in the preparation of development plans and in the development control and licensing control systems.

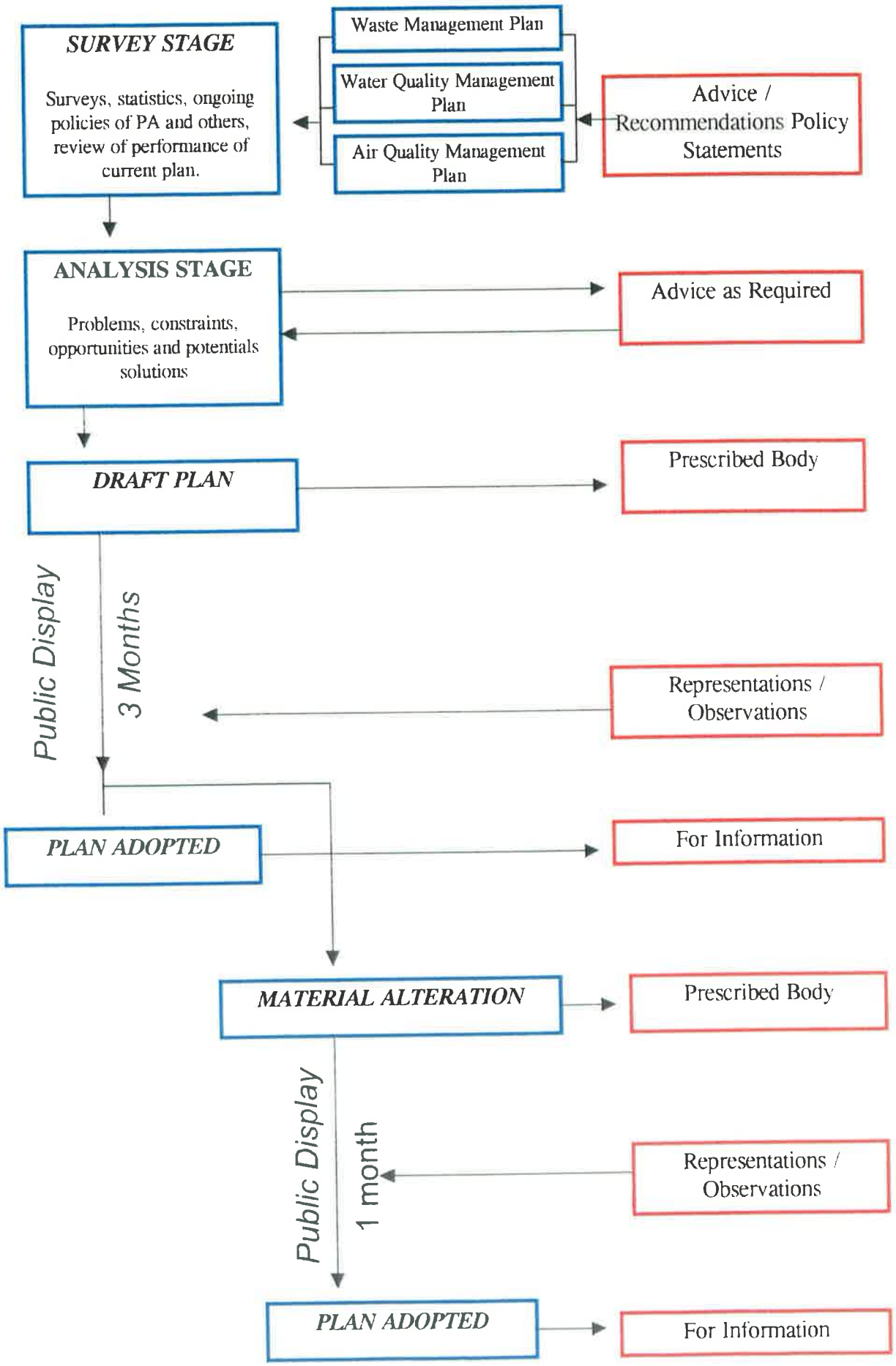


Figure 8: Proposed interface in the Planning Decision Making Process where there is an EIS.

7.2. 2 Matters to be considered by the planning authority

Where a licensable activity is involved, there are significant problem areas in the dual system of control and these have been outlined in detail in Chapter 5. Under the restrictions imposed by the EPA Act, the Waste Management Act, and the 1994 Regulations, many important matters relating to the proper planning and development of the area cannot be taken into account by the planning authority

In a judgement in the High Court in England (Gateshead Metropolitan Borough Council v Secretary of State for the Environment and Northumbria Water Group PLC.) Sullivan J. addressed the subject of material considerations in a planning decision (67). He expressed the view that "it is clear beyond any doubt that the environmental impact of emissions to atmosphere is a material consideration at planning stage" and that "in my judgement the Secretary of State could not lawfully adopt a policy of hiving off all considerations of such environmental effects in their entirety to the EPA regime". The judgement recognises "whilst environmental pollution is a material planning consideration, so to is the system of authorisation under the EPA". The Judge expressed the view that it was a matter for the EPA or the Secretary of State to decide if "remaining pollution concerns are capable of being dealt with by the EPA". It is submitted that these views give a reasonable insight into matters which should logically be taken into account in the making of planning decisions.

