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PLANNING AND POLLUTION LAW
IN IRELAND

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A B S T R A C T

PLANNING AND POLLUTION LAW IN IRELAND

By

HONORIA JOSEPHINE YVONNE SCANNELL

This thesis consists of a critical and analytical description of Irish law on planning and pollution and the practical implementation and enforcement of this law. It also shows the extent to which, and the manner in which, International and particularly EEC environmental law has been implemented in Ireland.

Section 1 places Irish environmental law in context by reference to international and EEC environmental law.

Section 2 describes the legal and administrative structures and techniques used for planning and pollution control in Ireland.

Section 3 considers controls over land-use and pollution operated under the Local Government (Planning and Development) Acts 1963-82.

Sections 4 and 5 describe the law relating to atmospheric and inland water pollution respectively.

Section 6 deals with pollution from sewage.

Sections 7 and 8 deal with marine pollution by substances other than oil and oil pollution in the sea respectively.

Section 9 considers controls over waste disposal on land.

Section 10 examines various laws which operate to control noise.

Section 11 outlines systems under which efforts are made to prevent and control environmental harm caused by various chemicals.

Section 12 consists of a broad overview of defects in the systems for planning and pollution control and offers certain suggestions for reform.

UNIVERSITY OF DUBLIN

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PLANNING AND POLLUTION LAW

IN IRELAND

by

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M.A. LL.B.(Cantab), Barrister

A thesis presented in fulfilment of the requirements for the degree of

Doctor of Philosophy

September 1983

UNIVERSITY OF DUBLIN

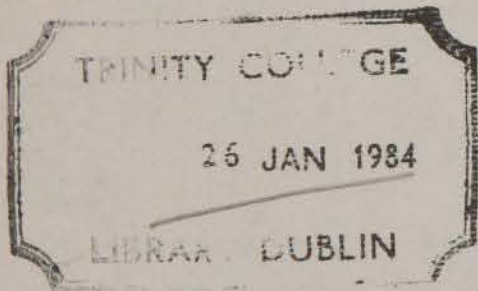
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716

LEARNING AND POLITICAL CULTURE

IN IRELAND



A thesis presented to Trinity College Dublin in partial fulfillment of the requirements for the degree of Bachelor of Arts

Department of Political Science

Trinity College Dublin

I hereby declare that the work contained herein
is my own and that it has not been submitted as
an exercise for a degree at any other University.

Yvonne Scannell

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PREFACE

This thesis attempts to describe and analyse the law relating to planning and pollution control in Ireland. This is a very broad topic but it was felt that a greater contribution could be made to Irish law by treating a broad topic (which has not been previously explored by other writers) in medium depth rather than treating a narrower topic exhaustively.

Throughout this thesis every effort has been made to describe not just the law but by whom, the extent to which, and the manner in which, this law is administered, implemented and enforced. I have also sought to indicate the extent to which international and particularly EEC environmental law has been implemented in Ireland.

The boundaries of planning and pollution law are somewhat difficult to delineate. No claim to comprehensive coverage is made for this work. In selecting topics for inclusion I have incorporated those subjects which I believe are most likely to have an immediate and practical relevance for Ireland. References to conservation law have accordingly been kept at a minimum.

I have not dealt with the common law aspects of planning and pollution control partly because these have already been treated in depth in other works and partly to keep the thesis to manageable proportions. Likewise an effort has been made to avoid references to comparative materials and areas which have already been dealt with adequately, and in some cases admirably, by other Irish writers.

The thesis includes numerous references to Circulars and Items of Information issued by Government Departments which are not generally available. Gaining access to these was difficult but the efforts to do so was justified by the fact that they are indicative of Government policy and of the manner in which the laws which they deal with are administered.

Like all writers on Irish law I have been frustrated by the absence of any comprehensive indices to the sources of law and the scarcity of articles and judicial decisions on my subject. The latter may partly explain, if not excuse, the somewhat descriptive nature of some sections of this thesis.

In the text the law is stated in the light of the materials available to me on 1 June 1983 although it has occasionally been possible to take account of later developments.

Substantial portions of sections 2-11 of this thesis have been published in my book, The Law and Practice Relating to Pollution Control in Ireland (2nd ed.), London, 1983, which was written at the request of the Commission of the European Communities.

I owe the deepest gratitude to my supervisor Professor R.F.V. Heuston for the freedom, tolerance and support which he has extended to me in writing this thesis; to my colleagues, Gerard Hogan and Gerard Whyte who discussed various sections with me and to Ruth Halpenny, Lee Guckian, Appie Kennedy and Margaret Lawlor, all of whom were involved in typing the thesis this long hot summer.

This thesis is the result of my own work and includes nothing which is the outcome of work done in collaboration. The research for it was carried out in Trinity College Dublin.

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September 1983

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Regulations 1972
- Air Navigation (Carriage of Munitions of War, Weapons and Dangerous
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11 THE UNITED NATIONS

11.1 The United Nations Environment Programme

In 1972 the United Nations in response to increasing concerns about global pollution sponsored the United Nations Conference on the Human Environment in Stockholm. This Conference adopted, inter alia, a Declaration on the Human Environment, an Action Plan and a list of recommendations for environmental management and development. The first of these recommendations was that the United Nations should establish a Commission on the Environment and Development. This Commission was established in 1973 and its mandate was to study the relationship between the environment and development and to report to the United Nations General Assembly. The Commission's first report was published in 1975 and is known as the Brundtland Report. This report established the United Nations Environment Programme (UNEP) as the principal global authority on the environment. The UNEP was established in 1972 and its mandate is to coordinate, co-ordinate and assist countries in the development and implementation of sound environmental management. The UNEP also provides technical assistance and financial support to countries in the development and implementation of sound environmental management. The UNEP also provides technical assistance and financial support to countries in the development and implementation of sound environmental management.

SECTION 1

IRISH PLANNING AND POLLUTION LAW

IN CONTEXT

Irish environmental law has developed at an unprecedented rate in the last decade. This was not a spontaneous development; it mirrors and is to a great extent influenced by developments in environmental law at the international level. These developments have occurred primarily through the activities of the United Nations and the European Economic Community.

1.1 THE UNITED NATIONS

1.1.1 The United Nations Environment Programme

In 1972 the United Nations in response to increasing international concern about global pollution sponsored the United Nations Conference on the Human Environment in Stockholm. This Conference adopted three measures: a Declaration on the Human Environment, an Action Plan consisting of 109 recommendations for environmental management and a detailed resolution on financial and institutional arrangements.⁽¹⁾ The first international environmental management body - the United Nations Environment Programme (UNEP) - was established to implement the Action Plan.

UNEP operates at three levels. On the first it assesses environmental quality by monitoring, research, evaluation and review and by information exchange. The Earthwatch Programme, which is UNEP's principal assessment tool, identifies and quantifies environmental problems of international significance and recommends remedial action. On the second level UNEP encourages and facilitates the co-ordination of environmental planning and management. This involves goal setting and the promotion of international consultation and agreements on environmental matters. Finally, UNEP acts as a co-ordinator of supporting measures, such as the promotion of environmental awareness, technological training, organisational assistance, exchange of information and financial aid to developing nations.

1.1.2 Impact on Irish Environmental Law

UNEP has no formal mandate under the Action Plan to formulate binding rules of international environmental law but a number of international resolutions do assign this role to UNEP.⁽²⁾ To date UNEP's role with respect to promoting and developing environmental law has not had a significant impact on Irish law, mainly because the topics with which it has been concerned (for example, conservation, forest depletion, ozone layer management, weather modification) are not of major concern to Ireland or because Ireland has not suffered or contributed to environmental problems meriting international concern. Nonetheless, as will be demonstrated later,⁽³⁾ EEC and Irish law on marine pollution, shipping, radioactive substances and more recently air pollution, has been greatly influenced by legislation, guidelines and codes of practice promoted by the specialised agencies of the United Nations.

1.2 THE EUROPEAN ECONOMIC COMMUNITY

1.2.1 Programmes of Action

The greatest single influence on the development of Irish environmental law and particularly the law on pollution control has been the activity of the European Economic Community (EEC) in the environmental sphere.

Although the Treaty of Rome does not expressly deal with environmental matters,⁽⁴⁾ the "task" of the European Community spelt out in the Treaty includes the promotion throughout the Community of "an harmonious development of economic activities" and "a continued and balanced" expansion.⁽⁵⁾ The Council of Ministers declared in November 1973⁽⁶⁾ that this is an achievement which "cannot now be imagined in the absence of an effective campaign to combat pollution and nuisances or of an improvement in the quality of life and the protection of the environment". The Declaration added that these objectives are "among the fundamental tasks of the Community" and that "it is therefore necessary to implement a Community environment policy". Accordingly the Council approved the first Programme of Action of the European Community on the Environment in 1973.⁽⁷⁾ Since then two further programmes have been adopted for the periods 1977-81⁽⁸⁾ and 1982-86.⁽⁹⁾

The objectives of the 1973 Action Programme were to:

- prevent, reduce and as far as possible eliminate pollution and nuisances,
- maintain a satisfactory ecological balance and ensure the protection of the biosphere,
- ensure the sound management of natural resources,
- guide development in accordance with quality requirements,
- ensure that more account is taken of environmental aspects in town planning and land use,
- seek common solutions to environmental problems with States outside the Community and international organisations.

The Eleven Principles of environmental policy were adopted by the Council of Ministers, the most important of which were:

- the polluter pays,
- prevention is better than cure,
- that in each different category of pollution the level of action (local, regional, national, Community, international) that befits the type of pollution and the geographical zone to be protected should be sought,
- national environmental policies should be co-ordinated and harmonised.

A detailed Programme of Action to implement EEC environment policy within two years was adopted. This Programme had three main objectives:

- (i) to reduce pollution and nuisances,
- (ii) to improve the environment, and
- (iii) to co-operate with international organisations and non-member States on environmental matters.

By 1976, 36 proposals for action had been transmitted by the EEC Commission to the Council, of which 17 were adopted by the Council.⁽¹⁰⁾ The 1977-81 Action Programme restated and approved the objectives and principles of the 1973 Programme and adopted a somewhat different and more ambitious programme of action to be achieved by 1981. Priority was to be given to measures for the protection of sea water and fresh water and new steps were proposed for noise abatement. While this programme was not an unqualified success, by May 1980 the Community had adopted 58 legislative texts relevant to environmental control, 15 on water pollution, ten on the reduction of air pollution, eight on noise pollution and four on the protection of the environment, land and natural resources. By the end of 1982, 78 legislative texts had been adopted.

The difficulties encountered in implementing the Second Action Programme and the recession delayed somewhat the adoption of the Third Action Programme for 1982-86, which was not approved until 17 December 1982.⁽¹¹⁾ This Programme again restated and approved the objectives and principles of the earlier Programmes, but it placed greater emphasis than hithertofore on the need for environmental policy to help in creating jobs, to eliminate waste, to conserve valuable natural resources, to encourage waste recycling, to conserve energy and to promote the use of less polluting energy sources. Particular emphasis is placed on the need to develop Community measures on the prohibition of substances dangerous to the environment, and there is an express commitment to secure the creation and practical implementation of an overall strategy for the sound management of natural resources.

This thesis deals only with action taken under the First and Second Action Programmes. The main achievement of these Programmes has been the adoption of legislation and other rules to reduce and eliminate pollution and nuisance and to preserve the natural environment. These measures

have been taken in the areas of atmospheric pollution, water pollution, noise, chemicals and waste. But there were also significant achievements on an extra-legal level including:

- the development of a method of ecological mapping now being used experimentally in ten Community regions,
- promotion of energy saving and conservation oriented technologies,
- sponsoring research into environmental issues,
- promoting environmental awareness,
- establishment of the European Foundation for the Improvement of Living and Working Conditions in Dublin in 1975,
- becoming a party to international agreements on environmental matters,
- co-operation with the Organisation for Economic Development (OECD), UNEP, the Economic Commission for Europe and non-EEC Countries on environmental matters.⁽¹²⁾

In environmental matters of international concern, the EEC on behalf of its Member States, seeks to present a common policy. Thus the EEC concluded the International Conventions for the Protection of the Mediterranean Sea against Pollution,⁽¹³⁾ for the Protection of the Rhine against Pollution,⁽¹⁴⁾ on Long-Range Transboundary Air Pollution⁽¹⁵⁾ and on Marine Pollution from Land-Based Sources,⁽¹⁶⁾ and ratified Conventions on Safety in Shipping⁽¹⁷⁾ and on Standards of Training, Certification and Watchkeeping for Seafarers⁽¹⁸⁾ on behalf of Member States. Furthermore, the Commission of the EEC was represented at, and sought to co-ordinate the policies of the Member States, at the conferences which led to the United Nations Convention on the Law of the Sea 1982.⁽¹⁹⁾ These activities are evidence of the development of a federal EEC approach to international environmental law.

1.2.2. Impact on Irish Environmental Policy

The EEC Action Programmes on the Environment have had an enormous, if unacknowledged, impact on Irish environmental policy.

The need for a national policy on the environment was recognised in

1978 when the Minister for the Environment established the now defunct Environment Council and charged it with the preparation of a national environment policy. In 1979 the Council produced a 16-page document Towards an Environment Policy⁽²⁰⁾ which merely stated the current pressures on the environment (four pages), outlined relevant policy considerations (three and a half pages) and contained conclusions (three pages) which suggested that consideration should be given to the following:

- (1) limiting and strictly controlling development in areas of great natural beauty,
- (2) providing special controls for development in other areas, e.g. amenity, recreational and coastal areas, especially those near large urban centres,
- (3) examining the long-term effects of modern farming practices,
- (4) examining questions relating to industrial location,
- (5) reducing water pollution,
- (6) making plans to deal with urbanisation, inner city renewal, ribbon development and sporadic development in rural areas,
- (7) paying attention to the interaction of energy and environment policies, and
- (8) providing studies or research which would help in the development or implementation of environment policy.

The Council proposed to consider what specific measures should be adopted in relating to:

- (i) the rural environment,
- (ii) industrial location,
- (iii) urbanisation and population,
- (iv) the environmental implications of future energy policy, and
- (v) research and studies needed for the development of environment policy.

There was little unexpected in this report for one familiar with the EEC Action Programme. All of the areas considered by the Environment Council had been dealt with in the Action Programmes. The only unusual feature of the Report was a hint that a policy of promoting what are known as "pollution parks"⁽²¹⁾ might be a preferred option when questions of

the location of heavy industries were being considered.⁽²²⁾ Only three lines of the report referred to EEC environment policy.⁽²³⁾

The following year the Council published a Policy for the Environment⁽²⁴⁾ which is, as the Council stated, "an initial policy statement in broad terms"⁽²⁵⁾ of future environment policy. Having stated the aims of environment policy, the Council recommended policy proposals under ten main headings:

1. Physical Planning
2. Water Pollution
3. Air Pollution
4. Waste Management
5. Chemicals
6. Noise Pollution
7. Environmental Improvement
8. Information Needs
9. International Aspects
10. National Strategy for Development.

The policy recommendations for 1. to 6. above may be summarised as broad proposals for better controls, better enforcement and better monitoring and data collection. But there is also an express recognition of the necessity to ensure the availability of adequately trained personnel to local authorities and for improvements in the manner (and speed) with which the public sector carries out and promotes environmentally improving development works.⁽²⁶⁾

In addition specific proposals were made for:

- (1) ensuring the satisfactory maintenance of coastal water quality standards particularly in bathing, fishing and shell-fishing areas,
- (2) discouraging waste generation and unlawful dumping, and encouraging waste recycling,
- (3) participating in internationally agreed measures for action on chemicals.

All of the specific proposals on pollution control were already part of the 1977-81 European Action Programme on the Environment.

General proposals for environmental improvement concerned improving environmental quality by promoting local authority schemes of environmental works, encouraging the private sector to become involved in environmental improvement, developing public awareness, implementing a litter-control campaign and examining possibilities for a more effective approach to urban renewal. Specific proposals related to improving existing recreational areas and ensuring the future provision of parks and other recreational areas and facilities. (27)

Proposals were made for developing environmental research and monitoring, setting up a national centre for co-ordinating, collating and assembling environmental information and publishing reports on environmental quality. (28)

Emphasis was placed on the necessity for focusing attention on environmental considerations in decisions taken under traffic and transportation policies, energy, arterial drainage and industrial location. (29)

Priorities identified were in the areas of water pollution control (local authority treatment systems, industrial discharges and non-point sources of agricultural pollution), urban renewal, State aids for environmental improvement, litter, the co-ordination of monitoring and research information and the preparation of a report on the state of the environment. (30)

The report did not place a great deal of emphasis on the EEC Action Programmes but its proposals and priorities are broadly in line with EEC policy and it is difficult to avoid the conclusion that a virtue was made out of the necessity for implementing EEC environment policy.

The Council stressed the necessity for the environment policy "being set in the context of a national strategy for development". (31)

Although this policy has not yet been adopted by the Government, the Coalition undertook to take account of it in the Programme for Government 1981-86 which includes proposals for a comprehensive plan to protect the environment, for firmer action to deal with pollution with

special attention to toxic wastes, for updating planning laws and extending environmental legislation to deal with emerging environmental problems.⁽³²⁾

A comparison between A Policy for the Environment and the EEC Action Programme for the Environment 1977-81 shows that the two documents are mutually compatible and broadly similar in the subjects which they address and the proposals which they make. Irish authorities have done a great deal to implement both programmes in the last few years. Since 1973, the Oireachtas has not passed one legislative measure relevant to pollution control which was not directly or indirectly - in the vast majority of cases directly - necessitated by the obligation to comply with Community law.

1.2.3 Impact on Irish Environmental Law

EEC law is applicable in Ireland and laws enacted by the Oireachtas take effect subject to it.⁽³³⁾

In anticipation of accession to the European Communities, Ireland by referendum adopted the Third Amendment to the Constitution.⁽³⁴⁾ This added a subsection to Article 29 of the Constitution enabling Ireland to become a member of the EEC and declaring:

No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities or prevents laws enacted, acts done or measures adopted by the Communities or the institutions thereof, from having the force of law in the State.

The reference to "No provision of the Constitution" includes a reference to Article 15 which vests in the Oireachtas "the sole and exclusive power of making laws for the State". Thus the EEC, or more correctly, the institutions of the EEC, may legislate for Ireland. Furthermore, laws enacted, acts done or measures adopted by the State necessitated by the obligations of EEC membership or laws enacted, acts done or measures adopted by the EEC, may not be declared unconstitutional.

This immunity from constitutional scrutiny may prove significant in environmental law particularly in the area of private property rights which have been accorded a great deal of protection by the Constitution,⁽³⁵⁾ and which, as judicially declared,⁽³⁶⁾ are perceived as inhibiting (because respect for them frequently entails the obligation to compensate persons affected by environmental control) the powers of planning and pollution control authorities for the implementation of their policies.⁽³⁷⁾

The European Communities Acts 1972 and 1973, make detailed provision for the incorporation of the EEC Treaties and secondary legislation into Irish domestic law. Section 2(1) of the 1972 Act provides that:

The Treaties governing the European Communities and the existing and future acts adopted by the institutions of those Communities shall be binding on the State and shall be part of the domestic law thereof under the conditions laid down in those Treaties.

Acts adopted by the institutions of the Communities are:

- (1) Regulations
- (2) Directives
- (3) Decisions
- (4) Recommendations.

These acts may be enforced against Member States in the manner provided for in articles 169 and 170 of the Treaty of Rome. The effect of these acts in domestic law is to be found in the Treaty and in the jurisprudence of the European Court. It is beyond the scope of this thesis to describe these effects in detail, but some indication must be given of their impact on domestic law.

Most secondary legislation of the Community institutions take the form of either Regulations or Directives, the effect of which is set out in Article 189 of the Treaty. This Article provides that a "Regulation shall have general application" and "shall be binding in

its entirety and directly applicable in all Member States". A Regulation therefore automatically becomes part of domestic law and need not be expressly incorporated. It should however be noted that a Regulation may sometimes require domestic legislation to make it fully effective.⁽³⁸⁾

According to Article 189 a "Directive shall be binding, as to the result to be achieved, upon each Member State to whom it is addressed, but shall leave to the national authorities the choice of form and methods". Prima facie therefore, a Directive must be expressly incorporated into Irish domestic law, but there are exceptional cases where it may be directly applicable.⁽³⁹⁾ Decisions of Community institutions are binding on addressees.⁽⁴⁰⁾ Recommendations are not legally binding at all.

The effect of s.2 of the 1972 Act is, as Costello J. held in Pigs and Bacon Commission v. McCarren⁽⁴¹⁾ that:

Community law takes legal effect in the Irish legal system in the manner in which Community law itself provides. Thus, if according to Community law a provision of the Treaty is directly applicable so that rights are conferred on individuals which national courts must enforce, an Irish court must give effect to such a rule. And if, according to Community law, the provisions of Community law take precedence over a provision of national law in conflict with it an Irish court must give effect to this rule. That Community law enjoys precedence over a conflicting national law has been made clear in a number of decisions of the European Court and most recently in case 106/77, Aministrazione delle Finanze dello Stato v. Simmenthal.

Section 3 of the 1972 Act, which empowers a Minister to make regulations to give full effect to s.2, provides that regulations made thereunder "may repeal, amend or apply other law" i.e. other Irish law

an expression which includes subordinate legislation, Acts of the Oireachtas and even the Constitution, provided the provision in the regulation made under s.3(1) is "necessary for the purposes of the regulations", i.e. necessary for enabling Acts adopted by the European Communities to become part of Irish domestic law.

All Irish courts (not merely the High Court and Supreme Court) may declare Irish law inconsistent with Community law because Community law prevails if national law is inconsistent with it.⁽⁴²⁾

To summarise, Community institutions may legislate for Ireland, Community law and State law necessitated by Community obligations may not be declared unconstitutional, Community law prevails over national law inconsistent with it, Community law may be enforced in the Court of Justice of the European Communities and a Ministerial regulation made under s.3(1) of the 1972 Act may repeal, amend or apply any Irish law including hierarchically equal or superior law.

Moreover, the European Court has held that in certain circumstances⁽⁴³⁾ Directives and Decisions may be directly applicable and confer rights on individuals to rely on and enforce Community law in the national courts notwithstanding the failure of a Member State to incorporate them into national law.⁽⁴⁴⁾

1.2.4 Implementation of EEC Environmental Law in Ireland

At the end of 1982, the EEC had adopted 78 measures for the implementation of its environment policy. As stated above, Regulations made do not have to be, and are not in practice, expressly incorporated into Irish domestic law. Directives must be directly incorporated unless their provisions are either directly applicable or are already covered by existing legislation. The choice of form and methods for implementing Directives is left to the discretion of Member States.⁽⁴⁵⁾ In practice, environmental Directives have been implemented by statute, by subordinate legislation and/or by administrative action or by a combination of any or all of these methods. The most usual method of implementation has been by regulations made under s.3(1) of the European Communities Act 1972. This method of incorporating Directives

into domestic law is in some respects unsatisfactory. Regulations made under s.3(1) frequently incorporate Directives or parts of Directives by reference only so that the full legal text is not easily or widely available. Section 3(3) of the 1972 Act furthermore provides that "regulations made under s.3(1) may not create an indictable offence". Consequently, all offences created by regulations implementing Directives are triable summarily, are minor in nature and are punishable by lenient maximum penalties, usually £600 or £1000 and/or six months imprisonment. The deterrent potential of these penalties is thus minimised and the development of a jurisprudence on environmental control is inhibited since prosecutions for breach of the regulations are taken in the District Courts.

Even more unsatisfactory is the implementation of Directives by administrative action. This happens when it is considered that the provisions of a Directive are already covered by domestic legislation. Administrative action usually consists of circular letters sent by the appropriate Minister (normally the Minister for the Environment) to planning and pollution control authorities instructing them to implement a particular Directive. These circulars are not published officially. In fact, the Department of the Environment refuses to make the vast majority of them available to members of the public.⁽⁴⁶⁾ The result is that only a few people outside of the public service have access to the entire body of environmental laws.

An interesting feature of the choice of implementation methods adopted is that when a Directive imposes an obligation on the public sector, it is almost invariably implemented by administrative action. When it imposes obligations on both the public and the private sector, it is common practice for the Minister to omit obligations on the public sector in implementing regulations. There is therefore one genus of law for the public sector and another for the private sector. This is particularly well illustrated in the way the Directives on air quality standards, waste, on toxic and dangerous waste and on drinking waters have been implemented.⁽⁴⁷⁾ It has the practical effect of ensuring that obligations on public authorities are not known, and even when they are known, that the means of enforcing them are not as

effective as if they were contained in regulations which have the merit of ensuring publicity and provision for penalising non-compliance. Similar comments can be made with respect to the implementation of Decisions and Recommendations.

In E.C. Commission v. Belgium,⁽⁴⁸⁾ the European Court recently held that (depending on the contents of a particular Directive) it may be incompatible with the binding effect of a Directive for a Member State to apply the provisions thereof without introducing the Directive into national law by a national legislative act. This decision therefore raises doubts as to the legality of Irish methods of implementing Directives by circular letter.

FOOTNOTES

1. (1972) 11 I.L.M. 1416.
2. See, for example, Principle 22 of the Stockholm Declaration on the Human Environment, (1973) 14 Harvard International Law Journal, 423; Resolution 3129 of the United Nations General Assembly, U.N. Doc. A/9030 (1973) and Charter of Economic Rights and Duties of States, Article 3, U.N. Doc. A/9631 (1974).
3. See sections 4.5, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 11.2, 11.3, 11.4. The Stockholm Conference is expressly referred to in the First and Second EEC Action Programmes on the Environment.
5. Treaty of Rome, Article 2.
6. Declaration of the Council of Ministers of the European Communities and of the Representatives of the Governments of the Member States meeting in the Council, O.J. No. C 112, 20 November 1973.
7. O.J. No. C 112, 20 November 1973.
8. O.J. No. C 139, 13 June 1977.
9. International Environment Reporter, Vol.5, No.12, 1138.
10. Bulletin of the European Communities, Supplement 6/76 at p.13.
11. International Environment Reporter, Vol.5, No.12, 1138.
12. EEC Commission Document COM(80)222.
13. Council Decision of 25 July 1977, O.J. No. L 240, 19 September 1977.
14. Council Decision of 25 July 1977, O.J. No. L 240, 19 September 1977.
15. Council Decision of 11 June 1981, O.J. No. L 171, 27 June 1981.
16. Council Decision of 3 March 1975, O.J. No. L 194, 25 July 1975.
17. Council Recommendation of 26 July 1978, O.J. No. L 194, 19 July 1978.
18. Council Recommendation of 21 December 1978, O.J. No. L 33, 8 February 1979.
19. Cmnd. 8941, H.M.S.O.

20. Towards an Environment Policy, Prl.8215, 1979.
21. Pollution parks are areas specifically chosen as locations for heavily polluting industries. The Council opined at p.14: "Concentration of industry in particular locations may be preferable economically in terms of the cost of services and environmentally in terms of the preservation of other areas" and, at p.15, "the question of accepting a degradation of some rivers and lakes might be considered as in the national interest and appropriate industry concentrated in these areas in order to reduce the risk of widespread pollution of waterways".
22. Towards an Environment Policy, op.cit., at pp.14,15.
23. Ibid., at p.9.
24. A Policy for the Environment, Prl.148, 1980.
25. Ibid., at p.8.
26. Ibid., at pp.9,10.
27. Ibid., at p.10.
28. Ibid., at p.11.
29. Ibid., at pp.28, 29.
30. Ibid., at pp.30,31.
31. Ibid., at p.26.
32. Press release on Environment Policy, Government Information Services, 8 January 1982.
33. See Temple Lang, J., European Community Law, Irish Law and the Irish Legal Profession - Protection of the Individual and Co-operation between Member States and the Community, The Second Frances E. Moran Memorial Lecture , Trinity College, Dublin, 1982.
34. Third Amendment to the Constitution Act 1972.
35. The European Court has, however, explicitly recognised that the principles of fundamental rights are part of Community law. See Internationale Handelgesellschaft [1970] E.C.R. 1125. It is difficult to foresee the European Court according the same degree of protection to private property rights as the Irish courts.

36. See Kelly, J.M., The Irish Constitution, Dublin, 1980, pp.511-524; Blake and Madigan v. Attorney-General [1981] I.L.R.M. 34; In re Article 26 and the Housing (Private Rented Dwellings) Bill 1982, Supreme Court, unreported, 19 February 1982.
37. See Keane, R., "The 1963 Planning Act - Twenty Years On", (1983) 5 D.U.L.J. 92 at pp.98-99.
38. See Eleventh Report of the Joint Committee on the Secondary Legislation of the European Communities, Prl.4669, 1978, p.7.
39. See Hartley, T.C., The Foundations of European Community Law, 1981, pp.185-223.
40. Treaty of Rome, Article 189.
41. [1982] 7 E.L.R. 331 at p.342.
42. Temple Lang, J., op.cit., at p.1. See Simmenthal Case [1978] E.C.R. 629.
43. Hartley, op.cit., pp.185-196.
44. See Van Duyn v. Home Office [1974] E.C.R. 1337; The Ratti Case [1979] E.C.R. 1629, both of which held that a directive could be directly effective. In the Grad Case [1970] E.C.R. 825, the European Court held that a decision was directly effective.
45. Treaty of Rome, Article 189.
46. This writer corresponded with the Department for five years before gaining access to circulars in 1981. Access was given only because she became a member of the Board of An Foras Forbartha.
47. See sections 4.8, 5.5, 9.2 and 9.3.4.
48. [1982] 2 C.M.L.R. 622.

SECTION 2

LEGAL AND ADMINISTRATIVE STRUCTURES FOR PLANNING AND POLLUTION CONTROL

2.1 SOURCES OF LAW

The sources of planning and pollution law are:

1. The Constitution
2. The Common Law
3. Statute Law
4. European Community Law.

2.1.1 The Constitution

The Constitution is silent on the express question of whether or not the citizen is entitled to a clean and healthy environment. Nevertheless it is arguable that some protection of the citizen against an unhealthy environment may be derived from the Constitution.

Article 40 which contains some of the fundamental rights of the citizen provides in subsection 3.2 that:

The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen.

Article 45(4)(2) which contains one of the Directive Principles of Social Policy which are not "cognisable by any Court"⁽¹⁾ under any of the provisions of the Constitution, but of which account is nevertheless taken by the Courts⁽²⁾ further provides that:

The State shall endeavour to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused.....

In Ryan v. Attorney General⁽³⁾ it was held that the personal rights of the citizen mentioned in article 40.3.2 were not exhausted by the enumeration thereof, and that one of the unmentioned personal rights which the citizen enjoys is the right to "bodily integrity". This right was defined in the High Court to mean that:

no mutilation of the body or of any of its members may be carried out by any citizen under authority of law except for the good of the whole body, and that no process which is or may, as a matter of probability, be dangerous or harmful to the life or health of citizens or of any of them may be imposed (in the sense of being made compulsory) by an act of the Oireachtas.⁽⁴⁾

Ryan involved a challenge to the constitutionality of a statute which, it was alleged, obliged an individual to use water containing an additive (fluoride) hazardous to health. The plaintiff lost the case but had her arguments as to the harmful effects of imbibing fluoride

been accepted, the provisions of the statute requiring the addition of this substance to public water supplies would have been declared unconstitutional.

In Rogers v. Irish Transport and General Workers Union,⁽⁵⁾ the Court held that article 45 could be looked at by the courts in determining the unspecified rights contained in article 40.3.2.

In the State (C) v. Frawley⁽⁶⁾ and the State (Richardson) v. Governor of Mountjoy Prison,⁽⁷⁾ the High Court extended the principle in Ryan to condemn an act or omission of the Executive (as distinct from the Oireachtas) which "without justification, would expose the health of a person to risk or danger".

It would not be difficult to argue that the principles in Ryan and Frawley should be extended to acts of administrative bodies like local authorities.

It is unlikely that an attempt to establish a general constitutional right to a healthy environment would be successful. The Constitution does not provide judicial remedies against every social and economic ill and, as the United States Supreme Court stated in Turner v. Armco Steel Corporation⁽⁸⁾:

the judicial process through constitutional legislation is particularly ill-suited to solving the problem of environmental control. Because such problems frequently call for the delicate balancing of competing social interests as well as the application of specialised expertise, it would appear that their resolution is best assigned initially to the legislative and administrative processes. ... Furthermore the inevitable trade-off between economic and ecological values presents a subject matter which is inherently political and which is too serious to relegate to the ad hoc process of government by law suit.

Similar views were held by Kenny J. in Ryan when he stated that:

.....the Oireachtas has to reconcile the exercise of personal rights with the claims of the common good and its decision on the reconciliation should prevail unless it is oppressive to all or some of the citizens or unless there is no reasonable proportion between what the legislation will confer on the citizens or a substantial body of them and the interference with the personal rights of the citizen.⁽⁹⁾

Nevertheless it is not unlikely that in certain circumstances, and particularly where the health of a citizen is threatened, the courts would be prepared to declare what the citizen has a qualified right to a clean and healthy environment.⁽¹⁰⁾

2.1.2 The Common Law

Although common law remedies for planning and pollution control do exist, in practice there are many obstacles to their effective use for this purpose.⁽¹¹⁾ Nowadays greater reliance is placed on legislative measures establishing an administrative machinery for planning and pollution control leaving common law remedies as a measure of last resort.

The principal common law remedies are actions for nuisance, negligence, trespass and under the rule in Rylands v. Fletcher.⁽¹²⁾ Their main advantages over statutory remedies is that a successful plaintiff may recover damages for loss suffered, a possibility which rarely exists when statutory remedies are used⁽¹³⁾ and that the courts in deciding whether or not to grant injunctive relief at common law tend to place greater emphasis on the private rights of plaintiffs to the neglect of the public interest.⁽¹⁴⁾

Nuisance⁽¹⁵⁾

Nuisance may be public or private or both. Public nuisance is

both a crime and a civil wrong but to be "public" the nuisance must materially affect the reasonable comfort and convenience of life of a class of citizens. Proceedings for public nuisance may be brought by the Attorney General but an individual may also bring them if he suffers damage over and above that suffered by the public at large.

Private nuisance usually consists of an "act of wrongfully causing or allowing the escape of deleterious things into another's land - for example, water, smoke, smelly fumes, gas, noise, heat, vibrations, disease-germs, animals and vegetation".⁽¹⁶⁾ The essence of private nuisance is an unlawful interference with a person's use or enjoyment of land, or of some right over or in connection with it. Accordingly, the plaintiff must have a proprietary or possessory interest in land which had been interfered with and the action is not available to persons lacking a property connection. This is one of the major disadvantages of nuisance as a device for planning and pollution control. Once the existence of a nuisance has been proved, the defendant must prove that the interference is justifiable. It is this aspect of the tort which has given it its advantage over negligence where the plaintiff must prove the defendant's fault. Substantial damage must be proved before a plaintiff can sue in nuisance. The standard for determining whether damage is substantial is objectively judged in the sense that the idiosyncracies of the hypersensitive plaintiff must be discounted unless caused by the nuisance.⁽¹⁷⁾ But the character of the neighbourhood which the alleged nuisance affects may be relevant in determining whether a remedy is available. As Thesiger L.J. said in Sturges v. Bridgman⁽¹⁸⁾ "what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey". The remedies available to a successful plaintiff are damages and/or an injunction. In addition, a person affected by a nuisance may, in certain circumstances, abate it.

Trespass⁽¹⁹⁾

Pollution or the carrying out of development may constitute a trespass. A trespass may be committed by, inter alia, placing or

projecting any material object on land or causing any physical or noxious substance⁽²⁰⁾ to cross the boundary of a plaintiff's land or even simply to come into physical contact with the land, though there be no crossing of the boundary.⁽²¹⁾ Trespass is essentially an injury to a plaintiff's interest in the possession of property. The tort is complete upon a tangible invasion of the plaintiff's property, however slight, whether or not damage results, but potential difficulties in succeeding in trespass actions, particularly for pollution, lurk in the requirements that a trespass invasion be direct and intentional. It has been held that the interference is not direct if an intervening force such as wind or water carry pollutants on to a plaintiff's land.⁽²²⁾ However, it has been argued that the concept of "direct" injury where pollution is concerned is repudiated by the contemporary science of causation which establishes that "atmospheric or hydrologic systems assure that pollutants deposited in one place will end up some place else, with no less assurance of causation than the blaster who watches the debris rise from his property and settle on his neighbour's land".⁽²³⁾ Damages and/or an injunction are the usual remedies.

Negligence⁽²⁴⁾

Negligence consists of a breach of a legal duty of care owed by one person to another as a result of which that other suffers damage.⁽²⁵⁾ The difficulty with this action from the point of view of a plaintiff who seeks to control or prevent pollution is that it is frequently difficult to prove negligence on the part of the polluter, damage by the pollutant and the foreseeability of that damage. The usual remedies are damages and/or an injunction.

The Rule in Rylands v. Fletcher⁽²⁶⁾

The rule in Rylands v. Fletcher imposes strict liability upon the occupier of land who brings and keeps on it anything liable to do damage if it escapes. The rule is qualified by the requirement that the use of land must be "non-natural". But non-natural uses include

many activities which are simply high in risk: water stored in bulk, electricity in bulk, storage of a motor-vehicle with a tank full of petrol in a garage, the collection of toxic waste in a dump.⁽²⁷⁾

The action, unlike an action in nuisance, may be brought by anyone who has suffered damage. The remedies are damages and/or an injunction.

2.1.3 Statute Law

Most modern planning and pollution control law originates in statutes and subordinate legislation made thereunder. The common law of nuisance has also been modified by statute and a number of statutory nuisances have been created which embrace various types of pollution.⁽²⁸⁾ Sanitary authorities are obliged to inspect their districts for such nuisances⁽²⁹⁾ and on receipt of a complaint about a statutory nuisance to take steps to ensure that it is abated.⁽³⁰⁾ Prosecutions for statutory nuisances may be brought by persons aggrieved, inhabitants of sanitary districts or sanitary authorities.⁽³¹⁾ The tendency in modern pollution control legislation is to extend rights to enforce pollution control to the ordinary citizen⁽³²⁾ thus limiting further the relevance of common law remedies and ensuring that persons other than public authorities are involved in protecting the environment.

2.1.4 European Community Law

The adoption by the European Council of the Community Action Programmes on the Environment⁽³³⁾ was probably the most significant factor in motivating Irish authorities to enact, update and extend laws on planning and pollution control. Indeed, were it not for the necessity of complying with various EEC Directives and Decisions, it is doubtful whether many of the planning and pollution controls currently in force would have been introduced in their present form at all. Since 1973 the Community has adopted about 80 legislative texts on the environment. Many of these have been incorporated into Irish law.

Action for failure to implement or for breach of EEC law may be taken by the European Commission or another Member State.⁽³⁴⁾ This provides an added dimension to the enforcement of planning and pollution control laws in Ireland necessitated by the obligations of membership of the Community. In fact the EEC Commission has taken action against

Ireland on a number of occasions for failure to implement environmental Directives.

2.2 NATIONAL PLANNING AND POLLUTION CONTROL AUTHORITIES

2.2.1 Department of the Environment

Overall and primary responsibility for the protection and improvement of the environment rests with the Minister for the Environment. In implementing this general responsibility the Minister was charged by Government decision in 1978 with the following functions to be carried out in consultation, as appropriate, with other Ministers:

- (i) to prepare for approval of the Government a national environment policy and keep it under review,
- (ii) to examine the state of the environment and report on it to the Government from time to time,
- (iii) to promote coordination in policies and programmes relating to the environment, in particular in relation to European Community and international measures,
- (iv) to promote specific programmes or projects for the protection and improvement of the environment,
- (v) to designate areas as national parks or regional parks. (35)

The Environment and Physical Planning Division of the Department is divided into three sections, viz.

- (i) The Town Planning and Development Section is concerned with background research into land-use planning, preparation of legislation on land-use, and the administration of the Local Government (Planning and Development) Acts 1963-82.
- (ii) The Environmental Policy Section is responsible for the review of environmental legislation; the implementation of the EEC Action Programmes on the Environment; the implementation of the environment programmes of other international organisations, and the

review and co-ordination of local authority standards and practices in environmental matters and

(iii) The Pollution Control Section is concerned with air and water pollution; pollution by improper waste disposal; the implementation of various EEC Directives on waste and air pollutants; the control through the Alkali Inspectorate of industrial emissions to the atmosphere and the co-ordination of arrangements for the clearance of oil pollution from beaches and immediately offshore.

The Department of the Environment has both a technical and administrative staff. Many of the technical staff are graduates and reputed to be highly competent in their fields of responsibility. The Department itself, however, is generally believed to be old fashioned, defensive and conservative in its approach to environmental matters. There is little official enthusiasm for public participation and little co-operation with members of the public or persons carrying out research in environmental studies. The Official Secrets Act is accorded a reverence which would astonish officials in similar Departments in other jurisdictions and which, at times, can hardly be compatible with the public interest.⁽³⁶⁾ The Department has published only two papers on environmental matters since 1972 - the Report on Pollution Control⁽³⁷⁾ which consists of 81 pages including eleven appendices, and Memorandum No. 1 on Water Quality Guidelines.⁽³⁸⁾ As yet, there is no formally adopted national policy for the environment. While the laws on planning and pollution control have been considerably improved since 1973, there are no or inadequate controls in some areas, monitoring of compliance with existing laws and the enforcement of existing controls by public authorities is seriously defective, penalties provided in legislation are relatively small and there has been no real attempt to implement the polluter pays principle.

The Department is the central control authority for local authorities in their various capacities. An Foras Forbartha⁽³⁹⁾ operates under the aegis of the Minister for the Environment. The Water Pollution Council⁽⁴⁰⁾ advises him on his functions and responsibilities under the Local Government (Water Pollution Act) 1977.

2.2.2 Department of Energy

This Department shares responsibility for pollution control from mineral and petroleum exploration and is the enforcement authority under the regulations implementing EEC Directives 76/616/EEC concerning the lead content of petrol⁽⁴¹⁾ and 75/716/EEC on sulphur content of certain liquid fuels.⁽⁴²⁾ Responsibility for the control of radioactive substances rests with the Minister under the Nuclear Energy Act 1977 and the Nuclear Energy Board appointed under that Act reports to the Minister.⁽⁴³⁾

2.2.3 Department of Fisheries and Forestry

This Department is responsible for licensing discharges at sea under the Fisheries (Consolidation) Act 1959. It has powers to control water pollution under the Fisheries Harbours Centre Act 1968, and enforces water pollution controls under the Fisheries Acts 1959-80 and the Local Government (Water Pollution) Act 1977. All applications to local authorities for licences to discharge effluents to waters are sent to the Department. Fisheries Boards⁽⁴⁴⁾ report to the Minister. This Department is also concerned with the effects of pollution on wild-life and with the administration of the Wildlife Act 1976.

2.2.4 Department of Agriculture

This Department is concerned with the effects of environmental pollution on agriculture, the pollution implications of agricultural practices including the control of agrichemicals and with agricultural development generally. It operates an informal pesticide approval scheme⁽⁴⁵⁾ and administers the Farm Modernisation Scheme.⁽⁴⁶⁾ An Foras Taluntais (the Agricultural Institute)⁽⁴⁷⁾ and An Comhairle Oiliuna Talamhiocta (ACOT)⁽⁴⁸⁾ report to the Minister.

2.2.5 Department of Transport

This Department is responsible for the enforcement of the Foreshore

Act 1933, the Oil Pollution of the Sea Acts 1956-77 and the Dumping at Sea Act 1982. The adoption and enforcement of noise certification standards and of procedures to reduce aircraft noise in residential areas come within its responsibilities. Harbour authorities⁽⁴⁹⁾ report to the Minister.

2.2.6 Department of Labour

This Department is responsible for the implementation and enforcement of the Dangerous Substances Act 1972, and for the protection of workers exposed to pollution.

2.2.7 Department of Health

This Department is concerned with the environmental health problems and food contamination. It has overall supervision of Health Boards who are involved in monitoring water quality.

2.2.8 Department of Defence

This Department deals with the clearance of oil spillages at sea.

In 1979 the Government decided that every Minister was to ensure that the environmental effects and implications of policies, programmes and projects undertaken by his Department, and by bodies for which he is the appropriate Minister, are fully considered before decisions are taken and that such decisions will take due account of environmental considerations, including national environment policy.⁽⁵⁰⁾

2.2.9 Water Pollution Advisory Council

The Water Pollution Advisory Council (WPAC) was appointed in 1977 in accordance with the provisions of s.2 of the Local Government (Water Pollution) Act 1977, to replace an informal council which had been in operation since 1975. It is representative of various interest groups affected by water pollution legislation. Its statutory function is to

make recommendations to the Minister for the Environment in relation to his water pollution control functions and responsibilities, either on its own volition or at the request of the Minister. The Minister is obliged to consult the Council before exercising his functions under sections 3(10), 24, 25, 26, 27 of the Water Pollution Act. WPAC concerns itself mainly with environmental consciousness raising. It has published several insipid annual reports and has commissioned studies on the implementation of the Water Pollution Act.

2.2.10 Inter-Departmental Advisory Committee

The Inter-Departmental Advisory Committee is not, strictly speaking, an agency but it does perform functions which might be assumed by a more formal body. Its function is "to co-ordinate the various activities of the public sector affecting environmental matters".⁽⁵¹⁾ By Government decision it has the following terms of references:

- (i) to be a means of communication between Departments in environmental matters, to promote co-ordination and joint consideration by Departments where appropriate, particularly in relation to EEC and international measures;
- (ii) to examine arrangements relating to environmental protection and improvement and to consider their adequacy;
- (iii) to provide such input as may be called for to the the working of the Environment Council;⁽⁵²⁾
- (iv) to monitor the consideration of matters arising from the Report on Pollution Control.⁽⁵³⁾

The proceedings and conclusions of this Committee are not publicly available.

2.2.11 An Bord Pleanála

An Bord Pleanála was established under the Local Government (Planning and Development) Act 1976. Its functions include:

- (i) determining whether or not a particular activity is or is not development or exempted development, ⁽⁵⁴⁾
- (ii) hearing appeals against local planning authority decisions
 - granting (with or without conditions) or refusing planning permissions or approvals or permissions to retain a structure, ⁽⁵⁵⁾
 - revoking or modifying a permission, ⁽⁵⁶⁾
 - requiring the alteration of a structure or the carrying out of specified works, ⁽⁵⁷⁾
 - requiring the removal or alteration of a structure, ⁽⁵⁸⁾
 - requiring the discontinuance of any use or land or imposing conditions on the continuance of any such use, ⁽⁵⁹⁾
 - making the conservation order, ⁽⁶⁰⁾
 - granting (whether subject to or without conditions) or refusing permission to erect, construct, place and maintain petrol pumps and other specified types of appliances and structures on public roads, ⁽⁶¹⁾
 - on the amount of the contribution to be paid by the developer when he is required to contribute to local authority expenditure as a condition of a planning permission or approval when he and the local authority fail to agree on the amount of the contribution payable, ⁽⁶²⁾
 - making an acquisition notice in relation to land which is to be provided or maintained as an open space, ⁽⁶³⁾
 - waiving the developer's obligation to comply with a condition, ⁽⁶⁴⁾
- (iii) resolving the impasse when a planning authority is unwilling to comply with a purchase notice, ⁽⁶⁵⁾
- (iv) determination of the contribution to be paid by a planning authority which has granted a permission subject to conditions requiring the provision of certain facilities in excess of the immediate needs of the proposed development and which fails to agree on the amount of the contribution. ⁽⁶⁶⁾

In 1977 the Bord was designated the appellate authority for appeals under the Local Government (Water Pollution) Act 1977, against local authority decisions on applications to discharge effluents to

waters⁽⁶⁷⁾ and to review a licence to discharge effluents to waters;⁽⁶⁸⁾
 and against sanitary authority decisions on applications to discharge
 effluents to sewers,⁽⁶⁹⁾ and to review a licence to discharge
 effluents to sewers.⁽⁷⁰⁾

Under the Local Government (Planning and Development) Act 1983, members of the six person Bord must be appointed in the manner specified in the Act. The chairperson must be appointed by the Government on the recommendation of a selection committee consisting of the President of the High Court, the Secretary and Chief Engineering Officer of the Department of the Environment, the Chairperson of An Taisce, and the Presidents of the Construction Industry Federation and the Irish Congress of Trade Unions.⁽⁷¹⁾ The five ordinary members must be appointed by the Minister for the Environment on recommendations received from four separate groups of organisations representative of environmental, development and community interests.⁽⁷²⁾

The Local Government (Planning and Development) Acts 1976 and 1983, contain a number of provisions designed to ensure the incorruptibility, impartiality and independence of the Bord and the depoliticisation of the planning process.⁽⁷³⁾

The Bord is obliged to keep itself informed on the policies and objectives of public bodies whose functions are concerned with proper planning and development.⁽⁷⁴⁾ The Minister for the Environment may give the Bord general directives on planning and development policy which must be published in a prescribed manner, but he may not address it on any specific case.⁽⁷⁵⁾ The Bord must "have regard" to such directives.⁽⁷⁶⁾

The Bord publishes an annual report detailing its activities.

2.3 RESPONSIBILITIES OF REGIONAL AND LOCAL AUTHORITIES IN PLANNING AND POLLUTION CONTROL MATTERS

2.3.1 Regional Development Organisations

Regional Development Organisations are non-statutory bodies representative of local authorities and of other development interests such as industrial development and tourist authorities. The country has been divided into nine regions for economic development purposes. Regional development officers report on, inter alia, physical and infrastructural factors which are important for regional development programmes. Their main concern is the promotion of economic development but they are also concerned with the pollution control implications of industrialisation and they have co-ordinated arrangements for dealing with oil pollution on a regional basis.

2.3.2 Local Authorities⁽⁷⁷⁾

Local authorities consist of county councils (27), county borough corporations (4), borough corporations (7), urban district councils (49) and boards of town commissioners (29). County councils and county borough corporations were established under the Local Government (Ireland) Act 1898. Borough corporations were reformed and reconstituted by the Municipal Corporations (Ireland) Act 1840. Town Commissioners came into existence in some cases under an Act of 1828, in others by Private Act, but generally under the Towns Improvement (Ireland) Act 1854. The modern urban district council is the successor of the urban sanitary authorities created under the Public Health (Ireland) Act 1878.⁽⁷⁸⁾ County councils exercise their jurisdiction over that part of a county unit which is not within the jurisdiction of other local authorities. County borough corporations are responsible for the cities of Dublin, Cork, Waterford and Limerick. Borough corporations, urban district councils and town commissioners have functions over a number of smaller towns.

Members of local authorities are elected, usually every five years, on a system of proportional representation. Elections are fought

almost exclusively on a party political basis. All qualified persons registered as local electors are entitled to vote. Elected members have overall responsibility over the activities of their particular local authority and certain exclusive powers (known as "reserved functions") while administrative and executive matters are left to a County or City Manager and staff.⁽⁷⁹⁾

All local authorities except boards of town commissioners are also planning and sanitary authorities. Planning authorities are responsible for the control of land-use in their areas.⁽⁸⁰⁾ Sanitary authorities have a wide range of functions including functions relating to air,⁽⁸¹⁾ sewage,⁽⁸²⁾ water supplies,⁽⁸³⁾ waste⁽⁸⁴⁾ and the suppression of statutory nuisances.⁽⁸⁵⁾ The larger local authorities (county councils, borough corporations, and Dun Laoire corporation) are responsible for the administration and enforcement of water pollution controls relating to discharges to waters established under the Local Government (Water Pollution) Act 1977⁽⁸⁶⁾ and for administration and enforcement of controls over toxic wastes.⁽⁸⁷⁾

Local authorities may, and do, co-operate with each other and other statutory bodies. They are empowered to exercise or perform a function, power or duty of another local authority or statutory body.⁽⁸⁸⁾ The Minister for the Environment is responsible to the Oireachtas for their activities and his powers include powers of approval in relation to many local authority plans; powers of action in default; powers to require co-ordination and co-operation between different local authorities; powers to give guidance on policy matters and the ultimate power to dismiss a local authority in special legally-defined circumstances. Because of their substantial financial dependence on central government finance, local authorities are, in practice, subordinate to the Department of the Environment.

2.3.3 County Committees of Agriculture

Under the Agriculture Act 1931, as amended, each county council must appoint a committee of agriculture. Each committee has corporate status. Two-thirds of the members are appointed by the county council and the remainder on the nomination of active voluntary rural organisations. County Committees of Agriculture are responsible for agricultural advisory and training services and the local administration of grant-aids to farmers. While they have no statutory functions in relation to planning and pollution control, in practice, they influence farm development and when approving grant aids, require farmers to adopt good agricultural practices in matters such as the construction and location of farm buildings, the disposal of farm wastes and the proper use of agrichemicals.⁽⁸⁹⁾ Since 1980 the advisory and training functions of the county committees are co-ordinated and supervised by An Comhairle Oiliuna Talmhaiochta (ACOT) under the provisions of the National Agricultural Advisory, Educational Research Authority Act 1977, and the Agriculture (An Comhairle Oiliuna Talmhaiochta) Act 1979.

2.3.4 Fisheries Boards

The Fisheries (Consolidation) Act 1959, provided for the establishment of boards of conservators in the fishery districts specified in the Act. Their functions included protecting fish life generally and for this purpose they had powers to prosecute for water pollution under the 1959 Act and under the Local Government (Water Pollution) Act 1977. In practice, they took their duties with respect to water pollution control far more seriously than most local authorities.⁽⁹⁰⁾ They were responsible to the Minister for Fisheries. The Fisheries Act 1980, dissolved the Boards of Conservators and replaced them by a Central Fisheries Board and seven regional fisheries boards. The water pollution control functions of the former Boards of Conservators were vested in the Fisheries Boards who report to the Minister of Fisheries.

2.3.5 Harbour Authorities

Harbour authorities were established under the Harbours Acts 1946 and 1947, and are responsible for the administration of harbours legislation in the harbours scheduled in the 1946 Act. They are powers under the Harbours Act 1946, and the Oil Pollution of the Sea Acts 1956-77, to control oil pollution in harbour areas.⁽⁹¹⁾ They also have responsibilities in relation to the control of dangerous substances under the Dangerous Substances Act 1972, and regulations made thereunder.⁽⁹²⁾ Harbour authorities are responsible to the Minister for Transport.

2.4 INDEPENDENT ADVISORY BODIES WITH FUNCTIONS RELEVANT TO PLANNING AND POLLUTION CONTROL

2.4.1 Institute for Industrial Research and Standards

The Institute for Industrial Research and Standards (IIRS) is a state-sponsored body responsible to the Minister for Industry and Energy by whom the Board is appointed. It was established under the Industrial Research and Standards Act 1961. Its only statutory function directly relevant to pollution control is prescribed in s.5 of the 1961 Act which requires it to promote or facilitate "the utilisation of the waste products of industry" but IIRS perceives its role in promoting the utilisation of the natural resources of the State as bringing with it an obligation "to ensure that in the development of those resources other natural resources, such as air, water and amenities are not damaged".⁽⁹³⁾

IIRS has five main areas of activity in the environmental field:

- (i) Its "primary" responsibility is "to help industry to meet the environmental constraints set by local and national authorities".⁽⁹⁴⁾
- (ii) In the absence of clearly defined statutory or local requirements regarding the environment, it advises Government and local authorities on "acceptable norms

for industrial practice in relation to effluents, emissions, noise and vibration, solid and hazardous wastes".⁽⁹⁵⁾ It also prepares national standard recommendations and codes of practice for pollution control.⁽⁹⁶⁾

- (iii) It participates in public service and EEC working groups on aspects of pollution control and is represented on most official and semi-official pollution control committees.⁽⁹⁷⁾ In this capacity the IIRS provides the scientific and technical expertise which the administrative Civil Service lacks.
- (iv) It acts as the consultant to the Industrial Development Authority (IDA) on environmental matters. Since 1972 it has carried out a limited form of environmental impact assessment on all industrial projects for which IDA grant-aids were sought. Where water pollution is in question, the aid of an Foras Forbartha is enlisted and joint assessments and recommendations are made. The suitability of proposed pollution control measures is assessed and environmental quality and/or emission standards are recommended to the IDA and incorporated as conditions for grant-aids.⁽⁹⁸⁾ The IDA sends copies of the recommended standards to the local authority of the area in which the industry is, or will be situated, and to the Department of Fisheries. In practice, these standards are almost invariably adopted by local authorities and incorporated as conditions for planning permissions and other authorisations.⁽⁹⁹⁾
- (v) It acts as a consultant to Government departments and local authorities carrying out their environmental protection functions. It has carried out environmental impact assessments on many major new industries on behalf of local authorities.⁽¹⁰⁰⁾
- (vi) Under the European Communities (Motor Vehicle Type Approval) Regulations 1978-82, the IIRS is empowered to issue type approvals to manufacturers of products used in vehicle

construction provided the products conform to EEC requirements.⁽¹⁰¹⁾

Although standards recommended by IIRS are not in themselves mandatory, they may and frequently do, become so by incorporation as conditions for grant-aids, planning permissions and authorisations of various kinds necessary for polluting activities. Planning and pollution control authorities have not got the expertise, staff or facilities to set environmental standards themselves and they rely greatly and sometimes exclusively on IIRS and/or An Foras Forbartha to provide them with technical information and advice. In practice therefore, the position is that the IIRS is often the real - as distinct from the formal - environmental standard-setter in Ireland. Whether the IIRS should enjoy this role is questionable. The IIRS depends on private enterprise for a good - and increasing - proportion of its finances. Its clients include both public bodies and private entrepreneurs. In a particular case it may act for both. On the topic of its conflicting functions, the IIRS has claimed that it "cannot or will not support or encourage industrial development where short-term benefits may lead to long-term damage to human health or the environment",⁽¹⁰²⁾ and it also points to its record to date which is reputed to be a good one. In 1977 the IDA-sponsored A Survey of Pollution in Ireland⁽¹⁰³⁾ stated that:

Among those IDA sponsored new industries that have been established in Ireland in the last five years, there has been, almost without exception, no sign of any environmental pollution nor any indication that stringent standards imposed are not being met.⁽¹⁰⁴⁾

Even if this statement is entirely accurate - and none but the IIRS is competent to comment on this - a system which permits the IIRS to work for both developers and polluters and planning and pollution control authorities and thereby constitutes it the de facto and unelected arbiter of environmental standards must surely be lacking.

2.4.2 An Foras Forbartha

An Foras Forbartha (The National Institute for Physical Planning and Research) is a state-sponsored body established in 1964 by the then Minister for Local Government to provide advice and undertake research in physical planning and development, in building and construction and in roads and water resources. It is responsible to, and works very closely with the Minister for the Environment and derives the vast bulk of its income from state grants and charges for services.

AFF operates a Conservation and Amenity Advisory Service to local authorities on environmental issues, including planning and pollution control. It also collects, collates and processes data on the quality of water resources throughout the country and has established hydrometric teams to monitor water quality in eight regional locations. It operates a laboratory system for monitoring water quality in rivers, lakes and estuaries and the quality of effluents discharged to these bodies. It is also carrying out research into the assimilative capacity of estuaries and coastal regions and the effects of industrial development on the country's water resources.

In the last few years AFF, at the request of the Minister for the Environment, has prepared studies on, inter alia, development policies and techniques, air and water quality, waste disposal methods, locations for heavy industries, amenity areas, conservation policies and techniques, litter, oil pollution, urban renewal and on aspects of energy policy.

AFF has prepared water quality management plans for several local authorities on a river catchment basis and in May 1983 it completed an in-depth review of water pollution in Ireland for the Water Pollution Advisory Council.⁽¹⁰⁵⁾ The proposals made and the priority areas identified by this report are likely to have a major impact on water pollution control policies in the next few years. Most of the proposals in A Policy for the Environment⁽¹⁰⁶⁾ have been incorporated

into the AFF work programme.

In practice AFF operates as a centralised research organisation for the Minister for the Environment, local authorities and the public sector generally. This pragmatic solution to a shortage of technically and scientifically qualified personnel in the public service has much to recommend it in a small jurisdiction.

AFF has been designated as the national co-ordinating body for forwarding the results of air pollution monitoring to the EEC Commission as required by the EEC Council Decision of 24 June 1975 establishing a common procedure for the exchange of information based on data relating to atmospheric pollution caused by certain compounds and suspended particulates and as the National Coordinating Laboratory in connection with the common measurement programme relating to EEC Directive 80/779/EEC on air quality values for sulphur dioxide and suspended particulates.⁽¹⁰⁷⁾ AFF also monitors surface waters at locations designated in accordance with EEC Directive 75/440/EEC concerning the quality required of surface water intended for the abstraction of drinking water in the Member States.⁽¹⁰⁸⁾ AFF participates in public service and EEC working groups on aspects of pollution control. With the IIRS, it carries out assessments on the water pollution implications of industries which have applied for IDA grant-aids and both bodies formulate joint recommendations on environmental standards which ought to be observed.

The functions of the IIRS and AFF appear to overlap but the institutes themselves have made administrative agreements to prevent duplication of work.⁽¹⁰⁹⁾ Despite their superficial similarity, the ethos of the two organisations is quite different: the IIRS has an aura more redolent of the market place than of the public service while AFF appears to be a combination of the academic and pragmatic. This probably arises from the fact that the greater proportion of IIRS work is for the private sector while the work of AFF is public sector orientated. AFF has published more than 240 research publications and technical reports on environmental matters. It sees its role as that

of "an environmental watchdog, free of commitment to any polluting interest". (110)

2.4.3 Industrial Development Authority

The Industrial Development Authority is a state-sponsored body charged with the promotion of industrial development in Ireland. Under the Industrial Development Act 1969, it has wide statutory powers to give financial and other assistance to qualifying industries. Most new and expanding industries receive some kind of IDA economic aid. The IDA requires that industries liable to cause pollution problems be subjected to a limited form of environmental impact assessment by its consultants the IIRS and AFF (for water pollution).⁽¹¹¹⁾ Environmental standards recommended by the IIRS and AFF are incorporated as conditions for grant-aids and grants are also made conditional on compliance with conditions attached to planning permissions and the obtaining of any necessary licences or other authorisations under pollution control legislation. Non-compliance with a term or condition attached to a grant or other payment may result in the grant or payment becoming repayable to the IDA and, in default of being repaid, being recoverable as a simple contract debt.⁽¹¹²⁾ It is understood that a grant has never been repaid because of non-compliance with pollution control conditions. The IDA also builds advance factories, purchases sites and identifies locations suitable for development. It has thus developed as one of the greatest determinants of industrial location in the country.⁽¹¹³⁾

The IDA claims to have a responsible attitude towards the environment. Since 1972 it has taken environmental considerations into account when considering applications for grant-aids. Environmental standards recommended by IDA consultants are frequently adopted as mandatory standards by pollution control authorities.⁽¹¹⁴⁾ In 1977 the IDA commissioned IIRS to carry out a national survey of air and water pollution "to establish that the creation of new industrial jobs in Ireland is not achieved at the cost of polluting our water and air".⁽¹¹⁵⁾ An edited form of the survey which purported to establish what the IDA wanted, was published in 1977. This survey is the most comprehensive and detailed analysis of industrial pollution ever carried out in

Ireland and it is regrettable that as such it should have been commissioned by the IDA and not by some body whose statutory functions include pollution control.

To some extent IDA involvement in the setting of environmental standards may be justified. It has the practical advantage that an industrialist usually has a good idea of what standards he must meet before he commits himself irrevocably to a project. But he could also know this if mandatory standards were published. The IDA claims with some justification that if it had not established its environmental impact procedures in 1972 and required the installation of pollution controlling equipment, "it is unlikely.....that much pollution control equipment would have been installed in many plants". This was probably true in the early seventies when planning and pollution control laws were inadequate or ignored by local authorities. It is now time for the IDA to re-assess its involvement in pollution control. Action must also be taken to ensure greater co-ordination between the IDA and planning and pollution control authorities on industrial location. (116)

2.4.4 An Comhairle Oiliuna Talamhaidh

An Comhairle Oiliuna Talmhaidh (ACOT) was established under the National Agricultural Advisory, Educational and Research Authority Act 1977, and the Agriculture (An Comhairle Oiliuna Talmhaidh) Act 1979. It is responsible for the development of agriculture through the provision of agricultural education, training and advice. It integrates, develops and expands the work of the County Committees of Agriculture, the information and education services of the Department of Agriculture and State-aided Agricultural Colleges, Colleges of Rural Home Economics and the Agricultural Institute.

Its functions relative to the environment are limited, but it does advise farmers in its literature and through the media on proper agricultural practices, on, inter alia, the location of farm buildings, silage making, animal feedingstuffs, pesticide spraying and sheep dipping.

ACOT is responsible to the Minister for Agriculture.

2.4.5 An Foras Taluntais

An Foras Taluntais (The Agricultural Institute) was established under the Agriculture (An Foras Taluntais) Act 1958. Its functions include reviewing, facilitating, encouraging, assisting, co-ordinating, promoting and undertaking agricultural research in Ireland. It is responsible to the Minister for Agriculture to whom it submits its annual report. It has no specific statutory function in the fields of planning and pollution control, but its work contributes to the control of pollution, especially agricultural pollution.

It is to the agricultural sector what IIRS and AFF are to the industrial sector. It is specifically obliged to disseminate the results of agricultural research, particularly to those engaged in agricultural advisory work, and it has a statutory obligation to advise the Minister for Agriculture on any matter relating to agricultural research or agricultural science on which advice is requested by him. A booklet on Methods of Treatment of Milk Processing Wastes published by the Institute is widely used in farming circles. Special sections in the Institute are concerned with pollution, viz.: the farm structures and environment department, the soil fertility and chemistry department, the pesticide residue and analytical services unit, soil physics, field investigations, soil biology and animal husbandry services laboratory.

The Institute has given high priority to pollution matters and has been involved with a number of local authorities in relation to planning applications for large industries where it was thought that pollution from them could have an unfavourable effect on agriculture in the vicinity.

The Agricultural Institute is comparatively well equipped, well financed and well staffed. It is not subject to the same conflicting interests as is, e.g. the IDA and IIRS. Its role as a pollution control authority should not be under-estimated as controls over pollution

caused by agricultural activities are largely extra-legal. (117)

2.4.6 National Board for Science and Technology

The National Board for Science and Technology (NBST) was established under the National Board for Science and Technology Act 1977. The Board consists of a chairperson appointed by the Government and up to ten ordinary members who, happily, do not represent specific interest groups. Its main functions include advising the Government or the Minister for Industry on policy for science and technology and related matters; promoting research in the fields of science and technology and promoting the development of national resources through the application of science and technology. (118)

NBST and the EEC have funded a number of research projects on the environment as part of the EEC Second Environmental Research Programme (1976-81). The main contribution of NBST to environmental policy-making has been through the publication of the proceedings of various seminars on environmental problems of particular significance in the Irish context and the identification of research projects in areas of national importance.

2.5 SPECIAL INTEREST GROUPS

2.5.1 An Taisce

An Taisce - the National Trust for Ireland - is a voluntary non-profitmaking company financed by private donations and subscriptions from members. It is concerned with protecting environmental quality in general and its principal aim is to protect the nation's physical heritage. It is a prescribed authority for the purposes of s.21(1)(a) of the Local Government (Planning and Development) Act 1963⁽¹¹⁹⁾ and one of the nominating bodies for the chair of An Bord Pleanála under the Local Government (Planning and Development) Act 1983.

An Taisce has no other specific rights under pollution control legislation but it avails of rights available to the individual. (120)

It is the most active and the most effective environmental watchdog in the country.

2.5.2 Bord Failte Eireann

Bord Failte Eireann (The National Tourist Board) is a corporate body established under statute and financed by annual Government grant. It is concerned with all aspects of tourist development including the development of amenities. It is a prescribed body under s.21(1)(a) of the Local Government (Planning and Development) Act 1963.⁽¹²¹⁾

Bord Failte encourages community participation in amenity projects by way of competitions such as Tidy Towns, National Gardens, Civil Award Schemes. Despite the financial and manpower resources available to it, the Board appears to be somewhat timorous about defending environmental interests especially where this involves challenging decisions made or supported by other public authorities.

2.5.3 Electricity Supply Board

The Electricity Supply (ESB) is a statutory corporation which has a virtual monopoly for supplying electricity in Ireland. It owns extensive fisheries in its own right and has powers of control over these.

Section 42 of the Electricity Supply (Amendment) Act 1945, gives the ESB a measure of control over rivers and streams serving electricity generating stations. This section prohibits any person, without the written permission of the Board, from discharging or allowing into a river (or into any tributary of any river, or any watercourse connected with any river) which is to be used by the Board in connection with the generation of electricity, any chemical or other substance which might injure any part of the generating station or any works subsidiary to it or connected with it. Contravention of the provision is punishable by £50 fine plus £20 for every day on which the offence is continued. Prosecutions have been taken in a number of cases.

The ESB spends considerable amounts in the preservation and development of amenity resources under its control and on fisheries. It employs an administrative officer in its head office and pollution investigation officers in the field. Its fisheries protection staff are instructed to report on cases of pollution which come to their notice in their daily rounds. It has its own central laboratory for investigating, inter alia, pollution, together with facilities for BOD, pH and ammonia analyses. When necessary, it avails of the expertise of the public analyst and other bodies, e.g. AFF, the IIRS and An Foras Taluntais. It has regular consultations with local authorities in their various capacities and is represented on various planning committees and regional development organisations. It operates a close liaison with fisheries interests especially the Department of Fisheries. It monitors air pollution in a number of locations, and has its own internal standards for emissions.

2.5.4 Others

Other associations concerned directly or indirectly with pollution control include the Arts Council, the National Monuments Advisory Council, the Ireland Waterways Association of Ireland, the Maritime Institute, the Heritage Trust, local field clubs, anglers and residents' associations and local development committees.

2.6 THE REGULATORY APPROACH

Planning and pollution control methods are not simply legal in character. They also comprise administrative and economic sanctions. The regulatory methods used in Ireland are common to all West European systems though there are differences in their application and enforcement. The most widely used methods are described below.

2.6.1 Criminal Sanctions

Every legislative measure on planning and pollution control provides for the imposition of criminal penalties (fines and/or

imprisonment) for breach or non-conformity with administrative requirements made under that statute and/or legislation subordinate to it.

Thus in Irish law penalties for environmental offences range from £20 for an offence under the Alkali etc. Works Regulations Act 1906, to an unlimited fine and five years imprisonment for illegal dumping of wastes at sea under the Dumping at Sea Act 1981. Modern tendency is to provide for large fines for environmental offences when these are created by statute. This has a distortive effect because many serious environmental offences created by older statutes are subject to much more lenient maximum penalties than less serious offences created by modern statutes.

In practice, the criminal law is rarely used to enforce planning and pollution controls. The reasons for this are well documented elsewhere.⁽¹²²⁾ The largest (traceable) fine ever imposed for a planning offence was £2000.⁽¹²³⁾ No person has ever been imprisoned for an environmental offence.

2.6.2 Civil law sanctions

Injunctions and/or damages are the remedies available to a person who successfully sues in negligence, nuisance, trespass or under the Rule in Rylands v. Fletcher for what is, in effect, an environmental offence.

In practice, however, civil law remedies for environmental control are dependent on the accidents of private litigation and while they are indispensable in that they offer the means of regulating day to day disputes, and of compensating individuals who suffer damage, they are not a very effective method of planning and pollution control.⁽¹²⁴⁾

2.6.3 Prior Authorisation Requirements

Authorisations of various kinds must now be obtained for most activities which affect environmental quality. Thus, for example,

- (i) planning permission must be obtained before any development of land may be undertaken,
- (ii) a limited number of activities liable to cause air pollution must be certified or registered,
- (iii) licences must be obtained for the discharge of trade and sewage effluents to waters or sewers,
- (iv) permits must be obtained for the dumping of wastes on land and at sea and for the handling, storage or deposit of toxic and dangerous wastes.

In nearly all cases authorisations granted may be conditional on discharges or emissions meeting specified emission standards, process or product standards, environmental quality or compliance with codes of practice or good management procedures. All authorisations are of limited duration and/or are reviewable. Non-compliance with conditions attached to authorisations is always an offence.

The effectiveness of conditions attached to authorisations depends, inter alia, upon the existence of reliable base line data on the state of the environment, the appropriateness of standards set, the availability of scientific and technical expertise, an integrated approach to environmental management and not least, the political will to enforce breach of, or non-compliance with, conditions set. Many of these requirements are lacking in Ireland.

As a general rule, authorisation requirements do not apply to activities carried out by public authorities.⁽¹²⁵⁾ Occasionally, other less restrictive methods of controlling development and polluting activities carried out by public authorities are provided. The details of these are rarely available to the public.

2.6.4 Environmental Standards

Environmental standards may be articulated in policy documents and/or in legal controls. They fall into four basic types:⁽¹²⁶⁾

1. Environmental quality standards which prescribe the maximum levels of pollution in the receptor medium, namely air, water and soil; for example, organic pollution of a river, the SO₂ content of air, DDT in the soil or the noise level in a particular place.
2. Emission or effluent standards which put a quantitative limit on the discharge of pollutants (or their concentration in effluents) which may be discharged from a given source per unit of time or during a given cycle of operations.
3. Process standards which prescribe, with reference to environmental protection targets, a set of specifications to which sources must conform. Unlike emission or effluent standards which merely impose an obligation to achieve a result and leave the polluter a choice as to how he will achieve it, process standards impose an obligation to use certain methods and those methods only. A process standard may prescribe a specific production process, or mode of operation, or type of waste treatment plant.
4. Product standards which aim at prescribing within various tolerance limits:
 - (a) the physical or chemical polluting or harmful properties of a product,
 - (b) the rules for making up, packaging or presenting a product,
 - (c) the maximum permissible polluting effluents or emission from the product during use.

These four kinds of regulation serve different purposes and a balanced control system should usually contain all four.

The only express environmental standards imposed by native legislation (as distinct from legislation necessitated by the obligations of membership of the EEC) are emission limits for certain acid gases prescribed in the Alkali etc Works Regulation Act 1906, and for dark smoke in the Control of Atmospheric Pollution Regulations 1920. Irish authorities always preferred to leave a wide discretion to control authorities with respect to the environmental standards which they could set. Some guidance on desirable standards has been given from time to time in unpublished circular letters sent to local authorities.

Since 1973, however, a large number of environmental standards have become applicable under various measures implementing the EEC Action Programmes on the Environment. These will be detailed in the remainder of this thesis. These standards are applied by regulations made under the European Communities Act 1972 or, more commonly, by circular letters.

2.6.5 Economic Incentives

The use of economic control methods such as emissions and effluent charges, subsidies, loans, grants and tax allowances for the purposes of planning and pollution control plays a decisive role in attempts at achieving an optimum quality of natural resources. The effectiveness of these methods has never been fully examined in Ireland.

The obligation to respect the "polluter pays" principle enshrined in all EEC Action Programmes on the Environment implies, inter alia, that the polluter should bear the full economic cost of carrying out pollution prevention and control procedures and that charges should be levied in respect of all wastes discharged to the environment. (127)

In Ireland this principle is partly respected, in theory at least, by legislative measures which can be used to prevent the location of industries in environmentally sensitive areas and by conditions attached to various kinds of authorisations prescribing environmental standards, compliance with which must be financed by the polluter.

Until 1977, the only charges made for discharging wastes to the environment were sanitary authority charges on traders for disposing of solid waste and charges in respect of waste treatment works jointly used by particular industries and sanitary authorities. (128) Since then, no doubt motivated by the polluter pays principle, several Acts have made provision for the imposition of prescribed or agreed charges for public authorities services in the fields of planning and pollution control. These include:

(1) The Local Government (Water Pollution) Act 1977, under which charges may be made for the entire or part of the costs of monitoring discharges to waters or sewers, for discharges of effluents or particular classes of effluents to waters, for the entire or part of the cost of any investigation carried out by a local authority in relation to an application for a water pollution licence, and for all or part of the costs incurred by a sanitary authority in monitoring, treating or disposing of a discharge to sewers, ⁽¹²⁹⁾

(2) The Dumping at Sea Act 1981, under which charges may be imposed for permits and any monitoring, surveying and examinations carried out in connection with the permit, ⁽¹³⁰⁾

(3) The Local Government (Planning and Development) (Fees and Amendment) Regulations 1982, under which prescribed fees are payable in relation to the submission of planning applications, applications for the extension or further extension of a planning permission, copies of entries in the planning register, appeals, references and determinations by An Bord Pleanála and third party representations or objections in respect of a planning application or an appeal to An Bord Pleanála. ⁽¹³¹⁾

(4) Local Government (Financial Provisions) Act 1983

In 1983, undoubtedly motivated by the recession, s.2 of the Local Government (Financial Provisions) Act 1983, gave local authorities a general power to charge for services directly supplied to consumers for which there was no existing power to make charges. It is anticipated that this power will be used to charge for domestic waste collection and other waste disposal services carried out by local authorities.

FOOTNOTES

1. Constitution of Ireland, article 45.
2. See Kelly J., The Irish Constitution, Dublin, 1980, at pp.542-546.
3. [1965] I.R. 344.
4. Ibid., at p.345.
5. High Court, unreported, 5 March 1978.
6. [1976] I.R. 365.
7. High Court, unreported, 28 March 1980.
8. 340 F. Supp. 532.
9. [1965] I.R. at pp.212-13.
10. A number of Constitutions adopted in the last ten years contain special rules relevant to the environment. See Steiger H., "The Fundamental Right to a Decent Environment" in Trends in Environmental Policy and Law, 1980, at pp.1-27.
11. See Currie D.P., Pollution Cases and Materials, 1975, at pp.51-81; Rodgers W.H., Environmental Law, 1977, at pp.100-207.
12. (1868) L.R. 3 H.L. 330.
13. See, however, Alkali etc. Works Regulations Act 1906, s.6(2) and section 4.12.
14. See Bellew v. Cement Ltd. [1948] I.R. 62 where the majority of the Supreme Court held in a nuisance action that "the Court was not entitled to take the public convenience into account when dealing with the rights of private parties". However, the High Court has recently taken a different view in Gleeson and Others v. Syntex Ltd., Irish Times, 29 September 1982, in which Hamilton J. held that "the level of smell was not sufficient to justify granting an injunction which would have the effect of closing down a factory which employs 350 people".
15. See McMahon B. and Binchy W., Irish Law of Torts, 1981, at pp.474-500.
16. Salmond, Law of Torts, (16th ed.) at pp.41-42.
17. See Mullin v. Hynes, Supreme Court, unreported, 13 November 1972.

18. 11 Ch.D. 852 at 865. See also Pembroke (Earl of) v. Warren [1896] 1 I.R. 76 for the adoption of this view in Ireland.
19. McMahon and Binchy, op.cit., at pp.127-148.
20. McDonald v. Associated Fuels (1954) D.L.R. 775.
21. Salmond and Heuston, Law of Torts, (18th ed.) at p.36.
22. Esso Petroleum Co. Ltd. v. Southport Corporation [1956] A.C. 218.
23. Rodgers, op.cit., at p.156.
24. McMahon and Binchy, op.cit., at pp.149-229.
25. Donoghue v. Stevenson [1932] A.C. 562.
26. McMahon and Binchy, op.cit., at pp.500-510.
27. See Salmond and Heuston, op.cit., at pp.306-307.
28. See Keane R., The Law of Local Government in the Republic of Ireland, 1982, at pp.93-105.
29. Public Health (Ireland) Act 1878, s.108.
30. Ibid., ss.109-112, 113, 123.
31. Ibid., s.121.
32. See Local Government (Planning and Development) Act 1976, s.27 and Local Government (Water Pollution) Act 1977, s.11. See also sections 3.6.13 and 5.4.11.
33. See section 1.2.
34. Treaty of Rome, article 169, 170. See Hartley T.C., The Foundations of European Community Law, 1981, at pp.291-323.
35. Press Release: Ministerial Responsibility for Environmental Matters, Government Information Services, 27 February 1978.
36. See section 1.2.4.
37. Prl. 6970, 1979.
38. G.P.O. 1979.
39. See section 2.4.2.
40. See section 2.2.9.
41. See section 4.7.

42. See section 4.6.
43. See section 11.
44. See section 2.3.4.
45. See section 11.2.2.
46. See section 5.7.
47. See section 2.4.5.
48. See section 2.4.6.
49. See section 2.3.5.
50. Press Release: Ministerial Responsibility for Environmental Matters, Government Information Services, 27 February 1978.
51. Ibid.
52. The Environment Council was disbanded in 1978. Proposals to replace it by an Environment Bureau have not been implemented.
53. Information from the Department of the Environment.
54. Local Government (Planning and Development) Act 1963, s.5. Hereinafter called the 1963 Act.
55. Ibid., ss.26, 27.
56. Ibid., s.30.
57. Ibid., s.33.
58. Ibid., s.36.
59. Ibid., s.37.
60. Ibid., s.46.
61. Ibid., s.89.
62. Ibid., s.26 as amended by the Local Government (Planning and Development) Act 1976, s.14(4).
63. Local Government (Planning and Development) Act 1976, s.25.
64. Ibid., s.29.
65. 1963 Act, s.29.
66. 1963 Act, s.26.

67. Local Government (Water Pollution) Act 1977, s.8.
68. Local Government (Water Pollution) Regulations 1977, article 15, S.I. No. 108 of 1978.
69. Local Government (Water Pollution) Act 1977, s.20.
70. Local Government (Water Pollution) Regulations 1977, article 22.
71. Local Government (Planning and Development) Act 1983, s.5.
72. Ibid., s.7.
73. Local Government (Planning and Development) Act 1976, ss.12, 32, 33, 34; Local Government (Planning and Development) Act 1983, ss.6, 7, 13, 14.
74. Local Government (Planning and Development) Act 1976, s.5.
75. Ibid., s.6.
76. Ibid.
77. For a fuller description of the origins and functions of local authorities see Keane, op.cit., and Roche D., Local Government in Ireland, 1982.
78. Local Government Re-organisation, Prl. 1572, 1971.
79. See County Management Act 1940, and City and County Management (Amendment) Act 1955.
80. See section 3.
81. See sections 4.1, 4.2., 4.3, 4.4.
82. See section 6.
83. See section 5.5.
84. See section 9.
85. See sections 4.1, 9.6.
86. See section 5.4.
87. See section 9.3.4.
88. Local Government Act 1955, s.59.
89. See section 5.7.
90. See section 5.2.

91. See sections 8.1.5, 8.6, 8.8.
92. See sections 8.8, 11.7.2.
93. The Role of the IIRS in the Environmental Field, 1977, at p.3.
94. Ibid., at p.4.
95. Ibid.
96. Ibid., p.9.
97. Ibid., Appendix 3.
98. See A Survey of Pollution in Ireland, Industrial Development Authority, 1977, at p.3; Convery F., "Some Environmental Policies - Review and Outlook", Irish Economic Policy, 1978, at pp.375-79.
99. Convery, op.cit., at pp.375-79.
100. The Role of the IIRS in the Environmental Field, at p.13.
101. See section 4.8.1.
102. The Role of the IIRS in the Environmental Field, at p.4.
103. Supra.
104. Ibid., at p.3. This statement no longer holds true. At least five chemical companies grant-aided by the IDA had major pollution control problems in 1981 and 1982.
105. See section 2.2.9. This report has not yet been published.
106. See section 1.2.2.
107. See section 4.13 and An Foras Forbartha Review 1982/83 at p.4.
108. See section 5.5.
109. Memorandum of Understanding between An Foras Forbartha and the Institute of Industrial Research and Standards, 1972.
110. Ibid.
111. See sections 2.4.1, 2.4.2.
112. Industrial Development Act 1969, s.45.
113. See Scannell Y., "Irish Procedures for the Protection of the Environment against Industrial Pollution", Paper at Conference on Industrial Pollution, 1977.

114. Sections 2.4.1, 2.4.2.
115. A Survey of Pollution in Ireland, supra, at p.4.
116. A Policy for the Environment, supra, at p.29.
117. See sections 3.6.2, 5.7.
118. National Board for Science and Technology Act 1977, s.4.
119. See sections 3.1.4, 3.9, 3.10.
120. See sections 3.10, 5.10.
121. See sections 3.1.4, 3.9, 3.10.
122. See Richardson G. et al., Policing Pollution, 1982, at pp.14-29.
123. Galway County Council v. Connacht Proteins Ltd., High Court, unreported, 28 March 1980.
124. See Ercman S., European Environmental Law, 1977, at pp.487-90.
125. See sections 3.5.2.2, 5.4.3, 5.5, 9.1, 9.2, 12.3.
126. This classification is based on a document issued by the Environment Directorate of the OECD Environment Standards: Definitions and the Need for International Harmonisation, 1974. See also Richardson G. et al, op.cit., at pp.30-68.
127. See Scannell Y., "The Polluter Pays Principle and Irish Environmental Law", Paper to the Environment Policy Committee of the Confederation of Irish Industry, 1983.
128. Public Health Acts (Amendment) Act 1890, s.48, and section 6.2.5.
129. Local Government (Water Pollution) Act 1977, ss.4, 6, 16.
130. Dumping at Sea Act 1981, s.3.
131. See section 3.6.15.

SECTION 3

DEVELOPMENT PLANNING

AND

DEVELOPMENT CONTROL

Any description of planning and pollution controls in Ireland must centre upon the provisions of the Local Government (Planning and Development) Acts 1963-82.⁽¹⁾ These Acts are the primary mechanisms for land-use control although land-use is also influenced by the Government, local authority and Industrial Development Authority development policies.

The Planning Acts have also been extensively and somewhat inadvisedly used for the control of many kinds of pollution. Their emergence as devices for pollution control was more by accident than design and was to a large extent due to the absence until the last few years of any other mechanisms, or, more accurately, any other effective mechanisms, for controlling pollution in an era of rapidly increasing urbanisation and industrialisation.

In recent years, however, the deficiencies inherent in these Acts as techniques for controlling pollution have become increasingly obvious and modern policy (influenced by the EEC) favours the enactment of separate legislation for the protection of specific environmental media (water, air, land) or for the control of environmentally harmful activities (e.g. waste disposal, noise generation).

The Planning Acts operate on two levels: on one they provide for the making and implementation of schemes regulating land-use in a general way; on the other they prohibit the development of land unless it is authorised and carried out under, and in accordance with, the permission or licence of the appropriate planning authority.

The Acts are administered at local level by 87 local planning authorities.⁽²⁾ Appeals from decisions by local planning authorities lie to An Bord Pleanála⁽³⁾ and from thence, on a point of law, to the High Court.

3.1 DEVELOPMENT PLANS

3.1.1 Nature and Content

Statutory land-use plans in Ireland are, with minor exceptions, prepared and implemented by local planning authorities in accordance with the provisions of the Planning Acts 1963-82 and the Local Government (Planning and Development) Regulations 1977.⁽⁴⁾ The 1963 Act requires every planning authority to "make a plan indicating the development objectives for their area".⁽⁵⁾ A development plan must consist of a written statement and a plan, which is essentially a map, indicating the development objectives for the area in question.⁽⁶⁾ There is no exhaustive definition of the term "development objectives" but the term does include objectives for physical, economic and social development. Mandatory and permissible objectives are set out in the 1963 Act and in the Third Schedule thereto.⁽⁷⁾ Mandatory objectives differ for urban and rural areas. Those for

county boroughs, boroughs, urban districts and towns scheduled in the First Schedule to the 1963 Act are objectives:

- (i) for the use solely or primarily (as may be indicated in the development plan) of particular areas for particular purposes, whether residential, commercial, industrial, agricultural, or otherwise),
- (ii) for securing the greater convenience and safety of road users and pedestrians by the provision of parking places or road improvements or otherwise,
- (iii) for the development and renewal of obsolete areas,
- (iv) for preserving, improving and extending amenities.

Mandatory objectives for other areas are:

- (i) for the development and renewal of obsolete areas,
- (ii) for preserving, improving and extending amenities,
- (iii) for the provision of new water supplies and sewage services and the extension of existing such supplies and services. ⁽⁸⁾

A wide range of permissible objectives for all areas are listed in the Third Schedule under the headings of Roads and Traffic, Structures, Community Planning and Amenities. The latter heading embraces objectives for "prohibiting, regulating or controlling the deposit or disposal of waste materials and refuse, the disposal of sewage and the pollution of rivers, lakes, ponds, gullies and the seashore". Planning authorities were required to draw up the original development plans within three years of 1 October 1964, or such longer period as the Minister allowed. Thereafter they are required to review the plan and make such variations thereto as they consider proper, or to make new development plans, from time to time but at least every 5 years. ⁽⁹⁾ This means that development planning is a relatively new concept in Ireland. The original development plans were generally rather crude and inadequate. Recent plans tend to be more sophisticated and detailed.

Planning authorities are prohibited from including in a development plan any objective the responsibility for the effecting

of which would fall on another local authority without consulting the latter⁽¹⁰⁾. Authorities may make either one development plan for the whole of their area incorporating all of the appropriate mandatory objectives, or two or more development plans - each being for the whole of their area and some one or more of the mandatory objectives, or for part of their area, and all or some one or more of the mandatory objectives⁽¹¹⁾. Because of the obvious dangers and inconveniences of allowing 87 different authorities to make 87 different plans, the Act empowers the Minister for the Environment to require the co-ordination of the plans of two or more planning authorities in certain respects⁽¹²⁾, but the Minister has never exercised this power. The Minister is also empowered to prepare and publish for the use of planning authorities and other persons interested "general instructions in relation to the preparation of development plans and of provisions and clauses usually inserted in such plans" as and when he thinks fit. A number of such circulars have been issued to planning authorities⁽¹³⁾. Expert advice and information is available from the technical staff of the Department of the Environment and from An Foras Forbartha⁽¹⁴⁾.

3.1.2 Procedure for making draft development plans

A draft of the plan, or of a variation of a plan, is prepared by the staff of a planning authority with or without outside assistance (In some cases, for example, An Foras Forbartha or independent planning consultants are employed). The proposed draft is submitted to the elected members of the planning authority for their consideration and it may be altered in the light of their reactions to it. Notice of the preparation of the relevant draft must be published in Iris Oifigiuil (the Official Gazette) and in at least one newspaper circulating in the area⁽¹⁵⁾. In certain circumstances, express notice must be served on owners or occupiers of structures or land where their interests are peculiarly affected⁽¹⁶⁾.

In all cases copies of notices of the preparation of the draft plan or variation and of the written statement comprised therein must be served on prescribed authorities⁽¹⁷⁾ who may have a particular interest in it or who may be in a position to give the planning

authority special advice⁽¹⁸⁾.

Notices published and served must state -

- (a) that a copy of the draft may be inspected at a stated place and at stated times during a stated period of not less than 3 months;
- (b) that objections or representations with respect to the draft made to the planning authority within the said period will be taken into consideration before the making of the plan or variations and
- (c) that any ratepayer making objection with respect to the draft may include in his objection a request to be afforded an opportunity to state his case before a person or persons appointed by the planning authority⁽¹⁹⁾.

The public is thus given a right to inspect the draft plan or variations and to make representations with respect thereto. Plans are not, in practice, presented in such a way as to allow a choice between alternative proposals, nor indeed has there, as yet, been any systematic effort to encourage meaningful public participation in the development planning process⁽²⁰⁾. . . There is a general tendency to see the right of public participation as being more relevant to those whose proprietary interests may be affected by a proposed plan than to the public at large which has yet to be made aware of the role which it could play in development planning.

A planning authority which has prepared the draft, given the appropriate notices and considered objections and representations made, may decide to amend the draft and make the plan accordingly. If the proposed amendment would constitute a material alteration of the draft displayed, the planning authority must again give public notice of intention to make the proposed amendment, display the draft amendment for not less than one month and allow the public to make objections and representations which must be taken into account

before the amendment is made⁽²¹⁾. Amendments which are not of a material nature may be made without displaying the amended draft.

When all the prescribed procedures have been properly complied with, the plan or variation or amendment is then adopted and "made" by the elected members of the planning authority. The making, varying or amending of development plans is a "reserved function", and must therefore be performed by the elected members of the local authority⁽²²⁾. Although in law the elected council makes the plan, the officials employed by the council to advise it have the greater influence on its content. Notice of the making of the plan or variation or amendment, as appropriate, must be published in Iris Oifigiuil and in at least one local newspaper⁽²³⁾. This notice must state that a copy of the relevant plan as made, varied or amended, is available for public inspection as a stated place and at stated times⁽²⁴⁾. Copies are kept available in the offices of planning authorities during office hours. Any member of the public is entitled to obtain a printed copy of a development plan or of an extract therefrom on payment of a fee not exceeding the reasonable cost of making it⁽²⁵⁾.

In Finn v. Bray Urban District Council⁽²⁶⁾ it was held that the prescribed procedure for making development plans was a mandatory one. In that case failure to publish the prescribed notice in respect of a draft plan as amended resulted in a declaration that the adoption of the development plan was of no effect.

The Minister for the Environment has power to require the variation of a development plan in respect of matters and in a manner specified by him, and a planning authority is obliged to comply with such a request⁽²⁷⁾. In so far as can be ascertained, the Minister has never formally requested a variation of a plan.

3.1.3 Significance of development plans

In essence, development plans serve as land-use allocation maps providing a basis for development control. Planning authorities

are statutorily obliged to "take such steps as may be necessary for securing the objectives which are contained in the provisions of the development plan"⁽²⁸⁾. Local authorities, though not required to obtain planning permission for development in their own areas,⁽²⁹⁾ are prohibited from effecting any development which materially contravenes their development plan⁽³⁰⁾. Development plans operate as a framework within which planning applications are made and permissions granted. Planning authorities must have regard to the provisions in their plans when considering planning applications, whether or not to enforce planning controls or whether to revoke or modify permissions granted⁽³¹⁾. Development which materially contravenes a provision in a development plan will not normally be permitted. In the exceptional circumstances when such development is to be permitted, special procedures must be observed, except where permission is granted on appeal by An Bord Pleanála⁽³²⁾.

The obligation to make development plans compels local authorities to focus on the proper planning and development of their areas; this is a prime justification for making development plans. Whether this objective is achieved or not is a different matter. It has, for example, proved extremely difficult to keep plans up to date and responsive to demands for change. The usefulness of plans as guides to future decision-making has been reduced by the lack of forward and long-term planning by many authorities. In recent years also, it has become increasingly obvious that there is a grave need for the articulation of regional as distinct from local planning policies - especially where questions of industrial location and pollution control are concerned. At present, few of the 87 different planning authorities co-operate adequately with each other and the public has become attuned to the repeated scenario of county councils planning to defend their territories against encroachment from towns and county boroughs, and urban district councils and county boroughs bursting at their seams and unable to provide land and services demanded by inhabitants and developers. Successive Ministers for the Environment have not exercised their powers to require the necessary co-ordination of plans.