The definition of "environmental pollution" is very broad and could be interpreted as including many matters normally considered by the planning authority. Noise has traditionally been a planning concern and an important factor in the determination of zoning objectives. Reference to the disposal of waste which would "adversely affect the countryside" appears to be very wide ranging and to include land use

and other planning considerations such as the protection of visual amenities. It is submitted that the definition of "environmental pollution" needs to be more tightly defined in the interests of clarity.

The perception of environmental pollution is an important consideration. The U.K. system appears to accept that such perception may have land use implications for the consideration of the planning authority. In the Masonite appeal, the Inspector expressed the view that the perception of environmental pollution was not a matter for the consideration of the planning system, having regard to the restrictions imposed by legislation. It is submitted that the perception of environmental pollution does have land use implications and should be legitimately a planning consideration.

Recommendation

1. In the case of licensable activities, the planning decision should be based on the consideration of all matters relating to the proper planning and development of the area. There should be a statutory consultation procedure adopted to enable the EPA to make submissions in relation to the environmental pollution aspects arising in such cases and the planning authority should be required to have regard to such submissions in making its decision. There should be provision for a one month extension of time for the planning authority's decision in such cases.

2. Where the planning authority is disposed to grant permission, but considers that conditions should be imposed relating to the prevention, limitation, elimination, abatement or reduction of environmental pollution, this view could be expressed in the Planning Officer's report which is attached to the public file and should be made available to the EPA. No conditions relating to environmental pollution should be attached to the planning authority's decision insofar as they relate to matters to be considered

by the EPA.

3. In the event of a planning appeal, and the holding of an oral hearing, the EPA should have a statutory right of attendance and participation. Where appropriate, there should be provision made for the holding of joint oral hearings. The procedure for the holding of joint oral hearings would need careful consideration. It may not be possible to permit the EPA to make submissions to a joint oral hearing, as this could be seen as being prejudicial to the independence of the Agency.

4. All correspondence relating to the statutory consultation procedure should be available for public inspection on the planning file, and the parties and public should be given a right to comment.

5. The definition of "environmental pollution" should be more tightly defined, and should be included in both planning and environmental legislation.

6. Lack of confidence in the effectiveness of controls imposed under pollution control legislation should not be a legitimate ground for refusal of planning permission where an activity is licensable.

7.2.3 Local Authority Landfill Developments

In the case of new local authority landfill developments, the certification procedure implemented by the Minister is to be replaced. In the future, the determination of all environmental and planning issues in such cases are to be a matter for the EPA (68). This gives a land use function to the EPA. The EPA is not a land use authority and does not have an Inspectorate with expertise in land use matters. This is, at least, unsatisfactory and not likely to enhance public confidence in the decision making process, particularly where there are emotive issues concerned such as the siting of landfill sites.

Recommendation

1. The EPA should engage the services of qualified persons with land use expertise. This could be in the form of full-time inspectors, private consultants on a case-by-case basis or, alternatively a formal consultative process could be set up involving the Inspectorate of An Bord Pleanála or the Department of the Environment.

2. There should be joint assessment of EIS's for local authority landfill developments. This joint assessment should be carried out by the EPA and An Bord Pleanála.

7.3 CONSTRUCTION VERSUS ACTIVITY

7.3.1 Introduction

The EPA sees a clear distinction between the construction and activity phases of a development. The Agency interprets its role as the licensing, regulation and control of the activity phase of a is confusing and does not appear to be supported by legislative provisions relating to the Agency.

7.3.2 Overlapping of Phases

In some proposals there may be an obvious and clear cut division between the construction and activity phases. For example the construction of a factory and subsequent production of a pharmaceutical product would appear to have two distinct phases. In other proposals there may not be a clear cut division between the two phases and, in this regard, reference has been made to mining activities and peat production. In these cases the construction and activity phases may overlap and this has the potential of serious confusion if the EPA's interpretation of its role is to be followed.

In the case of a mine development, the construction phase clearly has the potential for significant environmental pollution, but the EPA views this as a matter for the consideration of the local authority. It also sees the post activity phase as a matter for the local authority. In these circumstances, the local authority would control the construction phase through planning permission and appropriate sectoral licences, (air, water, waste), the EPA would control the activity phase through integrated pollution control licensing, and the local authority would control the post-activity phase through planning permission and sectoral licences. It is submitted that such an outcome would be cumbersome, confusing and could result in significant additional expense to the developer.

The Waste Management Act makes provisions for the EPA considering the construction phase of a landfill facility. Under Section 41(2)(b)(v) conditions attached to a waste licence may specify requirements of a technical nature to be complied with for the purpose of controlling emissions arising from, or which are a result of, the activity. These requirements may relate to the "design, construction, provision, operation or maintenance of the facility concerned". Under subsection xv conditions may be imposed specifying requirements for the closure, restoration and remediation of, or the carrying out of aftercare in relation to, the facility concerned.

7.3.3 EPA Remit

Under its statutory remit, the EPA is required to ensure the prevention, limitation, elimination, abatement and reduction of environmental pollution and the preservation of the quality of the environment. Environmental pollution is defined in the EPA Act and it is wide ranging including air emissions, the condition of waters after the entry of polluting matter, and the disposal of waste in a manner that would endanger human health or harm the environment and, in particular, create a risk to waters, the atmosphere, land, soil, plants or animals. The EPA is given powers to licence, regulate and control activities specified it the Act. In exercising its powers, the EPA must have regard to the need for a high standard of environmental protection and the need to promote sustainable and environmentally sound development, processes and operations.