Although in theory, plans may contain objectives for water

pollution control and for the control of waste disposal⁽³³⁾, in practice, these objectives are not usually or not adequately stated.

3.1.4 Public participation in development planning

In theory, the underlying policy behind requirements for the notification, display and hearing of views on proposed development plans/ variations/ amendments is to enable interested members of the public and certain cultural and environmental protection organisations who may be interested in environmental matters and/or who may be affected by proposals in drafts, to participate in the development planning process. In practice most planning authorities have shown little or no enthusiasm for encouraging public participation. Professional planners tend to resent the interference of, and delays caused by "amateurs"; most politicians prefer to keep their knowledge of the planning process to themselves and to distribute it, when possible, in the guise of political patronage. In addition, by the time public participation is formally invited the planners and the elected representatives have usually developed a commitment to the proposed plan/ variation/ amendment that inevitably produces a degree of bias against those who suggest alterations. What is in effect sought is a public response to proposals rather than a public input to them and there is little realisation of the nature of the contribution which could be made by ordinary people from their practical and intimate knowledge of local communities and local problems. Alternatives are rarely offered and the public is invited (not expected) to examine and judge a proposal without access to the background information, studies and surveys which influenced the planners and the politicians in making their proposals. This invidious and widespread practice of concealing information from those with a right to participate in the formulation of plans and at whose expense the information has been collected was recently successfully challenged in the U.S. courts who have declared that a prerequisite to the ability to make meaningful comment is to know the basis upon which the rule is proposed⁽³⁴⁾. It is to be hoped that the Irish courts will soon be invited to make a similar declaration.

Planning authorities appear to be quite assiduous in complying with the letter as distinct from the spirit of public participation requirements. Of 35 authorities (17 urban district councils and 18 borough and county councils) who responded to a questionnaire on public participation in development planning circulated by this writer in 1978, only one - Dublin County Council - indicated that it had displayed their draft for more than the prescribed minimum of 3 months. All county boroughs and county councils displayed their drafts in more than one place but only one urban district council did this. Of the 35 respondents, Dublin County Council made the most strenuous efforts to involve the public in making their development plan. These efforts included displaying the plan in 17 locations, mounting audio-visual displays and ensuring that qualified personnel, and even county councillors, were available to explain the plan to interested members of the public. Of the other authorities, only 9 took measures in addition to those prescribed in the Acts to involve the public. The most frequently taken non-mandated measures were -

- (1) ensuring extra press publicity and
- (2) explaining the draft to residents and other community associations.

Until the review of the latest Dublin Development Plan (in November 1982) when exceptional public interest was manifested with respect to zoning proposals, newspapers did not generally manifest a great deal of interest in development planning: only two planning authorities (Dublin and Cork County Councils) stated in 1978 that national newspapers had taken "some" interest in their draft plans. Local newspapers tended to display more interest - 4 authorities considered that they had taken a "great" interest in the draft displayed, 13 "some", 4 "little" and one authority considered that their local newspaper had evinced no interest at all. It is difficult to discover the extent of general public interest in development planning because of the lack of statistical records kept of numbers who inspected drafts or who made representations or objections with respect thereto. Only 13 of the 35 respondents

kept such records. One borough council (Waterford) reported that not one person had inspected its draft plan! The 1970 draft displayed by Dublin County Council was, as might be expected, inspected by the greatest number (21, 141); drafts displayed by other county councils attracted an average of about 50 people while the numbers who inspected drafts displayed by urban district councils varied from 1 to 250. There appears to be greater interest in acquiring copies of the development plans when made than in making them (e.g. Cork County Council sold about 1,000 copies of its development plan). The greatest number of plans sold by an urban district council was 70. Typical purchasers were those engaged in the construction industry and residents' associations.

Attitudes taken by planning authorities towards public participation in development planning were curious. All 35 respondents professed to be in favour of increased public participation, but 4 qualified their replies by stating that they needed more financial resources and 13 said that they would welcome participation "if it were more constructive", thereby implying that in their experience, public participation was not constructive. Eight authorities considered that participation in their development planning process was good; 9 considered that it was fair and 14 said that it was bad. There appeared to be a widely-felt view (18 out of 35 respondents) that the prime motivation for participation was concern about the impact of proposals on proprietary interests.

Public participation appears to have very little impact on the content of plans eventually made. Eighteen authorities reported that their draft had not been altered at all as a result of public comments thereon while 15 replied that their drafts had been changed in a few respects. The draft plans of urban district councils appear to have met with an extraordinary degree of public acceptance - 13 out of 16 replies stated that their drafts had not been changed in any material respect in response to public opinion. Of the 3 urban district councils who changed their drafts, 2 made zoning changes and the third altered a proposed traffic route. Twelve county and borough councils changed their drafts. In 4 cases,

proposals relating to roads were varied; in 7 zonings were changed; in 6 proposals relating to amenities were changed; in 3 cases additional buildings were listed for preservation and in 2 instances buildings listed for preservation were removed from the list. It was generally agreed that the subjects attracting greatest public interest were roads, zoning and amenities in that order. Of the objections made to the provisions in the last draft development plan displayed by Dublin County Council, 87% related to roads, 8% to zoning and 3% to proposals relating to the conservation and preservation of amenities.

Prescribed authorities have a right to receive specific notice of the making of a draft plan together with a copy of the written statement comprised therein⁽³⁵⁾. Of the prescribed authorities, An Taisce, the National Monuments Advisory Council, Bord Failte and the Arts Council might be considered as representative of environmental interests. Of the 35 respondents, 30 reported that one or more of the prescribed authorities had actively participated in making the plans eventually adopted. The extent to which the various bodies participated varied: 12 planning authorities considered that of the 4 prescribed authorities aforementioned, An Taisce had been the most helpful; 5 considered that the contributions of the National Monuments Advisory Council had been the most helpful and 2 gave this accolade to Bord Failte. The Arts Council appears to have abandoned its responsibilities in relation to development planning.

Any assessment of the techniques and experiences of public participation in development planning must necessarily be tentative and subjective because of the relative novelty of the concept and the lack of empirical research in the field. The above findings must, however, on any view, be described as depressing. It is submitted that the main reasons for this are inadequate and defective procedures and unenlightened official attitudes to public participation. The difficulties experienced with respect to industrial location and the siting of public developments in recent years may prompt a re-examination of existing techniques and practices⁽³⁶⁾.

3.2 SPECIAL AMENITY AREA ORDERS

Sections 42 and 43 of the 1963 Act, as amended ⁽³⁷⁾, deal with the making of special amenity area orders. Under these sections a planning authority is empowered to make an amenity order where it appears to them that by reason of -

- (i) its outstanding natural beauty,
- (ii) its special recreational value, or
- (iii) a need for nature conservation

an area should be declared an area of special amenity. These orders may state the objective of the planning authority in relation to the preservation or enhancement of the character or special features of the area including objectives for the prevention or limitation of development in the area. The Minister for the Environment may also, if he considers it necessary, require a planning authority to make an amenity order in relation to a specified area.

Where the functional areas of two planning authorities are contiguous, either authority may, with the consent of the other, make an amenity order in respect of an area in, or partly in, the functional area of the other. Such orders may be revoked or varied by subsequent order and there is an obligation to review any order from time to time and at least once in every period of 5 years for the purpose of deciding whether a revocation or amendment of the order is desirable.

As soon as may be after making an amenity order, the relevant planning authority must publish in one or more newspapers circulating in the area to which the order relates a notice -

- (a) stating the fact of the order having been made, and describing the area to which it relates,

- (b) naming a place where a copy of the order and of any map referred to therein may be seen during office hours,
- (c) specifying the period (not being less than one month) within and the manner in which objections to the order may be made to the planning authority, and
- (d) specifying that the order requires confirmation by the Minister and that, where any objections are duly made to the order and are not withdrawn, a public local inquiry will be held and the objections will be considered before the order is confirmed.

When the period for making objections has expired, the planning authority must submit the order for the Minister's confirmation with objections which have been duly made and not withdrawn. If no objection has been made, or if objections made are withdrawn, the Minister has a discretion to refuse to confirm the order or to confirm it with or without modifications. If there have been objections which have not been withdrawn, the Minister must cause a public local enquiry to be held and must consider objections there made and the report of the person who held the inquiry. Only then may the Minister exercise his discretion to refuse to confirm the order or to confirm it with or without modifications. Only 3 special amenity area orders have been made to date - by Dublin County Council, Dublin Corporation and Dun Laoghaire Borough Council. All 3 orders were in respect of the Dublin Bay area. A lengthy public inquiry to consider objections to the order made by Dublin Corporation was held in May 1978 and the Minister's decision refusing to confirm the order was announced in November 1981. One of the main reasons which inspired the public pressure leading to the making of the 3 orders was an unsuccessful attempt to locate an oil refinery in the Dublin Bay area. Despite the absurdity of this proposal (from an environmental point of view), there had been a good deal of support for it - especially from trade unionists. Special amenity area orders may be annulled by resolution of either House of the Oireachtas.

In deciding whether or not to permit a development or the retention of a structure or whether or not to enforce planning controls, or to revoke or modify planning permissions, planning authorities must have regard, inter alia, to any special amenity area order relating to their areas ⁽³⁸⁾. Permission may not be granted for a development which materially contravenes the provisions of an order. A planning authority which intends to permit a material contravention of any provision in a special amenity area order must follow special procedures before a decision permitting such a development is taken ⁽³⁹⁾.

Certain types of development which are normally exempted development are not exempted in an area to which a special amenity area order relates. The classes of development involved include mining, advertisements and certain types of industrial and agricultural developments ⁽⁴⁰⁾. Where a planning application is made for development in an area to which a special amenity area order relates, there may be an obligation to notify An Taisce or one of the other prescribed bodies ⁽⁴¹⁾.

3.3 CONSERVATION ORDERS

Section 46 of the 1963 Act, as amended ⁽⁴²⁾, deals with the making of conservation orders. Under this section a planning authority, after consultation with the prescribed bodies may decide :

“that it is expedient in the interests of amenity to make provision to preserve from extinction or otherwise protect any flora or fauna in an area, or part of an area, to which a special amenity area order relates, being flora or fauna which are of special amenity value or special interest”.

to make a conservation order. There is an obligation to give public notice of the making of a conservation order and a right of appeal to the Minister against the order. The Minister on appeal may decide to confirm the order with or without modifications or to annul the order. Contravention of a provision of a conservation order is a criminal offence for which the maximum fine on summary conviction is £250.

3.4 THE WILDLIFE ACT 1976

Further powers for wildlife conservation and the protection of wild flora and fauna are contained in the Wildlife Act 1976, which is administered by the Minister for Fisheries and Forestry.

Sections 15, 16 and 17 of this Act establish a procedure whereby the Minister for Fisheries and Forestry may make :

- (i) an establishment order establishing nature reserves on lands owned by him or the State,
- (ii) a recognition order, recognising nature reserves in private ownership and
- (iii) a designation order, designating land as a refuge for a particular species of fauna which should be specially protected.

Before publishing notice of intention to make such orders the Minister is obliged to consult and in some cases obtain the concurrence of authorities whose interests may be affected. In the case of a designation order or amendment thereof made under section 17, the Minister is obliged to serve copies of the notice of his intention to make the order on the owner or occupier of the affected land, and to publish the notice in Iris Oifigiuil and in at least one newspaper circulating in the area in which the land is situated. Certain specified persons whose interests may be peculiarly affected by these orders have a right to object to the Minister in respect of the making of the proposed order within two months of publication of the notice.

All such objections must contain particulars of the objecting party's claim (where appropriate) and particulars of the grounds of objection. The Minister must consider objections duly made, and having done so, he may make the designation order or amendment thereof in the prescribed manner. Persons whose interests in land

have been diminished by the making of the order, or persons who, as a result of the making of the order have had to incur expense or who have suffered financial loss for any inconvenience or other disadvantage are entitled to compensation. Copies of all orders made under sections 15, 16 and 17 of the Act must be sent to the Commissioners of Public Works and planning authorities within whose area the affected land, or part thereof, is situate.

Under s.18 of the Act, the Minister may also enter into an agreement with any person having an interest in or over land as to the user or management of the land in the interests of protecting or conserving wildlife. Copies of this agreement must be served on the Commissioners of Public Works and on planning authorities within whose area the affected land, or part thereof, is situate.

Section 12 (2) of the Act requires Ministers of State, (other than the Minister for Fisheries and Forestry), local authorities and certain other public bodies to consult the Minister before taking decisions on projects which might adversely affect the wildlife values of nature reserves or refuges for fauna set up under sections 15, 16 and 18 in the interests of eliminating or reducing potential damage. This section does not apply in respect of determinations made or acts done in emergency situations, to the functions of An Bord Pleanála in relation to development control and amenity under the Planning Acts nor to the Commissioners of Public Works under the Arterial Drainage Acts. Section 43 of the Act, however, provides for the exercise of some control over the Commissioners in the latter respect.

3.5 DEVELOPMENT BY A PLANNING AUTHORITY

Under s.74 of the 1963 Act planning authorities are empowered, with the consent of the appropriate Minister, to appropriate land vested in them otherwise than for the purposes of their functions under the Planning Acts to the purposes of their functions under these Acts.

They may also dispose of land acquired for the purposes of the Planning Acts or appropriated under the Acts subject to such conditions as they consider necessary in order to secure the best use of that or other land, and any development of that or other land in such manner as appears to them to be needed for the proper planning and development of their area. They may also lease land owned by them if it is not required for a particular period.⁽⁴³⁾

Planning authorities may also develop and promote the development of land themselves. Section 77 of the 1963 Act provides that:

- (1) A planning authority may develop or secure the development of land and, in particular and without prejudice to the generality of the foregoing, may -
 - (a) secure, facilitate and control the improvement of the frontage of any public road by widening, opening, enlarging or otherwise improving,
 - (b) develop any land in the vicinity of any road or bridge which it is proposed to improve or construct,
 - (c) provide areas with roads and such services and works as may be needed for development,
 - (d) provide areas of convenient shape for development,
 - (e) secure or carry out, as respects obsolete areas, the development or renewal thereof and the provision therein of open spaces,
 - (f) secure the preservation of any view or prospect, any structure or natural physical feature, any trees subject to a tree preservation order, any site of geological, ecological or archaeological interest or any flora or fauna subject to a conservation order.

- (2) A planning authority may provide -
 - (a) sites for the establishment or relocation of industries, businesses (including hotels, motels, and guesthouses), dwellings, offices, shops, schools, churches and other community facilities and or such buildings, premises, dwellings, parks and structures as are referred to in paragraph (b) of this subsection,
 - (b) factory buildings, office premises, shop premises,

dwelling, amusement parks and structures for the purpose of providing accommodation, meals and refreshments, buildings for providing trade and professional services and advertisement structures, building or structures for dogs or cats homes,

- (c) any services which they consider ancillary to anything which is referred to in paragraphs (a) and (b) of this subsection and which they have provided,

and may maintain and manage any such site, building premises, dwelling, park, structure or service and may make any charges which they consider reasonable in relation to the provision, maintenance or management thereof".

Since planning authorities themselves are not obliged to obtain permission to develop land,⁽⁴⁴⁾ they do not have to go through the procedures for obtaining such permission. Instead, s.78 of the 1963 Act provides that the Minister may make regulations providing for citizen participation in decision-making by planning authorities in relation to any specified cases or classes of cases of development proposed to be carried out by planning authorities. These regulations have never been made. There is thus very little provision in the Planning Acts for soliciting the views of the public on local authority development except in so far as proposals for such development may be contained in development plans. Many local authorities use s.77 to facilitate the establishment of amenities, industries and employment-providing enterprises in their areas.

3.6 DEVELOPMENT CONTROL

3.6.1 The Obligation to Obtain Planning Permission

Planning permission is required for all development of land being neither exempted development⁽⁴⁵⁾ nor development commenced before 1 October 1964.⁽⁴⁶⁾ The definition of development is therefore the basis of development control as only activities which come within the definition prima facie require planning permission. Section 3 of the 1963 Act provides that development 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 land .

There are therefore two broad categories of development: (i) development which consists of the carrying out of works⁽⁴⁷⁾ and (ii) development consisting of a material change of use. The two categories are not necessarily always exclusive and they sometimes "inevitably overlap"⁽⁴⁸⁾ but they must be kept separate because they sometimes have different legal consequences.⁽⁴⁹⁾

Whether a particular activity is or is not development is a question of fact and degree. It appears from four recently decided cases⁽⁵⁰⁾ that the Irish courts are prepared to hold that in intensification of works and/or an intensification of use of land may in certain circumstances amount to "development" for which planning permission is required. In these cases the defendants argued that planning permission was not required for their activities because they had been commenced before 1 October 1964 and/or that their activities did not constitute an "unauthorised use" of land within the meaning given to that expression in section 2 of the 1963 Act. Nonetheless the courts held that planning permission was required for their activities.

Whether or not this is a necessary consequence of intensification depends upon the degree of intensification which is, of course,

a question of fact. Relevant factors in a commercial or industrial context include the increased employment of labour, machinery, area occupied and productive output. Furthermore, the Courts appear to consider that a change in the object of the operations is also relevant⁽⁵¹⁾ although it is difficult to appreciate how this in itself relates to the question of intensification.⁽⁵²⁾ The one feature common to all these factors is that they are evidence of the fact that an activity has expanded to such an extent as to have a materially different impact on the local environment to the pre-1964 activity and that the creation of substantially more dust, noise, traffic and other deleterious environmental effects justifies a judicial declaration that "development" or new development has been carried out. The essential test therefore is to ask whether or not the intensification introduces new planning problems, e.g. safety considerations, the need for additional local authority services, interference with amenities and public health. If it does, and if these problems are material, then it is arguable that, for developments commenced before 1 October 1964 but intensified and expanded after that date, planning permission is required.⁽⁵³⁾

The question of when a change of use is material enough to constitute development arose in Cusack and McKenna v. Minister for Local Government and Dublin Corporation.⁽⁵⁴⁾ In this case McWilliam J. held obiter that the change of use from use for a dentist's practice to use as solicitor's office was a material change of use and that it constituted development within the meaning of the 1963 Act. Reasons advanced for this decision were that the professions were completely different in their training, in their skills and in their general nature. The central part of a dentist's premises was as a surgery while that of a solicitor's practice was that of an office. With respect, it is submitted that the test should be whether the change in the character of the use is substantial from the planning point of view and that in determining this, the relevant test ought to be whether the change affects local amenities and/or imposes an additional burden on public facilities. It is difficult to see what material difference exists in planning terms between a

conventional dentist's surgery and a solicitor's office. Both uses were similar in kind in that they involve a commercial use of premises; both activities were accompanied by extra but not necessary dissimilar amounts of traffic coming to and from the businesses. There is usually very little difference from an environmental point of view between the impact of these two businesses on a locality. McWilliam J.'s judgment appears to suggest that it is the change in the nature of the use that makes it material rather than the consequences. While this may be a good approach in some planning cases, it is not necessarily so when the uses involved come within the same broad planning category - commercial in this instance. A better approach was that adopted by Costello J. in the High Court and Griffin J. in the Supreme Court in Cork Corporation v. O'Connell.⁽⁵⁵⁾ Here one of the questions to be determined was whether a change of uses from that of a retail hardware shop to one of an amusement arcade was a material change of use. The defendant argued that it was not, on the basis that, inter alia, the change of uses involved was that of one shop to another. Griffin J. held that the change of uses involved was a material one. Apart from holding that an amusement arcade could not be described as a shop within the meaning of that expression in planning legislation, Griffin J. considered the planning consequences of the change of uses. The amusement arcade business would, he said, "attract to these premises and to its precincts large crowds, mostly consisting of younger people,...". This was indicative of the materiality of the change of uses.

3.6.2 Exempted Developments

Section 24(1) of the 1963 Act provides that planning permission is required in respect of any development, "being neither exempted development nor development commenced before the appointed day". The appointed day was 1st October 1964.⁽⁵⁶⁾

Section 5(1) of the 1964 Act, as amended,⁽⁵⁷⁾ provides that :

if any question arises as to what, in any particular case, is or is not development or exempted development, the question shall be referred to and decided by An Bord Pleanala .

Section 5(2) provides for an appeal to the High Court within three months after the giving of the decision by An Bord Pleanála (or such longer period as the High Court may in any particular case allow). It might therefore appear that jurisdiction to determine questions on exempted development rests exclusively with An Bord Pleanála in the first instance. Indeed the majority of the Supreme Court in Readymix (Eire) Ltd. v. Dublin County Council⁽⁵⁸⁾ adopted this view. That case, however, was decided before the enactment of the 1976 Act which introduced certain complications. Section 27 of that Act gave jurisdiction to the High Court to prohibit the continuance of any unauthorised development and use of land. Applications to the High Court are to be made by motion thereby dispensing with the necessity of instituting proceedings in the normal way. In many such proceedings it has been argued that the development which plaintiffs seek to have prohibited is either exempted and/or that it has been commenced before the 1 October 1964. Defendants in proceedings brought under s.27 of the 1976 Act have denied the jurisdiction of the High Court to determine these issues in the first instance, relying on the express words of s.5(1) and on s.46(4) of the 1976 Act which provides that the 1963 and 1976 Acts "shall be construed together as one Act". Since 1977 all such denials have been refuted and the current position is best summarised by Costello J. in Dublin County Council v. Tallaght Block Company Ltd.⁽⁵⁹⁾

In proceedings instituted by a planning authority under section 27 of the 1976 Act a respondent is not precluded by section 5 of the 1963 Act from raising a question that the development is exempted development. The court has a wide discretion under the section and could, if it thought fit, adjourn the section 27 application so that an application under section 5 could be brought or alternatively itself decide the issue in the interests of its expeditious determination.

The Supreme Court in Cork Corporation v. O'Connell⁽⁶⁰⁾ has unanimously accepted this view. The High Court therefore has original jurisdiction to decide on questions relating to exempted development where they arise in the course of s.27 proceedings. A local planning

authority has no jurisdiction to determine whether or not development is exempted development.⁽⁶¹⁾

Categories of Exempted Development

The types and parameters of exempted development are defined in s.4 of the 1963 Act as amended⁽⁶²⁾ and in the 1977 and Local Government (Planning and Development) (Amendment) Regulations 1981.⁽⁶³⁾ They include:

(1) Agricultural Activities

Section 4(1)(a) of the 1963 Act provides that exempted development shall include "development consisting of the use of any land for the purposes of agriculture or forestry (including afforestation), and development consisting of the use for any of those purposes of any building occupied together with the land so used". Section 2 of the 1963 Act provides that agriculture includes:

horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, the use of land for turbary, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.

This is a significant exemption in Ireland. It should, however, be noted that the exemption relates only to the use of land for agriculture or forestry purposes and not to the carrying out of works for such purposes. The words of s.4(1)(a) must be construed as meaning a change of a use to agricultural use otherwise exemption would not make sense, as a mere use per se is not development as defined in s.3(1) of the 1963 Act. It would therefore appear that planning permission is

not necessary for the change of use of any land to agricultural use or for the change of use of any buildings to agricultural use provided they are "occupied together with land so used".

The carrying out of works for agricultural purposes is not exempted development within the meaning of s.4(1) but the effect of article 10 and Part III of the Third Schedule to the 1977 Regulations is that planning permission is not required for the construction of certain agricultural buildings up to a specified floor area in rural areas (i.e. areas other than county boroughs, boroughs, urban districts and towns specified in the First Schedule to the 1963 Act) provided such developments comply with limitations and conditions specified in the relevant columns of Part III of the Schedule and provided restrictions on exempted development specified in article 11 of the 1977 Regulations are observed.

(2) Development by Local Authorities

Section 4(1)(b)-(d) of the 1963 Act provides that development by county councils, county and borough corporations and urban district councils in their own areas is to be exempted. Section 4(1)(e) provides that development by the aforementioned local authorities which consists of "the carrying out.... of any works required for the construction of a new road or the maintenance or improvement of a road" is also to be exempted but in this instance there is no restriction as to where the development is carried out. The effect therefore is that road authorities carrying out road works never need planning permission.

Some restriction on development by local authorities is contained in s.39 of the 1963 Act which prohibits them from effecting any development "which contravenes materially the development plan". There is no machinery in the Planning Acts for the enforcement of this duty but it is submitted that a person with sufficient locus standi may be able to prevent the carrying out of development in breach of the development plan.

(3) Statutory Undertakers

A statutory undertaker is defined in s.1. of the 1963 Act as

"a person authorised by a British or Saorstát Eireann statute or an Act of the Oireachtas or an order having statutory force to construct, work, or carry on a railway, canal, inland navigation, dock, harbour, gas, electricity or other public undertaking".

This expression therefore includes CIE, Bord Gais, the ESB, harbour authorities and the Telecommunications Board. Development by statutory undertakers which consists of any works for the purpose of "inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the breaking open of any street or other land for that purpose" is exempted development under s.4(f) of the 1963 Act. However, development consisting of the provision for the first time of sewers, mains, pipes, cables, overhead wires or other apparatus is not exempted. Much development of this nature is, however, exempted under Part I of the Third Schedule to the 1977 Regulations where further exemptions are given to CIE, harbour authorities, An Bord Gais and the ESB.

(4) Works Affecting the Interiors and Exteriors of Structures

The carrying of works for "the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure and which do not materially affect the external appearance of the structure so as to render such appearance inconsistent with the character of the structure or of neighbouring structures" is exempted development under s.4(1)(g) of the 1963 Act. An amendment in s.43(1)(e) of the 1976 Act withdraws the exemption in respect of the interiors of structures the preservation of which is included as an objective in a development plan.

Section 4(1)(g) also prohibits works which materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures. The importance of this provision has been diminished by the provisions of Part I, class 9, of the Third Schedule to the 1977 Regulations which

provide that the painting and replastering of the external part of any building or other structure within the curtilage of a dwelling house is exempted development and by the 1981 Regulations under which the erection or construction of a porch outside any external door of a development having a floor area of up to 2 square metres is exempted.

(5) Development within the Curtilage of a Dwelling House

Dwelling consisting of "the use of any structure or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such" is exempted development under s.4(1)(h) of the 1963 Act. The exemption in the 1963 Act relates only to uses not the carrying out of works but the 1977 and 1981 Regulations incorporate similar provisions covering, subject to restrictions, the construction of such facilities as a greenhouse, garage, gate-wall, boiler house, a porch, minor extensions of dwelling houses and the erection of wireless or television aerials.

(6) Works referred to in the Land Reclamation Act 1949

This exemption was contained in s.4(1)(i) of the 1963 Act and relates to any of the works referred to in the 1949 Act. However the exemption must now be read in the light of the amending provision contained in s.43(1)(b) of the 1976 Act which excludes from the category of exempted development works carried out in relation to the 1949 Act, where such works:

comprise the fencing or enclosure of land which has been open to or used by the public within the ten years preceeding the date on which the works commenced .

(7) Development Exempted by Regulations

The above mentioned categories of development are specifically exempted under s.4(1) of the 1963 Act. In addition, s.4(2) empowers the Minister for the Environment to make Regulations providing for any class of development being exempted development. This the Minister has done in 1977 and 1981 Regulations. Articles 9-12 and the Third Schedule of

the 1977 Regulations exempt a good deal of development from planning controls. The main categories of development exempted by Regulations are:

- Development within the curtilage of a dwelling house
- Sundry minor works
- Temporary structures and uses
- Certain industrial development
- Certain development by statutory undertakers
- Development for amenity or recreational purposes
- Advertisements
- Mining in rural areas
- Agricultural buildings
- Certain changes of use
- Changes of use within certain Classes of use.

It should, however, be noted that most of these exemptions are subject to restrictions and limitations laid down in articles, 10, 11 and 12 and in the Third Schedule itself. Thus, for example, certain developments are only exempted if carried out in rural areas, or for particular purposes or by specified statutory bodies. The most important exemptions from the commercial and industrial point of view are certain changes of use within certain use categories, such as a change from use as a general or special industrial building to use as a light industrial building⁽⁶⁴⁾; and acts which fall within Classes of use specified in Part IV of the Third Schedule to the 1977 Regulations. Part IV lists sixteen Classes of use. The Classes are grouped upon the basis that the activities within each given class are broadly similar in terms of nuisance value. Thus Classes 3-8 consist of six categories of industrial building ranged in ascending order of nuisance value, beginning with light industry. A change within a class is exempted development but a change from one class to another may not be unless the change of use concerned is immaterial from a planning point of view.

3.6.3 Application Procedure

An application for permission may be for either an outline permission, a permission or an approval. An outline permission is a permission for a development granted subject to the subsequent approval

of the planning authority of detailed plans for the development. It is a type of permission in principle. An outline permission does not authorise the carrying on of any development until an approval, or in certain circumstances, a further approval has been granted.⁽⁶⁵⁾ A permission or an approval on the other hand does authorise the carrying out of development.⁽⁶⁶⁾

The procedures regulating applications for all three types of authorisation are identical except that rather less information as to the development proposals is required of an applicant for outline permission.⁽⁶⁷⁾

3.6.3.1 Who May Apply?

Planning legislation is silent on the question of who may apply for planning permission. Section 25(2)(d) of the 1963 Act merely provides that the Minister may by regulations require

"any applicants to submit any further information relative to their applications (including any information as to any estate or interest or right over land)".

Article 17(a) of the 1977 Regulations provides that a planning application shall be accompanied by "particulars of the interest held in the land or structure by the applicant....".

A literal interpretation of this requirement would appear to indicate that any person, regardless of whether he has an interest in the land, may submit a planning application. However, in Frescati Estates Ltd. v. Walker⁽⁶⁸⁾ the Supreme Court appeared to take the view that an application to be valid,

"must be made by or with the approval of a person able to assert sufficient legal estate or interest to enable him to carry out the proposed development or so much of the proposed development as relates to the property in question".⁽⁶⁹⁾

In practice, however, many lawyers take the view that the Frescati decision should be confined to the particular type of situation which confronted the Court in that case.⁽⁷⁰⁾ Subsequent judicial decisions

have taken a more lenient approach to the locus standi requirements for the submission of planning applications. Thus, for example, in State (Alf-A-Bet) Promotions Ltd. v. Bundoran U.D.C.⁽⁷¹⁾ McWilliam J. distinguished Frescati. In Toft v. Galway Corporation⁽⁷²⁾ the Supreme Court upheld the validity of an application where the applicant's name was mis-stated (by genuine error) so that the application had been submitted by a non-existent company. But in State (Finglas Industrial Estates Ltd. v. Dublin County Council)⁽⁷³⁾ Henchy J. said obiter that he would hold that a permission granted to a company which was not incorporated until after the permission was granted would be invalid. In McCabe v. Harding Investments Ltd.⁽⁷⁴⁾ an application by a company which was in the process of acquiring the freehold interest in the site when the application was lodged but which acquired it before the decision on the application, was upheld in the Supreme Court. In Ross v. An Bord Pleanala⁽⁷⁵⁾ an application by a company which had ceased to exist was declared invalid.

To summarise, it appears that the Courts, notwithstanding Frescati, have to date upheld the validity of all "genuine" applications, i.e. applications by legal persons who have, or who are in the process of acquiring, a sufficient legal interest in the land to act upon a successful application. It is also submitted that the sufficient legal interest must be acquired before the decision is made on the application.

3.6.3.2 Pre-Application Requirements

Article 14 of the 1977 Regulations provides that prior to making a planning application, the applicant shall publish notice of his intention so to do in a newspaper circulating in the district in which the relevant land or structure is situate or by the erection or fixing of a notice on the land or structure. The contents of, and the requirements relating to, these notices are prescribed in articles 15 and 16. The primary purpose of these requirements is, as Griffin J. said in Monaghan U.D.C. v. Alf-A-Bet Promotions Ltd.⁽⁷⁶⁾:

to ensure that adequate notice is given to members of the public, who may be interested in the environment or who may be affected by the proposed development, that permission is

sought in respect of that development, so as to enable them to make such representations or objections as they may consider proper.

Published notices must contain, inter alia, the name of the applicant and the nature, extent and location of the proposed development.⁽⁷⁷⁾ They must be published in a newspaper circulating in the locality or on the structure within the period of two weeks immediately preceding the making of the application.⁽⁷⁸⁾ Strict compliance with the requirements of articles 14, 15 and 16 is required. Thus in Monaghan UDC v. Alf-A-Bet Promotions Ltd.⁽⁷⁹⁾ the fact that the defendant's newspaper notice did not contain, as a heading, the name of the town in which the land or structure was situated was one of the factors which impelled the Supreme Court to declare their planning application invalid for failure to comply with article 15. So too was the fact that the newspaper notice inadequately described the nature and extent of the proposed development contrary to article 15(c). In Croadaun Homes Ltd. v. Kildare County Council⁽⁸⁰⁾ a claim to permission in default failed because the newspaper notice inadequately described the location of the proposed development contrary to article 15(b).

Article 23 empowers a planning authority to require the applicant to publish much further notice in such manner (whether in a newspaper or otherwise), and in such terms as they may specify, and to submit such evidence as they may specify, when (1) more than two weeks have elapsed between the publication of a notice in accordance with article 15 or (2) a notice published does not adequately comply with the requirement of article 15 or 16, as appropriate, or (3) a notice published on land or on a structure has not been maintained in position for at least one month after the application was submitted or has been defaced or become illegible within such period or (4) the notice, because of its content or for any other reason, is misleading or inadequate for the information of the public. The courts may be expected to have little sympathy where a planning authority (as distinct from a member of the public) complains of defects in the notification procedure if they have failed to exercise this power.

3.6.3.3 The Application Submitted

An application must state whether it is for a permission, an outline permission or an approval. ⁽⁸¹⁾

Article 17 of the 1977 Regulations provides that a planning application must be accompanied by :

- (a) particulars of the interest held in the land or structure by the applicant, the name and address of the applicant, and
- (b) a copy of a newspaper circulating in the area in which the land or structure is situate in which there has been published a notice in pursuance of article 15 or
- (c) a copy of the notice erected or fixed on the land or structure in pursuance of article 16 .

In addition, articles 18, 19 and 20 require that certain additional information including plans, drawings and maps as prescribed by the 1977 Regulations and the Local Government (Planning and Development) (Fees and Amendment) Regulations 1982 ⁽⁸²⁾ must accompany the application. In the case of an outline application, however, the only additional matters which have to be included are :

such plans and particulars as are necessary are identify the land to which the application relates and to enable the planning authority to determine the siting, layout or other proposals for development in respect of which a decision is sought . ⁽⁸³⁾

An outline application may not be made in respect of the retention on land of any structure or the continuance of any use of land. ⁽⁸⁴⁾

Where an application does not comply with article 18, the planning authority may take one of four specified courses of action under article 21. They may grant or refuse the permission, grant an outline permission if the application is sufficient for the purpose only or write to the applicant requiring the submission of such further plans

and particulars as are necessary for the purpose of an outline application.

All applications must be stamped with the date of receipt and acknowledged in the prescribed manner.⁽⁸⁵⁾ Notice of receipt of every planning application and of the date of its receipt must be included in a weekly list which must be published as prescribed.⁽⁸⁶⁾ Planning authorities have a discretion under article 23 of the 1977 Regulations to give extra publicity to applications received. In practice, the larger planning authorities send copies of the weekly list, where relevant, to environmental and residents' associations. In certain circumstances, where the interests of the prescribed bodies or other local authorities may be affected by an applicants' proposals, there is an obligation to notify affected interests of receipt of a particular application.⁽⁸⁷⁾

3.6.3.4 Requests for Further Information

Article 26 provides that a planning authority may request further documentation and/or information from an applicant when they have received the application. As a general rule, only one such request may be made.⁽⁸⁸⁾ The effect of requiring further information is to prolong the statutory period allowed for the consideration of the planning application.⁽⁸⁹⁾ It is clear from the State (Conlon Construction Ltd.) v. Cork County Council⁽⁹⁰⁾ and State (N.C.E. Ltd.) v. Dublin County Council⁽⁹¹⁾ that once a planning authority has all the information necessary to decide on an application, they may not resort to the procedures in article 26 for the purpose of negotiating changes in the proposed development or as a device for extending the statutory period allowed for consideration of an application. Requests for further information must be bona fide.

3.6.3.5 Environmental Impact Studies

In certain circumstances a planning authority which has received an application for a particular type of development may require the applicant to prepare and submit an environmental impact study (EIS).

Section 25(2)(cc) of the 1963 Act empowers the Minister for the Environment to make regulations providing for the furnishing to planning authorities in cases where development to which a planning application relates "of a written study of what, if any, effect the proposed development, if carried out, would have on the environment relative to the place where that development is to take place", but the obligation is to apply only "in cases where the development to which the application relates will, in the opinion of the relevant planning authority, cost more than the amount specified in the regulations".

Article 28 of the 1977 regulations provides:

- (1) An application to a planning authority for a permission for any development to which this article applies shall, notwithstanding the provisions of article 18 or, in the case of an outline application, article 19, be accompanied by two copies of a written study of what, if any, effect the proposed development, if carried out, would have on the environment relative to the place where the development is to take place.
- (2) Where a planning authority receives an application for a permission for a development which, in their opinion, is a development to which this article applies and the application is not accompanied by a written study as required by sub-article (1), they may, in addition to their powers under article 26 require the applicant to submit such written study.
- (3) This articles applies to any development:-
 - (a) for the purposes of any trade or industry (including mining) comprising any works, apparatus or plant used for any process which would result in the emission of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit or the discharge of any liquid or other effluent (whether treated or untreated) either with or

without particles of matter in suspension therein and,

- (b) the cost of which, including all fixed assets as defined in section 2 of the Industrial Development Act 1969 (No. 32 of 1969), may reasonably be expected to be five million pounds or more .

The obligation to make an environmental impact study (EIS) applies solely to developments in respect of which a planning application is made. This means that exempted development as defined in s.4 of the 1963 Act and in the 1977 and 1981 regulations⁽⁹²⁾ and development by State Authorities as defined by s.84 of the 1963 Act, are not subject to EIS requirements because planning applications are not required in respect of these developments. These exemptions from the provisions of section 25(2)(cc) are extensive and significant. Section 4 of the 1963 Act exempts, inter alia, developments by local authorities in their own areas and development consisting of the use of any land for the purposes of agriculture or forestry. Among the more important exemptions, from the environmental point of view, contained in the regulations are developments by harbour authorities, much development consisting of agricultural buildings, and the storage in industrial buildings of wastes (including toxic wastes). In s.84 of the 1963 Act, State Authorities mean members of the Government, the Commissioners of Public Works and the Land Commission - bodies in whose names a significant amount of development is carried out. In addition, since offshore development is not regulated under the Planning Acts, there is no obligation to submit an EIS in respect of proposals for such development.

In general, therefore, it may be said that an EIS will not be required for most public projects and that many public authorities in Ireland enjoy an immunity from environmental protection controls, and from public scrutiny, which is not available to their counterparts in the private sector.

This approach to environmental impact studies contrasts sharply with that of every other nation with EIS requirements. The U.S. National Environmental Policy Act 1970, required that an EIS be made in respect of development by Federal Agencies, private projects sponsored by Federal Funds and, since the Housing and Community Development Act 1974, to Federally-aided local projects. The various States in the

U.S.A. which have introduced EIS requirements have done so in respect of State and local government projects. The German Ministerial Decree of 22 August 1975 envisages EIS requirements in respect of developments by Federal Agencies, local authorities, public organisations and foundations directly responsible to the State. The French Nature Protection Act 1976, requires an EIS for development projects carried out by public authorities or which require a prior authorisation from such authorities and all urban development plans. The EEC Draft Directive on Environmental Impact Assessment envisages EIS requirements for public and private developments, and the OECD recommends environmental impact assessment in respect of "significant public or private projects or actions." The universal trend is to subject public authorities, as well as private developers, to obligations to make an EIS. On the other hand, the Irish provisions are applicable mainly to industrial development in its narrow sense. To some extent, therefore, our legislation merely institutionalises and makes obligatory the existing administrative practice whereby IDA-sponsored projects are subjected to environmental assessment by the IIRS and An Foras Forbartha. (93)

Environmental impact studies are required in respect of development which in the opinion of the relevant planning authority will cost 5 million pounds or more. This delineation of development subject to EIS requirements is an arbitrary attempt to distinguish between major and minor developments, and it makes little sense from an environmental point of view. The general approach in other countries, and in the proposed EEC Directive, is to require an EIS in respect of proposals for development "significantly affecting the quality of the human environment" (U.S.A.); or which would "threaten to cause environmental degradation" (France); or 'is likely to have a significant impact on the environment' (EEC); or which would "lower the quality of the natural or man-made environment" (Resolution No. 7 of the European Council of Environmental Law). The cost of a proposed development is only one of the factors relevant in considering whether it could have major consequences for the environment. The fact that the relevant planning authority - if they take the obligation seriously - must consider whether or not the proposed costs will exceed 5 million pounds involves them in financial investigations which are time-consuming and of little benefit to the environment. In any case,

a developer could fail to satisfy the cost criterion by fragmentation of his project.

The obligation to require EIS under article 28(1) is mandatory. The use of the word "shall" means that once a development satisfies the criteria in article 28(3), a planning authority is obliged to require an EIS. There may be proposed developments which do not clearly and unambiguously satisfy the criteria in article 28(3). In such cases article 28(2) gives planning authorities a discretion as to whether or not they will require an EIS. The possibility of such cases occurring must necessarily be limited as whether or not a development will result in the emission of pollutants and cost more than 5 million pounds is usually a question of fact. But there may, as article 28(2) envisages, be borderline cases. In such cases a planning authority is bound to consider whether an EIS is required before coming to a positive or negative conclusion on the matter, and they are, it is submitted, in breach of statutory duty if they do not do so.⁽⁹⁴⁾ The object of a discretion is to promote the policy and objectives of the Act. If it is exercised to a contrary effect, a decision resulting from the exercise of such discretion is extremely vulnerable to attack.⁽⁹⁵⁾

The regulations do not specify what should be contained in such a study other than the "effect which the proposed development, if carried out, would have on the environment relative to the place where the development is to take place." Thus the EIS may be confined to the effect of the proposed development on the place where it is to be situated and not, presumably, on other areas. But what does 'effect' mean? Does it mean good effects and/or bad effects, all of the effects or only some of them, major effects or minor effects? As yet, there are no official answers to these questions, and this is obviously an area which ought to be investigated by environmental decision-makers. From a legal point of view it is submitted that any requirements as to the contents of an EIS should be specified in regulations in so far as this is practicable, and not in circulars sent to planning authorities. The more discretion that is given to planning authorities in this matter, the more likely a third party is to discover that an EIS does not satisfy legal requirements.

In practice, developers preparing environmental impact studies seek to comply with criteria in the latest draft proposal for a Directive on Environmental Impact Assessment published by the Commission of the European Communities. To date, attempts to have this proposed Directive adopted have been unsuccessful due to the resistance of the United Kingdom and Ireland.

3.6.3.6 Invitation to Submit Revised Plans

Article 27 empowers a planning authority disposed towards granting a permission or approval subject to any modification of the development to invite the applicant to submit revised proposals for the modification of the development. Darcy J. in State (Abenglen Properties Ltd.) v. Dublin Corporation⁽⁹⁶⁾ was of the opinion that, in the circumstances of that case, the planning authority's failure to have recourse to article 27 did not invalidate the permission granted. His view was supported by Henchy J. in the Supreme Court, who was of the view that article 27 was "enabling, not mandatory".

It should be noted that article 27 does not operate to prolong the statutory period permitted for consideration of the planning application. This article is rarely used in practice.

3.6.3.7 Third Party Rights

The entire tenor of the planning code is to facilitate if not encourage citizen participation in planning decision-making. Hence the requirements that public notice be given of intention to submit planning applications. Furthermore article 29 of the 1977 Regulations as amended in 1982 provides that specified documents and information lodged by the applicant must be made available for public inspection during office hours for a specified period. Unfortunately, there is no requirement that planning authorities make their comments or investigations into the application publicly available before taking their decision on the application. Consequently, a third party is frequently denied access to professional and scientific information with respect to a particular application which might assist in framing a case against the grant of permission. Such information may be made available to appellants against a decision if An Bord Pleanala

has required the planning authority to forward it to the Bord under article 39(1) of the 1977 Regulations.

The recognition of the special roles of An Taisce, the National Monuments Advisory Council, the Arts Council, Bord Failte and other public authorities in environmental decision making is evident in article 25 of the 1977 Regulations which provides that notice must be given to these bodies of the nature and date of an application for development which might be of particular interest to them and in article 32 of the 1977 Regulations which provides that they must be expressly notified of the decision on any such application within 7 days thereof.

Although planning legislation does not expressly provide for the making of objections or representations by a third party in respect of a proposed development before the local planning authority has decided on the application, the Supreme Court unanimously held in Stanford v. Dun Laoghaire Corporation⁽⁹⁷⁾ that, given the tenor of the planning code, the purpose underlying advertising requirements in articles 14, 15 and 16, and particularly the provisions of article 32(2), such a right is to be implied. If this implied right is not respected, the grant of planning permission or approval may be ultra vires. Because of the decision in Stanford and in order to facilitate the public right to participate in decision-making on planning applications, article 30 of the 1977 Regulations, as amended, in 1982⁽⁹⁸⁾ provides that a planning authority may not decide on an application until 14 days have elapsed from the date of receipt of the application or, where appropriate, from the date an applicant has complied with a request under article 23 to publish further notice of his application.

Requirements as to the notification and form of decisions on planning applications are contained in articles, 30, 31, 32 and 33, as amended,⁽⁹⁹⁾ of the 1977 Regulations. Persons who made submissions or observations with respect to the application must be notified of the decision by letter or newspaper notice within 7 days.⁽¹⁰⁰⁾

All applications and decisions thereof must be recorded in registers available for public inspection.⁽¹⁰¹⁾

The trend of judicial decisions on application requirements is to require strict compliance with all requirements relating to the submission and treatment of a planning application preceeded by the word "shall". The position was summarised by Henchy J . in Monaghan U.D.C. v. Alf-A-Bet⁽¹⁰²⁾ where, referring to application procedures, he said:

What the legislature has, either immediately in the Act or mediately in the Regulations, nominated as being obligatory may not be depreciated to the level of a mere direction by the application of the de minimis rule ... any deviation from the requirements must, before it can be overlooked, be shown by the person seeking to have it excused, to be so trivial, so technical, or so peripheral, or otherwise so insubstantial that, on the principle that it is the spirit rather than the letter of the law that matters, the prescribed obligation has been substantially and therefore adequately complied with.

3.6.4 Permission to Retain

Sections 27 and 28 of the 1963 Act, as amended, provide that an application may be made to a planning authority for permission to retain a structure erected without the required planning permission, or for permission to continue any unauthorised use of land. The procedure to be followed when submitting applications under these sections is exactly the same as the procedure for obtaining planning permission in the orthodox way already described. The planning authority may grant the permission subject to or without conditions or they may refuse it. Examples of permissible conditions are contained in s.27(2). As with an ordinary application for permission, there is provision for permission in default in the event of the planning authority neglecting to decide on the application within the prescribed period, as well as provision for an appeal against the decision to An Bord Pleanala. This procedure is usually used where

development has been carried out without the required planning permission.

3.6.5 The Decision on the Application

Under s.26(1) of the 1963 Act a planning authority may -

- (a) grant permission unconditionally, or
- (b) grant permission subject to conditions, or
- (c) refuse permission.

In considering a planning application, the planning authority is restricted to considering the "proper planning and development of the area of the authority (including the preservation and improvement of the amenities thereof), regard being had to the provisions of the development plan, the provisions of any special amenity area order relating to the said area" and the matters referred to in s.26(2) as amended.⁽¹⁰³⁾ Section 24(1) of the 1976 Act also empowers a planning authority to have regard, when it considers it appropriate, to either or both of the following -

- (i) the probable effect which a particular decision on the matter would have on any place which is not within, or on any area which is outside its area, and
- (ii) any other consideration relating to development outside its area.

Planning authorities take a very broad view of the nature of their discretion to attach conditions under s.26(2) and many appear to be unaware of the limitations on their powers imposed by administrative law generally and the wording of the Planning Acts. The former limitations will not be discussed here but from s.26 it will be seen that conditions imposed in the, albeit ambiguous, interests of proper planning and development and/or the preservation or improvement of amenities are likely to be valid. If these interests are contained in provisions properly incorporated in a development plan or a special amenity area order, they are even more likely to be valid. Permissible provisions for development plans and special amenity area orders are contained in s.19 of the 1963 Act,⁽¹⁰⁴⁾ in the Third Schedule thereto and in s.42 of the 1963 Act, as amended.⁽¹⁰⁵⁾

The Supreme Court in Killiney and Ballybrack Development Association Ltd. v. Minister for Local Government and Templefin Estates Ltd.⁽¹⁰⁶⁾ has held that in deciding whether or not a condition is intra vires both the condition and the reasons justifying it must be examined. If the reasons given "cannot fairly and reasonably be held to be capable of justifying the condition then the condition cannot be said to be a valid exercise of the statutory power". Reasons for insisting that reasons justify the conditions imposed are stated in Sweeney v. Minister for the Environment and Limerick County Council⁽¹⁰⁷⁾ and include giving the applicant "such information as may be necessary and appropriate for him firstly to consider whether he has got a reasonable chance of succeeding in appealing against the decision of the planning authority and secondly to enable him to arm himself for the hearing of such an appeal". In Sweeney's case the High Court stated that reasons need not be "set out with the precision of a Court Order nor need they necessarily contain any particular words of a technical nature, nor refer in any formal way to the provisions of the Act". In that case the reasons given for a decision to refuse planning permission were upheld, the court appearing to accept the possibility of public acquisition of land for the purposes of the Housing Act 1966 as a valid reason for refusing planning permission for private residential developments.

In Dunne Ltd. v. Dublin County Council⁽¹⁰⁸⁾ Mr Justice Pringle was of the opinion that a condition attached to a planning permission requiring that houses be so constructed as to provide sound insulation against aircraft noise were ultra vires for two reasons, (i) because it was not sufficiently connected with the planning and development of the area or the preservation or improvement of the amenities thereof and (ii) because the requirements of s.26(1) could be more appropriately dealt with by building regulations which can be made by the Minister under s.86 of the 1963 Act. While it is arguable whether the condition was or was not sufficiently connected with the improvement of the amenities of the area of the proposed development (an area subject to considerable noise from aircraft flying overhead), it is submitted that Pringle J.'s second objection to the validity of the condition was well founded. It is undesirable in principle and dangerous in practice for planning authorities to seek to achieve by planning conditions objectives for which the legislature has provided separate and different control procedures. The 1976 Act now specifically empowers Planning Authorities to attach conditions for requiring the

taking of measures to reduce or prevent noise. (109)

? ← In Kelleghan Dodd & O'Brien v. Dublin Corporation (110) McMahon J. concluded that a condition which provided that details of the access to the proposed development be submitted for agreement was ultra vires because "the public would have no knowledge of what details were in fact being agreed and no way of appealing against the details agreed between the applicants and the planning authority". It is submitted that this decision was correct. It may be permissible for a planning authority to reserve certain matters for agreement by a condition, for example, matters of purely technical or financial nature, but matters which could affect public attitudes to the proposed development and the exercise of the rights to make submissions and observations in respect of a planning application and to appeal a decision on a planning application ought not to be reserved for further agreement. The proper course for the planning authority in these instances is to grant outline planning permission in accordance with article 21(b) of the 1977 Regulations.

In the State (Finglas Industrial Estates) v. Dublin County Council (111) the validity of a condition attached under s.26(2) by the Minister for Local Government requiring the developers to pay a contribution towards the provision of public water supplies and sewage facilities was questioned. The defendants argued that s.26(2) could not authorise the imposition of conditions requiring contributions towards the costs of sanitary services where (i) proposals for the provision of such services did not exist and (ii) when it would be impossible to provide them before the permission expired in 1982. The High Court, however, ruled that the condition was valid and mandated the County Council to accept the contribution. Thus the defendants were implicitly mandated to provide water supplies and sewage services when they had no plans and, more importantly, no funds to provide them. Fortunately, the decision was reversed in the Supreme Court (112) on the grounds, inter alia (113) that:

"the condition as to the financial contribution imposed by the Minister..... must be construed as referring to the cost of providing a public water

supply or piped sewage facilities in the area only if the Council were either willing or legally bound to make such provision".

Since neither of these criteria were fulfilled in the instant case, the defendants had acted quite properly in refusing to accept the contribution.

~~THE~~ *reversed on appeal*
 In Barrett (Builders) Ltd. v. Dublin County Council⁽¹¹⁴⁾ Gannon J. refused to enforce a condition attached to a planning permission requiring the construction of a link road because the condition was uncertain and ambiguous.

In The State (Abenglen Properties Ltd). v. Dublin Corporation⁽¹¹⁵⁾ the applicants applied for outline planning permission for 48,000 square feet of office development and 12,000 square feet of residential accommodation. They got permission for 16,000 square feet of office development and 24,000 square feet of residential. In effect, their development was reduced by 33 per cent and the "mix" of office and residential uses changed so that instead of the residential use being subsidiary to office use, the position was reversed. The applicants argued that the conditions attached to the permission were ultra vires, because, inter alia, (i) the notice of the decision constituted a failure to adjudicate on the application, (ii) the conditions so radically modified the development as to permit a development of a wholly different character from the development applied for and (iii) the planning authority proceeded on an erroneous understanding and/or interpretation of the development plan in making their decision. There was a good deal of substance in the plaintiffs arguments. Planning permission may only be granted under s.26 in pursuance of an application therefor. It is a necessary implication from this that permission may only be granted for a development specified in an application, otherwise there would be permissions without applications. Some alterations in the development as proposed by the applicant may be made by the planning authority either by inviting the applicant to submit revised plans or other particulars providing for the "modification" of the development under article 27 of the 1977 Regulations or by attaching conditions in the interests of permitted considerations under section 26(2). But it

is submitted that the permitted development must be substantially the same as that applied for. This submission is based on the fact that only modifications may be invited under article 27 of the 1977 Regulations and on the argument that a grant of permission for a different development to that applied for would defeat the public right to participate in the decision-making process as the public is entitled to assume that the proposed development, if permitted, will be substantially the same as that proposed in the application. In Abenglen the planning authority could have taken several courses of action. They could have invited modifications of the proposed development under article 27 although it is doubtful if what they wanted would qualify as a "modification". (In any case the High Court and the Supreme Court were unanimous in the view that resort to the procedures in article 27 was not mandatory so that a failure to resort to the procedures in article 27 cannot tell against the planning authority), or they could have granted or rejected the application in toto or imposed conditions on the development. In the event they granted the permission subject to conditions. D'Arcy J. in the High Court accepted that conditions would be invalid if based on an erroneous interpretation of the development plan. Only Walsh J. in the Supreme Court expressly dealt with the question of whether a planning authority can radically alter a development proposal by conditions attached to the permission. He held that they could not. It is submitted that this is the correct view. The majority of the Supreme Court decided the case on the basis that the remedy sought (certiorari) was not available in the particular circumstances of the case. Nevertheless, Abenglen should serve as a warning to planning authorities not to attach conditions which radically alter the substance of a proposed development. If a developer's proposals appear to contravene a development plan, the proper course for a planning authority is to resort to the procedure provided in article 27 of the 1977 Regulations (provided what they require genuinely qualifies as a mere modification of the developer's proposals) or to refuse the permission.

Although it is clear that the Courts will declare a condition invalid the effect of such a declaration on a permission is uncertain. May the invalid condition be severed or does the permission itself fall

with it? This problem is not dealt with directly in any Irish decision. Dicta by McWilliam J. in Killiney and Ballybrack Development Association Ltd. v. Minister for Local Government⁽¹¹⁶⁾ and Barrington J. in The State (Pine Valley Developments Ltd.) Dublin County Council⁽¹¹⁷⁾ suggest that the permission will fall if the offending condition is of fundamental importance. The implication from this is that the permission will not fall if the condition is trivial or unimportant and that severance of such a condition may be possible. In Abenglen the High Court quashed the planning permission because the condition was invalid. In Barrett (Builders) Ltd. the High Court refused to enforce an invalid condition under s.27 of the 1976 Act because it was unclear and ambiguous.

The position as to the effect of invalid conditions is therefore uncertain. It appears that if the invalid condition is fundamental to the permission, the permission will fall. Otherwise the invalid condition may be severable. The courts will not enforce a condition which is ambiguous or unclear.

When the 1963 Planning Act was passed environmental controls in Ireland were either inadequate or non-existent. Consequently a practice developed of attaching pollution control conditions to planning permissions for polluting developments. The conditions frequently specified emission, effluent, or quality standards to be achieved and/or made the permission conditional on the developer obtaining authorisation for his activities or processes from other environmental control authorities, e.g. the Minister for Fisheries or the Alkali Inspector. This practice was encouraged by the Minister for the Environment and the official view was stated in the Report of the Interdepartmental Environment Committee on Pollution Control which stated in 1979 that:

The physical planning system operated by local authorities under the Local Government (Planning and Development) Acts 1963 and 1976, provides a statutory pollution control mechanism of a general nature. Conditions for the control of pollution, whether of water, air or soil, may be attached to permission for a project..... Permissions

may be refused if the pollution implications are incompatible with the proper planning and development of the area .⁽¹¹⁸⁾

The Planning Acts were regarded-and used - as the principal form of pollution control in Ireland. This practice was, and is, of very dubious legality.

It is submitted that planning conditions may be used to control pollution where this can be done by regulating the location, design or construction of a project but not where they seek to regulate processes or to impose effluent emission or quality standards. This submission is based on the following facts:

(1) Of the 11 permissible types of conditions referred to in s.26(2) of the 1963 Act, only one -introduced by the 1976 Act,- (i.e. the power to impose conditions for the taking of measures to reduce or prevent noise or vibration) expressly refers to pollution.

(2) Section 28(5) of the 1963 Act, provides that planning permission shall "ensure for the benefit of the land and of all persons for the time being interested therein". This means that a pollution control condition could in effect become a licence to pollute if the environment deteriorates after the permission is granted.

(3) A planning authority which requires the discontinuance of a use of land or which imposes conditions on the continuance of a use under s.37 of the 1963 Act may attract liability to pay compensation,⁽¹¹⁹⁾ The only exception to this (introduced by s.41 of the 1976 Act) relevant to environmental control is where conditions are imposed in order "to avoid or reduce serious air or water pollution or the danger of such pollution." Thus pollution control conditions attached to planning permission which, as a general rule, ought to be flexible, changeable and subject to review in the light of changing scientific knowledge and environmental circumstances, become fixed and unchangeable unless a planning authority is willing to compensate for expenditure incurred.

(4) Development plans do not contain provisions for overall pollution control or even for the control of many kinds of pollution. No development plan, for example, prescribes objectives for air or

water quality. The setting of conditions for objectives unstated in development plans is thus a questionable exercise.

(5) There are no provisions in the Planning Acts on monitoring which is vital when emission, effluent and quality standards are prescribed.

(6) The enforcement provisions of the Planning Acts do not give planning officers the powers of entry and inspection necessary for the proper enforcement of pollution control conditions.

(7) The practice of dealing with pollution control matters by planning conditions when they are subject to control under other statutes, or adequately covered by common law obligations, is bad policy and wrong in principle. It subjects operators of polluting installations to more than one set of legislative provisions - and penalties - designed to achieve the same end. It can lead to the imposition of inconsistent requirements and confusion.

In October 1982, the Minister for the Environment instructed planning authorities to ensure :

that matters which are subject to more specific
statutory controls or are regulated by common law
should not be dealt with by conditions . (120)

This policy instruction will discourage the practice of attaching unsuitable pollution control conditions to future planning permissions but it leaves unresolved the problems associated with the many existing permissions which have such conditions attached.

The decision on a planning application is an executive function of the planning authority and is made by or on behalf of the City or County Manager. However, s.4 of the City and County Management Act 1955, empowers elected members of a local authority to require by resolution, the performance by a Manager of a particular act which he is capable of performing as an executive function. Elected members have frequently used this power - particularly in the Counties of Galway, Mayo, Kerry, Donegal and Lough - to compel Managers to grant permissions against their better judgements. A leading authority on planning law has opined that:

A section 4 resolution which required the Manager
in a manner which brought him into conflict with the

requirements of natural or constitutional justice or which required him to exercise it for a purpose other than that for which it was conferred or which required it to be exercised in a capricious, arbitrary or unreasonable manner would be ultra vires (121)

3.6.6 Planning Permission in Default

Under s.26(4) of the 1963 Act where an application is made to a planning authority "in accordance with the permission regulations" for planning permission or approval, and any requirements relating to the application or made under the regulations have been complied with, then if the planning authority does not "give notice" to the applicant within the "appropriate" period, a decision by the planning authority to grant the permission shall be regarded as having been given on the last day of that period. The "appropriate" period is usually two months from the date the planning authority receives the application, but it may be two months from a later date in certain specified circumstances or if the applicant consents in writing. (122) This particular provision has engaged the attention of the courts on several occasions. Its object is to secure the expedition of decisions on planning matters. If notice of a decision is not given within the appropriate period, the applicant may seek a declaration that planning permission or approval, as appropriate, has been granted. But the matter is not as simple as this. One of the requirements of s.26(4) is that the application must be made "in accordance with the permission regulations". A defective application may therefore, depending upon the nature of the defect, operate to prevent the applicant becoming entitled to permission in default. (123)

Not only must the application itself comply with the regulations but "any requirements relating to the application of or made under the regulations" must be complied with. (124) Thus for example, a failure to comply with a valid request for further information could prevent an applicant from obtaining permission in default.

Problems concerning the definition of "month" and the point of time at which a planning authority "give notice" of a decision when they send notice of it by post have arisen before the courts. It has been held that "month" when used in the 1963 Act, means calendar month.⁽¹²⁵⁾ The date the application is lodged is counted when computing the relevant two month period as is the date on which the decision is given.⁽¹²⁶⁾ When the relevant period expires on a Sunday or other non-judicial day, notice of the decision must be given before that day.⁽¹²⁷⁾

The problem concerning the point of time at which a planning authority "give" notice of their decision when they send notice of it by post has arisen in two High Court cases. In these cases the question to be answered was whether notice was given when the letter containing it was posted or when it arrived. In the earlier case of Murphy v. Dublin County Council⁽¹²⁸⁾ O'Keeffe J. held, after considering s.7 of the 1963 Act and s.18 of the Interpretation Act 1937, that notice was "given" when it was sent by registered post in the manner prescribed by the 1963 Act. But in Freeney v. Bray Urban District Council,⁽¹²⁹⁾ O'Hanlon J. held that notice is given when the letter containing is received. Although O'Hanlon J. offered some sound policy reasons for his decision, it is suggested that O'Keeffe J.'s view accords more with the wording of s.18 of the Interpretation Act 1937, and of s.7 of the 1963 Act which deals with the manner, as distinct from the time at which, a notice is to be served. The practical consequences of O'Hanlon J.'s decision in these days of economic difficulties and unreliable postal services is that a planning authority, nearing the end of a statutory time limit, may be reluctant to adopt the normal, convenient and inexpensive method of postal notification of their decisions and may be forced instead to effect personal service. In some areas, for example, in the jurisdiction of Cork County Council, this may lead to a substantial increase in the cost of processing planning applications.

The High Court held in O'Neill v. Clare County Council⁽¹³⁰⁾ that even if notification to grant planning permission (albeit with

conditions attached) is received after the expiry of the appropriate two month period, an applicant who has satisfied all the requirements of s.26(4) is entitled to permission in default and to disregard the necessity for complying with the conditions.

The argument that an ultra vires or invalid decision is no decision does not apply in the context of s.26(4). Provided a decision is notified in time, it will be a decision for the purposes of s.26(4) and the fact that it is ultra vires or invalid will not entitle the applicant to permission in default. The Supreme Court so held in State (Abenglen Properties Ltd.) v. Dublin Corporation.⁽¹³¹⁾

It appears from the Supreme Court decision in The State (Pine Valley Developments Ltd.) v. Dublin County Council⁽¹³²⁾ that the courts will not grant an order of mandamus to compel a planning authority to grant a permission in default if the application is for a permission which the planning authority has no statutory power to grant because to do so would be a contravention to their development plan. The courts will not compel a planning authority to do something which is illegal. It is arguable that this aspect of the Pine Valley decision must be confined to applications made before the 1976 Act came into force because s.26(3) of the 1963 Act, as amended by s.39 of the 1976 Act, now permits planning authorities subject to the observance of special procedures, to grant permissions for developments which would materially contravene the development plan. On the other hand, the provisions of section 26(3) are such that it is the policy of the Act that contraventions of the development plan are not to be easily permitted and that the public must be given additional opportunities to participate in the decision-making process. It is therefore arguable that these considerations could justify the courts in refusing to mandate permissions in default in cases where a contravention of the development plan is involved and where the planning authority had not carried out the measures prescribed in section 26(3). It could be argued that section 26(4)(a) may be used as a deterrent to dilatory planning authorities but not as a means of depriving members of the public of their participation rights.

3.6.7 The Grant of Permission

A planning authority may not grant a permission (as distinct from notifying their intention to grant it under sections 26 and 27) until the period for making appeals to An Bord Pleanala has expired without an appeal being made or until any appeal made is withdrawn.⁽¹³³⁾ If these events transpire, planning permission must be granted "as soon as may be".⁽¹³⁴⁾ Reasons must be given for the refusal of permissions or for the attachment of conditions to permissions.⁽¹³⁵⁾

3.6.8 Appeals and References

Appeals against decisions under sections 26 and 27 and references as to whether a particular activity is, or is not, exempted development must be made to An Bord Pleanala. Section 26(5) of the 1963 Act provides that:

any person may, at any time before the expiration of the appropriate period, appeal to An Bord Pleanala against a decision of a planning authority under this section .

A similar right of appeal against a decision to refuse permission for the retention of a structure is contained in s.27(4) of the 1963 Act. A person appealing does not have to have to be peculiarly affected by a decision and can, for example, be an ordinary member of the public. The "appropriate period" for appealing is one month from the date the decision was received where the appelliant is the applicant and 21 days from the date of the decision for any other person.⁽¹³⁶⁾

The procedures for making appeals or references is identical and is contained in Part V of the 1977 Regulations. Article 36 of these Regulations provides that appeals must be (a) in writing, (b) state the subject matter of the appeal, and (c) be accompanied

by a deposit of £10 as required by s.15 of the 1976 Act. In State (Walsh) v. An Bord Pleanala⁽¹³⁷⁾ and State (Elm Developments Ltd.) v. An Bord Pleanala⁽¹³⁸⁾ the High Court and Supreme Court respectively held that requirement (b) was not mandatory. The requirements in article 36(a) and (c) have been held to be mandatory in Finnegan v. An Bord Pleanala⁽¹³⁹⁾.

A party to an appeal may request An Bord Pleanala to hold an oral hearing of the appeal.⁽¹⁴⁰⁾ This request must be in writing.⁽¹⁴¹⁾ If it is refused, there is an appeal within 14 days to the Minister.⁽¹⁴²⁾ The Bord must hold an oral hearing if directed so to do by the Minister.⁽¹⁴³⁾ The Minister may direct an oral hearing on his own initiative or an appeal from the Bord's refusal.

When there is an appeal, the planning authority whose decision is appealed must submit to the Bord the application, any drawings, map, particulars, information, evidence or written study (EIS) received or obtained by them from the applicant, together with such other documents or information in their possession or procurement as the Bord may require.⁽¹⁴⁴⁾ A party to the appeal (other than the planning authority) must give the Bord any document or information in his possession or procurement which the Bord considers necessary for the purpose of determining the appeal: failure to do so may result in the Bord deciding on the appeal without the requested information.⁽¹⁴⁵⁾

Great care is taken to ensure that the rules of natural and constitutional justice are respected. Thus, copies of the appeals or references must be given to all parties thereto.⁽¹⁴⁶⁾ Copies of any information given by any one party must be given or made available to other parties.⁽¹⁴⁷⁾ This obligation is mandatory and failure to observe it may result in the quashing of the decision. The High Court so held in Boyd v. Cork County Council⁽¹⁴⁸⁾. Parties to an appeal must be given an opportunity to make observations on the appeal within a specified time and these observations must be given to other parties.⁽¹⁴⁹⁾

The Bord may require the applicant/appellant to submit revised plans or other drawings, or other particulars modifying the proposed development.⁽¹⁵⁰⁾

An inspector may be appointed by the Bord to examine the development proposals and, if appropriate, to conduct the oral hearing. The inspector has powers to inspect the site of the proposed development and to do all things therein reasonably necessary for the purpose for which the entry is made.⁽¹⁵¹⁾ The inspector may include recommendations in his report⁽¹⁵²⁾ but he may not include in his report "matters extraneous to the public inquiry, information obtained from other sources or views of his own not the subject of any discussion at the inquiry"⁽¹⁵³⁾ unless, as provided in s.17 of the 1976 Act, these matters are brought to the notice of the parties to the appeal and they are given an opportunity of making observations thereon to the Bord, or in the case of an oral hearing, to the person conducting the hearing. Appeals may be withdrawn by the applicant at any time or regarded as withdrawn by the Bord provided certain procedures are observed.⁽¹⁵⁴⁾ The Bord may also dismiss vexatious or unnecessarily delayed appeals.⁽¹⁵⁵⁾ The inspector's report is not published or made available to parties to the appeal but it may be made available to parties if the courts so order.⁽¹⁵⁶⁾

There is no time limit within which the Bord must make its decision. The Bord has frequently been criticised for delaying decisions on appeals. In December 1979, 44% of appeals had been received in the previous 3 months; 29% between 3-6 months; 16% between 6-9 months and nearly 12% had been in hand over 9 months. A backlog of 3,100 appeals were carried forward from 1982. There can therefore be serious delays in processing appeals - a factor which motivated the Minister for the Environment to review the operation of An Bord Pleanála in 1983. Reasons must be given for decisions on appeal.⁽¹⁵⁷⁾

3.6.9 The Validity of a Planning Decision

Section 82 of the 1963 Act, as amended,⁽¹⁵⁸⁾ provides that the validity of a decision on a planning application may not be challenged

by prohibition, certiorari or in any other legal proceedings whatsoever unless the proceedings are commenced within two months commencing on the date on which the decision is given.

There are dicta in Freeney v. Bray U.D.C.⁽¹⁵⁹⁾ and in the High Court decision in State (Pine Valley Developments Ltd.) v. Dublin County Council⁽¹⁶⁰⁾ to the effect that an applicant is not precluded by s.82 from seeking a declaration that he is entitled to permission in default.

Further inroads into the perceived scope of s.82 were made in State (Finglas Industrial Estates Ltd) v. Dublin County Council⁽¹⁶¹⁾. In that case the developers had obtained permission on appeal for a housing estate subject to a condition that they pay a contribution towards the provision of water and sewage facilities, the amount of this contribution to be fixed by agreement, or failing agreement, by the Minister. The Minister's powers in this respect were assumed by An Bord Pleanala which fixed a contribution of £180,750. Dublin County Council refused to accept this and the developers sought mandamus to compel acceptance. The County Council argued, inter alia, that the condition and the order made thereunder were ultra vires. The developers countered that even if this were so, s.82 precluded the council from so alleging. The Supreme Court held that s.82 did not preclude a challenge to the validity of the order made in pursuance of the condition.

It is further submitted that s.82 does not preclude challenges to the validity of condition or conditions which radically and substantially alter the nature of the development for which permission is sought. Such a decision is not a decision on the application as required by s.82. Support for this view can be found in the judgement of Walsh J. in State (Abenglen Properties Ltd.) v. Dublin Corporation.⁽¹⁶²⁾

Since the Supreme Court decision in Abenglen it appears that applicants alleging that conditions attached to planning permissions by local planning authorities are invalid or ultra vires must be

advised that, except in very exceptional circumstances, they must first avail of their rights to appeal against the decision to An Bord Pleanála under s.26(5) of the 1963 Act before they initiate proceedings challenging the validity of the decision. Challenges to the validity of decisions on references must be brought within 3 months of the decision or such longer period as the High Court may in any particular case allow.⁽¹⁶³⁾

3.6.10 Relevance of the Application

A question which often arises in practice is whether, and to what extent, it is permissible to look at the application, and documents and plans accompanying it, when construing the nature and extent of a permission. In Readymix (Eire)Ltd. v. Dublin County Council⁽¹⁶⁴⁾ permission was granted for a "proposed replacement of existing concrete plant". The permission incorporated by reference the application for permission together with the plans lodged with it. The plaintiffs used the land for the manufacture of large amounts of readymix concrete. The defendants argued that the permission did not permit this. The plaintiffs replied that (a) since the grant of permission did not specify the purpose for which the structure was used, they were entitled to use it for the purpose for which it was designed as provided in s.28(6) of the 1963 Act and (b) that the permission must be construed within the four corners of the notice granting the permission and not by reference to the application and any document and plans accompanying it. The Supreme Court rightly rejected these arguments and examined documents and plans accompanying the application in order to determine the extent of the permission granted. But Henchy J., in his dissenting judgement, with which Walsh J. agreed, stated that:

The Act does not make the register the conclusive or exclusive record of the nature and extent of the permission but the scheme of the Act indicates that anybody who acts on the basis of the correctness of the particulars in the register is entitled to do so. Where the permission recorded in the register is

self-contained, it will not be permissible to go outside it in construing it. But where the permission incorporates other documents, it is the combined effect of the permission and such documents that must be looked at in determining the proper scope of the permission. (165)

This part of Henchy J.'s judgement is in line with the decision in Slough Estates v. Slough Borough Council (166) where it was held that a planning permission is to be construed within its own four corners and that the application for permission may not be looked at as an aid to its construction, unless it has been expressly incorporated within the permission. That decision has not met with universal approval in England (167) and the modern tendency of English courts when construing a permission is to look at the application and documents and plans accompanying it regardless of whether they have been expressly incorporated in the permission. As it happens Henchy J.'s statement as to what may be looked at when the permission does not incorporate other documents, apart from being in a dissenting judgement, was not essential to the decision in Readymix as the permission there incorporated other documents.

The reason advanced by Henchy J. in Readymix for the presumption that only the planning permission as it appears in the register may be looked at when construing a permission, (where the permission does not refer to the application and accompanying documents), is that a permission is a public document. Therefore, the argument goes, it would be wrong if the meaning of the permission could be qualified "in the light of subjective considerations special to the applicant or those responsible for the grant of permission". There is some substance to this argument because planning authorities are only mandatorily required to make the planning application and accompanying documents available for public inspection for 5 years under article 29 of the 1977 Regulations. After that period, access to the required documents may be obtained at the discretion of the planning authority or by an order for discovery. It is submitted that if Henchy J.'s view is to prevail it should only apply to cases where bona fide

purchasers of land have purchased that land after the relevant 5 year period has expired and who for some justifiable reason can only rely on public documents. Otherwise difficulties may arise in the enforcement of planning controls, (especially by persons other than planning authorities) and the construction of permissions in default.

In Jack Barrett (Builders) Ltd. v. Dublin County Council⁽¹⁶⁸⁾ the defendants in a s.27 action sought to enforce a planning condition requiring the plaintiffs to construct a link road. The plaintiffs argued that they had no such obligation. The planning permission incorporated both the application and plans submitted with it. Gannon J. having examined these, found that it was impossible to establish from them the nature and extent of the plaintiff's alleged obligation with respect to the link road. He then admitted extrinsic evidence in an attempt to resolve the ambiguities in the permission and in the application and accompanying plans. In the event he refused to enforce the condition. In Horne v. Freeney⁽¹⁶⁹⁾ Murphy J. also permitted the parties to give oral evidence as to the nature of the roofing envisaged by the plans lodged with the application.

The current position appears to be that when planning permission is granted, the courts will look at the application and documents and plans accompanying it at least when the latter are incorporated in the permission. It further appears that the courts will admit extrinsic oral evidence to determine the nature and extent of the developer's obligations.

But not all undertakings in planning applications and accompanying documents will be enforced by the courts. In Dun Laoghaire Corporation v. Frescati Estates⁽¹⁷⁰⁾ O'Hanlon J. refused to make an order under s. 27 of the 1976 Act compelling the developers to make No. 41 Rock Hill Blackrock (formerly part of the historic Frescati House) structurally sound and stable although there was an undertaking, in documents accompanying the application, to "retain" it. No 41 was excluded from the application for the planning permission and was not

mentioned in the permission granted by An Bord Pleanála. An obligation to retain it could have been imposed by a condition attached to the permission but was not. Because of this, and also because of uncertainties as to the extent of the obligation implied by the rather nebulous word "retain", O'Hanlon J. was not prepared to read any obligations with respect to No. 41 into the grant of permission by An Bord Pleanála "by implication or reference".

When planning permission is granted in default, it is submitted that the applicant is bound to carry out the development in accordance with the terms of the application and accompanying documents. The public interest in proper planning ought not to be entirely defeated by the failure of planning authorities to decide on the application within the statutory time limits.

3.6.11 Revocation and Modification of Permissions

Planning authorities have powers under s.30 of the 1963 Act as amended, to revoke or modify permissions by notice but these powers may not be exercised unless there has been "a change of circumstances relating to the proper planning and development of the area concerned".⁽¹⁷²⁾ A change of circumstances usually means a variation of a development plan or the making of a new plan. There is an appeal to An Bord Pleanála against a notice of a decision to revoke or modify.⁽¹⁷³⁾ The Board may decide to confirm the notice revoking or modifying or to annul it.⁽¹⁷⁴⁾ The change of circumstances justifying a revocation or modification must have occurred (a) in case a notice is annulled by An Bord Pleanála, since the notice was annulled, and (b) in case no notice is so served, since the permission was granted and must be stated in the decision to revoke or modify.⁽¹⁷⁵⁾

The power to revoke or modify may be exercised:

(a) where the permission relates to the carrying out of works, at any time before the works have been commenced, or in the case of works which have been commenced and which, consequent on the making of a variation in the development plan, will contravene such plan, at any time before the works have been completed, but the revocation or modification may not affect works already carried out and

(b) where the permission relates to a change of use of any land, before the change has taken place.⁽¹⁷⁶⁾

In certain circumstances the planning authority may have to purchase the land consequent on a revocation or modification.⁽¹⁷⁷⁾ The decision to revoke or modify must be taken by the elected members of the planning authority.⁽¹⁷⁸⁾ The limitations on the powers to revoke and modify permissions illustrate the inadvisability of attaching pollution control conditions (especially conditions prescribing emission, effluent or quality standards) to planning permissions.

3.6.12 Purchase Notices and Compensation for Refusal of Permission

Section 29 of the 1963 Act provides that an applicant who has been refused planning permission or granted permission subject to conditions may, in certain limited circumstances, serve notice on the planning authority requiring them to purchase his interest in the land. Generally, this section will apply where the result of the decision is that the land has become incapable of, or cannot reasonably be rendered capable of "reasonably beneficial use".

In certain circumstances, a disappointed applicant for permission may be able to claim compensation in respect of the reduction of the value of his interest in the land resulting from a decision to refuse planning permission or to grant it subject to conditions. The circumstances in which, and the conditions subject to which compensation may be payable are contained in Part VI of the 1963 Act.

The grounds on which and the procedures regulating purchase notices and claims for compensation are complex and outside the scope of this thesis.⁽¹⁷⁹⁾

3.6.13 Enforcement of Planning Controls

Planning authorities (and individuals) have wide powers to enforce the provisions of the Planning Acts. The principal enforcement powers are:

- (i) power under s.24 of the 1963 Act, as amended,⁽¹⁸⁰⁾ to prosecute persons carrying out development other than under and in accordance with the permission granted under Part IV of the Act. The maximum penalty on summary conviction is £20 plus £10 for each day on which the contravention continues, and for conviction on indictment £10,000 and/or two years imprisonment. Proceedings must be brought within the time limits specified in s.10(4) of the Petty Sessions (Ireland) Act 1951, and s.30 (1) of the 1976 Act.
- (ii) powers under s.31 of the 1963 Act, as amended⁽¹⁸¹⁾ to enforce planning controls where planning permission has not been obtained or where the conditions attached to a permission are not being observed. Under this section a planning authority may serve an enforcement notice "if they decide that it is expedient so to do" requiring that specified steps be taken within a specified period for restoring the land to its condition before the unauthorised development took place or requiring that conditions attached to a permission be complied with. Section 31 notices may require the removal or alteration of any structures, the discontinuance or any use of land or the carrying out on land of any works. If the required steps are not taken as directed, the planning authority may take them at the ultimate expense of the owner of the land. A s.31 notice must be served within 5 years of the "appropriate" period as defined in the section. Contravention of a s.31 enforcement notice is an offence punishable on summary conviction by a maximum fine of £800. It is a further offence to continue the unauthorised development after conviction for failure to comply with the enforcement notice. In this instance the maximum penalty on summary conviction is £50 (subject to a maximum of £800) for each day the offence is continued.⁽¹⁸²⁾ In State (Brady) v. District Justice McGrath⁽¹⁸³⁾ the High Court held that proof of conviction of the first offence is merely evidence of one ingredient of the further offence (i.e. the fact of conviction) and persons charged with the further offence are not estopped

from raising any defence they could have raised when prosecuted in the first instance.

- (iii) powers under s.32 of the 1963 Act, as amended,⁽¹⁸⁴⁾ to serve an enforcement notice requiring specified steps to be taken within a specified time when any condition subject to which a permission for the retention of a structure has been granted and has not been complied with. If the required steps are not taken as directed, the planning authority may take them and recover the costs from the owner of the structure. This notice must also be served within 5 years of the "appropriate period" as defined in the section.
- (iv) powers under s.34 of the 1963 Act, as amended,⁽¹⁸⁵⁾ to prosecute in respect of failure to take steps required in an enforcement notice served under the two preceding sections.
- (v) powers under s.36 of the 1963 Act, as amended,⁽¹⁸⁶⁾ to serve an enforcement notice when authorised development has not been or is not being carried out in conformity with permission, requiring that specified steps be taken within a specified time for ensuring that the development is carried out in conformity with the permission. Such notice may require that such steps to be taken as are specified in the notice within a specified period for securing the carrying out of the development in conformity with the permission and, in particular, any such notice may require the removal or alteration of any structures, the discontinuance of any use of land or the carrying out on land or any works. If the required steps are not taken as directed, the planning authority may take them and recover the costs from the person on whom notice was served.
- (vi) powers under s.36 of the 1963 Act, as amended,⁽¹⁸⁷⁾ to serve a notice requiring the removal or alteration of a structure and in the case of a removal, any replacement appearing to the planning authority to be suitable. In this instance an appeal against the notice lies to An Bord Pleanála which has power to

confirm the notice with or without modifications or to annul it. A person complying with a s.36 notice is entitled to reasonable expenses for so doing. In certain circumstances he may require the planning authority to purchase the property concerned or to pay him compensation for loss incurred. (188)

- (vii) powers under s.37 of the 1963 Act, as amended (189) to serve a notice requiring that a use of land be discontinued or that conditions be imposed on the continuance of a use. An appeal against the notice lies to An Bord Pleanála. In certain circumstances a person complying with a s.37 notice may require the planning authority to purchase the property concerned or to pay him compensation. (190) Section 40 of the 1976 Act provides that no compensation is payable where the conditions are imposed on the continuance of a use of land in order "to avoid or to reduce serious air or water pollution or the danger of such pollution" unless the Minister makes an order that in the particular circumstances of the case, it would not be just and reasonable to refuse compensation.
- (viii) powers under s.25 of the 1976 Act to secure the proper completion of developments by requiring the owner of the land to provide, level, plant or otherwise adapt or maintain open spaces as indicated in the planning application or required by conditions attached to permissions granted. If the owner fails to comply with a written notice, s.25 provides a procedure whereby the planning authority may acquire the land.
- (ix) powers under s.26 of the 1976 Act to prevent unauthorised development at an early stage by serving a warning notice on the owner and any other person who in their opinion may be concerned with the matters to which the notice relates (e.g. a builder) to prevent or stop any unauthorised development (including use) of land or to protect trees or other features which the terms of the permission for development require to be preserved.
- (x) In addition to the above powers, planning authorities and any member of the public or any legal person may also apply to the High Court under s.27 of the 1976 Act.

Section 27 provides:

(1) Where ;

- (a) development of land, being development for which a permission is required under Part IV of the 1963 Act, is being carried out without such a permission, or
- (b) an unauthorised use is being made of land, the High Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order prohibit the continuance of the development or unauthorised use.

(2) Where any development authorised by a permission granted under Part IV of the 1963 Act has been commenced but has not been, or is not being, carried out in conformity with the permission because of non-compliance with the requirements of a condition attached to the permission or for any other reason, the High Court, may the application of a planning authority or any other person, whether or not that person has an interest in the land, by order require any person specified in the order to do or not to do, or to cease to do, as the case may be, anything which the court considers necessary to ensure that development is carried out in conformity with the permission and specified in the order.

To date, s.27 has been successfully invoked, inter alia, to restrain an auctioneer from using an amplifier in such a way as to cause a nuisance by noise ⁽¹⁹¹⁾, to prohibit the use of land for the storage or sale of diesel or petroleum products ⁽¹⁹²⁾, to prevent the use of premises for holding dutch auctions ⁽¹⁹³⁾, to ensure compliance with planning conditions relating to the disposal of asbestos waste ⁽¹⁹⁴⁾ and the treatment of amonia fumes ⁽¹⁹⁵⁾, and to prohibit the continuance of many different kinds of unauthorised development.

Any person may apply for a s.27 order. As Barrington J. observed in Stafford and Bates v. Roadstone Ltd ⁽¹⁹⁶⁾ "this section therefore makes each citizen a watchdog of the public". However, an analysis of cases decided on s.27 shows that the majority of applicants are either

planning authorities who have a general duty to enforce planning controls or persons whose proprietary or amenity interests were directly affected by unauthorised developments. In National Federation of Drapers v. Allied Wholesale Warehouses and Others⁽¹⁹⁷⁾, however, the successful applicant for a s.27 order was an association concerned with protecting the business interests of its members against competition from itinerant dealers in cheap goods who traded by holding auctions in selected locations. The order prohibited the holding of such auctions in premises for which there was no permission to carry on commercial activities.

A s.27 order need not be directed to the person who obtained a permission. It may be directed to any person carrying on the unauthorised development. Thus in McCabe v. Harding Investments Ltd⁽¹⁹⁸⁾ an order was sought against a building company employed by the company which had obtained the permission. In Dublin County Council v. Sellwood Quarries Ltd⁽¹⁹⁹⁾ the order was sought against the leasee of a quarry. In Dublin Corporation v. Maiden Poster Sites Ltd⁽²⁰⁰⁾ the order was granted against a company which erected advertisements on hoardings. In Dublin County Council v. Directors of Gracepark Construction Ltd⁽²⁰¹⁾ the High Court granted an order directed personally to the directors of a liquidated company ordering them to complete a housing estate in accordance with the terms of the permission granted.

In deciding whether or not to grant a s.27 order the Courts balance the interests of the applicant against those of the person carrying out the development also taking into account whether the public interest would be served by granting or refusing the order. Factors which the courts have considered particularly relevant have been the applicants' property rights⁽²⁰²⁾, the hardship which prohibiting the continuance of the unauthorised development would cause the developer and persons employed on the development⁽²⁰³⁾; whether the breach of planning control was merely a technical or inadvertent breach or whether it was a flagrant breach⁽²⁰⁴⁾; delays in seeking the order⁽²⁰⁵⁾; the presence or absence of objections to the development from neighbours⁽²⁰⁶⁾ and the bad record of the developer.⁽²⁰⁷⁾

In exercising their discretion under s.27 as to the content of orders the Courts are somewhat hampered by the words of s.27(1) which provides

that orders under that sub-section may prohibit the continuance of the development of unauthorised use. This is understood to mean that s.27(1) does not empower the court to order the demolition or removal of works carried out without permission or the restoration of the property to its previous condition or use. In contrast, the Court's powers under s.27(2) are much wider because this subsection expressly empowers them to require any person specified in the order:

to do or not to do anything which the court considers necessary to ensure that development is carried out in conformity with the permission and specifies in the order

It thus appears that the Court's powers are less comprehensive where a development is carried out without planning permission than where planning permission has been obtained but has not been complied with. This anomaly has been commented upon in the High Court ⁽²⁰⁸⁾ Orders made under s.27(2) have for example:

- required the demolition of unauthorised developments ⁽²⁰⁹⁾
- required the carrying out of development in accordance with the terms of the permission and the plans submitted therefor ⁽²¹⁰⁾
- prohibited the use of an unauthorised extension as a public dance hall, lounge or premises for the consumption of alcohol ⁽²¹¹⁾.

An interesting feature of s.27 is the fact that no time limit is specified within which enforcement action must be commenced in respect of a breach of planning control. Accordingly, the immunity from enforcement action under sections 31 and 32 of the 1963 Act enjoyed in respect of breaches of planning control which had continued for more than 5 years is now of little practical value. In Galway County Council v. Connaught Proteins Limited ⁽²¹²⁾ the High Court granted an order under s.27 prohibiting the use of lands and premises as an animal by-product processing plant even though the land and premises had been so used for more than 5 years. In Dublin Corporation v. Mulligan ⁽²¹³⁾ the High Court expressly re-affirmed that nothing in s.27 nor in any other section of the 1976 Act restricted the time during which a planning authority or other interested person might apply to the High Court under s.27. The Court also held that the fact that enforcement proceedings were not brought under s.31 of the 1963

Act did not make unlawful development lawful. But the fact that an applicant for a s.27 order delayed unduly in seeking the order would be taken into account in deciding whether, and in what form, a s.27 order would be granted.

In practice s.27 has now become a most effective method for enforcing planning controls. It is widely known and availed of by members of the public and environmental protection associations. It may often be a speedier and more effective remedy than a nuisance action. An applicant for a s.27 order does not have to overcome the difficulties of establishing locus standi which persons seeking to enforce planning controls in other jurisdictions experience.

The Minister for the Environment may direct planning authorities to serve enforcement notices under sections 31 and 35 of the 1963 Act. Section 28 of the 1976 Act empowers planning authorities to withdraw notices served under sections 30, 31, 32, 35, 36 and 37 of the 1963 Act. This power is intended to facilitate the resolution of difficulties by negotiation.

Penalties on summary conviction for offences under sections 32, 34, 35 and 36 of the 1963 Act and s.25 of the 1976 Act are fines not exceeding £250 plus, in the case of continuing offence, £50 for each day an offence continues after conviction therefor.⁽²¹⁴⁾ The penalty for failure to comply with a discontinuance of use notice under s.37 of the 1963 Act is £800 plus £150 a day (subject to a maximum of £800) for each day the offence continues.⁽²¹⁵⁾ Contravention of s.26 of the 1976 Act is punishable on summary conviction by a maximum fine of £250 and/or 6 months imprisonment and on conviction on indictment by a maximum fine of £10,000 and/or 2 years imprisonment.⁽²¹⁶⁾ Prosecutions may be taken by planning authorities.⁽²¹⁷⁾

A member of An Bord Pleanála or an "authorised person" may enter in land at all reasonable times between the hours of 9.00 a.m. and 6.00 p.m. for any purposes connected with the Planning Acts.⁽²¹⁸⁾ Before entering on the land, however, the consent of the owner or

occupier must be obtained or 14 days written notice of intention to enter must be given.⁽²¹⁹⁾ In the latter instance the owner or occupier may apply to the District Court within 14 days after the notice was given for an order prohibiting the entry, and the Court may either prohibit the entry or specify conditions to be observed by the person entering.⁽²²⁰⁾

If the owner or occupier refuses to permit an authorised officer to enter the land, entry must be authorised by a District Court order.⁽²²¹⁾

An "authorised person" means a person appointed by the planning authority, the Minister for the Environment or An Bord Pleanala.⁽²²²⁾

Powers of entry under the Act are generally considered to be inadequate, particularly where breach of pollution control conditions are concerned. Fourteen days delay in entering on land to ascertain the nature and causes of a pollution incident will frequently result in the unavailability of the necessary evidence for enforcement action.

3.6.14 Duration of Planning Permissions

Section 2 of the 1982 Act provides that permissions will cease to have effect on the expiration of the "appropriate period" so that:

- permissions granted before 1 November 1976 expire on 31 October 1983;
- permissions granted on or after 1 November 1976 and before 31 October 1982 expire on 31 October 1987 or 7 years after the granting of permission whichever is earlier;
- permissions granted after 1 November 1982 expire 5 years after the granting of permission.

Section 4 of the said Act provides a procedure for extending the appropriate period as regards a particular permission. Details of the procedures to be followed when applying for permission to extend the life of a planning permission are contained in articles 4-12 of the 1982 Regulations.

Permissions extended under s.29(9) of the 1976 Act are not affected by any provision in the 1982 Act. Section 4 of the 1982 Act

does not affect permissions for the retention of structures, permissions granted for a limited period or for the continuance of a use of land in accordance with a permission. Section 4 also expressly provides that the expiration of a permission will not affect the obligation to comply with conditions attached to the permission not the carrying out of development works which are necessary for, or ancillary or incidental to, completed buildings.

3.6.15 Fees Payable

The 1982 Regulations provide for the payment of specified fees to planning authorities in relation to:

- planning applications
- representations by third parties
- applications for the extension or further extension of the duration of permissions
- copies of entries in the planning register.

These Regulations also provide for the payment of fees fo An Bord Pleanala in relation to :

- appeals
- references
- determinations.

Although the introduction of fees for planning services was widely disapproved of, it can be justified as a practical implementation of the "polluter pays" principle where charges are made for applications submitted by polluters.

3.7 CONTROL OF BUILDING CONSTRUCTION

Section 86 of the 1963 Act empowers the Minister to make building regulations regulating, inter alia, standards (expressed in terms of performance, types of materials, methods of construction or otherwise) in relation to matters specified in the Fifth Schedule to the Act. Draft Regulations have been prepared for a number of years but have not been made because of the widespread opposition of the construction industry and because complying with them would add substantially to building costs. Some local authorities (Dublin Corporation, Cork Corporation, Dun

Laoghaire Borough Council and Cork County Council) require that building bye-law approval be obtained prior to the erection of buildings within their jurisdictions. This requirement is made under provisions in the Public Health (Ireland) Act 1878, the Public Health Act Amendment Act 1890 and the Public Health Acts Amendment Act 1907. Approval is required even for buildings which are exempted development within the meaning of s.4 of the 1963 Act and the 1977, 1981 and 1982 Regulations. Building bye-law requirements vary from area to area but they typically provide for such matters as the structure and construction of a building, height, lighting, ventilation, water supply, drainage, sewage and refuse removal, fire safety, durability, heating, open spaces at the rear of buildings, requirements as to foundations and the thickness of walls. In order to obtain bye-law approval, plans, drawings and specifications for the proposed building must be submitted to, and approved by, the appropriate authority. In many cases planning applications and applications for building bye-law approvals are made simultaneously.