It is submitted that there is no clear legislative basis for the EPA confining itself to the consideration of the environmental impact aspects of the activity phase only. On the contrary, the legislation appears to indicate that the EPA is required to consider the environmental impacts of the development as a whole. In further support of this viewpoint reference is made to section 83(3) of the

EPA Act under which the Agency may not grant a licence for an activity unless it is satisfied that any emissions from the activity or any premises, plant, methods, processes, operating procedures or other factors which effect such emissions will comply with, or will not result in the contravention of, any standard prescribed under the regulations made under the European Communities Act, 1972 or any other enactment.

Recommendation

1. In cases where there is a licensable activity, the IPC should apply to all phases of the development associated with the activity.

2. The possibility of a "two-stage" IPC licence should be considered. Stage 1 of the IPC licence could be applied either before or for at the same time as the planning application. This stage 1 licence could apply IPC to the construction of the development and also set out broad parameters which would apply to the IPC licence for the activity.

7.4 EIS/EIA

7.4.1 Introduction

Environmental Impact Assessment is designed as a dynamic process which is geared to securing informed, open and transparent decision making in environmental issues. Article 5 (2) of the European Commission Directive 85/337/EEC sets out the minimum information which must be submitted by the developer and this includes a description of the project, a description of measures proposed to avoid, reduce or remedy significant adverse effects, and data required to identify and assess the main effects which the project is likely to have on the environment. Article 3 of the directive requires the assessment body to identify, describe and assess the

direct and indirect effects of a project on human beings, flora and fauna, soil, air, water, climate, the landscape, material assets and cultural heritage. It is submitted that EIA is intended to look at a project in its totality.

It has being shown that in Holland, EIA is an important part of the decision making process. There is an independent EIA Commission which advises on the scoping of the EIS, and checks the statement against legislation and implementary regulations before reporting back to the competent authority. In addition, the Dutch system makes provision for an ex post evaluation. In the U.K. the Environment Agency is a statutory consultee for EIS's and may make representations to the planning authority. Such representations are taken into consideration by the planning authority before a decision is made.

7.4.2 Scoping

In Ireland there is no formal scoping procedure for EIS's. It is matter for the developer to decide if advice is needed for scoping the statement. It is submitted that this is a weakness which should be rectified.

7.4.3 Competent Authorities

In the case of a scheduled development and a specified activity, there are two competent authorities for the assessment of an EIS. The planning authority is required to assess the EIS insofar as it relates the proper planning and development of the area, other than matters relating to the risk of environmental pollution, and the EPA is required to assess the document insofar as it relates to the environmental impacts of the licensable activity. There is no statutory requirement for the two bodies to liaise with each other before making their independent assessment. It is submitted that

much of the information contained in an EIS may be relevant and for the consideration of both the planning authority and the EPA. The same information could be deemed adequate by one competent authority but inadequate by the other.

7.4.4 Public Participation

The public have a statutory right to make submissions to the competent authority regarding an EIS before it is assessed. However, where there is a licensable activity involved, the public must decide which is the competent authority for the different sections of the EIS. The planning authority can only consider submissions insofar as they relate the proper planning and development of the area, other than matters relating to the risk of environmental pollution. It is submitted that this is confusing and not conducive to public participation in the EIA process.

7.4.5 Environmental Assessment of Strategic Decisions

In Holland the EIA procedure extends beyond individual projects to include key planning decisions at national level, and structure and land use plans. It is submitted that consideration should be given to the assessment of policies, plans and programmes in Ireland. This is recognised in the Government strategy for Sustainable Development which states that "the Department of the Environment is currently assessing the proposal for a Council Directive in consultation with other relevant departments and intends to adopt a constructive Irish position". Earlier in this chapter it is recommended that development plans could be authorised to reserve sites for particular types of industry with unique planning requirements. Strategic land use decisions of this nature taken at national or regional level should be accommodated in local land use plans. It is submitted that such strategic decisions should be the subject of EIA before final adoption. The assessment may need to be carried out by an

independent body as is the case in Holland.

Recommendations

1. There should be only one competent authority to assess an EIS. It is recommended that this should be the planning authority and that the EPA should be a statutory consultee. The reasoning behind this recommendation is that the first basic decision which needs to be taken is the land use decision i.e. is the site suitable for the proposed development having taken all relevant factors into account, and most local authorities have a wide expertise to assess the range of matters to be addressed in an EIS. Proposals for the interface between the planning authority and the EPA in planning decision making in cases where there is an EIS are illustrated in Figure 8.

2. Scoping of an EIS should become a mandatory requirement. This should be coordinated by the planning authority who should seek the advice of the EPA.