Some of these bye-laws are very out of date (e.g. the Cork bye-laws date to 1908) so that their efficacy depends upon sensible administration by the authorities. In practice, authorities lay down standards for a particular building which reflect modern techniques and which are frequently in line with requirements in the draft building regulations. If a builder objects, the authority will threaten him with the standards of the old bye-laws, which are difficult to attain nowadays. In fact therefore, the old bye-laws are used in terrorem to achieve proper building standards. Non compliance with conditions subject to which bye-law approval has been granted is an offence. It may also be a breach of planning control as planning permission are frequently made conditional on compliance with bye-law requirements. A person who violates bye-laws may be required to remove, alter, or pull down a building. (See, for example Dublin Bye-law No. 115, Cork Bye-law No. 99)

In practice, the draft building regulations are developing into a code of practice for designers of buildings.

3.8 LICENCES FOR PARTICULAR INSTALLATIONS

Section 89 of the 1963 Act, as amended⁽²²³⁾, provides that a planning authority may grant to any person a licence to erect, construct, place or maintain -

- (a) a petrol pump, oil pump, air pump or other appliance for the servicing of vehicles,
 - (b) a vending machine,
 - (c) a town or landscape map for indicating directions or places,
 - (d) a hoarding, fence or scaffold,
 - (e) an advertisement structure,
 - (f) a cable, wire or pipeline,
 - (g) any other appliance or structure specified by the Minister by regulations as suitable for being licensed under this section,
- on, under, over or along a public.

This section does not apply to pipelines constructed by the Gas Board pursuant to its powers under the Gas Act 1976, nor to the construction of pipelines permitted and controlled by the Minister under s.40(2) of that Act.⁽²²⁴⁾

A person applying for a s.89 licence must furnish such plans and other information concerning the position, design and capacity of the appliance or structure as the planning authority may require.⁽²²⁵⁾ Licences may be refused or granted for such period and on such conditions as the planning authority specifies.⁽²²⁶⁾ Licences may be withdrawn in certain circumstances and the licensee required to remove his appliance or structure if it causes an obstruction or becomes dangerous.⁽²²⁷⁾

Any person may appeal to An Bord Pleanála against any decision on a licence.⁽²²⁸⁾ The Bord on allowing an appeal may give the planning authority such directions concerning the withdrawing or granting or altering of a licence as may be appropriate and the planning authority is obliged to comply therewith.⁽²²⁹⁾ There are no provisions for citizen participation in decision-making on licences.

Erecting, constructing, placing or maintaining a structure without, or in contravention of the terms of a licence or of conditions attached thereto is an offence punishable on summary conviction by a fine not exceeding £10 plus £2 a day for a continuing offence.⁽²³⁰⁾

3.9 PLANNING BY AGREEMENT

Section 38 of the 1963 Act, as amended,⁽²³¹⁾ empowers planning authorities :

to enter into an agreement with any person interested in land in their area for the purpose of restricting or regulating the development or use of land, either permanently or during such period as may be specified in the agreement.

No research has been published indicating to what extent this section is used as an environmental control device. But it has been so used on a number of occasions. The 1976 amendment provides that a planning authority in entering into a s.38 agreement may join with a prescribed body. The section permits planning authorities to secure the agreement of developers to conditions controlling their use or development of the land, including the generation of pollution which conditions might not necessarily be properly or legally attachable to a planning permission or approval⁽²³²⁾. The possibility of joining one of the prescribed bodies like An Taisce as a party to the agreement enhances the potential effectiveness of the section and ensures a minimum amount of public participation - albeit indirect - in planning by agreement. Section 38 provides that the agreement may be enforced by the planning authority or any body joined with them but, curiously, no mention is made of enforceability against the planning authority or prescribed body. Presumably the agreement can only be enforced against these bodies if it is supported by consideration.⁽²³³⁾ Another potentiality of a s.38 agreement is as a device to ensure that the polluter himself pays the economic costs of pollution control.⁽²³⁴⁾

3.10 INDIVIDUAL RIGHTS

In no sphere of Irish statute law does the individual enjoy such extensive rights as under the Planning Acts. These rights have been described in some detail in the preceding sections. They include rights:

- (i) to participate in the development planning process;
- (ii) purchase copies of a development plan or of an extract therefrom at a reasonable cost;
- (iii) to be notified that a developer proposes to submit a planning application;
- (iv) to make submissions or observations with respect to development proposals;
- (v) to be notified of a decision on an application with respect to which he has made submissions or representations;
- (vi) to appeal decisions or planning authorities on planning applications to An Bord Pleanála;
- (vii) to become parties to the appeal;
- (viii) to request an oral hearing of the appeal;
- (ix) to make objections and representations with respect to development proposals to An Bord Pleanála;
- (x) to challenge the validity of planning decisions in the courts⁽²³⁵⁾;
- (xi) to inspect the development plan, the planning register and documents lodged with planning applications at reasonable times.
- (xii) to enforce planning controls by applying for an order under s.27 of the 1976 Act.

In addition, the interests of the general public, and particularly of those who take a special interest in environmental control, are recognised by the special status given to certain prescribed bodies in Irish planning law. An Taisce, the National Monuments Advisory Council, Bord Failte and the Arts Council, being prescribed bodies under article 6 of the 1977 Regulations, are statutorily entitled under s.21(1) of the 1963 Act to receive copies of the written statements comprised in draft development plans, and draft variations and amendments of such plans and to be expressly notified of the draft published.⁽²³⁶⁾

Article 25 of the 1977 Regulations requires that express notice of the date and nature of applications received for developments in an area of special amenity (whether or not a special amenity area order has been made for that area) and of applications for permission to retain a structure which could obstruct any view or prospect of special amenity value or special interest must be given to An Taisce Bord Failte and the Arts Council. All of the above-mentioned bodies must also be notified when development would be unduly close to

objects of archaeological, geological or historical interest, or would detract from any building of artistic, architectural or historical interest, or in either case, would obstruct any scheme for the improvement of the surroundings of or any means of access to any such place object or structure. Bord Failte must be notified when applications are submitted for developments which would obstruct or detract from any tourist amenity works.

The decision on any application for the developments mentioned in article 25 must be expressly notified to the appropriate body within 7 days of the making of the decision. (237)

These bodies may also participate in any agreement regulating the development or use of land made between a planning authority and any person interested in land in their area under s.38 of the 1963 Act. An Taisce is a party to an agreement made between Cork County Council and Pfizers Ltd (a chemical company) whereby the company agreed to accept restrictions on their development which had not been imposed by the planning permission. (238)

The Royal Irish Academy, Bord Failte and An Taisce must be consulted by a planning authority before they make a special amenity area order. (239) An Bord Pleanala is required to keep itself informed (in so far as it considers it necessary for the performance of its functions) of the policies and objectives of inter alia the Arts Council, Bord Failte and the National Monuments Advisory Council. (240)

The recognition of the special role which prescribed bodies interested in environmental matters have to play in environmental control is an unusual feature of Irish planning law.

No comprehensive research has been published on the extent to which individuals and/or the prescribed bodies participate in the planning process. (241) The annual reports of An Bord Pleanala from 1978 to 1981 give some indication of third party participation in appeals against decisions on planning applications.

Year	Total No. of Appeals	Third Party Appeals	Percentage of total
1978	3551	486	20%
1979	3759	431	11.5%
1980	3970	870	22%
1981	4526	868	19%

These figures suggest that there is a healthy amount of third party participation in decision-making on planning applications. Despite frequent allegations from developers' interests that third party objections are improperly motivated⁽²⁴²⁾ the number of appeals which the Bord dismissed as vexations under s.18 of the 1976 Act is extremely small. In 1977 and 1978 no appeal was dismissed on this ground whereas in 1979 and 1980, only 14 and 13 appeals respectively were dismissed.⁽²⁴³⁾ In 1980, 76% of third party appeals were successful in that the Bord either revised or reversed the original decision of the planning authority.⁽²⁴⁴⁾ This statistic indicates that third party appeals are as a rule justifiable and sustainable on proper planning grounds.

There are many defects in the procedures permitting participation in planning decision-making. Defects in procedures for making development plans have already been described.⁽²⁴⁵⁾ Of more practical importance in individual cases are defects in the notification requirements in articles 14 and 15 of the 1977 Regulations. While these requirements are extensive and strictly enforced⁽²⁴⁶⁾ they can easily be evaded by publication of notices in Irish or in newspapers which are not widely circulated in the neighbourhood of a proposed development or by publication of the notice on a date when it is unlikely that many newspapers will be read.⁽²⁴⁷⁾ The requirements in article 16 of the 1977 Regulations for notices published on land and structures can also be evaded by the use of small print or of easily destructable paper. There are no requirements that immediate neighbours should be specially notified of applications for developments.

Planning legislation does not require planning authorities, An Bord

Pleanala or the Minister for the Environment to make the results of any surveys, reports or other investigations into environmental matters publicly available. In practice, a person who wishes to participate in development planning will not have access to the background information on which proposals in draft plans, variations or amendments were based.

The file on a planning application which must be made available to the public in a planning office will include information supplied by the applicant as required by articles 17-20 of the 1977 Regulations but not information as to the views of, or the results of, investigations carried out by or on behalf of the planning authority into the implications of the proposed development.⁽²⁴⁸⁾ In Boyd v. Cork County Council,⁽²⁴⁹⁾ the plaintiff had not seen an EIS submitted in respect of a proposed chemical factory because it had been commissioned by the planning authority which did not (because it was not obliged to do so) put it on the file. This writer is aware of a similar malpractice when Clare County Council refused access to an EIS carried out into the effects of the Moneypoint power station on the environment.

If there is an appeal under s.26 of the 1963 Act, against a decision on an application, a third party who has appealed the decision may gain access to information collected by a planning authority on an application only if An Bord Pleanala has required the planning authority to submit such information.⁽²⁵⁰⁾

The obligation on a planning authority under article 29 of the 1977 Regulations, as amended,⁽²⁵¹⁾ to make the documents relating to a particular application submitted by an applicant (not by any other person) expires 5 years after permission or approval or a decision extending the duration of a planning permission was granted.

Thus, for example, an individual who wishes to ascertain whether a development is complying with the terms of a planning permission has no automatic right of access to information vitally necessary for his case⁽²⁵²⁾ if 5 years have elapsed since the permission or approval was granted. He will almost invariably have to get a High Court order

for discovery of the documents. This provision made some sense before 1976 when many breaches of planning control became immune from enforcement action after 5 years but it makes no sense now when an action under s.27 of the 1976 Act may be brought for breaches of planning control which have continued for more than 5 years. (253)

When planning permission is granted subject to a condition requiring the monitoring of polluting activities, planning authorities frequently require access to monitoring records or the submission of such records to them at regular intervals. In practice, planning authorities will not permit access to these records to members of the public or even to an individual who alleges that he is adversely affected by pollutants from the development.

When there is an appeal against a decision on a planning application under sections 26 or 27 of the 1963 Act, there is no requirement that An Bord Pleanála make the inspectors report on the appeal available to the public or even to the parties to the appeal. In effect therefore, the only way appellants can discover the basis on which the appeal was decided is to institute proceedings challenging the validity of the decision. These reports should be published as a matter of course. Apart from making the planning process more open, their publication would increase confidence in the planning system and be of considerable assistance to persons taking planning appeals who could rely on them as precedents. (254)

It is worth noting that the defects in planning procedures for citizen participation frequently result from the absence of requirements on public authorities to make information publicly available. Since much of this information is gathered at public expense and for the public benefit, there can be no excuse for withholding it from the public.

3.11 ENFORCEMENT

There are no national statistics on the extent to which Planning Acts are enforced by planning authorities. The following table throws some light on the practice of Dublin Corporation.

TABLE 3.11

Measures Taken	1978	1979	1980
Prosecutions for non-compliance with s.31 of the 1963 Act notices	48	25	23
Prosecutions for non-compliance with s.26 of the 1976 Act notices	2	4	0
Enforcement notices complied with	57	36	36
Warning notices complied with	11	14	38
Other successful actions	84	107	93

In addition, the Corporation brought five successful actions under s.27 of the 1976 Act in 1979, and 14 in 1980. Of all the measures taken, however, only one was for pollution and that was for unauthorised dumping.

The experience of this writer and an independent study⁽²⁵⁵⁾ have confirmed that despite the assertion of the Inter-Departmental Committee that the Planning Acts "provide a statutory pollution control mechanism of a general nature",⁽²⁵⁶⁾ there are several instances where polluters are operating without any planning permission and that there have been very few attempts to enforce pollution control conditions in the courts or even by negotiation.

A study by Levinge of 31 large industries found that 22 had conditions attached to planning permissions setting environmental standards relevant to water pollution control, and 14 had conditions attached relevant to air pollution control and waste disposal.⁽²⁵⁷⁾ Nineteen of the 22 with water pollution control conditions were required to monitor effluents and/or receiving waters, but only six of the 14 with air pollution control conditions were required to monitor emissions to the air.⁽²⁵⁸⁾ Two pharmaceutical industries and one large textile plant submitted no information on their emissions to the air with their planning applications and were not subjected to air pollution controls in their planning per-

missions, although observations of these and other plants on the author's visits indicated that emissions were being discharged and odours were noted. (259)

The pollution control conditions in many of the permissions surveyed are probably invalid. For example, ten of the 14 permissions containing conditions on waste disposal required that waste disposal arrangements be "approved" by the local authority, (260) and conditions set to prevent air pollution were expressed in such vague terms as "no atmospheric emissions may be discharged" or "adequate provision must be made to prevent nuisance, smoke, noise or dust" or "emissions must meet the highest standards possible". (261)

A very obvious reason for the failure to enforce pollution control conditions could be the widespread practice of relying almost exclusively on polluters to monitor their own emissions and discharges. This is compounded by the failure to stipulate any requirement for the submission of monitoring records to the planning authority and/or by inadequate stipulations with respect to monitoring records. Levinge found that of the 19 industries subjected to water pollution control conditions in planning permissions, one was required to send monitoring records to the planning authority immediately, one regularly, one weekly, three monthly, seven on request and that there were no requirements on the submission of records in seven cases. (262) Only half of the 14 industries subjected to air pollution control conditions were regularly monitoring their emissions, and these were communicating their results "informally and irregularly" to the local authority. (263) Only one local authority was actively and independently monitoring atmospheric emissions and this was being done on an irregular basis. (264) Levinge considered that only 22 per cent. of the 19 industries required to monitor discharges to waters were monitoring adequately. (265) In only 10 of these 19 cases did the planning condition stipulate that the planning authority was to have access to sampling points. This means that, unless the discharger consents, the planning authority must give 14 days notice, or even obtain a court order, if they want to monitor effluents. (266)

It appears that breaches of the planning code which are patently obvious and visually detectable or in respect of which there is public dissatisfaction will usually be enforced, particularly in urban areas. But planning authorities have not the staff or facilities, nor perhaps the inclination, to detect and enforce invisible breaches of planning permissions. They may also be deterred from taking enforcement action by uncertainties concerning the legality of pollution control conditions attached to permissions and a lack of confidence in the inadequacy of their knowledge and experience in resorting to the fairly complicated legal procedures for enforcing planning controls.

FOOTNOTES

1. Hereafter called the 1963 and 1982 Act respectively.
2. See section 2.3.2.
3. See section 2.2.11.
4. S.1. No. 65 of 1977. Hereafter called the 1977 Regulations.
5. 1963 Act, s.19(1).
6. Ibid., s.19(2).
7. Ibid., s.19(2) and Third Schedule as amended by 1976 Act, s.43(1).
8. Ibid., s.19(2).
9. Ibid., s.20(1) as amended by 1976 Act, s.43(f).
10. Ibid., s.19(4).
11. Ibid., s.19(5).
12. Ibid., s.22(2).
13. Ibid., s.23. See, for example, Circulars P.D. 7 of 12 August 1965; P.D. 16 of 6 June 1976; P.D. 2 of 14 March 1972; P.D. 2 of 9 December 1974; P.D. 103/1 of 30 July 1976; P.D. 103/6/5 of 16 December 1981; Development Control Advice and Guidelines , 1982.
14. See section 2.4.2.
15. 1963 Act, s.21(1)(b).
16. Ibid., s.21(1)(c) as amended by 1976 Act, s.43(g).
17. 1977 Regulations, article 6.
18. See section 3.1.4.
19. Ibid., s.21(2).
20. See section 3.1.4.
21. 1963 Act, s.21A.
22. Ibid., s.19(7).
23. Ibid., s.21(4).
24. Ibid., s.21(5).

25. Ibid., s.21(6)(c) and 1977 Regulations, articles 7, 8.
26. Finn v. Bray Urban District Council [1969] I.R. 169.
27. 1963 Act, s.22(3).
28. Ibid., s.22(1).
29. Ibid., s.4.
30. Ibid., s.39. A planning authority must vary a plan if it proposes carrying out a development which materially conflicts with it.
31. Ibid., ss.26(1), 27(1), 30(2), 21(2), 32(2), 25(2), 26(3), 37(3).
32. Ibid., s.26(3) as amended by 1976 Act, s.39(d).
33. Ibid., Third Schedule, Part IV, 11.
34. Portland Cement Association v. Ruchelhaus 417, U.S. 921 (1974).
35. 1963 Act, s.21(1)(a).
36. Scannell Y., Citizen Participation in Environmental Decision-Making, EEC Commission, 1978.
37. 1976 Act, s.40.
38. 1963 Act, ss.26(1), 27(1), 30(2), 31(2), 32(2), 35(2), 36(3), 37(3).
39. 1963 Act, s.26(3), 1976 Act, s.39(d).
40. 1977 Regulations, article 11(b); Third Schedule, Part I, classes 1, 3, 13, 17, 18, 23, 24; Third Schedule, Part II, classes 4, 5, 8, 9, 13, 14, 17; Third Schedule Part III, classes 6, 7, 8, 9.
41. 1977 Regulations, article 25.
42. 1976 Act, ss.21, 40, 45.
43. Ibid., s.75.
44. Ibid., s.4.
45. See section 3.5.2.
46. 1963 Act, s.24(1) and Local Government (Planning and Development) Act 1963 (Appointed Day) Order 1964, S.I. No. 211 of 1964.

47. "Works" are defined in s.2 of the 1963 Act as including "any act or operation of construction, excavation, demolition, alteration, repair or renewal". The demolition of a building or other structure is exempted development under the Third Schedule, Part I of the 1977 Regulations.
48. Per Henchy J. in Re Claim of Viscount Securities Ltd. (1978) 112 I.L.T.R. 20.
49. For example, compensation for refusal of planning permission is not payable where development consists of or includes the making of any material change in the use of any structures or other land. See Re Claim of Viscount Securities Ltd., supra. The remedies available for the enforcement of planning controls may also depend upon which category the development falls into. See section 3.5.13 and Patterson v. Murphy, High Court unreported, 4 May 1978.
50. Patterson v. Murphy supra; Stafford and Bates v. Roadstone Ltd. High Court, unreported, 17 January 1980; Dublin County Council v. Sellwood Quarries Ltd., [1981] I.L.R.M. 23; Dublin County Council v. Tallaght Block Company Ltd., [1982] I.L.R.M. 534. See Scannell Y., "Planning Control: Twenty Years On", (1982) 4 D.U.L.J. 41-67.
51. Patterson v. Murphy, supra.
52. It may however be very relevant in deciding whether there has been a change of use.
53. The same argument may hold true where permission has been granted for an activity which has subsequently expanded and intensified to an extent unforeseeable by the planning authority from the planning application unless the developer can establish that he comes within s.28(6) of the 1963 Act. See Readymix (Eire) Ltd. v. Dublin County Council, Supreme Court, unreported, 30 July 1974.
54. High Court, unreported, 4 November 1980.
55. [1982] I.L.R.M. 505.
56. Local Government (Planning and Development) Regulations 1964 (Appointed Day) Order 1964, supra.

57. 1976 Act, s.14(2).
58. Supreme Court, unreported, 30 July 1974.
59. [1982] I.L.R.M. 534.
60. [1982] I.L.R.M. 505.
61. Dublin Corporation v. McGrath, High Court, unreported, 17 November 1978.
62. 1976 Act, s.43.
63. S.1. No. 154 of 1981. Hereafter called the 1981 Regulations.
64. See Part I, Class II of Third Schedule to 1977 Regulations.
65. 1977 Regulations, article 19(5).
66. 1963 Act, s.24(2).
67. 1977 Regulations, article 19.
68. [1975] I.R. 77.
69. Ibid., at p. 183.
70. See State (Alf-A-Bet) Promotions Ltd. v. Burdoran U.D.C. 112 I.L.T.R. 9. Keane R., The Law Relating to Local Government in the Republic of Ireland, Dublin, 1982, at p. 167.
71. 112 I.L.T.R. 9.
72. [1981] I.L.R.M. 439.
73. Supreme Court, unreported, 17 February 1983 at p. 3 of the unreported judgment.
74. High Court, unreported, 1 March 1982. Affirmed Supreme Court, unreported, 27 October 1982.
75. High Court, unreported, 28 July 1982.
76. Supreme Court, unreported, 24 March 1980 at p. 10 of the judgment.
77. 1977 Regulations, articles 15(a), 16(3).
78. Ibid., article 23(a).
79. Supreme Court, unreported, 24 March 1980.
80. Supreme Court, unreported, 27 April 1982.

81. 1977 Regulations, article 19A. Local Government (Planning and Development) (Fees and Amendment) Regulations 1982, S.1. No. 30 of 1982.
82. Hereafter called the 1982 Regulations.
83. 1977 Regulations, article 19(1).
84. 1982 Regulations, article
85. 1977 Regulations, article 22.
86. Ibid., article 24.
87. Ibid., article 25.
88. Ibid., article 26.
89. 1963 Act, s.26(4)(b).
90. High Court, unreported, 31 July 1975.
91. High Court, unreported, 4 December 1979.
92. See section 3.6.2.
93. See sections 2.4.1 and 2.4.2.
94. Anns v. London Borough of Merton [1976] 2 All E.R. 492.
95. Padfield v. Minister for Agriculture, Fisheries and Food [1968] A.C. 997 at p. 1029.
96. [1981] I.L.R.M. 54; Supreme Court, unreported, 5 February 1982.
97. Supreme Court, unreported, 20 February 1981.
98. 1982 Regulations, article 10.
99. Ibid., articles 10, 11.
100. 1977 Regulations, article 32(2); 1982 Regulations, article 12(b).
101. 1963 Act, s.41.
102. Supreme Court, unreported, 20 March 1980 at p. 6.
103. 1976 Act, s.39.
104. See section 3.1.1.
105. See section 3.2.
106. Supreme Court, unreported, 24 April 1978.

107. High Court, unreported, 17 February 1979.
108. [1974] I.R. 45. This decision was reversed on different grounds in the Supreme Court.
109. 1976 Act, s. 39.
110. High Court, unreported, 12 November 1976.
111. High Court, unreported, 10 July 1981.
112. Supreme Court, unreported, 17 February 1983.
113. See section 3.6.3.1.
114. High Court, unreported, 2 May 1979.
115. [1981] I.L.R.M. 54; Supreme Court, unreported, 5 February 1982.
116. High Court, unreported, 1 April 1977.
117. High Court, unreported, 27 May 1981.
118. Prl. 6976 at p. 4. See, for example, Circular ENV 7/73 of 11 June 1973 advising planning authorities "to consider attaching suitable conditions to ensure that the best practicable means are adopted to minimise the emission of grit and dust".
119. See section 3.16.13 (VII).
120. Development Control Advice and Guidelines, 1982, at p. 32.
121. Keane, op.cit., at p. 181.
122. Housing Act 1969, s.12; 1976 Act, s.39(e).
123. See section 3.5.3.
124. 1963 Act, s.26(4)(a)(ii).
125. Tiernan Homes v. Fagan, Supreme Court, unreported, 23 July 1981.
126. Freeney v. Bray U.D.C. [1982] I.L.R.M. 29.
127. Ibid.
128. [1970] I.R. 253.
129. [1982] I.L.R.M. 29.
130. High Court, unreported, 16 July 1981.
131. Supreme Court, unreported, 5 February 1982.

132. [1982] I.L.R.M. 169.
133. 1963 Act, ss.26(9), 27(6). An Bord Pleanála may deem an appeal to be withdrawn under the 1982 Act, s.5.
134. Ibid., ss.26(9), 27(6).
135. Ibid., s.26(8) as amended 1976 Act, s.39(9).
136. Ibid., ss.26(5), s.27(4).
137. High Court, unreported, 19 November 1980.
138. [1981] I.L.R.M. 108.
139. Supreme Court, unreported, 27 July 1979.
140. 1977 Regulations, article 41(1).
141. Ibid.
142. 1976 Act, s.16(3).
143. Ibid., s.16(5).
144. 1977 Regulations, article 39(1).
145. Ibid., article 39(2).
146. Ibid., article 38.
147. Ibid., article 39(4).
148. High Court, unreported, 1 March 1983.
149. 1977 Regulations, article 40.
150. Ibid., article 42.
151. 1963 Act, s.83 as amended 1976 Act, s.42.
152. 1976 Act, s.23.
153. Geraghty v. Minister for Local Government [1975] I.R. 300.
154. 1982 Act, s.5.
155. 1976 Act, s.18.
156. Geraghty v. Minister for Local Government, supra.
157. 1963 Act, s.26(8) as amended by 1976 Act, s.42.
158. 1976 Act, s. 42.
159. [1982] I.L.R.M. 22.

160. High Court, unreported, 2 April 1981.
161. Supreme Court, unreported, 17 February 1983.
162. Supreme Court, unreported, 5 February 1982. See also Leech W.A., "The Application and the Permission", 1981 Journal of Planning Law 481.
163. 1963 Act, s.5.
164. Supreme Court, unreported, 30 July 1974.
165. Ibid., at p. 5.
166. [1971] A.C. 958.
167. See, for example, R.K.T. Investments. v. Hackney Borough Council (1978) 248 E.G. 919. Note also that Salmon L.J. in Slough Estates expressly reversed the question as to whether the majority approach applied where a dispute about the true construction of a permission arises between the planning authority and the applicant.
168. High Court, unreported, 2 May 1979.
169. High Court, unreported, 7 July 1982.
170. [1982] I.L.R.M. 469. Affirmed Supreme Court, unreported, 22 December 1982.
171. 1976 Act, ss.26, 28, 29.
172. Ibid., s.39(i).
173. 1963 Act, s.30(3).
174. Ibid., s.30(4).
175. 1963 Act, s.30(2) as amended by 1976 Act, s.39(i).
176. Ibid., s.30(5).
177. Ibid., s.30(6).
178. Ibid., s.30(8).
179. See Keane, op.cit. at pp. 203-206, 195-203. Walsh E., Planning and Development Law, Dublin, 1979, at pp. 66-107.
180. 1982 Act, s.8(3).
181. 1976 Act, ss.24, 28, 38.

182. 1963 Act, s.31(8); 1976 Act, s.38; 1982 Act, s.8.
183. High Court, unreported, 25 May 1978.
184. 1976 Act, ss.24, 28, 38.
185. Ibid., s.38.
186. Ibid., ss.24, 28, 38.
187. Ibid., ss.24, 28, 38.
188. 1963 Act, s.36(9); 1976 Act, ss.24, 28, 38, 41, 60. 1982 Act, s.8.
189. 1976 Act, ss.24, 28, 41.
190. 1963 Act, ss.37(8) as amended 1976 Act, s.41.
191. Dublin Corporation v. Clyne and Co., Irish Times, 15 September 1979.
192. Monaghan County Council v. McCagney, Irish Times, 3 July 1979.
193. National Federation of Drapers and Allied Traders Ltd. v. Allied Irish Wholesale Warehouses and Others, Irish Times, 29 November 1979.
194. Cork County Council v. Raybestos (Manhattan) Ltd., International Environment Reporter, Vol. 3. No. 7, 285.
195. Cork County Council v. N.E.T., Irish Times 15 July 1980.
196. High Court, unreported, 17 January 1980.
197. Irish Times, 29 November 1979.
198. High Court, unreported, 1 March 1982. Affirmed Supreme Court, unreported, 27 October 1982.
199. [1981] I.L.R.M. 28.
200. High Court, unreported, 8 July 1982.
201. Irish Times, 26 June 1981.
202. Morris v. Garvey, Supreme Court, unreported, 8 March 1982.
203. Stafford and Bates v. Roadstone Ltd., High Court, unreported, 17 January 1980.
204. Morris v. Garvey supra; Dublin Corporation v. Maiden Poster Sites supra.

205. Dublin Corporation v. Mulligan, High Court, unreported, 6 May 1980; Dublin Corporation v. Garland, High Court, unreported 27 November 1981.
206. Dublin Corporation v. Garland supra; Avenue Properties Ltd. v. Farrell Homes Ltd., High Court, unreported, 27 May 1981.
207. Galway County Council v. Connacht Proteins Ltd., High Court, unreported, 28 March 1980.
208. Dublin Corporation v. Maiden Poster Sites Ltd., supra.
209. Morris v. Garvey supra, Kerry County Council v. Clery (demolition of a silage pit), Irish Times, 25 November 1981; Residents of Coliemore Road, v. Power and Bradley (demolition of unauthorised extension to hotel), Supreme Court, unreported 8 October 1981.
210. Residents of Coliemore Road v. Power and Bradley, supra.
211. Dublin Corporation v. Sachs Hotel Ltd., Irish Times, 14 January 1982.
212. High Court, unreported, 28 March 1980.
213. Dublin Corporation v. Mulligan, supra.
214. 1963 Act, ss.32, 34, 25, 26, as amended by 1976 Act, s.38.
215. Ibid., s.37 as amended by 1982 Act, s.8(1).
216. 1976 Act, s.36(4) as amended by 1982 Act, s.8(3).
217. 1963 Act, s.80.
218. Ibid., s.83(1).
219. Ibid., s.83(3).
220. Ibid., s.83(4).
221. Ibid., s.81.
222. Ibid., s.83(8)
223. 1976 Act, s.14(1)(b); Gas Act, 1976, s.42.
224. Gas Act 1976, s.42. The Minister has specified further appliances and structures under article 54 of the 1977 Regulations.
225. 1963 Act, s.89(2).

226. Ibid., s.89(3).
227. Ibid.
228. Ibid., s.89(4) as amended by 1976 Act, s.14(1)(b).
229. Ibid.
230. Ibid., s.89.
231. 1976 Act, s.39(j).
232. See 1979 Journal of Planning Law, at pp. 732, 736.
233. See Alder J., Development Control, 1979, at pp. 128-137;
Clarke H.W., "Enforceability of Development Agreements", New Law Journal, 3 July 1975.
234. See Taisce Journal, 1982, Vol. 6, No. 2 at p. 23.
235. See Law v. Minister for Local Government, High Court, unreported 9 May 1974. The applicant for certiorari in this case was a neighbouring landowner who had consistently objected to the proposed development and who had actively participated in the planning process.
236. 1963 Act, s.21(1)(a); 1977 Regulations, articles 5, 6.
237. 1977 Regulations, article 32.
238. Taisce Journal 1982, Vol. 6, No. 2 at p. 23.
239. 1963 Act, s.46; 1977 Regulations, article 64.
240. 1976 Act, s.5; 1977 Regulations, article 65.
241. See section 3.1.4.
242. See, for example, Irish Business, September 1982 at p. 55.
243. Information from the Department of the Environment.
244. O'Connor C., "Chairwoman's Colum", 1982 Taisce Journal, Vol. 6. No. 1 at p. 27.
245. See section 3.1.4.
246. See section 3.6.3.
247. The newspaper notice in respect of the controversial Raybestos Manhattan Ltd. application was published on Christmas Eve. See section 9.3.4.

248. 1977 Regulations, article 29.
249. Boyd v. Cork County Council, High Court, unreported, 1 March 1983.
250. 1977 Regulations, article 39(1).
251. 1982 Regulations, article 9.
252. See section 3.6.10.
253. See section 3.6.13.
254. Taisce Journal, 1982, Vol. 6, No. 1, at p. 19. See also Keane R., "The 1963 Planning Act - Twenty Years On", (1983) 5 D.U.L.J. 92, at p. 95.
255. Levinge D., The Enforcement of Environmental Controls of Industrial Development within the Planning Acts, 1983.
256. Report on Pollution Control, Prl. 6970, at p. 4.
257. Levinge, op.cit., pp. 24-31.
258. Ibid., pp. 24, 30.
259. Ibid., p. 30.
260. Ibid., p. 32. See section 3.6.5.
261. Ibid., pp. 30, 31, 38. See Barrett Builders Ltd. v. Dublin County Council, High Court, unreported, 2 May 1979.
262. Ibid., p. 25.
263. Ibid., p. 31.
264. Ibid., pp. 31-32.
265. Ibid., p. 40.
266. See section 3.6.13.

SECTION 4

ATMOSPHERIC POLLUTION

Ireland is fortunate in that it enjoys relatively pure air outside of the two major cities and isolated industrial areas. This is largely because of the lack of intensive industrialisation, the geographical location of the country and the direction of the prevailing winds. Recent studies however, indicate that air pollution levels in Dublin and Cork are unacceptably high at times and that ambient concentrations of smoke and sulphur dioxide in Dublin and other major urban centres occasionally exceed WHO thresholds and EEC limits and guide values for these pollutants for developing urban and industrial areas.⁽¹⁾ This situation has been exacerbated by an aggressive policy - executed by the Department of the Environment - of encouraging householders to burn solid fuel instead of domestic heating oil.

About one third of all atmospheric discharges occurs in Dublin and one sixth in Cork but a national inventory of emission sources has not yet been compiled.

The Alkali etc Works Regulations Act 1906, is the only statute enacted specifically for the control of air pollution. In practice, the Local Government (Planning and Development) Acts 1963-82, though not designed or specifically suitable for the task, are the main instruments used for the control of air pollution from stationary sources established since the 1963 Act came into force on 1 October 1964. Some control over air pollution is also exercisable under the Public Health (Ireland) Act 1878. Regulations for the control of air pollution have been made under the Road Traffic Acts 1961-68, the Local Government (Sanitary Services) Act 1962, and the European

Communities Act 1972. Informal controls over air pollution include conditions attached to grant-aids for new industries and improved effluent treatment plant given by the Industrial Development Authority⁽²⁾ and for farm modernisation and improvement schemes.⁽³⁾

Apart from a few emission and specification standards prescribed in the Alkali etc Works Regulations Act 1906, and the Control of Atmospheric Pollution Regulations 1970, there are no national standards for air pollution from stationary sources. At present, the only ambient air quality standards applicable in Ireland are contained in Directive 80/779/EEC as amended by 81/857/EEC on air quality limit values and guide values for sulphur dioxide and suspended particulates and in EEC Decision 80/372/EEC concerning chlorofluorocarbons in the environment. Air quality standards for lead in the atmosphere prescribed by EEC Directive 82/884/EEC will be applicable in 1984.

Five draft directives on air pollution emissions are currently being discussed at EEC level. If adopted, these will deal with nitrogen oxide emissions, emissions from the asbestos industry, air pollution from fixed industrial sources, emissions of mercury from plants other than those in the chlor-alkali electrolysis industry and emissions from large industrial power stations, especially those generating electricity from solid fuel or oil.

Controls over emissions from mobile sources are contained in the Road Traffic (Construction, Equipment and Use of Motor Vehicles) Regulations 1963-78, and in a series of Regulations made under the European Communities Act 1972.

In the absence of mandatory standards, air pollution control authorities are expected to operate on the basis that standards imposed should be reasonably practicable having regard to all the circumstances relevant to any particular pollution source. This pragmatic approach enables the setting of individual emission standards for each discharge although in practice there may be a high degree of uniformity in standards set for the same or similar emissions

because authorities tend to seek expert advice from the same sources. (4)

4.1 PUBLIC HEALTH (IRELAND) ACT 1878

Public Health legislation provides for the punishment of a number of statutory nuisances which embrace various types of pollution. The power to abate them is given to local authorities where such action appears to be necessary in order to protect the health of the community. Such 'statutory nuisances' need not necessarily interfere with personal comfort but they can only arise from a private source and they cannot (by definition) arise from public works, such as sewage works. Whether or not a statutory nuisance exists is a question of fact and in this respect the duration of the nuisance may be relevant. Among the statutory nuisances listed in s.107 of the Public Health (Ireland) Act 1878 are:

- (a) any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever; and
- (b) Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance.

It is a defence to a charge of (a) above to prove that the:

fireplace or furnace is constructed in such a manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having charge thereof. (5)

Sanitary authorities are bound to inspect their district for nuisances. (6) On the receipt of any information respecting the existence of a statutory nuisance the sanitary authority is obliged, if satisfied of the existence of the nuisance, to serve an abatement

notice on the person by whose act, default or sufferance the nuisance arises or continues or if such person can not be found, on the owner or occupier of the premises on which the nuisance arises.⁽⁷⁾ In certain limited circumstances the authority itself may abate the nuisance.⁽⁸⁾ If the notice is not complied with or if in the opinion of the sanitary authority the nuisance, though abated, is likely to recur, summary enforcement proceedings may be brought in the District Court⁽⁹⁾ or, if in the opinion of the sanitary authority summary proceedings would afford an immediate remedy, in any superior court.⁽¹⁰⁾ Section 107 does not apply in respect of emissions from private dwelling houses or from mining and associated activities.⁽¹¹⁾

4.2 ALKALI ETC WORKS REGULATION ACT 1906

This act is administered by the Alkali Inspectorate of the Department of the Environment which is charged with the inspection of all "works" concerned in the production of substances the manufacture of which may involve the release of "noxious fumes and smoke". The Act is partly obsolete, and very limited in scope. It has never been updated like its U.K. counterpart (amended eight times) to cover new processes. It applies mainly to chemical industries.

4.2.1 Works Regulated

Alkali Works

An alkali work is a work for the manufacture of soda or sulphate of potash, or the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed in which muriatic acid (now called hydrochloric acid) is evolved.⁽¹²⁾ Every alkali work must be so carried on as to secure the condensation of the muriatic gas evolved to the extent of 95 per cent, and to such extent that in each cubic foot of air, smoke or chimney gases escaping from the works into the atmosphere there is not more than one-fifth of a grain of muriatic acid.⁽¹³⁾ A cubic foot is to be calculated at 60°F and 30 inches of barometric pressure.⁽¹⁴⁾ Contravention of the above requirements is punishable by a fine of up to £50 for a first offence and £100 for every subsequent offence.⁽¹⁵⁾

In addition, under s.2 of the Act, the owner of every alkali work must use the best practicable means to prevent the escape of noxious or offensive gases by the exit flue of any apparatus used in any process carried out in the works, to prevent their discharge into the atmosphere and to render them harmless and inoffensive if they are discharged. Any muriatic acid gas which does not exceed the limit imposed by the last preceding paragraph is to be ignored for the purposes of s.2. Failure to comply with the above provisions is punishable by a fine of up to £20 for the first offence and £50 for every subsequent offence together with a further sum not exceeding £5 for each day any subsequent offence continues. ⁽¹⁶⁾

(ii) Sulphuric Works

Sulphuric acid works are works in which the manufacture of sulphuric acid is carried on by the lead chamber process in which sulphurous acid is converted to sulphuric acid by oxides of nitrogen and the use of a lead chamber, or by any other process involving the use of oxides of nitrogen. ⁽¹⁷⁾ Such works must be carried on so as to secure the condensation of the acid gases of sulphur or of sulphur and nitrogen to the extent that the total acidity of those gases in each cubic foot does not exceed the equivalent of four grains of sulphuric anhydride. ⁽¹⁸⁾ Failure to comply with the above requirements is an offence punishable by a fine not exceeding £20 for a first offence, £50 for each subsequent offence and a further sum not exceeding £5 for each day every subsequent offence continues. ⁽¹⁹⁾

(iii) Muriatic Acid Works

Muriatic acid works are defined as muriatic acid works, or works (not being alkali works as defined in the Act) where muriatic acid gas is evolved either during the preparation of liquid muriatic acid or for use in any manufacturing process; tin plate works, i.e. works in which any residue or flux from tin plate works, is calcined for the utilization of such residue or flux, and in which muriatic acid gas is evolved; and salt works (not being works in which salt is produced by refining salt, otherwise than by the dissolution of rock salt at the place of deposit) in which the extraction of salt from brine is carried on, and in which muriatic acid gas is evolved ⁽²⁰⁾ Muriatic acid works must be carried on so as to secure the

condensation of the muriatic acid gas evolved to the extent that in each cubic foot of air, smoke or chimney gases escaping into the atmosphere from such works there is not more than one-fifth of a grain of muriatic acid. Failure to comply with the above requirements is punishable by a fine of up to £20 for the first offence and £50 for each subsequent offence together with a further sum not exceeding £5 for each day every subsequent offence continues. ⁽²¹⁾

(iv) Scheduled Works

These are the most important works regulated by the Act. Twenty-one works are listed in the First Schedule to the Act. These include sulphuric and muriatic acid works but not alkali works. In the U.K. the schedule has been amended eight times so as to extend controls to modern works and processes but no similar development has taken place in Ireland. Works actually regulated in Ireland include sulphuric acid, chemical manure, nitric acid, sulphate of ammonia and tar works. ⁽²²⁾ The owner of any scheduled work is obliged to use the best practicable means to prevent the escape of noxious or offensive gases by the exit flux of any apparatus used in any process carried on in the works and to prevent the discharge, whether directly or indirectly, of such gases into the atmosphere and to render such gases where discharged harmless and inoffensive. ⁽²³⁾ To be ignored for the purpose of deciding whether an offence has been committed are (a) any discharges of muriatic acid gas into the atmosphere where the amount discharged does not exceed one-fifth of a grain per cubic foot of air, smoke or gas, and (b) acid gases from works for the concentration and distillation of sulphuric acid discharged into the atmosphere, where the total acidity of such gases does not exceed the equivalent of one and a half grains of sulphuric anhydride per cubic foot of air. The owner of any works operated in contravention of the above provisions is punishable by a fine of up to £20 for a first offence and £50 for each subsequent offence together with a further sum not exceeding £5 each day every subsequent offence continues. ⁽²⁴⁾

4.2.2 Registration Requirements

A scheduled work, an alkali work, a cement work or a smelting work must be registered with the Alkali Inspectorate.⁽²⁵⁾ Certificates must be renewed annually.⁽²⁶⁾ It is a condition of the first registration (or re-registration annually) that the "best practicable means" be used for preventing the discharge of noxious and offensive gases into the atmosphere and for rendering them harmless and inoffensive.⁽²⁷⁾ Section 27(1) of the act states that the expression best practicable means refers not only to the provision and efficient maintenance of appliances adequate for preventing the escape of noxious and offensive gases, but also the manner in which such appliances are used and the proper supervision by the owner of any operation in which such gases are produced. In practice, the Alkali Inspectorate appears to take a very pragmatic and practical approach: they require that works be efficiently maintained, and that appliances be properly used so as to prevent pollution in so far as is practicable. Account is taken of the cost of any desirable remedial measures: the inspectorate being conscious of a need to preserve a balance between the cost of pollution control measures and the extent of the harm or nuisance involved. The obligation to use the best practicable means is however a continuing one and it may entail alterations in plant and/or in its mode of operation as new techniques become available. In practice, means are negotiated by the Alkali Inspectorate in camera with industries affected. The Act does not define emission standards (except for a few acid processes); this is left to the Alkali Inspectorate which prescribes presumptive limits which, if not exceeded, will satisfy them that the best practicable means are being used. These limits are decided in the light of advancing technology and attention is paid to British, German and American practice and to actual or proposed EEC standards. The presumptive limits typically include both concentration and volume limits. On occasion, the Inspectorate will permit a works to exceed the presumptive limits for justifiable reasons; for example, in 1974 one company in an effort to reduce energy costs got permission to exceed the presumptive limit for its plant so as to burn more sulphur and produce more steam in a sulphuric acid plant.⁽²⁸⁾ The Act refers to

the registration of works in a register containing the prescribed particulars and the making of an application for a certificate of registration in a prescribed manner.⁽²⁹⁾ No particulars or manner appear to have been prescribed by statutory instrument or otherwise.

4.2.3 Enforcement

The Act is enforced by the Alkali Inspectorate. This consists of one or two expert engineering graduates in the Department of the Environment. The number of works registered has never exceeded 20 in any one year. An inspector visits every registered works at least once a year. Some of the inspector's powers have already been described. The most important of these is deciding on applications for certificates of registration. The inspector has all necessary powers for carrying out his duties under the Act and he may:

- (a) enter and inspect any work to which the Act applies;
- (b) examine any process causing the evolution of any noxious or offensive gas, and any apparatus for condensing such gas, or otherwise preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged;
- (c) ascertain the quantity of gas discharged into the atmosphere, condensed or otherwise dealt with; and
- (d) apply any such tests and make any such experiments, and generally make all such inquiries, as seem to him to be necessary or proper for the execution of his duties under the Act.⁽³⁰⁾

The owner of any work is obliged, on being requested by the Chief Inspector, to furnish him within a reasonable time with a sketch plan, to be kept secret, of those parts of the production in which any process causing the evolution of any noxious or offensive gas or any process for the condensation of such gas or for preventing the discharge thereof into the atmosphere, or for rendering such gas harmless or inoffensive when discharged, is carried on.⁽³¹⁾ He is also obliged to furnish to every inspector all necessary facilities for entry, inspection, examination, and testing in pursuance of this Act.⁽³²⁾ Failure to afford such facilities or obstruction of an inspector in the course of his duty is an offence punishable on

summary conviction by a fine not exceeding £10.⁽³³⁾

The Department of the Environment is obliged to inquire into breaches of the Act occasioning a nuisance on receipt of a complaint from any sanitary authority, on information given by any of its officers, or any ten inhabitants of their district, that any work to which the Act applies is carried on (either within or without the district) in contravention of the Act or that any alkali waste is deposited or discharged (either within or without the district) in contravention of the Act and that a nuisance is occasioned thereby to the inhabitants of their district.⁽³⁴⁾ After the inquiry, the Department may direct an inspector to take such proceedings as it thinks fit and just.⁽³⁵⁾ In fact the Alkali Inspectorate investigates all complaints made. Individuals are specifically empowered to bring actions for damages for statutory nuisance caused by the owners of works to which the Act applies.⁽³⁶⁾

There have been no prosecutions for breach of the Act in recent years - a fact which is not at all surprising since the penalties for breach are totally inadequate. The enforcement powers of the alkali inspector are limited: his power is merely to ensure that the best practicable means are being used, and, while he may prosecute for offences under the Act, he has no legal powers to close down works carried on in flagrant breach of the conditions of registration. He can, of course, refuse to issue a certificate of registration but, in so far as can be determined, he has never done this. There is reason to believe that a good number of works registered under the Act have caused, or are still causing, air pollution problems. For example, the authors of the IDA survey on pollution in Ireland referred to the fact that there were "three sulphuric acid manufacturing facilities in the country and all have given or are still giving rise to problems at certain times"⁽³⁷⁾ Owners or operators of works are required to monitor their own emissions and to make monitoring records available to the Alkali Inspectorate. These records are treated as confidential. All apparently genuine complaints are investigated although the existence of the Act and of rights available under it do not appear to be widely known.

The basic problem with many of the works and processes regulated under this Act is that it is not considered economically practicable to require the expenditure of large sums to modernise works so as to ensure that they do not cause air pollution. Requiring re-equipment could sometimes result in the closure of a plant and a consequent rise in unemployment statistics. This is a measure which none but the most politically insensitive would hazard.

4.3 LOCAL GOVERNMENT (SANITARY SERVICES) ACT 1962

Section 10(1) of the Local Government (Sanitary Services) Act 1962, empowers the Minister for the Environment, after consultation with other specified Ministers, to make regulations for controlling atmospheric pollution for the purpose of securing the cleanliness of the atmosphere or the prevention of danger to health or injury to amenity from atmospheric pollutants. Section 10(2) provides that regulations may be made for all or any of the following matters:

- (a) Controlling sources of pollution of the atmosphere, including the emission of smoke, dust, grit or gas;
- (b) regulating the establishment and operation of -
 - (i) trades,
 - (ii) chemical and other works, and
 - (iii) processes (including the disposal of waste), which are potential sources of atmospheric pollution from smoke, dust, grit or noxious or offensive gases;
- (c) specifying maximum concentration of specified pollutants in the atmosphere;
- (d) measuring emissions of pollutants into the atmosphere;
- (e) investigating and obtaining information on emissions of pollutants into the atmosphere;
- (f) testing, measuring and investigation of atmospheric pollution;
- (g) regulating potential sources of pollution of the atmosphere from radioactive materials;
- (h) specifying particular controls of atmospheric pollution for particular areas;
- (i) licensing of persons engaged in specified works or processes, being works or processes discharging pollutants into the

- atmosphere, and prohibiting the engagement in such works or processes of persons other than licensed persons;
- (j) licensing of premises from which pollutants are discharged into the atmosphere, and prohibiting discharges of pollutants into the atmosphere from premises other than licensed premises;
 - (k) the cancellation or suspension of licenses;
 - (l) the imposition of charges for the purpose of the regulations or for services performed thereunder.

The section also empowers the making of regulations conferring jurisdiction on the District Court relating:

to the annulment or confirmation of cancellations or suspensions by sanitary authorities of licences and the direction of sanitary authorities to licence persons or premises in specified circumstances.

Regulations made are enforceable by officers of sanitary authorities or the Department of the Environment who are given necessary powers of entry and inspection.⁽³⁸⁾ Obstruction of officers in the course of their duties is an offence punishable on summary conviction by a fine not exceeding £20.⁽³⁹⁾ The licensing systems envisaged by s.10 were never established. Instead, the provisions of the Local Government (Planning and Development) Acts 1963 and 1976 were used to achieve some of the objectives of s.10 although these provisions can only be used prospectively and not, like s.10, for the control of pollution from existing installations or developments. The only regulations made under s.10 are the Control of Atmospheric Pollution Regulations 1970,⁽⁴⁰⁾ which are very limited in scope.

4.4 CONTROL OF ATMOSPHERIC POLLUTION REGULATIONS 1970

4.4.1 Scope

These regulations set limits on the length of time during which smoke of varying degrees of darkness may be emitted from premises other than a private dwelling house and prohibit the emission of smoke, dust, grit, gas or fumes from such a premises or from any public

place in such a quantity or manner as to be a nuisance to persons in any premises in the neighbourhood. ⁽⁴¹⁾

4.4.2 Operating Conditions

Limits are set on the length of time during which dark or black smoke (that is, smoke as dark as, or darker than, shade 2 and shade 4 respectively, on the Ringleman chart) may be emitted from premises other than a private dwelling house. These limits are:

Article 3(1) : Emissions from premises

Emission	Maximum permissible time
Dark smoke	Four continuous minutes
Darker smoke	Eight minutes in the aggregate in any period of eight consecutive hours.
Black smoke	Two minutes in the aggregate in any period of thirty minutes.

Article 3(2) : Emissions from chimneys serving two or more furnaces

<u>Permitted period of dark smoke in any given eight hour period</u>	
<u>No. of furnaces served by one chimney</u>	<u>Maximum permitted time</u>
Two	16 minutes
Three	22 minutes
Four	27 minutes

It should be noted that a private dwelling house in the regulations does not include the curtilage or garden of a private dwelling house or a building containing several private dwellings and having a furnace the maximum heating capacity of which exceeds 55,000 British Thermal Units per hour (16.1189 kW). ⁽⁴²⁾

4.4.3 Defences

A number of defences are available to those who exceed the prescribed time limits. These are:

- (i) that the best practicable means were employed to avoid the contravention⁽⁴³⁾,
- (ii) that the emission of the smoke was caused by the lighting up of the fire or furnace from being cold⁽⁴⁴⁾,
- (iii) that the contravention was solely due to some failure of a furnace or of apparatus used in connection with a furnace, that the failure could not reasonably have been foreseen or, if foreseen, could not reasonably have been provided against, and that the contravention could not reasonably have been prevented by action taken after the failure occurred.⁽⁴⁵⁾
- (iv) where a person is charged with emitting dark smoke for a continuous period exceeding four minutes, that the smoke complained of was emitted during soot-blowing⁽⁴⁶⁾ and
- (v) where a person is charged with emitting dark smoke for more than eight minutes in the aggregate in any period of eight consecutive hours, that the smoke complained of was emitted during soot-blowing and was not emitted for more in the aggregate in any period of light consecutive hours than-
 - 12 minutes where the chimney is served by one furnace
 - 23 minutes where the chimney is served by two furnaces
 - 32 minutes where the chimney is served by three furnaces
 - 39 minutes where the chimney is served by four furnaces⁽⁴⁷⁾
- (vi) that in respect of a charge of emitting smoke, dust, grit, gas or fumes from a premises other than a private dwelling-house in such quantity as to be a nuisance to persons in any premises in the neighbourhood that the practicable means the were taken to minimise the emission complained of.⁽⁴⁸⁾

"Practicable" in the context of the regulations means reasonably practicable having regard, amongst other things, to local conditions and circumstances, financial considerations and the current state of technical knowledge, and "practicable means" includes the

provision and maintenance of plant and the proper use thereof.⁽⁴⁹⁾

4.4.4 Enforcement

The regulations are enforceable by the Department of the Environment and sanitary authorities. In practice, they are enforced by sanitary authorities only. Enforcement officers are given the necessary powers of entry and inspection by the parent Act.⁽⁵⁰⁾ Obstruction or interference with an officer in the course of his duty is punishable on summary conviction by a fine of up to £20.⁽⁵¹⁾ In cases where a time limit has been exceeded, or smoke, dust, grit, gas or fumes have been emitted from premises (other than a private dwelling-house) in such quantity or manner as to be a nuisance, and where the contravention is likely to continue or recur, the sanitary authority may notify the occupier of the premises of the works which the sanitary authority consider necessary to be done to end the contravention or to prevent its recurrence.⁽⁵²⁾ Prosecutions may be brought by the Minister or the appropriate sanitary authority for contravention of the regulations.⁽⁵³⁾ The penalty on summary conviction for contravention or wilful obstruction of the execution of a regulation is a fine not exceeding £100 and, if the contravention or obstruction is continued after conviction, a further fine not exceeding £5 for each day the contravention or obstruction is so continued.⁽⁵⁴⁾ The Minister for the Environment has suggested to sanitary authorities that proceedings should only be instituted "as a last resort" and has advised them to seek to resolve problems by co-operating with offenders. Authorities have been advised by circular letter to inform the Minister when they intend to prosecute so that he may consider the question of obtaining specialist advice to ensure that "when prosecutions are taken, they will be successful in having the cause of pollution rectified".⁽⁵⁵⁾ Sanitary authorities have adopted an informal procedure of serving notices of breach, followed, on occasion, by notices of intention to prosecute. Enforcement of the regulations is difficult. A polluter must be caught in delicto and methods of proving breach are very cumbersome. Only one prosecution has ever been brought for breach of the Regulations.

Dublin is the area most likely to suffer from air pollution and the statistics in relation to enforcement of the regulations by the sanitary services section of Dublin Corporation are as follows:

Table 4.4		
ENFORCEMENT OF CONTROL OF ATMOSPHERIC POLLUTION REGULATIONS, 1970		
Year	Number of breaches of the regulations	Notices served (verbal and written)
1972	162	158
1973	170	191
1974	92	92
1975	96	77
1976	107	101
1977	79	53
1978	106	93
1979	123	97
1980	122	N/a
1981	169	96
1982	96	39

In view of the unsatisfactory levels of air pollution in Dublin, it is questionable whether the conciliatory policy adopted by Dublin Corporation towards enforcement of these Regulations is justifiable.

4.5 LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS 1963-82

The scope and effect of these Acts have already been described.⁽⁵⁶⁾ Briefly, they enable planning authorities to control through their development plans the location of industry likely to cause air pollution and to refuse permission for, or permit subject to controlling conditions, developments which may generate air pollution.

In theory, planning authorities have a discretion as to the standards which they may impose on emissions to the atmosphere and/or on the air quality standards which they may prohibit a development from infringing. In practice, it is the policy of the Department of the Environment to secure the objectives of various EEC requirements on air pollution by, inter alia, instructing planning authorities to achieve these objectives by conditions attached to planning permissions.

The Minister for the Environment has advised planning authorities by circular letter to "consider attaching suitable conditions in relevant cases to ensure that the best practicable means are adopted to minimise the emission of dust and grit" and he has also emphasised the necessity for controlling emissions from fuel-burning plants and chimneys. All authorities were furnished with, and were advised to refer to, memoranda published by the British Ministry of Housing and Local Government on chimney heights and grit and dust from boiler and furnace chimneys.⁽⁵⁷⁾

The advisability of relying on the principle of building taller chimneys for dispersing flue gasses has been discredited. While it may reduce local or national air pollution problems it can contribute to air pollution in other countries in the form of acid rain. EEC Council Resolution of 15 July 1980 on transboundary air pollution by sulphur dioxide and suspended particulates⁽⁵⁸⁾ urges Member States to endeavour, in accordance with the objectives of EEC Council Directive 80/779/EEC⁽⁵⁹⁾ to limit and as far as possible to reduce and prevent, transboundary air pollution by sulphur dioxide and suspended particulates. By EEC Council Decision 81/462/EEC on the conclusion of the Convention on Long-range Transboundary Pollution,⁽⁶⁰⁾ the EEC undertook to participate in the implementation of the said Convention "by exercising it's competence in the fields concerned". The necessity and/or desirability of meeting EEC standards for sulphur dioxide and suspended particulates and for complying with obligations under the Convention on Long-Range Transboundary Pollution⁽⁶¹⁾ should prompt a re-assessment of existing, requirements for and methods of controlling these pollutants.

The fairly common practice of attaching conditions to planning permissions requiring that odours should not be detectable beyond the boundaries of the permitted development has been discouraged by the Development Control Advice and Guidelines (1982) which warn planning authorities that "conditions which can only be expressed in vague general terms will often be found to be unnecessary and unenforceable".⁽⁶²⁾

If a planning authority decides that a use of land should be discontinued or that conditions should be imposed on the continuance thereof, they may so require.⁽⁶³⁾ However, in many cases the planning authority may not do this without attracting liability to acquire the land concerned or to compensate the owner thereof.⁽⁶⁴⁾ One of the exceptional cases where compensation may not be payable is where conditions are imposed on the continuance of a use in order "to avoid or reduce serious air pollution or the danger of such pollution".⁽⁶⁵⁾

4.6 SULPHUR CONTENT OF CERTAIN LIQUID FUELS

EEC Council Directive 75/716/EEC on the approximation of laws of the member states relating to the sulphur content of certain liquid fuels⁽⁶⁶⁾ was partially implemented somewhat dilatorily by the European Communities (Sulphur Content of Gas Oil) Regulations 1977⁽⁶⁷⁾ made under s.3 of the European Communities Act 1972. The Directive sets down EEC requirements for the limitation of the sulphur content of gas oils which would have the effect of ensuring a marked reduction in atmospheric pollution caused by sulphur compounds.

The Directive seeks to attain its objective in two stages: the marketing of type A gas oil is prohibited unless its sulphur compound content, expressed as sulphur, does not exceed 0.5% by weight as from 1 October 1976 and does not exceed 0.3% by weight as from 1 October 1980; the marketing of type B gas oil is prohibited unless its sulphur content expressed as sulphur, does not exceed 0.8% by weight as from 1 October 1976 and 0.5% by weight as from 1 October 1980. Member countries were allowed to define low atmospheric pollution regions and regions where the contribution made to atmospheric pollution

by gas oils was low: in these areas the use of type B gas oil (the more polluting type) is permissible.

Ireland has been granted a five year exemption before she has to pass on to the second stage of the programme for reducing the sulphur content of gas oil which means that the limits set for 1 October 1980 in the Directive will not be mandatory in here until 1985. The five year exemption was sought because of the large investment which would have been required to enable Whitegate, the only oil refinery in the country, to produce gas oil with a sulphur content conforming with the Directive. Whitegate refined about 55% of the total gas oil consumption in 1978.⁽⁶⁸⁾ The implementing regulations provide that the entire State is to be determined as a zone for the use of type B gas oil⁽⁶⁹⁾, a somewhat surprising designation as the Directive envisages that type B oil shall be used in zones :

where ground level concentrations of atmospheric sulphur dioxide pollution are sufficiently low, or where gas oil amounts for an insignificant proportion of atmospheric sulphur dioxide pollution.

Dublin city could hardly be said to fulfil either of these criteria. The designation of the entire country as a zone where type B gas oil may be used does not accord with the spirit of the Directive. It is an unnecessary and unwise derogation and cannot even be justified by the alleged need to prolong the operational life of Whitegate as it is possible to require the marketing of type A gas oil only in Dublin and Cork.

The regulations do not apply to gas oil used in power stations or by shipping or contained in the fuel tanks of motor vehicles entering the State.⁽⁷⁰⁾ There is one slight and insignificant difference between the Directive and the Regulations: the exemption in the Directive in respect of gas oil contained in the fuel tanks of inland waterway vessels has not been granted in Ireland.

The regulations are enforceable by the Department of Energy. The penalty for breach on summary conviction is a fine not exceeding

£500 and/or six months' imprisonment. Any person who obstructs or interferes with an authorised person seeking entry to any place where gas is kept for the purpose of examining it and taking samples of gas oil is liable on summary conviction to a fine not exceeding £250.⁽⁷¹⁾ There has never been a prosecution for breach of the Regulations.

4.7 LEAD IN PETROL

EEC Council Directive 78/611/EEC on the approximation of the laws of the Member States concerning the lead content of petrol⁽⁷²⁾ was partly implemented by the European Communities (Lead Content of Petrol) Regulations 1980.⁽⁷³⁾ These provide that petrol with a lead content not exceeding 0.64 grammes per litre may be placed in the Irish market for a period of five years from 1 January 1981 whereas in other Member States the maximum permitted lead content of petrol placed on the market from 1 January 1981 is 0.40 grammes per litre. The derogation sought by Ireland was justified by the Minister for the Environment on the grounds that:

the large investment which would have been required to enable the Whitegate refinery to produce petrol with a lead content conforming with the Directive would have placed the continued operation of the refinery in jeopardy. In addition, imports of crude oil would have to be increased to produce petrol with a lower lead content and there would also be an increase in petrol consumption, estimated at 10 per cent.⁽⁷⁴⁾

The Minister also stated that :

as a result of the monitoring of levels of atmospheric lead pollution at three stations in the Dublin area, the derogation which Ireland obtained from the terms of the Directive will not result in levels of atmospheric lead above the two microgram per cubic metre level proposed in the draft EEC Directive on air quality standards for lead.⁽⁷⁵⁾

Following the government take-over of the Whitegate oil refinery the European Communities (Lead Content of Petrol) (Amendment)

Regulations 1982,⁽⁷⁶⁾ were made. These provide for the reduction of the maximum permissible lead compound of petrol to 0.40 grammes per litre. These Regulations are enforceable by the Department of Energy. The maximum penalty for breach on summary conviction is £250. The U.K., Germany, Denmark and Greece recently announced decisions to reduce the lead content of petrol to 0.15 grammes per litre from 1985.⁽⁷⁷⁾ There has been no committment to do likewise in Ireland. The Directive does not permit Member States to introduce unleaded petrol because it sets a mandatory lower limit of 0.15 grammes per litre. The European Environmental Bureau and the European Bureau of Consumers Unions have mounted campaigns to ban the use of leaded petrol in the EEC.

4.8 MOTOR VEHICLES

4.8.1 Implementation of EEC Directives

Although the initial aim of the European Commission in the harmonization of requirements as to the technical characteristics of motor vehicles was to remove technical barriers to trade, this aim was expanded to ensure that damage to the environment from the use of mecahnically propelled vehicles is minimised. The EEC has adopted a number of Directives which require, inter alia, that motor vehicles be so constructed as to minimise emissions of pollutants especially emissions of carbon monoxide, hydrocarbons and nitrogen oxides. Since motor vehicles are not manufactured - as distinct from assembled - in Ireland, the implementation of these Directives was a relatively straightforward process. The European Communities (Motor Vehicle Type Approval) Regulations 1978⁽⁷⁸⁾ made under s.2 of the European Communities Act 1972, implement the provisions of certain EEC Council Directives which relate to the type approval of motor vehicles, trailers and components. The relevant Directives are Directives 70/157/EEC (as amended by 73/350/EEC and by 77/212/EEC) on sound level and exhaust systems,⁽⁷⁹⁾ 70/220/EEC, (as amended by 74/290/EEC, 77/102/EEC, and by 78/665/EEC) on air pollution by gases from vehicles with positive ignition engines,⁽⁸⁰⁾ and 72/306/EEC on atmospheric pollution by diesel engined motor

vehicles.⁽⁸¹⁾ The European Communities (Agricultural or Forestry Tractors Type Approval) Regulations 1980⁽⁸²⁾, implement EEC Directive 77/537/EEC on the emission of pollutants from diesel engines for use in wheeled agricultural or forestry tractors.⁽⁸³⁾

Moreover, the European Communities (Vehicle Type Approval) Regulations 1980,⁽⁸⁴⁾ provide that components of mechanically propelled vehicles and trailers which comply with the provisions of the scheduled EEC Directives and continue in use so to comply, shall not be regarded as infringing existing statutory requirements in the Road Traffic (Construction Equipment and Use of Vehicles) Regulations 1963-78.⁽⁸⁵⁾ Under the European Communities (Motor Vehicle Type Approval) Regulations 1978-82,⁽⁸⁶⁾ the Institute for Industrial Research and Standards is empowered to issue type approvals to manufacturers of products used in vehicle construction provided the products conform to EEC requirements. The regulations also provide for the conditions subject to which type approval may be issued; for the circumstances in which type approval may be cancelled or suspended; for the manner in which type approved products may be identified and for the right of aggrieved manufacturers to appeal to the Minister for Industry and Energy against any decision on a type approval. Contravention of the regulations is punishable on summary conviction by a fine not exceeding £300 and/or up to six months' imprisonment. The regulations are enforceable by the Department of Energy.

4.8.2 National Requirements

The Road Traffic Act 1968, empowers the Minister for the Environment to make regulations to control, inter alia, the importation, supply and fitting of substandard parts and equipment for vehicles⁽⁸⁷⁾ to introduce a type approval scheme⁽⁸⁸⁾ and to give effect to the European agreement concerning Uniform Conditions of Approval for Motor Vehicle Equipment and parts 1958.⁽⁸⁹⁾ The Minister has never made any of these regulations but some of the objectives of the 1968 Act have been achieved by the European Communities (Motor Vehicle Type Approval) Regulations 1978 - 82 above.

(i) Controls over design and construction

Controls over the design and construction of vehicles marketed in Ireland are contained in the European Communities (Motor Vehicle Type Approval) Regulations 1978-82. Other controls are contained in Part II of the Road Traffic Acts 1961-68 and in the Road Traffic (Construction, Equipment and the Use of Vehicles) Regulations 1963.⁽⁹⁰⁾ The 1961 Act places responsibility for compliance with the relevant regulations solely on the user (or owner) of the vehicle, but this responsibility (and controls) were extended by the 1968 Act to ensure that vehicles and vehicle parts were supplied in proper condition.⁽⁹¹⁾ The Road Traffic (Construction, Equipment and Use of Vehicles) Regulations 1963, apply in relation to the use of vehicles in public places and in so far as they attempt to deal with air pollution they provide that:

- (i) every vehicle shall be so constructed as to prevent, to to such extent as is reasonably possible, the emission of smoke, visible vapour, noxious gases or offensive odours;
- (ii) every vehicle using solid fuel be fitted with an efficient appliance for the purpose of preventing the emission of sparks or grit and also with a tray or shield to prevent ashes or cinders from falling to the ground; and
- (iii) a vehicle propelled by a compression ignition engine shall not be fitted with a device designed to facilitate the starting of the engine by causing it to be supplied with excess fuel unless :
 - (a) the device is so designed that it cannot cause the engine to be supplied with excess fuel after the engine has been started, or
 - (b) the device cannot be readily operated by a person while he is carried in the vehicle.⁽⁹²⁾

(ii) Controls over maintenance

The Road Traffic (Construction, Equipment and Use of Vehicles) Regulations 1963, provide in respect of the maintenance of vehicles that:

- (a) Every vehicle and trailer, and all parts and equipment of every vehicle and trailer, shall be maintained in good and efficient working order, and shall be such and so maintained that no danger is liable to be caused thereby;
- (b) Every vehicle and trailer shall be maintained in such a condition that there will not be emitted any smoke, visible vapour, grit, sparks, ashes, cinders or oily substances, the emission of which could be prevented by the taking of any reasonable steps or the exercise of reasonable care, or the emission of which might cause damage to person or property or endanger the safety or health of any other user of the public place in consequence of any harmful content contained therein and
- (c) Where a vehicle with a compression ignition engine is fitted with a device designed to facilitate starting by causing the engine to be supplied by excess fuel, the device shall be maintained in such a condition that it does not cause the engine to be supplied with excess fuel while the vehicle is in motion. ⁽⁹³⁾

(iii) Controls over use

It is an offence under the Road Traffic (Construction, Equipment and Use of Vehicles) Regulations 1963:

- (a) to use a vehicle in a public place so that there is emitted therefrom any smoke, visible vapour, grit, sparks, ashes, cinders or oily substances the emission of which could be prevented by the exercise of reasonable care; and
- (b) to use, cause or permit the use of a device designed to facilitate starting so as to cause it to supply the engine with excess fuel while the vehicle is in motion. ⁽⁹⁴⁾

(iv) Vehicle Testing

The European Communities (Vehicle Testing) Regulations 1981⁽⁹⁵⁾ provide for the annual testing of certain categories of commercial vehicles (goods vehicles, trailers and semi-trailers over 1½ tons unladen weight, buses with more than 8 seats, taxis in a taximeter area and ambulances) from 1 January 1982. If vehicles pass the test (which includes testing exhaust emissions) a certificate of roadworthiness will be issued. It is an offence to use a vehicle subject to the Regulations in a public place unless there is in force in respect of the vehicle a certificate of roadworthiness issued under the Regulations.⁽⁹⁶⁾

(v) Enforcement

Enforcement of the Road Traffic Acts 1961-66, and the regulations made thereunder is the responsibility of the Garda Síochána. There are no statistics on the extent to which the regulations referred to in this work are enforced. Enforcement depends on visual observations and subjective judgement by the Gardai. The Report of the Inter-Departmental Environmental Committee on Pollution Control recommended the substitution of an objective system of monitoring and control in relation to polluting emissions from vehicles for the subjective system which is at present the basis of the regulations.⁽⁹⁷⁾

The penalty for breach of the regulations is a fine not exceeding £20 for a first offence and £50 for a second or subsequent offence.⁽⁹⁸⁾ The penalty for breach of any regulations made under the European Communities Act 1972, is a fine not exceeding £500 and/or six months imprisonment.⁽⁹⁹⁾

4.9 AIRCRAFT AND SHIPS

There are no national legislative controls over air pollution caused by aircraft though all aircraft landing in Ireland must comply with rules promulgated by the International Civil Aviation Authority.

For the purposes of the Control of Atmospheric Pollution Regulations 1970, a ship or vessel lying in any river, harbour, or other water not within the district of a sanitary authority is deemed to be within the district of the nearest adjoining sanitary authority.⁽¹⁰⁰⁾ Prosecutions under these Regulations may be brought by the Minister for the Environment or a sanitary authority in respect of prohibited emissions from any ship or vessel.⁽¹⁰¹⁾

4.10 MISCELLANEOUS CONTROLS

A number of statutes enacted to regulate specific developments contain authorisation requirements under which there is a discretion to attach air pollution control conditions to authorisations granted. These include the Petroleum and Other Minerals Development Acts 1940 - 1979, the Smelting Act 1968, and the Nuclear Energy Act 1971 and regulations on product standards made under the European Communities Act 1972.⁽¹⁰²⁾ In addition, some extra-legal control may also be imposed by conditions attached to grant-aids awarded by the Industrial Development Authority⁽¹⁰³⁾ and by the Department of Agriculture in the administration of the Farm Modernisation Scheme.⁽¹⁰⁴⁾

4.11 AIR QUALITY AND EMISSION STANDARDS

Air quality standards prescribe the maximum permissible levels of certain pollutants in the atmosphere. The only air quality standards currently applicable in Ireland are those prescribed in EEC Council Directive 80/779/EEC on air quality values and guide values for sulphur dioxide and suspended particulates⁽¹⁰⁵⁾ which became binding in Ireland on 15 July 1982. This Directive specifies maximum permissible concentrations of these pollutants (L values) which must not be exceeded during specified periods of time as and from 1 April 1983, and sets down guideline standards (G values) which are to be achieved in the medium term. Member States are obliged to ensure compliance with the standards in the Directive within certain time frames and to establish monitoring stations where concentrations of the regulated pollutants may approach or exceed permissible levels. Provision is made for excusing breach of the

standards in certain zones until 1987 provided Member states (i) notify the Commission before 1 October 1982 and (2) forward plans for the improvement of air quality. The Department of the Environment has notified the Commission of the probability that standards can not be achieved in the Dublin region and has forwarded an action plan for improving air quality in Dublin.

The main proposal in this plan is to encourage operators of fuel-burning industries and installations to burn natural gas instead of hydrocarbons and solid fuels. Reports on the implementation of the Directive must be sent to Brussels at specified intervals and the Commission is to publish a summary report annually on the implementation of the Directive.

This Directive has been implemented by administrative action. For example, Dublin Corporation monitors sulphur dioxide and suspended particulates at four stations⁽¹⁰⁶⁾ and forwards the results to An Foras Forbartha which is the national co-ordinating body designated by the Minister for the Environment for forwarding the results of air pollution monitoring to the Commission under EEC Decision 75/441/EEC establishing a common procedure for the exchange of information between surveillance and monitoring networks based on data relating to atmospheric pollution caused by certain compounds and suspended particulates.⁽¹⁰⁷⁾

EEC Council Directive 82/884/EEC on a quality standards for lead⁽¹⁰⁸⁾ was adopted in July 1982. This Directive prescribes a limit value of 3 ng/m³ annual mean concentration for lead in the atmosphere. It will not come into force until 1984.

EEC Council Resolution 78/607/EEC on chlorofluorocarbons in the environment⁽¹⁰⁹⁾ urged on Member States to reduce the emission of these pollutants. EEC Council Decision 80/372/EEC concerning chlorofluorocarbons in the environment⁽¹¹⁰⁾ required (1) the reduction of the use of chlorofluorocarbons in aerosol cans by 30% of 1976 levels between January 1980 and December 1981 and (2) Member states to limit the production of chlorofluorocarbons F-11 and F-12 to 1980 levels. This decision has not been implemented by legislative

or any other means. It is understood that there were difficulties in establishing what the 1976 Irish levels were. The Department of the Environment takes the view that the obligations imposed by the decision have been met by a decline in the number of industries handling and using chlorofluorocarbons since 1976.

Emission standards for certain chemical pollutants are prescribed under the Alkali etc. Works Regulation Act 1906, (111) and for dark smoke in the Control of Atmospheric Pollution Regulations 1970.⁽¹¹²⁾ In addition, planning authorities may prescribe emission standards when attaching conditions to planning permissions for particular developments.⁽¹¹³⁾ Specification standards for certain mobile sources of air pollution have been prescribed in various regulations made under the European Communities Act 1972.⁽¹¹⁴⁾ Specification standards requiring the adopting of abatement measures to control or prevent air pollution may be imposed under the Alkali etc. Works Regulation Act 1906, the Control of Atmospheric Pollution Regulations 1970 and the Local Government (Planning and Development Acts) 1962-82.⁽¹¹⁵⁾

4.12 INDIVIDUAL RIGHTS

Apart from rights at common law the individual has a number of rights under some of the statutes referred to in this section. Under the Public Health (Ireland) Act 1878, any person aggrieved by a statutory nuisance (which may include air pollution), or any two inhabitant householders of a district may complain of the existence of the nuisance to the sanitary authority which is obliged, if satisfied of the existence of the nuisance, to serve a notice requiring the abatement thereof and, if this does not have the desired effect, to prosecute the person deemed responsible for the nuisance.⁽¹¹⁶⁾ A person aggrieved by a statutory nuisance or the inhabitant of a sanitary district or the owner of any premises in the district may also prosecute for a statutory nuisance.⁽¹¹⁷⁾

Under the Alkali etc. Works Regulation Act 1906, any ten inhabitants of a district may complain to their sanitary authority

that any work to which the Act applies is being carried on in contravention of the Act and that a nuisance is occasioned thereby to any of the inhabitants of their district. Where the sanitary authority in turn passes on this complaint to the Department of the Environment, the Department is obliged to "make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by the inspector as they think fit and just".⁽¹¹⁸⁾ The Alkali Act also provides for actions by individuals in cases of contributory nuisances, i.e. cases where a nuisance (public or private) arises from a discharge of any noxious or offensive gas or gases caused by several discharges from several sources.⁽¹¹⁹⁾ Any person injured by such nuisance may proceed against any one or more of the owners and may recover damages from each defendant-owner to the extent of the contribution of that defendant to the nuisance, notwithstanding that the act or default of that defendant would not separately have caused a nuisance.⁽¹²⁰⁾

The rights of the individual under the Local Government (Planning and Development) Acts 1963 - 82, have already been described in detail.⁽¹²¹⁾ Of particular importance is the right under s.27 of the 1976 Act to ensure that new development causing air pollution is undertaken and carried out in accordance with permission granted under the Acts. The provisions of other statutes referred to in this section are enforceable by designated authorities only.

4.13 MONITORING⁽¹²²⁾

Regular monitoring of air quality for sulphur dioxide and smoke is carried out by local authorities in Dublin, Cork, Limerick, Waterford and Galway - the major urban areas. Dublin Corporation also monitors lead in the atmosphere at three stations. The Meteorological Service of the Department of Transport operates a programme of monitoring the chemical content of precipitation at nine stations as part of the International Meteorological Institute network. The Meteorological Service also monitors radio-activity in the atmosphere at two stations. The Electricity Supply Board operates

24 stations in the Dublin area which monitor sulphur dioxide and smoke and also monitors pollution levels in the vicinity of its generating stations. Monitoring networks in Dublin formerly adhered to British Standard 1747 (1963) procedure for sampling and ambient air quality but in 1981 an OECD method of sampling and analysis was adopted.⁽¹²³⁾

EEC Decision 75/441/EEC⁽¹²⁴⁾ establishing a common procedure for the exchange of information between the surveillance and monitoring networks based on data relating to atmospheric pollution caused by certain compounds and suspended particulates has been implemented by the Department of the Environment. An Foras Forbartha has been designated as the national co-ordinating body for sending results to the EEC Commission each month.

The monitoring of industrial sources of air pollution is carried out, if at all, by dischargers and, on occasion, by local authorities. The Department of the Environment, in a circular,⁽¹²⁵⁾ has instructed local authorities that :

in dealing with new industries which may give rise to an air pollution problem, local authorities should ensure that adequate arrangements are made for monitoring of air emissions from the projects and for assessing the findings

For this purpose, authorities were advised that in some cases it might be necessary to attach conditions to planning permissions "that specified monitoring be carried on by the developers and information supplied on an on-going basis to the local authority". Alternatively or in addition, authorities were advised to undertake monitoring themselves in the vicinity of particular projects. The circular also contained a list of industries considered potential sources of significant air pollution. Local authorities were advised to make arrangements for in-plant and/or outside monitoring to ensure that adequate information is obtained on air emissions and their effects where there was a prima facie reason to believe that industries were causing significant air pollution.

There is very little published information of the outcome of monitoring programmes. In 1971-74, the Institute for Industrial Research and Standards investigated 70 cases of actual or alleged air pollution in the vicinity of single sources. The results of these investigations showed that of the 77 cases examined "seven were confirmed as air pollution cases causing injury to man or his environment; 51 were confirmed as being a "source of nuisance" though no injury caused and 19 were found to be causing neither injury nor nuisance".⁽¹²⁶⁾ The IIRS believes that their investigations covered the bulk of all actual air pollution incidents in Ireland in the period 1971-74. From this the IIRS concluded "that only seven instances of injury or damage have occurred in recent years is a firm indication of how relatively unpolluted is Ireland's air".⁽¹²⁷⁾ Such a conclusion is not at all surprising when the criterion for dissatisfaction with air pollution levels adopted was that of actual injury to man and his environment and when investigations were confined to sources already identified as sources of "actual or alleged" air pollution. The IIRS also found that about 40 per cent of the incidents of air pollution nuisance were the food processing industry. The manufacture of various building and construction materials accounted for a further 25 per cent of the incidents while the chemical industry was responsible for 10 per cent.⁽¹²⁸⁾

Monitoring of sulphur and suspended particulates in the atmosphere in Dublin and Cork has shown that the situation is sufficiently unfavourable that it is affecting public health.⁽¹²⁹⁾ Monitoring of lead in dust by Dublin Corporation in 1981-82 showed that lead levels in dust in some of the seven school playgrounds monitored is a cause for concern while lead levels in dust at two sites near lead processing works were positively alarming, ranging in one instance from 2,080-50,000 ppm.⁽¹³⁰⁾

Monitoring techniques used by local authorities have been criticised on the grounds that they underestimate the true position in regard to air quality because of in-built deficiencies in the measurement system.⁽¹³¹⁾ Some concern has also been expressed to this writer relating to the sites chosen for monitoring purposes.

There has been no systematic attempt by public authorities to analyse monitoring results in order to identify trends in air pollution and to develop control policies.

4.14 ENFORCEMENT

The enforcement of legislation on air pollution has been described in preceding sections. There has only been one prosecution ever for an air pollution offence.⁽¹³²⁾ In so far as can be discovered, only two cases have ever been brought under the Local Government (Planning and Development Acts) 1963-82, for breach of air pollution control conditions attached to planning permissions.⁽¹³³⁾ Five actions have been taken under s.27 of the 1976 Planning Act for breach of planning controls which involved air pollution.⁽¹³⁴⁾ A number of private nuisance actions, have also been brought by individuals for air pollution.⁽¹³⁵⁾

FOOTNOTES

1. Bailey M., A Study of Dublin Air Quality 1970-75, National Board for Science and Technology, Dublin, 1978; Dublin Corporation Environmental Pollution Report, 1981-82; An Foras Forbartha Review, 1981-82.
2. See section 2.4.1.
3. See sections 2.4.3 and 5.7.
4. See section 2.4.
5. Public Health (Ireland) Act, 1878, s.107.
6. Ibid., s.109.
7. Ibid., s.110.
8. Ibid., s.110.
9. Ibid., ss.111, 121.
10. Ibid., s.123. See Keane, op.cit., at pp.99-105 for a detailed description of this enforcement procedure.
11. Ibid., s.288.
12. Alkali, etc., Works Regulation Act 1906, s.27(1).
13. Ibid., s.1(1).
14. Ibid., s.16.
15. Ibid., s.1(2).
16. Ibid., s.2(2).
17. Ibid., First Schedule, para.1.
18. Ibid., s.6(1).
19. Ibid., s.6(2).
20. Ibid., First Schedule, para.8.
21. Ibid., s.6(2).
22. Annual Report of the Alkali Inspector, 1980.
23. Alkali, etc., Works Regulation Act 1906, s.7(1).

24. Ibid., s.7(2).
25. Ibid., s.9(1).
26. Ibid., ss.19(3), 19(4).
27. Ibid., s.19(5).
28. Annual Report of the Alkali Inspector, 1974.
29. Alkali, etc., Works Regulation Act 1906, s.9.
30. Ibid., s.12(1).
31. Ibid., s.12(2).
32. Ibid., s.12(3).
33. Ibid., s.12(4).
34. Ibid., s.22.
35. Ibid.
36. Ibid., s.23.
37. A Survey of Pollution in Ireland, Industrial Development Authority, 1976, at p.10.
38. Local Government (Sanitary Services) Act 1962, s.10.
39. Ibid.
40. S.1. No. 156 of 1970.
41. Control of Atmospheric Pollution Regulations 1970, articles 3, 5.
42. Ibid., article 2.
43. Ibid., article 3(3)(a).
44. Ibid., article 2.
45. Ibid., article 3(3)(b).
46. Ibid., article 3(3)(c).
47. Ibid., article 3(4).
48. Ibid., article 3(5).
49. Ibid., article 4(2).

50. Local Government (Sanitary Services) Act 1962, s.10.
51. Ibid., s.10(5).
52. Control of Atmospheric Pollution Regulations 1970, article 6.
53. Local Government (Sanitary Services) Act 1962, s.10(6).
54. Ibid.
55. Circular ENV.7/73 of 11 June 1973.
56. Section 3.
57. Circular ENV.7/73 of 11 June 1973.
58. O.J. C 222, 30 August 1980.
59. See section 4.11.
60. O.J. L 171, 27 June 1981.
61. (1979) 18 I.L.M. 1442.
62. Development Control Advice and Guidelines, 1982, at p.34.
63. Local Government (Planning and Development) Act 1963, s.37.
64. Ibid., ss.37(8), 29, 61.
65. Ibid., s.61 as amended by the 1976 Act, s.41(f). See section 3.6.9.
66. O.J. L 307, 27 November 1975.
67. S.I. No. 361 of 1977.
68. Dail Reports, Vol.320, Col.641, 1 May 1980.
69. European Communities (Sulphur Content of Gas Oil) Regulations 1979, article 4.
70. Ibid., article 6.
71. Ibid., article 5.
72. O.J. L 197/19, 22 July 1978.
73. S.I. No. 372 of 1980.
74. Dail Reports, Vol.320, Col.641, 1 May 1980.

75. Ibid. The Minister must have been misled. Monitoring of lead in the air by the I.I.R.S. and Dublin Corporation has shown that there is every reason for concern about atmospheric and dust lead levels in Dublin. See section 4.11.
76. S.1. No. 236 of 1982.
77. International Environment Reporter (1983) Vol.6, No.2, 44.
78. S.1. Nos. 305 of 1978, 169 of 1980, 134 of 1982.
79. O.J. L 42, 23 February 1970; as amended by O.J. L 321, 22 November 1973; and O.J. L 66, 12 March 1977.
80. O.J. L 76, 6 April 1970; O.J. L 159, 15 June 1974; O.J. L 32, 3 February 1977; O.J. L 233, 14 August 1978.
81. O.J. L 190, 20 August 1972, and O.J. L 299, 23 November 1977.
82. S.1. No. 101 of 1980.
83. O.J. L 220/38, 29 August 1977.
84. S.1. No. 41 of 1980, as amended by S.1. No. 420 of 1981.
85. S.1. No. 190 of 1963.
86. S.1. Nos. 305 of 1978, 169 of 1980, 134 of 1982.
87. Road Traffic Act 1968, s.9.
88. Ibid., s.8.
89. Ibid., s.14.
90. S.1. No. 190 of 1963.
91. Road Traffic Act 1968, ss. 8, 9, 14, 17.
92. Road Traffic (Construction, Equipment and Use of Vehicles) Regulations 1963, article 30.
93. Ibid., article 34.
94. Ibid., article 90.
95. European Communities (Vehicle Testing) Regulations 1981, S.1. No. 193 of 1981.
96. Ibid., article 12.

97. Report on Pollution Control, supra, at p.26.
98. Road Traffic Act 1961, ss.11(4), 103; Road Traffic Act 1968, s.8.
99. European Communities (Vehicle Testing) Regulations 1981, article 14.
100. Local Government (Sanitary Services) Act 1962, s.10(9).
101. See section 4.4.4.
102. See section 11.
103. See section 2.4.3.
104. See sections 2.2.4 and 5.7.
105. O.J. L 229, 30 August 1980.
106. Dublin Corporation Environmental Pollution Report, 1981-82, at pp.72, 73.
107. O.J. L 194, 24 June 1975.
108. O.J. L 378, 31 December 1982.
109. O.J. C 331/1, 7 June 1978.
110. O.J. L 90/45, 3 April 1980.
111. See section 4.2.
112. See section 4.4.
113. See section 4.5.
114. See sections 4.6, 4.7, 4.8, 11.8.
115. See sections 4.2, 4.4, 4.5.
116. Public Health (Ireland) Act 1878, ss.109, 110, 111. See section 4.1.
117. Ibid., s.121.
118. See section 4.2.3.
119. Alkali, etc., Works Regulation Act 1906, s.23(1).
120. Ibid., s.23(2).

121. See section 3.
122. See Coffey, J., Air Pollution - Impacts and Control, National Board for Science and Technology, Dublin, 1978, at pp.130-132; Bailey, M. and Walsh, J., "Monitoring Air Pollutants in Dublin", (1979) Irish Journal of Environmental Science, Vol.1, at pp. 26-35.
123. Dublin Corporation Environmental Pollution Report, 1981-82, at p.73. It is understood that the differences between the two methods of monitoring are not material.
124. O.J. L 194, 25 July 1975.
125. Circular ENV. 22/74 of 10 September 1974.
126. A Survey of Pollution in Ireland, Industrial Development Authority, 1976, at p.10.
127. Ibid.
128. Ibid.
129. Irish Times, 15 April 1983.
130. Dublin Corporation Environmental Pollution Report, 1980-81, at pp.91-95.
131. Irish Times, 15 April 1983.
132. See section 4.4.4.
133. Cork County Council v. Raybestos (Manhattan) Ltd., International Environment Reporter, (1980) Vol.3, No.7, 285; Cork County Council v. N.E.T., Irish Times, 15 July 1980.
134. Patterson v. Murphy, High Court, unreported, 4 May 1978; Stafford and Bates v. Roadstone Ltd., High Court, unreported, 17 January 1980; Dublin County Council v. Sellwood Quarries Ltd., [1981] I.L.R.M. 23; Galway County Council v. Connaught Proteins Ltd., High Court, unreported, 28 March 1980; Lambert v. Lewis and Kelly, High Court, unreported, 24 November 1982.
135. See, for example, Malone v. Clogrennane Lime and Trading Company, High Court, unreported, 14 April 1978; Patterson v. Murphy, supra; Gleeson and Others v. Syntex Ltd., High Court, Irish Times, 19 October 1982.

SECTION 5

INLAND WATER POLLUTION

The law on inland water pollution in Ireland has recently been reformed and, to an extent, codified in the Local Government (Water Pollution) Act 1977. But water pollution controls in other Acts of lesser significance have been continued in force. The more important of these so far as inland waters are concerned are the Public Health (Ireland) Act 1878, the Fisheries (Consolidation) Act 1959-80 and the Local Government (Planning and Development) Acts 1963-82.

Water pollution control is primarily, though not exclusively, the responsibility of local authorities. Some control is also exercised by the Minister for Fisheries, Fisheries Boards, the Minister for Agriculture and private individuals.

An Foras Forbartha reports that the overall national position in relation to river water quality based on the results of biological monitoring up to 1981, showed that of 6,910 km of river channel surveyed, 84 per cent was of good or satisfactory quality, 14 per cent was moderately polluted and 2 per cent was seriously polluted.⁽¹⁾ Of 50 major lakes surveyed, 15 were found to be enriched - eight excessively and seven moderately.⁽²⁾

Mandatory environmental standards for water pollution control originate exclusively in measures adopted under the EEC Action Programmes on the Environment. There are no legally binding national water quality or effluent standards. Instead water pollution control authorities have a general discretion to attach whatever standards they think fit when granting authorisations for discharges to waters. Some degree of uniformity in standards required may be expected based upon the recommen-

dations of the Technical Committee on Effluent and Water Quality Standards and objectives defined in future water quality management plans.

5.1 PUBLIC HEALTH (IRELAND) ACT 1878

Section 19 of the Public Health (Ireland) Act 1878, provides that sanitary authorities may not discharge sewage or filthy water into any natural stream or watercourse, or into any canal, pond or lake unless the discharge is freed from "all excrementitious or foul or noxious matter." Section 77 prohibits the contamination by gas washings of any stream, reservoir, aqueduct, pond or place for water or any drain or pipe communicating therewith. The penalty for this offence is £200 and a further sum of £20 for every day the offence continues. Proceedings may be brought by the appropriate sanitary authority or by the person whose waters were polluted. Section 78 empowers sanitary authorities, with the sanction of the Attorney General, to take proceedings in their own name or in the name of any other person with the consent of that person to prevent water pollution by sewage whether the sewage originates inside or outside their district.

Section 107 enacted that a statutory nuisance shall exist where "any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain or ashpit is so foul or in such a state as to be nuisance or injurious to health." The remedies for statutory nuisances have already been described.⁽³⁾

5.2 FISHERIES (CONSOLIDATION) ACT 1959

Sections 171 and 197⁽⁴⁾ of the Fisheries (Consolidation) Act 1959, established licensing and certification schemes respectively under which licences and certificates could be granted by the Department of Fisheries for discharges to waters. Section 171(1) provides that:

Any person who:

- (a) steeps in any waters any flax or hemp, or
- (b) throws, empties, permits or causes to fall
into any water any deleterious matter

shall, unless such act is done under and in accordance with a licence granted by the Minister under this section, be guilty of an offence.

"Waters" for the purposes of sections 171 and 172 mean "any river, lake, watercourse, estuary or any part of the sea." Deleterious matter is defined as:

any substance (including 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 or to injure fish in their value as human food, or to impair the usefulness of the bed and soil of any waters as spawning grounds or their capacity to produce the food of fish.

The Minister for Fisheries is empowered, after consultation with the Minister for Industry and Energy in respect of applications for licences for industries, and the Minister for the Environment in respect of applications for licences by sanitary authorities in relation to sewage schemes, to attach conditions to any licence and, after like consultation, to revoke any licence.

Licences are usually granted for limited periods, are subject to review and stipulate, inter alia, and where appropriate, monitoring requirements and standards to be complied with by licencees. Since the schemes established under the Act are not compulsory, the number of licences held under s.171 has never exceeded 30. At present licences are held by sanitary authorities, food processing and chemical firms. The I.D.A. and planning authorities sometimes require recipients of grants and planning permissions respectively to obtain a s.171 licence.⁽⁵⁾

Section 172 of the Act provides that it is an offence to discharge "deleterious liquid" which is contained or conveyed in a receptacle which is within 30 yards of any waters, to any waters. The owner of a receptacle who has provided "suitable means" for the prevention of deleterious discharges may apply to the Minister for a certificate specifying the suitable means and the manner in which they are to be used. If he observes the terms of the certificate he may not be convicted of an offence under s.172. No certificate of suitable means has ever been issued.

Section 34(c) of the Local Government (Water Pollution) Act 1977, provided for the repeal of sections 171 and 172 but they are still in force. They have two major advantages over other statutory remedies for

water pollution, (1) liability under them is strict and (2) they apply to deleterious discharges to water irrespective of the identity of the discharger and thus accord no special immunity to discharges made by the public sector. The sections are enforceable by the Garda Siochana, Fisheries Boards and the Minister for Fisheries. A licence has never been revoked. The penalty for breach of s.171 is a fine not exceeding £500 and/or six months' imprisonment and the penalty for breach of s.172 is the same plus a fine not exceeding £50 (subject to a maximum of £600) for each day the offence continues after conviction.⁽⁶⁾ In practice the sections are enforced almost exclusively by Fisheries Boards in District Courts. The following table, adapted from the Dail Reports,⁽⁷⁾ indicates the extent to which sections 171 and 172 were enforced by the former Boards of Fisheries Conservators whose functions have been transferred to Fisheries Boards.