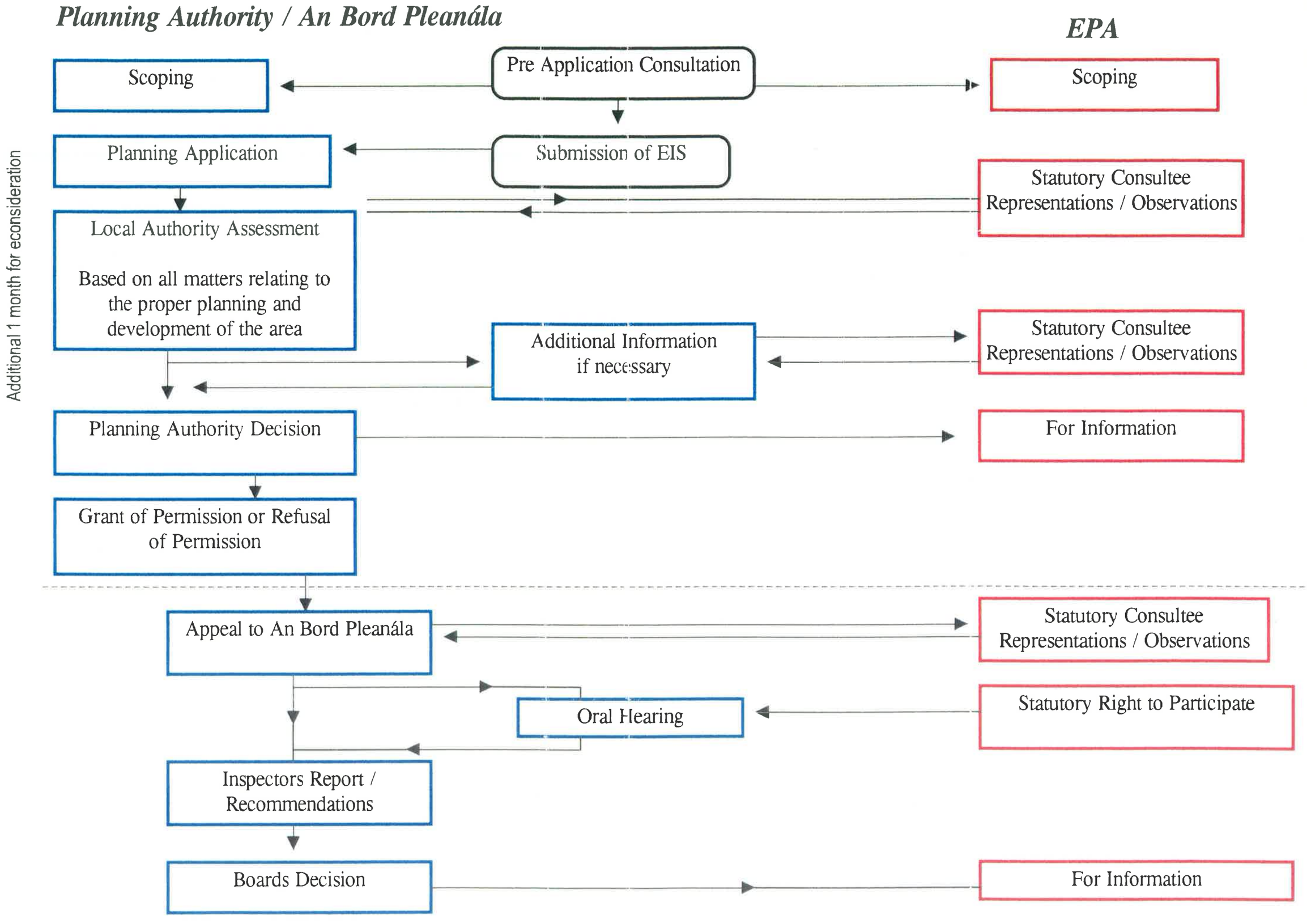


Figure 7: Proposed interface in the Development Plan making process

3. Public participation in the EIA process should be encouraged, and there should be no restriction on the contents of submissions to the competent authority insofar as they relate to matters contained in an EIS.

4. Strategic environmental decisions taken at national or regional level, and which should be accommodated in local land use plans, should be subject to EIA. Such decisions could include the location of particular types of industry, and the location of landfill sites. Public participation should be encouraged at this stage. Once adopted there should be no further appeal against strategic decisions of this nature. An independent body may be needed to carry out this type of assessment.

7.5 OTHER PROCEDURAL MATTERS

7.5. 1 Introduction

The IPC licensing system is relatively new and a number of procedural difficulties have become apparent in the interface with the planning control system. Some of these are discussed in detail in Chapter 5. It is submitted that many of these difficulties may be easily addressed.

7.5.2 Timing of Planning/Licence Applications

Where there is a proposal for a development and a licensable activity, there is no requirement to submit applications for planning permission and an IPC licence simultaneously. In many cases, the planning application is made first. An argument in favour of this procedure is that the developer does not have to go to the expense of making an IPC licence application until such time as a planning decision is made. There is merit in this argument, but this must be weighed against the problems which such a system may cause. The

introduction of a "two-stage" IPC licence, as recommended earlier in this chapter, could provide a suitable solution.

Recommendations

1. Where there are questions raised as to whether or not a proposed activity is licensable under the EPA Act, the EPA should have the sole responsibility of deciding the matter. Such questions could relate to the precise meaning of the wording of a scheduled activity, or to the calculation of a threshold stated. A procedure, similar to the reference procedure under planning legislation where An Bord Pleanála decides what is or is not exempted development in any particular case, could be adopted. There should be a formal consultation procedure between the planning authority and the EPA. The EPA's decision should not be open to legal challenge other than by way of judicial review on procedural grounds.