Year	Total Number of Prosecutions	Number of Prosecutions against Local Authorities
1974	31	6
1975	25	7
1976	59	9
1977	40	12
1978	55	25

(These figures relate to prosecutions taken by 14 of the 17 boards of conservators.)

The most common offenders are local authorities and farmers.

The Minister for Fisheries has also made bye-laws⁽⁸⁾ under s.9 of the Act and s.33 of the Fisheries (Amendment) Act 1962, prohibiting the discharge of any effluent from sand or gravel washing plants into any waters without his consent. The Minister may attach such conditions as he thinks fit to his consent and may vary any conditions attached subject to giving one month's written notice to the person concerned.

5.3 LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS 1963-80 X

The scope and effects of these Acts have already been described.⁽⁹⁾ Briefly, they enable planning authorities to control through their development plans the location of developments likely to cause water pollution, and to refuse permission for, or to permit subject to controlling conditions, developments which may generate water pollution. Planning authorities have always (in this writer's opinion erroneously) considered themselves free to attach such environmental standards as they considered proper to permissions granted.

Until 1982, the Planning Acts were in practice the principal form of water pollution control used in Ireland. A study of the extent to which planning conditions were used to control water pollution from 31 industries in the chemical, pharmaceutical and textile sectors found that environmental standards relating to water pollution control were set in conditions attached to the planning permissions of 22 of the industries surveyed.⁽¹⁰⁾ In 19 cases a monitoring requirement was also included as a condition.⁽¹¹⁾

In 1982 however, the Minister for the Environment advised planning authorities that:

In general, it is no longer appropriate that a planning permission should contain conditions setting out in detail the standards which effluents should meet; such standards can more appropriately be included in a licence under the 1977 Act which, unlike planning conditions, is subject to periodic review.⁽¹²⁾

Planning authorities have been advised by circular on attaching conditions regulating septic tank drainage arrangements from developments and in so doing have been advised to consult the IIRS Recommendations for Septic Tank Drainage Systems Suitable for Single Houses (S.R. 6: 1975).⁽¹³⁾

In future, therefore, it is likely that planning authorities will not set effluent or water quality standards as conditions. They will however, probably continue to prescribe some kinds of process standards⁽¹⁴⁾ and standards for effluents from septic tanks, most of which are exempt from the licencing requirements of s.4 of the Local Government (Water Pollution) Act 1977.⁽¹⁵⁾

The unsuitability of the Planning Acts as water pollution control mechanisms has been demonstrated already.⁽¹⁶⁾

5.4 LOCAL GOVERNMENT (WATER POLLUTION) ACT 1977

5.4.1 Scope

Under this Act, local authorities, as defined therein,⁽¹⁷⁾ have primary but not exclusive responsibility for ensuring the preservation, protection and improvement of water quality. Because of the fundamental changes which this Act wrought on Irish water pollution law, s.33 thereof provided that different provisions might be brought into force on different dates. Much of the Act came into operation on 1 May, 1977⁽¹⁸⁾ but sections 4 and 16, which require the licensing of discharges to waters and sewers, did not come into operation until 1 October, 1978 and 1 January, 1979⁽¹⁹⁾ respectively. Commencement orders have now been made in respect of all sections of the Act other than sections 25 and 34.

In s.1 of the Act "waters" are defined so as to include:

- (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 beach, 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 inclusion of an aquifer in the above definition and the further definition of an aquifer as "any stratum or combination of strata which stores or transmits sufficient water to serve as a source of water supply" means that the Act applies to the vast bulk of (and perhaps all) groundwaters. This is the first time that legislation has been enacted for the direct protection of groundwaters. Furthermore the Act applies to both inland and sea waters, the expression "tidal waters" in s.1 being defined so

as to include "the sea and any estuary up to high water mark medium tide and any enclosed dock adjoining tidal waters." Pollution is nowhere defined but "polluting matter" is very widely defined in s.1 to include:

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, or 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 use.

This definition of polluting matter is an amalgam of the definition of deleterious matter in the Fisheries (Consolidation) Act, 1959 and part of the definition of water pollution in s.3 of the Illinois Environmental Protection Act 1970. It is unusual in that it sets up a system of water pollution control based on injury to stated beneficial uses of waters.

5.4.2 Prohibition on the Entry of Polluting Matter to Waters

Section 3 of the Act provides that "a person shall not cause or permit any polluting matter to enter waters." It should be noted that the section creates two separate offences: (1) causing and (2) permitting polluting matter to enter water. The difference between the two offences can be seen in Alphacell Ltd. v. Woodward⁽²⁰⁾ and Price v. Cormack.⁽²¹⁾ It appears that "causing" involves some active operation or chain of operations causing the prohibited entry; "permitting" on the other hand involves a failure to prevent. Section 3(1) is concerned only with the entry of polluting matters to waters - not with pollution itself so that it is not necessary to prove that pollution has actually occurred. Once it is established that the matter which entered the waters is liable to damage the legitimate beneficial uses of those or any other waters (e.g. waters downstream or outside the mixing zone), then an essential ingredient of the offence is proved.

But what is damage to beneficial uses of waters? This question can only be answered satisfactorily if quality standards are prescribed for those uses. The Act provides that these may be contained in water quality management plans made under s.15 and/or in regulations prescribing environmental standards for waters made by the Minister under s.26. By June 1983, neither water quality management plans nor regulations under s.26 had been made. However quality standards for certain drinking, bathing, shellfish and fresh waters supporting fish life have been prescribed by EEC Directives⁽²²⁾ and are applicable in Ireland. Thus matter entering waters which results in their failure to comply with quality standards in the relevant Directives will, prima facie, be polluting matter.

But the vast bulk of waters are not covered by EEC Directives and have not got quality standards prescribed for them. In these cases, the procedure almost invariably used by prosecutors is to prove that the capacity of the waters to support fish life has been injured. Irish authorities continue to define water pollution almost exclusively in terms of injury to fish life. In particular cases, it may also be possible for prosecutors to prove that waters have been rendered harmful or detrimental to public health, or to domestic, commercial, industrial, agricultural or recreational uses, as the case may be, by reference to internationally recognised or nationally recommended quality standards for those uses. There has been little effort to acquaint pollution control authorities of the existence of these standards.

The full potential of s.3(1) to control water pollution can not be realised in the absence of the recognition of defined quality and emission standards for the various protected beneficial uses of waters.

Section 3(3) provides that it is a defence to a prosecution under s.3(1) to prove that the person charged "took all reasonable care" to prevent the prohibited entry. There is no guidance as to what constitutes all reasonable care. In practice, it should be judged in the light of good management practices, available technology and scientific knowledge where, for example, industrial effluents are involved and in the light of current good agricultural practice where agricultural effluents are involved.⁽²³⁾ The Water Pollution Advisory Council has issued over 20,000 leaflets to farmers on proper procedures to prevent water pollution from silage making. The Minister for the Environment has also recommended County

Councils to set up Consultative Committees of persons representing farming interests to advise farmers of good agricultural practices on waste disposal with particular reference to silage making.⁽²⁴⁾ A failure to observe officially recommended procedures for farm waste disposal would, prima facie, constitute a failure to take all reasonable care.

There has been a good deal of criticism in recent years of the methodology used for proving that waters are polluted. Until recently the Biochemical Oxygen Demand (BOD) test was accepted as the standard test in the assessment of water pollution in prosecutions. Apparently this test on its own is scientifically unreliable.⁽²⁵⁾ In response to various criticisms the Minister for the Environment issued Guidelines on Fish Kill Investigatory Procedures⁽²⁶⁾ to all water pollution control authorities in 1982 and the IIRS has published a booklet A Guide to the Investigation of Fish Kills.⁽²⁷⁾ These documents should help to ensure that the correct procedures and tests are used to prove pollution of waters.

Section 3(4) provides that s.3(1) shall not apply to discharges of trade effluents and sewage effluents (other than exempted discharges under s.4(10)) unless where a relevant standard is prescribed under s.26, there is a blanket exemption for discharges of trade and sewage effluent other than exempted discharges.⁽²⁸⁾ However these discharges are subject to controls under s.4. Certain other discharges of effluents and entries of polluting matter to waters controlled under other statutes are also exempted,⁽²⁹⁾ generally because separate control systems are applicable to them.

Prosecutions may be brought by local authorities, the Minister for Fisheries, Fisheries Boards or any other person.⁽³⁰⁾ The maximum penalty on summary conviction is £250 (plus £100 a day for a continuing offence) and/or six months imprisonment and on conviction on indictment £5000 (plus £500 a day for a continuing offence) and/or two years imprisonment.⁽³¹⁾

By June 1982 only 31 prosecutions had been taken under s.3(1) although over 1511 pollution incidents were investigated.⁽³²⁾ Reasons for this failure to implement s.3 include insufficient familiarity with the procedures for bringing prosecutions, inadequate scientific and technical facilities, lack of personnel and, not least, a political unwillingness to prosecute farmers who were responsible for the largest proportion of of water pollution incidents.⁽³³⁾ Most of these prosecutions were taken

by local authorities. The Fisheries Board, as a result of a policy decision by the Central Fisheries Board, do not prosecute under s.3, preferring to use s.171 of the Fisheries Consolidation Act 1959. In so far as is known, a private individual has never prosecuted under s.3(1).

5.4.3 Licenses for Discharges of Trade and Sewage Effluents to Waters

Section 4 of the Act provides that (subject to exceptions) a person shall not after 1 October 1978 discharge or cause or permit the discharge of any trade effluent or sewage effluent to any waters except under and in accordance with a licence under the section.

Section 1 of the Act defines trade effluent as effluent:

from any works, apparatus, plant or drainage pipe used for the disposal to waters or to a sewer of any liquid (whether treated or untreated), either with or without particles of matter in suspension therein, which is discharged from premises used for carrying on any trade or industry (including mining), but does not include domestic sewage or storm water.

Sewage effluent is defined in the same section as:

effluent from any works, apparatus, plant or drainage pipe used for the disposal to waters of sewage, whether treated or untreated.

"Trade" includes agriculture, aquaculture, horticulture and any scientific research or experiment.⁽³⁴⁾ "Premises" includes land whether or not there are structures on the land.⁽³⁵⁾

The obligation to obtain a licence under s.4 therefore applies to a great many activities. It should however be noted that licences are required for discharges from point sources only. (A point source is one that enters waters at a particular identifiable location). Domestic waste plants and industrial wastes usually come within this category and, while the effluents from these sources may be polluting, they are susceptible to treatment before discharge. The IIRS estimates that there are about 1500-2000 licensible industrial discharges in the country. By January 1982 a total of 492 licences for discharges to water had been issued.

The fact that discharges from point sources only are licensable means that run-off of effluents, slurry, fertilisers and biocides from land are not controlled under s.4 although they are subject to other controls in the Act.⁽³⁶⁾

Section 4(2) provides that the licensing obligation does not apply to discharges:

- (a) to tidal waters from vessels or marine structures,
- (b) from a sewer,
- (c) the subject of regulation under subsection 10.

The exemption of (a) above is understandable as these discharges are controlled under other legislation.⁽³⁷⁾ The exemption of (b) however is a major defect in the Act and is, once again, evidence of the general tendency in Irish environmental legislation to provide different regulatory procedures for public sector and private sector activities.

Effluents from sewers are discharged mostly by sanitary authorities because under s.15 of the Public Health (Ireland) Act 1878, all existing and future sewers were vested in sanitary authorities except:

- (i) sewers made by a person or company for profit,
- (ii) sewers made and used for the purpose of draining, preserving or improving land under any local or private Act of Parliament for the purpose of irrigating land.

But even (i) and (ii) benefit from the general exemption granted in respect of discharges from sewers. Discharges of non-domestic sewage from private drains however are not exempted because the definition of "sewer" in s.1 of the Act excludes drains other than those vested in or controlled by sanitary authorities. The basic distinction between a sewer and a drain is that the former serves more than one premises whereas the latter serves one premises only.⁽³⁸⁾

The alternative control mechanism potentially applicable to discharges from sewers is in s.26 of the Act which requires local authorities to take steps "as soon as practicable" to ensure that sewage effluent complies with any standards which may be prescribed by the Minister under that section. Since the Minister has not yet prescribed standards under s. 26, even this control is not in force, though sanitary authorities have been advised to comply with standards recommended in the Eighth Report of the Royal Commission on Sewage Disposal 1912.⁽³⁹⁾

Further exemptions from the licensing requirements are contained in the Local Government (Water Pollution) Regulations 1978.⁽⁴⁰⁾ These are:

- (i) domestic sewage not exceeding five cubic metres in any 24 hour period which is discharged to an aquifer from a septic tank or any other disposal unit by means of a percolation area, soaking pit or any other method;
- (ii) trade effluent discharges by a sanitary authority in the course of the performance of its powers and duties other than from a sewer.⁽⁴¹⁾

These exempted discharges are by virtue of s.3(5)(a) subject to control under s.3(1), which means that (unless they comply with any relevant standards prescribed under s.26) a discharger can be prosecuted if they are liable to cause pollution. It should be noted that, once again, sanitary authorities are not subject to the same controls as the private sector in respect of discharges of trade effluents.

Licences are granted by local authorities which in the present context means County Councils and Borough Corporations but not Urban District Councils or Town Commissioners.⁽⁴²⁾

5.4.4 Existing Discharges

The Act applies to new and existing discharges but s.5 thereof makes special provision in respect of the latter: once a licence application is made for an existing discharge (as defined in s.5) before 1 October 1978, and any information required by any regulations under s.6 is furnished, the applicant may continue to make discharges without contravening s.4(1) until such time as the local authority grants or refuses a licence. Since there is no time limit specified within which a local authority is obliged to decide on a licence, this could be indefinitely. Apparently, s.5 was motivated by an appreciation of the difficulties which might be experienced by existing dischargers in complying with new requirements and local authorities use the delay in deciding on applications as a lever to encourage dischargers to make progressive improvements in the quality of effluents discharged. Section 5(2) places the onus of proof in relation to an existing discharge on a person charged with contravening s.4(1).

Local authorities have been advised to notify the Minister of cases where satisfactory effluent standards for existing discharges are unattainable within six years from April 1980.⁽⁴³⁾

As of June 1982, there were 705 licence applications which local authorities had not decided upon. The bulk of these are believed to be concerned with existing discharges.

A person who has submitted an application in respect of an existing discharge is not immune from prosecution under other sections of the Act or under the Fisheries (Consolidation) Act 1959.

5.4.5 Application Procedure

The procedures regulating the submission of applications for licences are contained in Part II of the 1978 Regulations. They are modelled on, and substantially similar to, the procedures regulating the submission of applications for planning permissions already described in detail.⁽⁴⁴⁾ Local authorities have been advised to "integrate the operation of the licensing system as closely as possible with the physical planning control system."⁽⁴⁵⁾

This subsection merely seeks to outline the differences between these two systems and emphasises requirements peculiar to applicants for licences under s.4(1).

5.4.5.1 Public Notice.

Article 4(1) of the 1978 Regulations requires applicants for licences to publish notice of intention to apply for a licence containing prescribed particulars in a newspaper circulating in the local authority area. The option to put the notice at the site of the discharge does not exist. Existing dischargers who have applied for a licence before 1 October 1978 are exempted from this obligation, as are holders of planning permissions granted during the five year period prior to that date provided they have applied for a licence.⁽⁴⁶⁾ Public notice of the grant of a licence in these cases must be given by the local authority under article 11(1)(d).

Local authorities have powers to require the applicant to publish further notice in the same circumstances as for planning applications.⁽⁴⁷⁾

5.4.5.2 The Application Submitted.

A licence application must be accompanied by:

- (i) a copy of the newspaper notice,
- (ii) such plans and particulars in duplicate and such other particulars as are necessary to describe the premises,

- drainage system and any works, apparatus or plant from which the effluent is to be discharged and to identify the receiving waters and the point of discharge,
- (iii) particulars of the nature, composition, anticipated temperature, volume and rate of discharge of, and the proposed treatment of, the effluent and the period or periods during which the effluent is to be discharged, and
 - (iv) in the case of a trade effluent, a general description of the process or activity giving rise to the discharge. (48)

In addition, a licence application for an existing discharge must state that the discharge is such. (49) Local authorities have powers to request further information and, if the applicant fails or refuses to comply with such a request, to procure the requested information (at the partial or total expense of the applicant) or to decide on the application without it. (50) There is no limitation on the number of times a local authority may request further information but the Minister has instructed them "to avoid returning to the applicant again and again for additional data." (51)

A standard form of application has been supplied to all local authorities (52) as well as detailed and specific guidance on information which may be necessary to decide on applications. (53)

5.4.5.3 Procedure on Receipt of the Application.

A local authority is obliged to make the application and accompanying documentation submitted to the local authority available in their offices for public inspection during normal office hours until the application and any appeal relating thereto is determined (54) but not, as in the case of planning law, for any longer period. This of course severely undermines the potential of the provision for citizen and Fisheries Boards enforcement of water pollution control in sections 3, 4 and 11. (55)

There are no provisions (as there are in respect of planning applications) which require the local authority to publish weekly lists of applications received, or to notify prescribed bodies of the receipt of any application. Neither is a local authority expressly empowered to ensure further publicity for the application, although it probably has implied powers to do so. Curiously, no provision is made whereby arrangements can be made to respect the confidentiality of information submitted

but local authority practices are quite capable of doing this. Local authorities are not obliged to make the results of their own investigations into the licence application publicly available.

5.4.6 The Decision on the Application

Section 4(3) provides:

A local authority may at its discretion refuse to grant a licence under this section or may grant such a licence subject to such conditions as it thinks appropriate and specifies in the licence.

In considering whether or not to grant a licence a local authority must have regard to the objectives contained in any relevant water quality management plan, and a licence may not be granted in respect of the discharge of an effluent which would not comply with, or would result in the waters to which the discharge is made not complying with, standards prescribed by the Minister for the Environment under s.26.⁽⁵⁶⁾ As yet, no water quality management plans or standards have been made or prescribed. However, local authorities have been circulated with Water Quality Guidelines, one of the purposes of which is to provide them with "guidance on water and effluent quality for their assistance in dealing with development proposals which may affect water quality."⁽⁵⁷⁾

Section 4(5) provides that without prejudice to the generality of subsection (3) conditions attached to licences may relate to:

- (a) (i) the nature, composition, temperature, volume, rate, method of treatment and location of discharge, the periods during which a discharge may be made or may not be made, the effect of a discharge on receiving waters and the design and construction of outlets for a discharge;
- (ii) the provision and maintenance of metres, gauges, other apparatus, manholes and inspection chambers;
- (iii) the taking and analysis of samples, the keeping of records and furnishing of information to the local authority;
- (iv) the prevention of a discharge in the event of a breakdown of plant;

- (b) require defrayment of or contribution towards the cost incurred by the local authority in monitoring the discharge;
- (c) specify a date not later than which any condition shall be complied with; and
- (d) require the payment to the local authority which granted the licence of a charge or charges prescribed under regulations made by the Minister for the Environment.

It appears from the Act that local authorities have a complete discretion as to standards which they may prescribe in conditions attached to licences. In practice, they take into account the Memorandum on Water Quality Guidelines and they are obliged also to implement any relevant standards prescribed in EEC Directives relevant to water quality and effluent discharges described below. ⁽⁵⁸⁾

Local authorities have been advised:

- to require dischargers to monitor their effluents;
- to include a test for treatability if the effluent could give problems;
- to carry out spot checks and to charge the discharger for same as a fixed annual charge or as a cost per visit. ⁽⁵⁹⁾

There is no time limit within which a local authority must give a decision on a licence but as the procedural aspects of the planning and water pollution control systems are so alike, it is envisaged that decisions should be made within two months of receipt by the local authority of a properly completed licence application for a new discharge.

Section 24 of the Act empowers the Minister to make regulations requiring local authorities, sanitary authorities and Fisheries Boards to consult with such persons and in such manner in relation to the exercise of such powers and duties under the Act as may be prescribed. To date no statutory consultation procedures have been prescribed, but local authorities have been repeatedly advised to develop consultative arrangements administratively. ⁽⁶⁰⁾ In particular, all s.4 applications and licences must be forwarded to the Department of Fisheries and the appropriate Fisheries Board. Other bodies to be consulted include County Committees of Agriculture where pollution from agricultural activities is involved; Health Boards on matters relating to public health; the

Industrial Development Authority in relation to industrial promotion issues, and "as necessary" tourism and conservation interests.

By the end of 1979, fewer than a dozen licences had been granted. In 1980, however the Minister for the Environment urged local authorities to expedite decisions on licence applications and to adopt a definite time scale for dealing with applications in hand. Priority was to be given to dealing with applications in respect of major and highly polluting discharges. Every effort was to be made "to appreciate the problems of particular industries": in this respect, and when setting time schedules within which prescribed or necessary effluent quality standards should be met and when considering licence conditions to attach, authorities were to consider the "viability, capital expenditure, increased operating costs, process change, availability of land and the degree of pollution being caused."⁽⁶¹⁾ By June 1982, 1511 licences had been granted.

While the application is being considered, any person may submit written objections or representations to the local authority with respect thereto. This facility is, strictly speaking, an informal one but the permissibility thereof is implicitly recognised in article 11(1)(c) of the Regulations.⁽⁶²⁾

Once it has come to a decision, the local authority must, if the decision is a positive one, transmit the licence to the applicant, or, if the decision is negative, give notice of refusal to the applicant.⁽⁶³⁾ Notice of the decision must also be given to any third party who submitted written objections or representations, or, alternatively, notice may be given to third parties by publication of the decision in a local newspaper.⁽⁶⁴⁾ The notice must, inter alia, inform the applicant and the parties of their right to appeal against the decision under s.8 of the Act.⁽⁶⁵⁾ A model form of licence is contained in the Second Schedule to the 1978 Regulations. There is no provision for obtaining licences in default of a decision being taken within a given time.

A local authority must publish notice of the grant of a licence in respect of an existing discharge in a local newspaper but they have a discretion whether or not to publish other notices.⁽⁶⁶⁾ A register must be kept of all licences granted under s.4: this must be available for public inspection.⁽⁶⁷⁾ Conditions attached to a licence are binding on any person discharging or causing or permitting the discharge of effluent

to which the licence relates.⁽⁶⁸⁾ The licence lapses if no discharge authorised by it is made within three years or if such a discharge ceases for three years.⁽⁶⁹⁾

Discharging a controlled effluent except under and in accordance with a licence is an offence. Prosecutions may be taken by a local authority, a Fisheries Board, the Minister for Fisheries or any other person.⁽⁷⁰⁾ It is a good defence to a prosecution for an offence under any Act, other than the Local Government (Water Pollution) Act 1977, that the act constituting the alleged offence is authorised by a s.4 licence.⁽⁷¹⁾ The penalties on conviction are the same as for breach of s.3(1).⁽⁷²⁾

5.4.7 Appeals

Any person may appeal to An Bord Pleanála against a decision on a licence application under s.4 or in relation to the amendment or deletion of conditions attached to, or to the attachment of new conditions to a licence on review under s.7.⁽⁷³⁾ Appeals relating to the grant or refusal of a s.4 licence must be made within one month from the date of the grant or refusal: appeals relating to the decision on review under s.7 must be made within one month of the decision.⁽⁷⁴⁾ Part IV of the 1978 Regulations prescribes the procedures to be followed on appeal. In general, they are very similar to those governing planning appeals.⁽⁷⁵⁾ One substantial difference, however, is that a person refused an oral hearing by the Bord has no right to appeal the decision to the Minister for the Environment. Section 8 of the Act provides that after consideration of an appeal (for which no time limit is specified) the Bord may either refuse the appeal or

give appropriate directions to the local authority concerned relating to the granting or revoking of a licence or the attachment, amendment or deletion of conditions, and, where such directions are given, the authority shall, as soon as may be after receipt of the directions, comply with them.

The Bord must notify every party to an appeal of its decision, and every notification to persons other than a local authority must specify the nature of the decision, including any directions given to the local authority relating to the granting or revoking of a licence or the attachment, amendment or deletion of conditions.⁽⁷⁶⁾ There is

no obligation to give reasons for the decision or for the imposition of conditions (if any). A local authority must notify the holder of a licence when it complies with directions of the Bord.⁽⁷⁷⁾

In January 1982 An Bord Pleanála had 72 appeals on hand, 37 of which had been made in 1981. Six of the 37 were third party appeals - made mostly by Fisheries Boards.⁽⁷⁸⁾ There has been some conflict between local authorities and fisheries interests because of the allegedly lenient approach to water pollution control taken by the former.

5.4.8 Review and Revocation

Section 7 of the Act provides that licences will be subject to review at intervals of not less than three years. A licence may, however, be reviewed at any time with the consent of the person making the discharge or where the local authority has reasonable cause for believing that the discharge is a significant threat to public health or where there has been an unforeseen material change in the condition of the receiving waters. It must also be reviewed "as soon as is practicable" if standards are prescribed by the Minister for the Environment under s.26.

A local authority must give notice to the discharger and the public of intention to review a licence.⁽⁷⁹⁾ The notice must, inter alia, state that written representations relating to the review may be made within one month.⁽⁸⁰⁾ The discharger may be required to submit plans or other particulars necessary for the purposes of the review and these must be made available for public inspection at the local authority offices until the review or any appeal relating thereto is determined.⁽⁸¹⁾ If plans or particulars requested are not supplied within three months, the review may be completed without them.⁽⁸²⁾ Following the review, the local authority may amend or delete any condition attached to a licence or attach new conditions, and if appropriate, issue a revised licence.⁽⁸³⁾ Notice of the decision on the review containing, inter alia, information on the right to appeal the decision, must be given to the discharger and to any person who submitted written representations.⁽⁸⁴⁾

One of the factors which ought to mandate local authorities to review licences is the introduction of legally binding environmental standards by EEC Directives, so that, for example, a local authority

ought to review a licence if it permits the discharge of one or more of the dangerous substances in List 1 of EEC Directive 80/68/EEC on the protection of groundwater against pollution from certain dangerous substances. ⁽⁸⁵⁾

A licence may be revoked only where the licensee has been convicted of supplying false or knowingly misleading information as to a material fact in relation to an application for a licence. ⁽⁸⁶⁾

5.4.9 Charges for Discharges to Waters

Section 4(5)(d) of the Act empowers a local authority which grants a s.4 licence to charge for discharges to waters according to a method prescribed by the Minister under s.6(2)(e). As yet, the Minister has not made regulations prescribing any charging methods.

EEC Council Recommendation of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters ⁽⁸⁷⁾ recommended Member States to conform to the principles and rules in a Commission communication attached to the recommendation in order to, inter alia, implement the "polluter pays" principle. This recommendation has not been acted upon in Ireland. Proposals for charges for discharges to waters are currently being prepared in the Department of the Environment.

5.4.10 Water Quality Management Plans

Section 15 of the Act deals with water quality management plans. A local authority may make a water quality management plan for any waters situated in its functional area or which adjoins that area. Making a plan is mandatory if the Minister for the Environment so directs. Plans may cover any waters in or adjoining the functional area of the local authority but may include the sea only to the extent that the Minister, after consultation with the Minister for Fisheries, shall approve. Plans must contain such objectives for the prevention and abatement of water pollution and such other provisions as the local authority considers necessary. A plan may not contain any provision which is inconsistent with regulations made under s.26.

The procedure for making plans is contained in Part IV of the 1978 Regulations. Public notice must be given of intention to make a plan; the plan must be made available for public inspection for not less than

three months; written representations may be made by any person with respect thereto and copies of the plan, when made, must be made available for public inspection and for sale at a reasonable cost. Plans may be revised or replaced from time to time. Making, revising or replacing a plan is a reserved function. Copies of all current plans must be furnished to the Ministers for the Environment and Fisheries, to adjoining local authorities and to sanitary authorities and Fisheries Boards in the functional area of the local authority. The Minister has power to require a local authority to revise a plan and to require two or more local authorities to make a joint plan or to coordinate their plans as directed by him.

No water quality management plan has yet been made. An Foras Forbartha completed draft plans for the Barrow, Suir, Nore and Slaney in 1982 and is currently preparing a draft plan for County Cavan. In practice, plans are, sensibly, being prepared on a river catchment basis. Guidelines on the preparation of plans have been issued by An Foras Forbartha to all local authorities.

5.4.11 Enforcement

Provisions of the Water Pollution Act may be enforced by a number of authorities and, in some instances, by any person whether or not that person has an interest in the waters. Enforcement provisions deal with:

5.4.11.1 Contraventions of sections 3(1) and 4(1)

Local authorities, the Minister for Fisheries, Fisheries Boards and any private individual may prosecute in respect of breaches of sections 3(1) and 4(1) of the Act.⁽⁸⁸⁾ In addition, or alternatively, s.10(1) of the Act empowers the aforesaid Minister, Fisheries Boards and local authorities to apply to the District Court for an order directing the person named therein to mitigate or remedy any effects of a contravention of s.3(1) or s.4(1) in such manner and within such time as may be specified in the court order. Alternatively, s.10(5) empowers a local authority (only) to serve a written notice requiring the ceasing of the contravention of s.3(1) or s.4(1) within such period as may be specified in the notice and requiring the mitigation or remedying of any effects of the contravention within the period and in the manner specified.

In the event of non-compliance with a District Court order or on failure to comply with a notice under s.10(5), the section empowers the

local authority itself to take any steps it considers necessary to prevent the entry or discharge or to mitigate or remedy any effects of the contravention. It may also recover the cost of such steps from the person on whom the notice is served as a simple contract debt in a court of competent jurisdiction on satisfying the court that the person is responsible for the contravention. Non-compliance with a court order under s.10(1) is a criminal offence punishable on summary conviction by a fine not exceeding £250 together with a fine not exceeding £100 for every day the contravention is continued and/or six months' imprisonment. (89)

Section 11 of the Act provides that a local authority or any person may apply to the High Court where a contravention of s.3(1) or s.4(1) has occurred or is occurring and the Court may prohibit the continuance of the contravention and/or make such interim or interlocutory order or such order as to costs as it considers appropriate. In so far as can be ascertained there has never been an application to the High Court under this section.

In the period from January 1979 to June 1982 there were only 31 prosecutions for contravention of s.3(1) and none for contravention of s.4(1). Most of the prosecutions were brought against farmers or agriculture-related industries. No action was taken in that period under s.10.

5.4.11.2 Measures to prevent water pollution from premises.

Section 12 empowers local authorities in the interests of preventing or controlling water pollution, to deal with problems arising from the custody and storage of polluting matter on premises, an expression which includes land. (90) Notice may be served on the person having custody or control of such matter directing him to take specified measures considered necessary by the local authority to prevent polluting matter from entering waters.

If the notice is not complied with as and within the time specified, the local authority may take any steps it considers necessary to prevent the polluting matter from entering waters at the expense of the person on whom the notice was served. Non-compliance with a notice is an offence punishable on summary conviction by a fine not exceeding £250 together with a fine not exceeding £100 for every day the offence is continued. A prosecution may be brought by a local authority. In practice this section is the most widely used enforcement provision in the Act - 244 notices were served in the period January 1979-June 1982. The section is most frequently used against farmers.

The fact that this relatively lenient method of enforcement is most used is indicative of a political unwillingness to use more drastic enforcement measures. To some extent, this is understandable as experience has shown that persuasion is the most effective method of getting farmers to comply with the Act. There has never been a prosecution for non-compliance with these notices. Only the naive could conclude that all notices have been complied with.

5.4.11.3 Powers to prevent and abate pollution in cases of urgency.

Section 13 of the Act empowers local authorities to take such steps, carry out such operations or give such assistance as they consider necessary to prevent polluting matter entering waters, to remove such matter from the waters, to dispose of it as they think fit and to mitigate or remedy the effects of any pollution caused by the matter. This power may only be exercised if, in the opinion of a local authority, "urgent measures" are necessary to prevent pollution of any waters in its functional area, to remove polluting matter from waters in that area, or, while such matter is in waters outside that area, to prevent it from entering any part of that area. Expenses properly incurred by a local authority under s.13 are recoverable from the polluter.

This section gives a statutory basis for local authority involvement in clean-ups necessitated by oil spills and was partly motivated by this need. It can, of course, also be invoked in the event of other polluting substances entering waters or the sea. It is the only section in Irish legislation dealing - albeit obliquely - with civil liability for water pollution.

In the period January 1979 to December 1981 action was taken 50 times under this section but there are no reported cases of local authorities recovering expenses from polluters.

5.4.11.4 Accidental discharges.

Local authorities may prosecute any person who does not comply with the obligation under s.14 of the Act to notify them as soon as practicable after the occurrence of an accidental discharge, spillage or deposit of any polluting matter which enters or is likely to enter any waters. The penalty on summary conviction is a fine not exceeding £250.

There were 100 notifications of accidental discharges from January 1979-June 1982. No prosecutions were taken under this section.

5.4.11.5 Powers to require information with respect to abstractions and discharge.

Section 23 of the Act empowers a local authority to require the furnishing by any person who is abstracting water from or discharging effluent or other matter to any waters, of relevant information about the abstraction or discharge. Failure to give the required information within the time allowed or furnishing a written statement which is false or knowingly misleading in a material respect is an offence punishable on summary conviction by a fine not exceeding £100. The prosecution may be taken by a local authority.

5.4.11.6 Prosecutions.

All offences under the Act relevant to discharges to waters may be prosecuted by local authorities. Offences under sections 3 and 4 may, in addition, be prosecuted by Fisheries Boards, the Minister for Fisheries and any other person. Offences under s.10(1) may be prosecuted by Fisheries Boards and the Minister for Fisheries. However, since persons and bodies other than local authorities will not usually have access to monitoring records and have not powers under s.23 to require information on discharges made or being made, it is probable that their prosecuting role will be somewhat limited and confined principally to cases where pollution has actually occurred or where the person responsible for the pollution is a local authority.

Section 31 of the Act empowers a local authority to prosecute for an offence whether or not the offence occurred in (or in respect of waters in) the authority's functional area.

5.4.11.7 Incidental powers.

Section 28 of the Act provides the usual necessary powers of entry, inspection, etc. to authorised persons in relation to the performance of their functions under the Act. Of particular interest is the power of authorised persons to enter premises at any reasonable time in normal circumstances and at any time in cases of urgency where action is to be taken under s.13. However, entry to any premises or vessel used exclusively for residential purposes and entry with heavy equipment to any other land must, except where s.13 applies, be preceded by seven days written notice of intended entry.

Section 28(3) provides that there is a presumption that any sample of effluent taken by an authorised person at any inspection chamber or manhole

or other place provided under and in accordance with a licence under the Act is a sample of what was passing from the point-source concerned at the time the sample was taken.

Section 28(5) enables the Minister to make regulations on sampling, analysis, testing examinations and ancillary matters. The Minister has not yet made these regulations, though advice has been given to local authorities on these matters and methods of sampling and analysis have been prescribed in EEC Directives.⁽⁹¹⁾

Obstruction of an authorised person in the performance of his duty is an offence under s.28(4) punishable by a maximum fine of £250 and/or six months imprisonment. An authorised person is a person appointed by a local authority, the Minister for Fisheries or a Fisheries Board.⁽⁹²⁾

5.5 EMISSION AND WATER QUALITY STANDARDS

5.5.1 National Standards

The prescription of emission and water quality standards is fundamental to water pollution control. At present, the only mandatory emission and water quality standards in Ireland are those prescribed in EEC Directives applicable here. Irish legislation does not specify water quality or emission standards although s.26 of the Local Government (Water Pollution) Act 1977, empowers the Minister for the Environment to make regulations prescribing :

- (1) quality standards for waters, trade and sewage effluents, and
- (2) standards in relation to methods of treatment of such effluents.

If standards are prescribed under s.26 local authorities are prohibited from granting a licence in respect of the discharge of an effluent which would not comply with or which would result in the waters to which it is made not complying with those standards.⁽⁹³⁾ Furthermore, local authorities are obliged to review a licence "as soon as may be" when regulations are made under s.26 relating to an effluent the discharge of which is authorised by such a licence or when regulations are made prescribing quality standards for waters to which a licenced effluent is discharged.⁽⁹⁴⁾ Even exempted discharges must comply with standards prescribed under s.26.

The Minister has not yet made any regulations under s.26. National legislation therefore currently gives a complete discretion to water

pollution control authorities as to emissions and water quality standards which they may set. Nevertheless, quality and emission standards for various waters and effluent discharges do exist. Some of these consist merely of instructions sent by or on behalf of the Minister for the Environment to various water pollution control authorities. These are not legally binding. Others, having been prescribed by EEC Directives, are legally binding.⁽⁹⁵⁾

The Minister established a Technical Committee on Effluent and Water Quality Standards in 1976 to advise him "on technical aspects of quality standards for effluents and receiving waters or other related matters which he may refer to the Committee or which the Committee may consider relevant."⁽⁹⁶⁾ To date the Committee has only issued one document, Memorandum No.1 Water Quality Guidelines 1979, which was intended to provide local authorities with guidelines on water and effluent quality for their assistance in dealing with development proposals which may affect water quality. The guidelines were expressly confined to recommending quality objectives for the protection of fisheries and of man in so far as he consumes water or the fishery resources therein.

The Committee shared a general preference for the environmental quality objectives approach to water quality management over the uniform emissions standards approach. The former approach allows the discharge of pollutants to waters provided quality objectives for those waters are not infringed; the latter requires uniform emission standards for all discharges regardless of the assimilative capacity of the receiving waters.

The Memorandum recommends emission quality and treatment standards and lists appropriate literature in respect of a number of pollutants. These standards consisted of:

- (1) quality objectives for receiving waters for ammonia, DO and BOD, nitrate, oil and grease, suspended solids, temperature;
- (2) water quality objectives for cadmium, chlorine, chromium, copper, cyanide, fluoride, lead, silver, manganese, mercury, nickel, nitrate, pH, phenol, sulphate, sulphite and zinc;
- (3) general guidelines for effluent discharges not exceeding BOD₅ loading of 100 lbs/day;
- (4) standards for discharges of sewage from large urban areas;
- (5) standards for phosphorous loading of lakes, and phosphate removal from sewage and industrial effluents discharged to eutrophic lakes;

- (6) recommendations for the disposal of industrial effluent waters;
- (7) requirements that up to six months' storage for animal manures be provided by farmers and that slurry should not be disposed of by land spreading in fine weather from April to November. A general standard of not more than 44m^3 /hectare (3,800 gallons per acre) of slurry per dressing was recommended;
- (8) recommendations that silage be made on an impermeable surface with provision for collection and disposal of leachate.⁽⁹⁷⁾

The Committee stated that objectives should be regarded as minimal standards and that they should be reviewed as necessary.⁽⁹⁸⁾

The Committee's recommendations are of course merely guidelines and have no statutory force. It appears that local authorities have not taken the Committee's recommendations very seriously. In 1983, the Minister for the Environment felt obliged to write to local authorities complaining about "the serious lack of uniformity of approach to setting licence conditions" and pointing out that :

there is considerable variation in standards set for individual discharges in the same industrial sector as well as wide differences in the application of the environmental quality objectives approach to receiving waters having broadly the same beneficial uses.⁽⁹⁹⁾

5.5.2 EEC Standards

The relevant Directives have been implemented, or allegedly implemented, by circular letters. The Minister for the Environment apparently considers existing Irish law adequate for their implementation. This is not, as will be illustrated, quite so. It should also be noted that the most appropriate method of implementing EEC emission and water quality standards (i.e. by regulations made under s.26 of the 1977 Act) has not been chosen. This is presumably because the obligations in the Directives apply mainly to public authorities.

The remainder of this subsection will briefly describe the main provisions of the relevant Directives and the extent to which they have been implemented in Ireland.

5.5.2.1 Dangerous substances Directive 76/160/EEC on pollution caused by certain dangerous substances discharged to the aquatic environment of the Community.⁽¹⁰⁰⁾

This Directive requires Member States to eliminate pollution by dangerous substances in List I of the Annex (the Black List) and to reduce pollution by dangerous substances in List II of the Annex (the Grey List) (article 2). Discharges of Black List substances must be subject to prior authorisation and subjected to emission standards (article 5). Limit values for these emission standards are to be prescribed by the EEC Council (article 6). In fact the only limit values prescribed to date are those prescribed in respect of discharges of dangerous substances to groundwaters, described below, and those in Directive 82/176/EEC on limit values and quality objectives for mercury discharges by the chlor-alkali industry⁽¹⁰¹⁾ which was adopted in July 1982 and which is not yet binding in Ireland. Emission standards for List II substances must be prescribed by national authorities in accordance with quality objectives laid down in a programme for the reduction of pollution (article 7).

The Minister for the Environment did not consider new legislation necessary to implement this Directive on the basis that the Local Government (Water Pollution) Act 1977, and the Dumping At Sea Act 1981, provide the necessary powers to achieve the objectives of the Directive.⁽¹⁰²⁾ Water pollution control authorities were advised to comply with the Directive in Memorandum No.1 - Water Quality Guidelines.⁽¹⁰³⁾ Ireland agreed to comply with uniform emission standards or Community values to be adopted by the Council of Ministers as envisaged in the Directive. The limit value for discharges of List I substances to groundwater was set at zero emissions pending the adoption of what is now Directive 80/68/EEC on the protection of groundwaters against pollution from certain dangerous substances.⁽¹⁰⁴⁾

In fact, while the provisions of the Local Government (Water Pollution) Act 1977 (particularly sections 4, 16 and 26) and of the Dumping At Sea Act 1981 (particularly s.3), could ensure some respect for the provisions of Directive 76/160/EEC, they cannot be used to require the prior authorisation of discharges of dangerous substances by local and sanitary authorities because discharges of trade and sewage effluents by these bodies are exempted from licensing requirements. Furthermore although regulations under s.26 of the 1977 Act could prescribe quality and emission standards

as required by the Directive, these regulations have never been made. There is no express prohibition in the Dumping At Sea Act 1981 on discharges of List I substances.

Irish authorities have not yet established programmes for the control of List II substances as required by article 7 of the Directive, nor drawn up an inventory of discharges which may contain List I substances as required by article 11. But water quality standards for some of the Gray List substances and emission standards for Black List substances have been recommended in Memorandum No.1 Water Quality Guidelines.⁽¹⁰⁵⁾

5.5.2.2 Drinking Water

National Controls.

Under s.74 of the Public Health (Ireland) Act 1878, statutory responsibility for ensuring the provision of drinking water fit for human consumption rests primarily with sanitary authorities who have a general power under s.61 of that Act to supply their districts with "a supply of water proper and sufficient for public and private purposes," and who are specifically obliged under s.65 to provide and keep in waterworks belonging to them a supply of "pure and wholesome water." Under s.78 they may take proceedings to prevent pollution of waterworks within their jurisdiction from sewage, and under s.79 they may, on receipt of a complaint that potable water is so polluted as to be injurious or dangerous to health, seek a court order to eliminate such danger. Where a sanitary authority is empowered to take water from any source, it has the same rights of preventing interference with the flow and pollution of the water as has the riparian owner.⁽¹⁰⁶⁾ The duty to provide a sufficient and wholesome water supply can be enforced (even by a private individual) in the manner provided for in s.15 of the Public Health (Ireland) Act 1896.⁽¹⁰⁷⁾

Where a public water supply system has been provided, sanitary authorities may in certain circumstances require the connection therewith of any premises not provided with a satisfactory water supply.⁽¹⁰⁸⁾ Section 61 of The Waterworks Clauses Act 1847, prohibits the contamination of any stream or reservoir used as a public water supply, or any aquaduct or other part of the supply system. The penalty is £1 for each day that the offence continues. Section 17 of the Waterworks Clauses Act 1863, provides that it is an offence for any person to wilfully or negligently cause or suffer "any pipe valve, cock, cistern, bath, soil-pan, watercloset, or other apparatus or receptacle to be out of repair, or to be so used or

contrived" as to cause the water supplied by the sanitary authority to be wasted, misused, unduly consumed or contaminated or so as "to occasion or allow the return of foul air, or other noisome or impure matter" into any pipe belonging to a sanitary authority. Every such offence is punishable by a fine not exceeding £5. Section 16 of the same Act permits the sanitary authority to cut off the water supply to anybody who fails in certain circumstances to prevent it being contaminated. These sections were incorporated into the Public Health (Ireland) Act 1878, by s.67 thereof.

The statutory powers of sanitary authorities in relation to drinking water sources have been greatly strengthened by the enactment of the Local Government (Water Pollution) Act 1977. The definition of "polluting matter" in s.1 of that Act includes "matter rendering waters harmful or detrimental to public health or to domestic ... uses." This includes rendering drinking waters unfit for such use. The provisions of the Act can be used to ensure the protection of drinking water against pollution. Section 27 of the Local Government (Sanitary Services) Act 1948, empowers sanitary authorities to take samples of water from any water supply (public or private) for the purpose of analysis and provides that the sanitary authority must take all reasonable steps to warn water users when water is found to be "unfit for human consumption."

There are no statutory quality standards for the "pure and wholesome water" which sanitary authorities are obliged to provide and keep in their waterworks. In practice, sanitary authorities seek to comply with recommendations of the World Health Organisation on the selection and treatment of drinking water sources. Since 1977 however certain quality standards for various kinds of drinking water having become mandatory under various EEC Directives.

EEC Directives.

The EEC Directives relevant to drinking water quality are:

- (i) Directive 75/440/EEC concerning the quality of surface water intended for the abstraction of drinking water in the Member States. ⁽¹⁰⁹⁾
- (ii) Directive 80/68/EEC on the protection of groundwater pollution from certain dangerous substances; ⁽¹¹⁰⁾

- (iii) Directive 80/777/EEC relating to the quality of water intended for human consumption;⁽¹¹¹⁾
- (iv) Directive 80/777/EEC on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters;⁽¹¹²⁾ and
- (v) Directive 79/869/EEC concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States.⁽¹¹³⁾

The time limits for compliance with all of the above Directives except (iii) (which must be complied with by July 1985) have now expired.

- (i) Directive 75/440/EEC on surface waters and Directive 79/869/EEC on methods of measurement and frequencies of sampling and analysis.

Directive 75/440/EEC prescribes quality requirements which surface fresh waters used or intended for use in the abstraction of drinking water for public water supplies must meet. Article 2 divides surface waters into three categories, A1, A2 and A3, depending upon the appropriate standard methods of treatment which are determined with respect to the physical, chemical and microbiological characteristics of the waters: individual parameters (46 in all) are prescribed for the three categories in Annex II. Some of these parameters are mandatory (I values) and some are guidelines which must be respected (G values).

Article 3 requires Member States :

- (i) to set for all or individual sampling points the values applicable to surface waters for all the parameters listed in Annex II (these may not be less stringent than the I values in Annex II), and
- (ii) to respect G values given in Annex II.

Article 4 requires Member States to "take all necessary measures" to ensure compliance with the Directive's quality standards and to ensure the continuing improvement of surface waters. To this end they are obliged to draw up a systematic plan of action (including a timetable) especially for A3 waters, and to submit same to the EEC Commission. Waters which are classified as A3 and which do not meet the I values for these waters may not be used for the abstraction of drinking waters except in exceptional circumstances which must be notified to the Commission.

Article 5 provides that the quality standards will be met if a defined percentage of samples taken at regular intervals comply with the prescribed parametric values. The frequency of sampling and analysis was left to Member States pending the adoption of a Community policy on the matter. The Community policy is expressed in Directive 79/869/EEC concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States.