2. The EPA should be required to issues guidelines on the methods of calculation of capacity for scheduled activities. Clarification is needed as to whether "capacity" relates to actual or potential capacity.

   The scheduled activities in the First Schedule of the EPA Act should be more clearly defined, and thresholds should be set where appropriate. For example, an operation threshold should be set for scheduled activity 1.3 relating to the extraction and processing of minerals, and scheduled activity 8.6, relating to the fell-mongering of hides and tanning of leather, should clearly indicate whether each of these operations constitutes a licensable activity if the capacity of 100 skins per day is reached, or if both operations must take place before the activity is licensable. Scheduled activity 6.2 should be clarified to refer to stocking densities and also the nature of lands to be used for manure spreading.

3. Consideration should be given to a requirement for simultaneous applications for planning permission and IPC licensing. Alternatively, consideration should be given to the introduction of a two-stage "licence" where stage 1 could address the environmental pollution aspects of the construction phase in terms of IPC, and set out broad requirements for the activity phase: Stage 2 could set out detailed IPC requirements for the development, other than the construction phase.

7.6 FINAL CONCLUSION

The conclusions and recommendations made in this chapter are based on the existing planning control and IPC licensing systems as they are currently operated. The introduction of IPC has highlighted the need to take a broader integrated view of pollution control for major developments as compared with the sectoral approach previously adopted. It is submitted that the next stage is to integrate pollution control, waste management and land use planning to create an efficient environmental planning process at local level.

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APPENDIX A

Schedules 2 and 3 of the European Communities (Environmental Impact Assessment) Regulations, 1989.

S.I. No. 349 of 1989

Article 25

Second Schedule

Information to be contained in an environmental impact statement

1. An environmental impact statement shall contain the information specified in paragraph 2 (referred to in this Schedule as "the specified information").

2. The specified information is -

(a) a description of the development proposed, comprising information about the site and the design and size or scale of the development;

(b) the data necessary to identify and assess the main effects which that development is likely to have on the environment;

(c) a description of the likely significant effects, direct and indirect, on the environment of the development, explained by reference to its possible impact on -

human beings;

flora;

fauna;

soil;

water;

air;

climate;

the landscape;

the inter-action between any of the foregoing;

material assets;

the cultural heritage;

(d) where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and

(e) a summary in non-technical language of the information specified above.

3. An environmental impact statement may include, by way of explanation or amplification of any specified information, further information on any of the following matters -

(a) the physical characteristics of the proposed development, and the land-use requirements during the construction and operational phases;

(b) the main characteristics of the production processes proposed, including the nature and quantity of the materials to be used;

(c) the estimated type and quantity of expected residues and emissions (including pollutants of surface water and groundwater, air, soil and substrata, noise, vibration, light, heat and radiation) resulting from the proposed development when in operation;

(d) (in outline) the main alternatives (if any) studied by the applicant, appellant or authority and an indication of the main reasons for choosing the development proposed, taking into account the environmental effects;

(e) the likely significant direct and indirect effects on the environment of the development proposed which may result from -

(i) the use of natural resources;

(ii) the emission of pollutants, the creation of nuisances, and the elimination of waste;

(f) the forecasting methods used to assess any effects on the environment about which information is given under subparagraph (e); and

(g) any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any specified information.

In paragraph (e), "effects" includes secondary, cumulative, short, medium and long term, permanent, temporary, positive and negative effects.

4. Where further information is included in an environmental impact statement pursuant to paragraph 3, a non-technical summary of that information shall also be provided.

GIVEN under the Official Seal
of the Minister for the Environment
this 19th day of December, 1989.

L.S. Padraig Flynn

Minister for the Environment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations provide for the incorporation into Irish law, in respect of relevant development other than motorways, of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment. Effect was given to this Directive in respect of motorways by the European Communities (Environmental Impact Assessment) Regulations, 1988 (S.I. No. 221 of 1988).

The Regulations modify the provisions of the Local Government (Planning and Development) Acts, 1963 to 1983 so as to provide a framework for the application of Environmental Impact Assessment (EIA) to the planning control procedures under those Acts, and for the application of EIA to relevant development by local authorities. They also modify development consent procedures under 9 other enactments in light of the Directive's requirements, and they establish an EIA procedure for relevant development by State authorities.

APPENDIX B

First Schedule of EPA Act, 1992.

number, and the sections and Acts specified in *columns (2)* and *(3)* of that Table shall be construed and have effect accordingly.

(2) (*a*) Where a penalty, forfeiture or fine is expressed in any section specified in *column (2)* of the Table as being for a day, each contravention to which it relates shall constitute a separate offence.

(*b*) Where an offence referred to in *subsection (1)* is described as a continuing or further offence the penalty for each day on which the contravention continues shall, in lieu of any other monetary penalty, forfeiture or fine provided in respect thereof, be a fine not exceeding £200.

(3) This section shall have effect in relation to offences committed after the commencement of this section.

TABLE

Ref No. (1)	Section (2)	Act (3)	Maximum Fine (4)
1.	55	Waterworks Clauses Act, 1847	£1,000
2.	58	Waterworks Clauses Act, 1847	£1,000
3.	60	Waterworks Clauses Act, 1847	£1,000
4.	50	The Dublin Corporation Waterworks Act, 1861	£1,000
5.	51	The Dublin Corporation Waterworks Act, 1861	£1,000
6.	17	Waterworks Clauses Act, 1863	£1,000
7.	18	Waterworks Clauses Act, 1863	£1,000
8.	19	Waterworks Clauses Act, 1863	£1,000
9.	20	Waterworks Clauses Act, 1863	£1,000
10.	70	Public Health (Ireland) Act, 1878	£1,000
11.	112	Public Health (Ireland) Act, 1878	£1,000
12.	114	Public Health (Ireland) Act, 1878	£200
13.	119	Public Health (Ireland) Act, 1878	£1,000
14.	171	Public Health (Ireland) Act, 1878	£1,000
15.	220	Public Health (Ireland) Act, 1878	£1,000
16.	272	Public Health (Ireland) Act, 1878	£1,000
17.	273	Public Health (Ireland) Act, 1878	£1,000
18.	31	Local Government (Sanitary Services) Act, 1948	£1,000
19.	33	Local Government (Sanitary Services) Act, 1948	£1,000
20.	34	Local Government (Sanitary Services) Act, 1948	£1,000
21.	37	Local Government (Sanitary Services) Act, 1948	£1,000
22.	42	Local Government (Sanitary Services) Act, 1948	£1,000
23.	44	Local Government (Sanitary Services) Act, 1948	£1,000
24.	46	Local Government (Sanitary Services) Act, 1948	£1,000
25.	47	Local Government (Sanitary Services) Act, 1948	£1,000
26.	4	Local Authorities (Works) Act, 1949	£1,000
27.	8	Local Government (Sanitary Services) Act, 1962	£1,000
28.	3	Local Government (Sanitary Services) Act, 1964	£1,000
29.	16	Local Government (Sanitary Services) Act, 1964	£1,000

Sections 3 and 82.

FIRST SCHEDULE

ACTIVITIES TO WHICH *Part IV* APPLIES

1. **Minerals and Other Materials**

1.1 The extraction, production and processing of raw asbestos.

1.2 The extraction of aluminium oxide from an ore.

1.3 The extraction and processing (including size reduction, grading and heating) of minerals within the meaning of the Minerals Development Acts, 1940 to 1979, and storage of related mineral waste.

1.4 The extraction of peat in the course of business which involves an area exceeding 50 hectares.

2. **Energy**

2.1 The production of energy in combustion plant the rated thermal input of which is equal to or greater than 50MW other than any such plant which makes direct use of the products of combustion in a manufacturing process.

2.2 The burning of any fuel in a boiler or furnace with a nominal heat output exceeding 50MW.

3. **Metals**

3.1 The initial melting or production of iron or steel.

3.2 The processing of iron and steel in forges, drawing plants and rolling mills where the production area exceeds 500 square metres.

3.3 The production, recovery, processing or use of ferrous metals in foundries having melting installations with a total capacity exceeding 5 tonnes.

3.4 The production, recovery or processing of non-ferrous metals, their compounds or other alloys including antimony, arsenic, beryllium, chromium, lead, magnesium, manganese, phosphorus, selenium, cadmium or mercury, by thermal, chemical or electrolytic means in installations with a batch capacity exceeding 0.5 tonnes.

3.5 The reaction of aluminium or its alloys with chlorine or its compounds.

3.6 The roasting, sintering or calcining of metallic ores in plants with a capacity exceeding 1,000 tonnes per year.

3.7 Swaging by explosives where the production area exceeds 100 square metres.

3.8 The pressing, drawing and stamping of large castings where the production area exceeds 500 square metres.

3.9 Boilermaking and the manufacture of reservoirs, tanks and other sheet metal containers where the production area exceeds 500 square metres.

4. **Mineral Fibres and Glass**

4.1 The processing of asbestos and the manufacture and processing of asbestos-based products.

4.2 The manufacture of glass fibre or mineral fibre.

4.3 The production of glass (ordinary and special) in plants with a capacity exceeding 5,000 tonnes per year.

4.4 The production of industrial diamonds.

5. **Chemicals**

5.1 The manufacture of chemicals in an integrated chemical installation.

5.2 The manufacture of olefins and their derivatives or of monomers and polymers, including styrene and vinyl chloride.

5.3 The manufacture, by way of chemical reaction processes, of organic or organo-metallic chemical products other than those specified at 5.2.

5.4 The manufacture of inorganic chemicals.

5.5 The manufacture of artificial fertilizers.

5.6 The manufacture of pesticides, pharmaceutical or veterinary products and their intermediates.

5.7 The manufacture of paints, varnishes, resins, inks, dyes, pigments or elastomers where the production capacity exceeds 1,000 litres per week.

5.8 The formulation of pesticides.

5.9 The chemical manufacture of glues, bonding agents and adhesives.

5.10 The manufacture of vitamins involving the use of heavy metals.

5.11 The storage, in quantities exceeding the values shown, of any one or more of the following chemicals (other than as part of any other activity)—

methyl acrylate (20 tonnes); acrylonitrile (20 tonnes); toluene di-isocyanate (20 tonnes); anhydrous ammonia (100 tonnes); anhydrous hydrogen fluoride (1 tonne).

6. **Intensive Agriculture**

6.1 The rearing of poultry in installations, whether within the same complex or within 100 metres of that complex, where the capacity exceeds 100,000 units and where units have the following equivalents—
1 broiler = 1 unit,
1 layer, turkey or other fowl = 2 units.

6.2 The rearing of pigs in installations, whether within the same complex or within 100 metres of that complex, where the capacity exceeds 1,000 units on gley soils or 3,000 units on other soils and where units have the following equivalents—
1 pig = 1 unit,
1 sow = 10 units.

7. **Food and Drink**

7.1 The manufacture of vegetable and animal oils and fats where the capacity for processing raw materials exceeds 40 tonnes per day.

7.2 The manufacture of dairy products where the processing capacity exceeds 50 million gallons of milk equivalent per year.

7.3 Commercial brewing and distilling, and malting in installations where the production capacity exceeds 100,000 tonnes per year.

7.4 The slaughter of animals in installations where the daily capacity exceeds 1,500 units and where units have the following equivalents—

1 sheep	=	1 unit,
1 pig	=	2 units,
1 head of cattle	=	5 units.

7.5 The manufacture of fish-meal and fish-oil.

7.6 The manufacture of sugar.

7.7 The rendering of animal by-products.

8. **Wood, Paper, Textiles and Leather**

8.1 The manufacture of paper pulp, paper or board (including fibre-board, particle board and plywood) in installations with a production capacity equal to or exceeding 25,000 tonnes of product per year.

8.2 The manufacture of bleached pulp.

8.3 The treatment or protection of wood, involving the use of preservatives, with a capacity exceeding 10 tonnes per day.

8.4 The manufacture of synthetic fibres.

8.5 The dyeing, treatment or finishing (including moth-proofing and fireproofing) of fibres or textiles (including carpet) where the capacity exceeds 1 tonne per day of fibre, yarn or textile material.

8.6 The fell-mongering of hides and tanning of leather in installations where the capacity exceeds 100 skins per day.

9. **Fossil Fuels**

9.1 The extraction, other than offshore extraction, of petroleum, natural gas, coal or bituminous shale.

9.2 The handling or storage of crude petroleum.

9.3 The refining of petroleum or gas.

9.4 The pyrolysis, carbonisation, gasification, liquefaction, dry distillation, partial oxidation or heat treatment of coal, lignite, oil or bituminous shale, other carbonaceous materials or mixtures of any of these in installations with a processing capacity exceeding 500 tonnes per day.

10. **Cement**

10.1 The production of cement.

11. **Waste**

11.1 The incineration of hazardous waste.

11.2 The incineration of hospital waste.

11.3 The incineration of waste other than that mentioned in 11.1 and 11.2 in plants with a capacity exceeding 1 tonne per hour.

11.4 The use of heat for the manufacture of fuel from waste.

12. **Surface Coatings**

12.1 Operations involving coating with organo-tin compounds.

12.2 The manufacture or use of coating materials in processes with a capacity to make or use at least 10 tonnes per year of organic solvents, and powder coating manufacture with a capacity to produce at least 50 tonnes per year.

12.3 Electroplating operations.

13. **Other Activities**

13.1 The testing of engines, turbines or reactors where the floor area exceeds 500 square metres.

13.2 The manufacture of integrated circuits and printed circuit boards.

13.3 The production of lime in a kiln.

13.4 The manufacture of coarse ceramics including refractory bricks, stoneware pipes, facing and floor bricks and roof tiles.

APPENDIX C

Development of the Target Group Approach in the Second National Environmental Policy Plan (NEPP 2), 1993, in the Netherlands.

3.3 DEVELOPMENT OF THE TARGET GROUP APPROACH IN THE NEPP 2

New implementation strategies and measures are directed particularly at target groups since they are ultimately responsible for making all government policy operational. In response to all target groups' need for more long-term certainty in environmental policy, the NEPP 2's approach focuses on providing clear targets, tasks and information, improving the implementation 'infrastructure' (technology, facilities, markets) and tailoring measures more specifically to the needs of target group members.

The tables on pages 26-29 highlight some of the strategies and policy measures which will be adopted over the next four years.

INDUSTRY

Strategies

- complete schedule of integral environmental covenants to be signed with 15 industry sectors by 1995 (covering emissions to air, soil and water, energy use and waste management)
- emphasise industry responsibility and initiative and allow companies to set their own priorities within targeted action plans
- assist industry with practical aspects of implementation
- strengthen role of branch organisations especially in relation to small and medium enterprises
- use intermediary actors eg financial institutions to influence industry behaviour
- monitor industry performance more closely to measure progress, spot emerging problems and focus future policy priorities

Additional Measures

- energy conservation programmes and stronger measures on HCFCs, N_2O; installation and process measures for additional NO_x reductions
- emission levels of phosphates and nitrogen compounds will meet 2000 targets. New measures will be studied and prepared in order to meet 2010 targets
- industry branch specific research to develop further waste reduction opportunities
- multi-year programme to reduce emissions from 'non-agricultural pesticides'
- action programme to reduce non-essential uses of groundwater

AGRICULTURE

Strategies

- improve information and communication through use of sector networks comprising relevant ministries and local authorities, universities and agricultural boards
- work on translation of national targets to regional, local and individual farm level
- develop implementation (management) tools for use by farmers
- improve integration within and between authorities (and EU) to provide continuity of policy
- stress environmental aspects in EU discussions over reform of CAP

Additional Measures

- full implementation of Policy Plan on Manure and Ammonia (3rd phase) and Multi-Year Crop Protection Plan
- energy conservation: enlargement of covenant with glasshouse cultivators and conclusion of covenants with other agriculture branches
- research and development on biofuels
- new standards for NO_x emissions from heating installations and farm premises

ENERGY

Strategies

energy saving and emission reduction

electricity production companies
- tighten energy efficiency measures
- decrease use of coal in power stations (target of 30% maximum output from coal)
- increase cogeneration capacity
- invest in energy efficiency measures/tree planting internationally

electricity distribution companies
- increase use of combined heat and power schemes
- increase development of wind power
- provide energy management services to commercial clients
- provide energy advisory services to industry and households

gas distribution companies
- increase development of CHP for industry users
- provide energy saving advisory services to industry

Additional Measures

- electricity distribution companies preparing new Environmental Action Plan with higher targets
- gas and electricity distribution companies planning new CHP capacity of 5000MW
- target of 3% of total electricity sales from renewable sources by 2000
- extension of sector's advisory and energy management services (eg agreements to manage heating systems of offices) to industry and commercial sector
- extension of electricity companies' leasing facilities (eg high efficiency, low NO_x boilers) to households and commercial users
- stronger focus on target groups energy consumption eg industry (via long-term energy saving agreements and permitting requirements) and construction (energy standards for new buildings introduced from 1995)

TRAFFIC AND TRANSPORT

Strategies

- reduce emissions at source through improved technology and tighter emission standards
- reduce rate of increase in mobility through pricing and physical planning (accessibility and zoning)
- encourage modal shift away from car use
- change behaviour through information and pricing mechanisms

Additional Measures

- support for tighter EU emission standards for NO_x and noise
- phased increases in price of gasoline to ensure comparability with public transport tariffs
- information and differential rates in road tax to encourage smaller, cleaner cars
- support for EU measures on CO_2 emission reduction
- new measures to influence driving behaviour eg lower speed limits, road pricing
- faster introduction of clean technologies
- increased restrictions and fees for parking
- local authorities to set level of parking fees and fines and keep revenues
- establishment of short term targets for freight transport sector since long-term targets currently out of reach
- improved freight infrastructure
- priority for research and development of policies on freight traffic volumes
- targets for air pollution, noise and risk levels in vicinity of airports
- completion of cooperative implementation plan between national airline, airport and rail company to substitute rail for air traffic to certain European destinations

REFINERIES

Strategies

- improve sectoral implementation framework
- broaden scope of environmental monitoring at installations
- pursue harmonisation of EU and Dutch emission standards

Additional Measures

- phased reduction of permitted SO_2 emission levels to meet 1996 and 2000 targets
- multi-year agreement on energy conservation
- new standards for NO_x emissions at new and existing installations
- regulations on vapour collection during fuel transportation
- sectoral action plan including emission targets for dust, heavy metals, oil spills, heavy metals and PAHs

CONSUMERS

Strategies

- continue information and education programmes
- create environmentally sound 'infrastructure' of products, facilities, services and feedback information
- increase use of financial instruments to internalise environmental costs
- strengthen policy through translation of national targets to consumer sector - not for individual achievement but to monitor policy progress

Additional Measures

- energy labelling of appliances
- product (emission) labelling of central heating boilers
- increased source separation of household waste
- increased use of life cycle management in product development
- Environmental Product Policy Plan (December 1993)
- policy development on water conservation
- memorandum on environment and tourism (due 1994)

RETAIL TRADE

Strategies

- translate national targets to sectoral level
- strengthen communication frameworks between government and retailers
- improve monitoring of retailers' performance as intermediaries between government and consumer and as businesses impacting on the environment
- encourage environmental management systems in retail companies

Additional Measures

- increased range of environmentally sound products
- environmental label and profiles providing information on products
- provision of collection/return points for post-consumer waste products (eg batteries) in retail outlets
- target of 50% waste recycling at retail outlets
- encouragement of other measures including NO_x emission reductions - no targets as yet

Strategies

- maintain strong discussion network established with sector and intermediary organisations
- improve building information to the public and other 'end users'
- extend research into sustainable building materials and methods
- stimulate market for recycling/reuse of building materials
- improve integration of environmental, physical planning and transport policy

Additional Measures

- ban on landfill, incineration or direct use of untreated construction waste
- agreements with government organisations to specify use of recycled materials in building contracts
- forthcoming memorandum on heavy metals and radon will include requirements on construction sector
- improved noise insulation of buildings
- 'log books' for buildings will include environmental aspects
- (probable) introduction of environmental labelling of buildings based on materials, heating system, insulation etc
- research into integrated life cycle management of building materials

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2. Concern For Tomorrow, National Institute of Public Health and Environmental Protection (RIVM), Bilthoven, March 1989

3. Nationale Milieuverkenning 1993-2015, RIVM, Bilthoven, 1993

FOR FURTHER READING

Series Environmental Policy in action:

- Working with Industry
- Working with the Construction Sector
- Involving the Consumer
- Managing Priority Waste Streams
- Managing Environmental Information
- Achieving Integration

This publication has been prepared by Emily Mattews, Environmental Reasources Management G-Br., commissioned by The Netherlands Ministry of Housing, Spatial Planning and the Environment.