Article 6 enables Member States to fix values more stringent than those in the Directive. The remaining articles deal with circumstances in which the Directive may be waived, revision to Annex II and incidental matters.

This Directive has considerable implications for sanitary authorities in Ireland. Most drinking water in Ireland (approximately 90%) is abstracted from some 700 surface water sources. Irish authorities consider existing law adequate to meet the requirements of the Directive relying specifically on sections 61 and 65 of the Public Health (Ireland) Act 1878, and the Local Government Water Pollution Act 1977. Three circular letters and a memorandum were sent to all sanitary authorities instructing them to implement the Directive.⁽¹¹⁴⁾ The quality standards in Annex II were adopted as national values in the 1977 circular. No systematic plan of action has been drawn up for the improvement of surface waters although each sanitary authority was requested to prepare local plans. The Department of the Environment does not consider that an action plan for A3 waters is an urgent priority because only a small amount (estimated at 7.5 per cent) of surface waters come within this category. It is envisaged that water quality management plans will fulfil this function when they are adopted.

Sanitary authorities have been required by circular to implement Directive 79/868/EEC concerning methods of measurement and frequencies of sampling and analysis of surface waters. National values which are more stringent than those in the Directive have not been set. The Department has decided to apply the Directive to public water supply schemes serving a population of 3000 or more and not to smaller schemes.⁽¹¹⁵⁾

(ii) Directive 80/68/EEC on the protection of groundwaters against certain dangerous substances.

The purpose of this Directive is to prevent groundwater pollution by

List I and List II substances and to check or eliminate pollution by these substances which has already occurred. Articles 3(c) and 4 of the Directive require the total prohibition of all direct discharges to groundwater of List I substances; the subjection to prior investigation and authorisation of any disposal or tipping of List I substances which might lead to indirect discharges and the taking of all appropriate measures to prevent any other indirect discharges of these substances. The discharge, subject to prior authorisation, of List I substances to permanently unusable groundwater is permissible.

The effect of articles 3(b) and 5 is that direct and indirect discharges of List II substances are subject to prior investigation and authorisation as well as requirements that all technical precautions be taken for the prevention of groundwater pollution.

Investigation requirements and authorisation conditions are set out in Articles 7-10. Article 11 states that authorisation may only be granted for a limited period; that they must be reviewed at least every four years and that they may be reviewed, amended, or withdrawn. Authorisations must be refused if the person seeking them is unable to comply with conditions prescribed or if it is evident that he is unable to comply with them (article 12(1)). Appropriate steps (and if necessary withdrawal of the authorisation) must be taken by competent authorities to ensure that conditions in authorisations are complied with (article 12(2)).

Existing discharges must comply with the Directive within four years of 17 December 1981 or such lesser period as is stipulated by competent authorities (article 14). Competent authorities are required to keep inventories of discharges of List I substances and of authorisations granted and to supply specified information on the implementation of the Directive to the EEC Commission, if requested (articles 15 and 16). Provision is made in article 20 for the revision and extension of substances in the Lists.

This Directive has been allegedly implemented by circular letter,⁽¹¹⁶⁾ Local authorities have been informed of the requirements thereof and instructed to ensure that it is complied with. The Department of the Environment considers existing law adequate to meet the requirements of the Directive relying specifically on the Local Government (Water Pollution) Act 1977, the European Communities (Waste) Regulations 1979,⁽¹¹⁷⁾

and the European Communities (Toxic and Dangerous) Waste Regulations 1981. ⁽¹¹⁸⁾

Existing law is not in fact adequate to meet the requirements of the Directive. There is no provision in the Water Pollution Act or in the 1979 and 1981 Regulations whereby authorisations granted under these measures may be withdrawn as may be necessary to comply with article 12 of the Directive. ⁽¹¹⁹⁾ The grounds for reviewing a licence under the 1977 Act do not include the coming into effect of EEC water quality or emission standards though they do include the making of national quality or emission standards. ⁽¹²⁰⁾ Many local authorities are not subjected to the prior authorisation requirements of the 1977 Act or the 1979 or 1981 Regulations so that there can not be authorisations of their direct or indirect discharges of dangerous substances to groundwaters. The exemptions from the requirements of the 1979 and 1981 Regulations include wastes which are liable to cause groundwater pollution by substances listed in the Annex.

The Department of the Environment in conjunction with the Geological Survey of Ireland (Groundwater Division) is preparing an aquifer protection policy to ensure that, inter alia, groundwaters used extensively as a source of drinking water are not polluted. ⁽¹²¹⁾

(iii) Directive 80/777/EEC relating to the quality of water intended for human consumption.

This Directive prescribes quality standards, methods of testing and monitoring requirements for waters in both public and private water supplies which are intended for human consumption, regardless of the origin of the waters. It also applies to waters used in foodstuffs where they affect the wholesomeness of the foodstuff in its finished form.

Article 3 requires Member States to apply the standards in Annex I and the monitoring regimes in Annex II to all water supplies. The requirements in Annex I are minimum requirements. Water standards are dealt with in articles 7-11(inclusive), 16, 20 and Annex I. Monitoring requirements are prescribed in article 12 and Annexes II and III and provision is made for future technical adaption of the Directive in articles 13-15 inclusive. Exemptions, derogations and departures from the Directive are provided for in articles 4, 9 and 10 respectively subject, in some cases, to the Commission being informed.

Member States are required by article 18 to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive and its Annexes by 15 July 1982 but article 19 provides that compliance with the Directive is not mandatory until 15 July 1985. The Minister for the Environment has instructed sanitary authorities to implement this Directive by circular letter.⁽¹²²⁾ The Minister considers that the powers of sanitary authorities under s.65 of the Public Health (Ireland) Act 1878, s.27 of the Local Government (Sanitary Services) Act 1948, and the Local Government (Water Pollution) Act 1977, are adequate to ensure compliance.

(iv) Directive 80/777/EEC on the approximation of the laws of the Member States relating to the exploitation and marketing of natural mineral waters.

This Directive defines the procedure for taking samples and the methods of analysis necessary to check the composition of natural mineral waters.

Article 2 provides that only mineral waters (as defined in article 1) which comply with the Directive may be marketed as natural mineral waters. Article 3 provides that natural mineral water springs may be exploited and their waters bottled only in accordance with Annex II. Articles 4 and 5 deal with the treatment and colony counts of natural mineral waters. Article 6-10 inclusive contain packaging and labelling requirements. Article 11 prescribes sampling procedures and methods of analysis.

Action has not yet been taken to implement this Directive.

5.5.2.3 Fishing Waters

Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life.

This Directive seeks to preserve and protect the quality of fresh waters supporting fish life. The combined effects of articles 1, 2 and 4 is that Member States must designate waters to comply with physical and chemical parameters listed in Annex I. For the purposes of applying these parameters waters are divided into salmonoid and cyprinid waters. Article 3 requires that national limit values (NLV's) be prescribed by Member States for designated waters as provided in Annex I: these may not be less stringent than values listed in column I of Annex I and in setting values respect must be given to the values in column G. Article

5 requires Member States to establish pollution reduction programmes and to ensure that designated waters conform to NLV's and the comments contained in column G and I of Annex I within five years of designation.

Competent authorities are required to set up sampling programmes in accordance with article 7(4). The minimum frequency of sampling operations is set out in Annex I. Article 7(4) allows less frequent or no sampling in certain cases. Article 11 provides for derogations from the Directive. Articles 12-14 inclusive provide for adaptation of the Directive to scientific and technical progress. Member States are required by article 15 to provide the EEC Commission with certain specified information and article 16 requires the submission of a detailed report to the Commission on designated waters and the basic features thereof within five years of designation and at regular intervals thereafter.

Irish authorities considered the powers in the Local Government (Water Pollution) Act 1977, adequate to meet the legal requirements of this Directive. It was implemented administratively by circular letters. (123) The following rivers have been designated for compliance with the provisions of the Directive: the river Moy and tributaries except the Tubbercurry River, Blackwater, Lough and River Corrib, Fergus, Feale, Swilly, Finn, Nore, Slaney, Lee (above Cork City Waterworks), Boyne, Darle, Vartry, Aherlow, Bride, Arigideen, Brown, Flesk, Maine, Lurgay, Glashagh, Lennon and Maggisburn

The Minister for the Environment has not yet prescribed NLV's but local authorities have been instructed by circular to regard the I values for salmonid waters (as in Annex I) as NLV's and to be guided by the G values where no I values are given. (124) The same circular also requested local authorities to prepare annual reports on sampling results and to forward them to the Department of the Environment. The first annual report is to be submitted by October 1983.

Programmes of Action as required by article 5 of the Directive have not yet been prepared. Procedures for establishing the causes of non-compliance with the quality requirements of the Directive as envisaged by article 7(3) have not been established. It should be noted that nearly all of the designated rivers are rivers which have not been identified as suffering from pollution with the result that compliance with the Directive will be relatively easy for Ireland.

It is difficult to justify the failure to implement the Directive by regulations under s.26 of the Local Government (Water Pollution) Act 1977.

Directive 79/923/EEC on the quality required of shellfish waters.

The implementation of this Directive will be described in section 7.

5.6 OFFENSIVE TRADES

It is an offence under s.127 of the Public Health (Ireland) Act 1878 to establish within the district of any urban authority without written consent, any offensive trade. The following trades are offensive trades for the purposes of s.128 - the trade of bloodboiler, bone boiler, gut manufacturers and any other noxious or offensive trade, business or manufacture ejusdem generis with those specified.⁽¹²⁵⁾ The maximum penalty for establishing a trade without the required consent is £50 plus £2 for each day on which the offence is continued.⁽¹²⁶⁾ The specified trades all involve accumulations of animal matter.

Urban authorities are empowered to declare a business an offensive business⁽¹²⁷⁾ and are required by s.129 to make bye-laws to "prevent or diminish the noxious or injurious effects thereof." Under s.130 if an urban authority medical officer or two medical practitioners or ten inhabitants of an urban district certify that an offensive trade is a nuisance or injurious to the health of the inhabitants of the district, the urban authority must complain of the nuisance to the District Court which has powers to fine the offender (£5 for a first conviction but further penalties of up to £200 may be imposed for subsequent convictions) unless he can prove that he used the best practicable means for abating the nuisance or counteracting any effluvia which is a nuisance or injurious to health.⁽¹²⁸⁾

5.7 AGRICULTURAL EFFLUENTS

The significance of agricultural effluents as the third most important source of pollution merits treating them under a separate heading. It is estimated that 87 per cent of generated waste loads (as B.O.D.) from all sectors is caused by the agricultural sector and that the vast

majority of the pollution incidents involving fish kills and contaminations of water supplies can be attributed to wastes of agricultural origin. (129)

The use of land for the purposes of agriculture or forestry is exempt from planning control under s.4 of the Local Government (Planning and Development) Act 1963. (130)

The carrying out of works for agricultural purposes is not exempted development within the meaning of s.4(1) but the effect of article 10 and Part III of the Third Schedule to the Local Government (Planning and Development) Regulations 1977, is that planning permission is not required for the construction of certain agricultural buildings in rural areas (i.e. areas other than county boroughs, boroughs, urban districts and towns specified in the First Schedule to the 1963 Act) provided such developments comply with certain limitations and restrictions specified in the relevant columns of Part III of the Schedule and provided restrictions on exempted development specified in Article 11 of the 1977 Regulations are observed. (131)

The exempted buildings include almost all kinds of buildings for housing livestock and other farm animals, milking parlours, sheep dipping units, silage storing structures and any ancillary provision for effluent storage. (132) The two main restrictions on these developments relevant to water pollution control are that:

- (1) they may not exceed 400 square metres in floor area whether or not by extension of an existing structure, and
- (2) they must not be situated within 100 yards of a dwelling house without the consent of the owner and the occupier. (133)

These are significant exemptions because it is possible, for example, to house 5000 pigs in a building having a floor area of less than 400 metres. It is also arguable that there is nothing to prevent the construction (without planning permission) of several adjacent buildings none of which has a floor area exceeding 400 square metres.

Other "works" exempted in s.4 of the 1963 Act are works carried out under the Land Reclamation Act 1949. Such works consist of field drainage and the construction and improvement of watercourses. Work relating to the construction or maintenance of any gully pond, pond trough, pit or culvert, the widening or deepening of watercourses, the removal of

obstructions from watercourses and the making and repairing of embankments are also exempted under Part III of the Third Schedule to the 1977 Regulations.

Accordingly, as the Interdepartmental Committee on Pollution Control pointed out:

the Act does not offer appropriate means to deal with pollution or other effects detrimental to the environment resulting from fertiliser run-off, chemical, seed dressings, herbicides, insecticides and silage making operations.⁽¹³⁴⁾

Neither does the Local Government (Water Pollution) Act 1977 provide the best methods of controlling agricultural effluents. Agricultural effluents are not normally discharged directly to waters or sewers through point sources (though many could be) and are thus not licensible under sections 4 and 16 of that Act.⁽¹³⁵⁾ It is arguable that the spreading of manure slurries on land by means of mechanical devices could be construed as an activity requiring licensing because they are effluents from an apparatus which may enter aquifers and may thus qualify as the discharge of a trade effluent.⁽¹³⁶⁾

The Technical Committee on Effluent and Water Quality Standards has recommended treatment methods for animal manures and silage but has stated that "at the present time, it is not economically practicable to treat animal manures or silage effluent to a degree which would allow discharge to waters under licence."⁽¹³⁷⁾

In other respects, however, provided they come within the definition of "polluting matter" in s.1 of the Water Pollution Act, agricultural effluents must be treated identically to other polluting effluents. In practice, legal control over pollution by agricultural effluents (other than run-off) is exercised under s.12 of the Act, which empowers local authorities to require specified steps to be taken to prevent polluting matter entering waters from premises (e.g. silos, livestock housing, slurry tanks, dungsteads).⁽¹³⁸⁾

The disposal of animal carcasses and agricultural waste comprising faecal matter or substances used in farming is exempted from the provisions of the European Communities (Waste) Regulations 1977.⁽¹³⁹⁾

The reality of environmental control over pollution by agricultural activities, however, is that the primary and probably the most effective

controls are extra-legal. Farmers are eligible for substantial grant-aids from the Department of Agriculture when carrying out agricultural developments. The scheme under which these grant aids are administered is known as the Farm Modernisation Scheme. Approvals for grant aids will only be given where planning permission has been granted for the proposed development or where the conditions for exemption from the necessity to apply for planning permission are clearly satisfied. In issuing approvals for grant aids, account is taken of the necessity for pollution control, and conditions are attached where necessary, to safeguard against the possibility of pollution from animal wastes. Guidelines on appropriate conditions are contained in a book entitled Guidelines and Recommendations on Control of Pollution from Farm Wastes⁽¹⁴⁰⁾ circulated by the Department of Agriculture, the purpose of which is to set out a basis for the application of uniform guidelines and recommendations on pollution control pertaining to animal buildings and other water-producing structures on the farm and to suggest appropriate minimum standards or conditions on which payment of grant aid should, for the future, be offered under the Farm Modernisation Scheme in respect of such structures. The guidelines are flexible and provision is made for deviation from them where the circumstances pertaining to any particular development justify stricter or more lenient controls. There is, however, nothing to prevent a sufficiently motivated farmer from avoiding any constraints imposed by the administrators of the Farm Modernisation Scheme provided he is willing to forego the grant-aid.

While it is customary for conditions attached to grant-aids to require the provision of water pollution control appliances and structures, there are no requirements or penalties for failure to maintain and use them.

Advice on all aspects of pollution control relevant to farming activities is available to farmers through the Agricultural Advisory Service.⁽¹⁴¹⁾ The Water Pollution Advisory Council and the Minister for the Environment have also given advice to farmers from time to time in booklets and through the media on good farming practice for silage making.

Water pollution from farm wastes is particularly serious in the Cavan/Monaghan areas where there are large numbers of intensive pig rearing units. Most of these were built without planning permission. In 1981 a pilot scheme was established to provide grants for the removal of pig

slurries from Lough Sheelin because the lake there was seriously polluted.

Pollution from agricultural activities has now reached the stage where a review of the exemptions which farmers enjoy under the Local Government (Planning and Development) Act 1963 is long overdue. ⁽¹⁴²⁾ A code of practice should be published on good agricultural practices on the disposal of farm wastes, compliance with which should be a defence to a prosecution under s.3(1) of the Local Government (Water Pollution) Act 1977. Regulations on the disposal of farm wastes from intensive life-stock units might be a first step in controlling pollution from these sources.

5.8 WATERBORNE CRAFT

Controls over pollution of inland waters by waterborne craft are exercisable under the Local Government (Water Pollution) Act 1977, s.27 of which empowers the Minister for the Environment, after consultation with the Minister for Transport, the Commissioners of Public Works in Ireland and the Water Pollution Advisory Council, to make regulations enabling local authorities :

to prohibit, restrict or regulate the keeping or use in such waters (other than tidal waters) as may be specified in the regulations, of vessels with sanitary appliances from which polluting matter passes or can pass into the waters.

Sanitary authorities are empowered by s.27(2) to provide facilities for the reception and disposal of sewage from vessels and to impose fees or other charges for the use of such facilities. Contravention of any regulation is an offence punishable on summary conviction by a fine not exceeding £250 together with a further fine of £100 for every day on which the contravention is continued. Prosecutions under s.27 may be taken by a local authority. Regulations have not yet been made under s.27. Causing or permitting entry of polluting matters to water other than tidal waters (whether from waterborne craft or otherwise) is an offence under s.3(1) of the Act and may also be an offence under various other statutes penalising pollution described in this section.

5.9 MISCELLANEOUS

A number of provisions in various statutes of little general importance from the point of view of water pollution control also prescribe penalties for causing water pollution. These include s.47 of the Public Health Acts Amendment Act 1890, which prohibits the throwing of cinders, ashes, bricks, stones, rubbish, dust, filth or other matter likely to cause annoyance into any river, stream or watercourse. The penalty is a fine not exceeding £2. Section 4 of the Alkali etc. Works Regulations Act 1906, prohibits the discharge of alkali waste into waters or otherwise "without the best practical means being used for effectually preventing any nuisance from arising therefrom." The penalty is £20 for a first offence and £50 plus £5 for each day a subsequent offence continues. Section 42 of the Electricity (Supply) (Amendment) Act 1945, prohibits any person from discharging or allowing to escape into a river or stream serving electricity generating stations any chemical or other substance likely to injure part of the generating station or any subsidiary or connected works without the written permission of the Electricity Supply Board and compliance with conditions attached to such permission. Contravention entails a £50 fine, plus £20 for each day on which the offence is continued.

5.10 INDIVIDUAL RIGHTS

At common law, an individual may have rights to sue in negligence, nuisance, trespass or under the rule in Rylands v. Fletcher for injury to his interests caused by water pollution. There are, however, limitations on the usefulness of these actions as anti water pollution devices⁽¹⁴³⁾ and the common law itself has developed specific remedies whereby riparian owners (i.e. the owners of land in actual and reasonably proximate contact with a watercourse) have specific rights to ensure that water is not polluted.⁽¹⁴⁴⁾ The riparian concept bases the right to use water on the ownership of land which touches the water. If a lake is involved, the word "littoral" is sometimes used instead of riparian.

The riparian owner on a natural watercourse flowing in a known and defined channel, either subterranean or on the surface, has a proprietary right to have the water flow past his land "without sensible alteration in its character or quality."⁽¹⁴⁵⁾ Therefore if waters which a riparian

owner is entitled to use are polluted, he may sue the polluter. At common law, pollution means adding anything to water which changes its natural qualities: the expression includes raising the temperature of water,⁽¹⁴⁶⁾ adding hard water to a soft water stream,⁽¹⁴⁷⁾ and discharging sewage and refuse from a factory.⁽¹⁴⁸⁾ Proof of actual damage is not required: it is sufficient to prove that the right to receive water in its natural state has been infringed.⁽¹⁴⁹⁾ The rights of riparian owners do not apply where underground water flows in a defined but unknown channel or where water merely percolates through the soil but an action for nuisance may lie instead: in one case a landowner was successfully sued for nuisance when he polluted his land so that water percolating from it to his neighbour's land was polluted.⁽¹⁵⁰⁾ The owner or grantee of fishing rights may also sue in respect of injury to his rights caused by water pollution.⁽¹⁵¹⁾

There are also a number of statutory remedies which the individual can assert in respect of water pollution. Under the Public Health (Ireland) Act 1878, an individual may require his sanitary authority to take action against a statutory nuisance or he himself initiate a prosecution for such a nuisance.⁽¹⁵²⁾ Any individual may seek an order under s.27 of the Local Government (Planning and Development) Act 1976, prohibiting an unauthorised development causing water pollution or enforcing water pollution control conditions attached to a planning permission.⁽¹⁵³⁾ Any individual may prosecute for breach of sections 3 and 4 of the Water Pollution Act and appeal a decision on a licence under s.8 of the Act.⁽¹⁵⁴⁾ Under s.11 of the Act, any person, whether or not he has an interest in the waters, may seek a High Court order prohibiting the continuance of a contravention of sections 3(1) and 4(1) of the Act. The probability of individual enforcement of the Water Pollution Act is greatly impeded by

- (1) the fact that local authorities have no obligation to make the licence application and accompanying documents publicly available after the final decision is taken on the licence, and
- (2) the individual has no right in law or in practice to inspect monitoring records.

In so far as can be discovered no individual has pursued a statutory remedy for water pollution control in recent years. In 1982, in Berkery v. Flynn,⁽¹⁵⁵⁾ the plaintiff recovered £4500 damages for nuisance

consisting of the contamination of his well by pollutants coming from the overflow at the defendant's slurry pit and/or from the outwintering unit on the defendant's land.

5.11 MONITORING

The Local Government (Water Pollution) Act 1977, contains extensive and wide-ranging provisions for the monitoring of all waters (inland or sea) and discharges of effluents to waters. The following table, adapted from a Report on Monitoring Industrial Pollution, published by the Institute for Industrial Research and Standards, ⁽¹⁵⁶⁾ is a summary of the monitoring provisions in the Act.

Table 5.11.		
PURPOSE AND EMPOWERING SECTION	FORM	MONITORING AGENCY
<p><u>Section 3.</u></p> <p>To ensure compliance with the general prohibition on the entry of polluting matter other than trade or sewage effluent to waters.</p>	<p>Inspection, investigation, or sampling to determine if an unauthorised discharge has taken place or is taking place.</p>	<p>LA FB MF AN</p> <p>Note: AN may not enter a premises for monitoring purposes unless authorised by SA, LA, FB, MF or DOE to do so.</p>
<p><u>Sections 4, 16</u></p> <p>To ensure compliance with the conditions attached to a licence to discharge effluent</p>	<p>(a) Measurement of the nature, composition, temperature, volume rate, and time of discharge. (b) Inspection of the method of treatment and location of discharge. (c) Monitoring the effect of a discharge on the receiving waters (d) Checking on the design and construction of outlets for a discharge.</p>	<p>D LA SA FB MF AN</p> <p>Note 1: AN may not enter a premises for monitoring purposes without authorisation as noted above.</p>

TABLE 5.11 (contd.)

PURPOSE AND EMPOWERING SECTION	FORM	MONITORING AGENCY
Sections 4, 16 (contd.)	<p>(e) Providing or checking on the provision and maintenance of meters, gauges, other apparatus, manholes and inspection chambers.</p> <p>(f) Taking and analysis of samples, keeping of records and providing information to the local authority.</p>	<p>Note 2: An industrialist may be required by licence conditions to pay for or contribute towards the cost incurred by a local authority in monitoring a discharge.</p>
<p><u>Section 22</u></p> <p>For the LA or SA to carry out any of its functions under the Act (General Monitoring provision).</p>	<p>(a) Any monitoring, sampling measurements or analysis of waters, effluents and other matter, which the LA or SA considers necessary.</p> <p>(b) Collecting any information the LA or SA consider necessary for performing its functions under the Act.</p> <p>(c) Providing meters, gauges, manholes or any other apparatus for any of the purposes of this section.</p>	<p>LA SA</p>
<p><u>Section 23.</u></p> <p>For any purpose relating to the functions of an LA or SA under the Act.</p>	<p>Obtaining and supplying in writing to the LA or SA any details regarding an abstraction or discharge sought in a notice from the Authority.</p>	<p>D LA SA</p>
<p><u>Section 26.</u></p> <p>In the case of sewage effluents or waters to which such effluents discharge, to ensure that the discharge complies with any relevant water or effluent standard prescribed by the Minister of the Environment under this section.</p>	<p>Sampling and analysis of sewage effluents and receiving waters.</p>	<p>SA</p>

TABLE 5.11 (contd.)

PURPOSE AND EMPOWERING SECTION	FORM	MONITORING AUTHORITY
<p><u>Section 27</u></p> <p>To enable the LA to prohibit, restrict, to regulate water pollution by sewage from boats</p>	<p>Inspection of sewage disposal systems in boats in non-tidal waters</p>	<p>LA</p>
<p><u>Sections 6,19</u></p> <p>To provide specified information or evidence to verify any information given by the applicant for a licence.</p>	<p>A special or short-term survey or investigation of a discharge, probably involving some flow measurements, sampling and analysis</p>	<p>D</p>
<p><u>Sections 7, 17</u></p> <p>To provide information required in connection with a licence review, e.g. to establish whether the discharge is a significant threat to public health, or if a material change has taken place in the receiving water</p>	<p>(a) Investigation of whether an effluent is a threat to public health: possibly toxicity tests. (b) Review of receiving water conditions to determine if there is any recent significant change</p>	<p>D LA</p>
<p><u>Section 12</u></p> <p>To determine whether a person has the custody or control of any polluting matter which should be prevented from entering waters</p>	<p>Inspection of premises for matter which may pose a risk of water pollution</p>	<p>LA SA</p>
<p><u>Section 14</u></p> <p>To identify and control accidental discharges</p>	<p>Checking for occurrence of accidental discharges</p>	<p>D LA SA</p>
<p><u>Section 16</u></p> <p>To ensure polluting water is not discharged to surface water or storm water drains</p>	<p>(a) Checking layout of foul sewers and surface water drains (b) Sampling surface or storm water drains to ensure no polluting matter has been or is being discharged</p>	<p>D SA</p>

Table 5.11 (contd.)

PURPOSE AND EMPOWERING SECTION	FORM	MONITORING AGENCY
<p><u>Section 28.</u></p> <p>(a) To perform any function conferred under this Act on LA, SA, DOE, MF or BC.</p> <p>(b) To find out whether such a function should be performed.</p> <p>(c) To find out whether the Act is being or has been contravened in any way.</p>	<p>Carrying out any necessary inspection and taking any necessary samples in premises or vessels.</p>	<p>LA SA DOE MF FB AN Other</p> <p>Note: AN other may enter premises for monitoring purpose only if authorised by LA, SA, DOE, AF or FB.</p>

NOTE: D = Discharger MF = Minister for Fisheries
 LA = Local Authority DOE = Department of the Environment
 SA = Sanitary Authority AN = Any other person
 FB = Fisheries Board

One feature which becomes obvious from the table is the multiplicity of authorities empowered to monitor the same effluent. Under s.24 of the Act the Minister for the Environment may make requisitions requiring local authorities, sanitary authorities and Fisheries Boards "to consult with such persons and in such manner in relation to the exercise of such powers and duties under this Act as may be prescribed." The Minister has not yet made any regulations under s.24 but all public authorities involved in water pollution control have been repeatedly urged to cooperate with each other and to coordinate their activities.⁽¹⁵⁷⁾ Few public authorities have the capacity (nor indeed would it be administratively or economically feasible for them) to carry out their monitoring powers and duties under the Act. It is likely that, at least until Water Quality Control Authorities are established under s.25, the vast bulk of monitoring will be carried out on behalf of control authorities by An Foras Forbartha or the Institute for Industrial Research and Standards. In 1976, the Institute calculated that if all "significant" (determined by reference to their effect on receiving waters) industrial discharges were monitored, over 497 factories would be involved and monitoring costs would be about £3½ million (£1 million for equipment and £2¼ for testing and analysis).⁽¹⁵⁸⁾ It is extremely unlikely that local authorities will embark on monitoring

all these discharges and it is generally believed that primary responsibility for monitoring industrial discharge will remain with the discharger with local authorities carrying out periodic inspections of monitoring equipment and occasional checks on monitoring results.

Four regional laboratories for monitoring water quality have been established and six local authorities have decided to set up their own laboratory facilities. At present, however, a number of local authorities have neither local nor regional facilities for monitoring effluent discharges or water quality.

Apart from monitoring obligations necessitated by the implementation of the Water Pollution Act, sanitary authorities have been instructed to monitor drinking waters and fishing waters in order to fulfil obligations imposed by EEC Directives described above.⁽¹⁵⁹⁾ Bathing waters are monitored at six locations around the coast.⁽¹⁶⁰⁾ An Foras Forbartha monitors the quality of surface fresh waters at Slane, River Barrow; Killavullen, River Blackwater; Graiguenamagh, River Barrow, and Corrofin, Clare River, in accordance with the requirements of EEC Decision 77/795/EEC establishing a common procedure for the exchange of information on the quality of surface fresh water in the Community.⁽¹⁶¹⁾ The results of this monitoring are communicated to the EEC Commission annually.

Although there are no express provisions on monitoring in the Local Government (Planning and Development) Acts 1963-82, conditions attached to planning permissions for effluent discharging industries and licenses under the Water Pollution Act normally prescribe effluent and/or water quality standards. In a study of the planning permissions granted to 31 industries, Levinge⁽¹⁶²⁾ found that 22 permissions contained environmental standards relating to water pollution control and 19 included monitoring requirements as conditions. Eighteen industries were required to meet specific effluent standards. Of these, two were required to check emissions against standards, one was required to have emissions monitored regularly, five were to have (unspecified) testing of effluent carried out, seven were required to have automatic continuous testing of effluent quality, and in three cases the arrangements for monitoring of effluent were to be agreed with the planning authority.⁽¹⁶³⁾

Of the three industries which were required to comply with effluent standards but which were not required to monitor, two never monitored their effluents, and the local authority carried out irregular monitoring

of the third.⁽¹⁶⁴⁾ In the nine industries where the planning permissions were silent on environmental standards and monitoring, five were unaware of the detailed characteristics of their effluents and were unable to specify (except in broad terms) what was contained in the effluents although all but one were discharging potentially polluting effluents. In seven of these cases the local authority or the IIRS had monitored the effluent irregularly. Only one of the nine was regularly monitoring its effluents. Only 22% of the 19 industries required to monitor was monitoring adequately.⁽¹⁶⁵⁾

Conditions attached to licenses granted under the Fisheries (Consolidation) Act 1959 and the Dumping at Sea Act 1981 may also require the monitoring of effluents and receiving waters.⁽¹⁶⁶⁾

Monitoring is also carried out by a number of agencies, as is shown in the table below.⁽¹⁶⁷⁾

Table 5.11.	
AGENCY	MONITORING FUNCTION
<u>Department of Agriculture</u>	Monitors pesticide levels in water
<u>Agricultural Institute</u>	Carries out various monitoring projects for research purposes
<u>Department of Fisheries and Forestry</u>	Monitors fishery waters and suspected pollution sources including licensed discharges
<u>Fisheries Boards</u>	Monitoring fishery waters
<u>Foyle Fisheries Commission</u>	Monitoring fishery waters
<u>Eastern and Western Health Boards</u>	Monitoring bathing and drinking waters
<u>Institute for Industrial Research and Standards</u>	Baseline monitoring in relation to specific industrial projects; monitoring commissions for public and private sector clients
<u>Local Authorities</u>	Monitoring for observance of planning control conditions
<u>An Foras Forbartha</u>	On-going water quality survey in rivers and lakes; monitoring surface fresh waters; general monitoring service to local authorities

Table 5.11 (contd.)

AGENCY	MONITORING FUNCTION
<u>Office of Public Works</u> ar	River flow measurement in connection with arterial drainage
<u>Bord Mhailte</u> cu	Monitoring development proposals of particular tourism importance
<u>Corabailte</u> re	Laboratory examination of pollution occurrences in canals
<u>Electricity Supply Board</u>	Monitoring waters in charge.

EEC Directives frequently specify methods of monitoring and frequencies of sampling and analysis in order to achieve comparability of results.⁽¹⁶⁸⁾ The Minister for the Environment has issued Guidelines on Sampling and Analysis of Waters to all local and sanitary authorities.⁽¹⁶⁹⁾

5.12 ENFORCEMENT

The enforcement of the various statutory provisions on water pollution control has been described in preceding sections. It is generally admitted (even by the Department of the Environment) to be inadequate. The only public authorities which appear to take their duties in this respect at all seriously are Fishery Boards. The general approach to enforcement is one of negotiated compliance rather than resort to judicial proceedings.⁽¹⁷⁰⁾

FOOTNOTES

1. An Foras Forbartha Review 1982/83 at p.15.
2. Ibid.
3. See section 4.1. See also Keane, op.cit. at pp.93-105.
4. Fisheries (Amendment) Act 1962, s.2(1); Fisheries Act 1980, s.50.
5. See sections 2.4.3 and 3.5.5.
6. Fisheries Act 1980, s.50.
7. Dail Reports Vol.312, Col.623, 1 March 1979.
8. Bye-law No.589, 1976.
9. See section 3.
10. Levinge D., The Enforcement of the Environmental Controls of Industrial Development with the Planning Acts, 1983, at p.23.
11. Ibid., at p.24.
12. Development Control Advice and Guidelines, 1982, at pp.45,46.
13. Ibid., at p.24.
14. See section 2.6.4.
15. See section 5.4.3.
16. See sections 3.5.5 and 5.11.
17. Local Government (Water Pollution) Act 1977, s.1. Hereafter called the 1977 Act.
18. Local Government (Water Pollution) Act 1977 (Commencement) Order 1977, S.1.No.117 of 1977.
19. Local Government (Water Pollution) Act 1977 (Fixing of Dates) Order 1978, S.1.No.16 of 1978.
20. [1972] A.C.824.
21. [1975] 2 All E.R. 113.
22. See section 5.5.

23. See Mannion L., Guidelines and Recommendations for the Control of Pollution from Farm Wastes, Department of Agriculture, 1977, and Memorandum No.1 Water Quality Standards, 1979, at pp.47, 48 which provide guidelines on good management practices by farmers.
24. Circulars ENV 7182 of 29 July 1982; 11/83 of 24 May 1983.
25. See Douglas D., "Water Pollution: The base against B.O.D." (1981) 3 D.U.L.J. 25-28.
26. Circular ENV.8/82 of 26 July 1982.
27. A Guide to the Investigation of Fish Kills, IIRS, 1982.
28. See section 5.4.3.
29. 1977 Act, s.3(5) and 3(6).
30. Ibid., s.3(4).
31. Ibid., s.3(3).
32. Levinge, op.cit. at p.73.
33. Ibid., at p.74.
34. 1977 Act, s.1.
35. Ibid.
36. See sections 5.4.2 and 5.4.11.
37. See sections 7 and 8.
38. See Keane, op.cit. at pp.85-89.
39. Memorandum No.1 Water Quality Standards, supra, at pp.35,44.
40. S.1.108 of 1978. Hereafter called the 1978 Regulations.
41. Ibid., article 4 and First Schedule.
42. 1977 Act, s.1.
43. Circular ENV. 2/80 of 24 April 1980.
44. See section 3.5.3.
45. Circular ENV.18/77 of 19 September 1977.
46. 1978 Regulations, article 5(3).
47. Ibid., article 6.

48. Ibid., article 7(1).
49. Ibid., article 7(2).
50. Ibid., articles 7(3) , 8, 9.
51. Circular ENV. 9/78 of 17 April 1978.
52. Ibid.
53. Leech, B.C., "Some Aspects of the Local Government Water Pollution Act 1977," Paper at Conference of Municipal Engineers, 1981. See also Circular ENV. 9/78 of 7 April 1978.
54. 1978 Regulations, article 10.
55. See sections 5.4.2, 5.4.3, and 5.4.11.
56. 1977 Act, ss. 4(3)(b) ., 4(4)
57. Memorandum No. 1 Water Quality Guidelines, supra, at p.7.
58. See section 5.5.
59. Leech, op.cit., at p.11.
60. See Circulars ENV. 9/77 of 29 April 1977; 9/78 of 7 April 1978; 7/82 of 20 July 1982. One of the reasons for this repeated advice was the fact that the bulk of third party objections to local authority decisions on licences came from Fisheries Boards.
61. Circular 2/80 of 24 April 1980.
62. See State (Stanford) v Dun Laoghaire Corporation, Supreme Court, unreported, 20 February 1981, where the Supreme Court upheld a third party's right to object to a planning application in a substantially similar context.
63. 1978 Regulations, articles 11(1), 11(2).
64. Ibid., article 11(3).
65. Ibid., article 11(1)(c).
66. Ibid., article 11(1)(d), 11(3).
67. 1977 Act, s.9.
68. Ibid., s.4(6).
69. Ibid., s.4(7).

70. Ibid., s.4(9).
71. Ibid., s.4(11).
72. See section 5.4.2.
73. 1977 Act, s.8(1).
74. 1978 Regulations, article 26.
75. See section 3.5.8.
76. 1978 Regulations, article 34.
77. Ibid., article 35.
78. Annual Report of An Board Pleanala, 1981, at p.7.
79. 1978 Regulations, article 13(1).
80. Ibid., article 13(2).
81. Ibid., article 14(1), 14(2).
82. Ibid., article 14(3).
83. 1977 Act, s.7(2).
84. 1978 Regulations, article 15(1), 15(2).
85. See section 5.5.
86. 1977 Act, s.6(3).
87. OJ No.L194, 25 July 1975.
88. 1977 Act, ss.3(4), 4(9).
89. Ibid., s.10(2).
90. Ibid., s.1.
91. See section 5.5 and 5.11.
92. 1977 Act, s.28(9).
93. Ibid., s.4(4).
94. Ibid., s.7(3)(b).
95. See section 1.2.3.
96. Memorandum No.1 Water Quality Guidelines, supra, at p.7,
97. Ibid., at pp.49-51.

98. Ibid., at p.51.
99. Circular ENV. 4/83 of 22 February 1983.
100. OJ No.L 129 of 18 May 1976. See section 7.8.
101. OJ No.L.81 of 27 March 1982.
102. See sections 5.4 and 7.7.
103. Memorandum No.1 Water Quality Guidelines, supra, at p.30.
104. Ibid.
105. Ibid., at p.43.
106. Water Supplies Act 1942, s.20. See also section 5.10.
107. See Keane, op.cit., at pp.88, 90.
108. Local Government (Sanitary Services) Act : 1962, s.8(2).
109. OJ No.L.271, 29 October 1979.
110. OJ No.L.20, 26 January 1980.
111. OJ No.L.229, 30 August 1980.
112. Ibid.
113. OJ No.L.271, 29 October 1979.
114. Circulars L.4/75 of 20 August 1975; L.5/75 of 2 December 1975; L.1/77 of 17 June 1977 with accompanying memorandum.
115. Circular L.1/77 of 17 June 1977.
116. Circular ENV.3/81 of 25 March 1981.
117. See section 9.2.
118. See section 9.3.4.
119. See section 5.4.8.
120. See section 5.4.8.
121. See Wright G.R. and Daly D., "The Hydrogeological Aspects of Tip Site Selection," Paper at Conference Planning for Waste Disposal, 1977. See also Daly D., Groundwater Quality in Ireland, 1979 and Toner P.F., The National Survey of Irish Rivers, A Third Report on Water Quality, An Foras Forbartha, 1980, for descriptions of groundwater quality and sources of groundwater pollution.

122. Circular L.6/83 of 18 May 1983.
123. Circular ENV.9/80 of 25 September 1980; ENV.14/82 of 14 September 1982.
124. Circular ENV. 4/82 of 14 September 1982.
125. See Keane, op.cit., at p.117.
126. Public Health (Ireland) Act 1878, s.128.
127. Public Health Acts Amendment Act 1907, s.51.
128. Public Health (Ireland) Act 1878, s.130.
129. Information from An Foras Forbartha.
130. See section 3.6.2.
131. Local Government (Planning and Development) Regulations 1977, Third Schedule, Part III, classes 7, 8, 9.
132. Ibid., classes 7 and 8.
133. Ibid.
134. Report on Pollution Control, supra, at p.5.
135. See sections 5.4.1 and 5.4.3.
136. Local Government (Water Pollution) Act 1977, s.1.
137. Memorandum No.1 Water Quality Guidelines, supra, at p.48.
138. See section 5.4.11.
139. European Communities (Waste) Regulations 1979, article 8. See section 9.2.
140. Mannion, L., Guidelines and Recommendations on the Control of Pollution from Farm Wastes, Department of Agriculture, 1977.
141. See sections 2.3.3 and 2.4.4.
142. See Scannell Y., "Agriculture and Environmental Law," Paper at Conference on the Environment, University College, Dublin, 1983.
143. See section 2.1.2.
144. See Gale, Easements (14th edn) at pp.229-234.
145. Young v Bankier Distilling Co. [1893] A.C.698.
146. Tipping v Eckersley [1855] 2K & J 264.

147. Young v Bankier Distilling Co., supra.
148. Crossley & Sons Ltd. v Lightowler (1867) 2 Ch.App.478.
149. Ibid.
150. Ballard v Tomlinson (1885) 29 Ch.D.126.
151. Fitzgerald v Firbank (1897) 2 Ch.96.
152. See sections 5.1, and 5.6.
153. See section 3.6.13.
154. See sections 5.4.2, 5.4.3, and 5.4.7.
155. High Court, unreported, 10 June 1982.
156. Lynch M., "The Monitoring Requirements of the Local Government (Water Pollution) Bill 1976," in Monitoring Industrial Pollution, IIRS, 1976, at pp.35-39.
157. Circulars ENV. 9/77 of 29 April 1977; 9/78 of 7 April 1978; 7/82 of 20 July 1982.
158. Monitoring Industrial Pollution, supra, at p.50.
159. See section 5.5.
160. See section 7.11.
161. OJ L./334, 24 December 1977. See Circular ENV.4/78 of 24 February 1978.
162. Levinge, op.cit., at pp.24-30.
163. Ibid., at p.25.
164. Ibid., at p.28.
165. Ibid., at p.40.
166. See sections 5.2 and 7.7.2.
167. Adapted from Report on Pollution Control, supra, at pp.52-56.
168. See section 5.5
169. Circular ENV.1/81 of 27 February 1981.
170. See section 12.7.

SECTION 6

SEWAGE

Untreated or inadequately treated sewage is the second important cause of water pollution in Ireland despite the fact that all major cities and urban areas are situated on the coast so that most sewage is discharged into coastal waters.⁽¹⁾

An Foras Forbartha estimates that 65 per cent of the total population is served by sewers and that the wastes from the remaining 35 per cent are disposed of to septic tanks and similar receptacles. Many public sewage systems are overloaded, inadequately maintained or incapable of meeting design standards.

The Inter-Departmental Environment Committee has stated that future progress in preventing pollution from sewage must depend upon "the maintenance of a high level of capital allocations for the sanitary services programme in the next few years".⁽²⁾ The expenditure of central government funds on public sewage schemes (including treatment plants) from 1972 to 1981 is estimated to be in the order of £220 million at 1982 prices, while the estimated cost of public schemes currently at the proposal, planning or construction stage is £392 million.⁽³⁾

Control over pollution caused by sewage and discharges to sewers is primarily the responsibility of sanitary authorities. The principal Acts governing the powers, duties and responsibilities of these authorities are the Public Health (Ireland) Act 1878, the Public Health Acts Amendment Act 1890 and the Local Government (Water Pollution) Act 1977. Sanitary authorities are also required to take account of any EEC environmental standards where relevant.⁽⁴⁾ There are no mandatory national standards for sewage effluents.

6.1 THE DISPOSAL OF SEWAGE

Under the Public Health (Ireland) Act 1878, all sewers within their districts, together with the structures ancillary thereto were, with minor exceptions, vested in and placed under the control of sanitary authorities.⁽⁵⁾ Sanitary authorities were also obliged to "cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act",⁽⁶⁾ and were endowed with wide powers to carry out their functions including powers to purchase and make sewers, to alter and discontinue sewers, to dispose of sewage, to agree to the connection of sewers under their control with those of adjoining districts, to deal with land appropriated to sewage purposes, to enter into contracts to carry out their duties, and to enforce the provisions of the Public Health Acts 1878 and 1890, relating to nuisance.⁽⁷⁾ Authorities were also empowered to make bye-laws with respect to, inter alia, drainage of buildings, waterclosets, earth-closets, privies, ashpits and cesspools connected with buildings and the keeping of waterclosets supplied with sufficient water for flushing.⁽⁸⁾

Under s.8 of the Local Government (Sanitary Services) Act 1962, a sanitary authority is empowered to require the owner of premises within their district to connect the premises to the public sewage system where such has been provided and where they are of the opinion that the premises are (i) not drained satisfactorily, and (ii) capable of being served by the sewage system by means of a connection not exceeding one hundred feet in length.

There appears to be some doubt as to whether the duties of sanitary authorities extend to the mandatory reception of effluents to sewers. Section 23 of the Public Health (Ireland) Act 1878 provides that the owner or occupier of any premises within the district of the sanitary authority "shall be entitled" to cause his drains to enter into the sewers of the authority by giving notice to the sanitary authority and on complying with the regulations of the authority as to the manner in which the communication is to be effected. Section 24 gives a similar (though less strongly worded) right to the owner or occupier of premises outside

the district of the sanitary authority. In Dublin County Council v. Shortt⁽⁹⁾ the Supreme Court held that the 1878 Act and particularly s.23 thereof:

oblige the sanitary authority to receive into its sewers the sewerage of all premises within its district provided proper notice is given and the appropriate regulations observed.⁽¹⁰⁾

In State (Finglas Industrial Estates Ltd.) v. Dublin County Council⁽¹¹⁾ the Supreme Court, however, held that the rights under sections 23 and 24:

presuppose the existence of these sewers at a point where connection may be made from the premises. They do not appear at first sight to deal with the more knotty problem of what is to be done when there are no sewers in the locality.⁽¹²⁾

One learned writer⁽¹³⁾ has said of this "knotty problem" that if a sanitary authority declines to provide sewers, the owner or occupier of premises is not entitled to an order of mandamus requiring the provision of sewers because s.15 of the Public Health (Ireland) Act 1896 provides a specific remedy whereby the Minister for the Environment, on a complaint that a sanitary authority, has made default in providing their district with sufficient sewers, may order them so to do. There is authority for the proposition that the Minister is not obliged to make the order unless satisfied of the culpable neglect of the sanitary authority in the performance of their duty.⁽¹⁴⁾

It is not clear whether the obligation to provide sewers arises where premises (meaning buildings) have not yet been erected. One authority considers that the obligation does not arise until the buildings are actually erected.⁽¹⁵⁾ It is submitted that this is correct because the definition of "drain" in s.2 of the 1878 Act means "any drains of and used for the drainage of one building only or of premises within the same curtilage...." Therefore an apparatus cannot be a "drain" until it is so used.

In Wallace v. McCartan⁽¹⁶⁾ it was held that the right to communicate with a sewer could not be exercised in an unreasonable or negligent manner, or without regard to the rights of third parties.

Section 16 of the Local Government (Water Pollution) Act 1977, ignoring the existence of section 23 and 24 of the 1878 Act, somewhat contradictorily provides that all discharges of effluents (other than domestic sewage and storm water) to sewers must be licensed.

The position therefore is that sanitary authorities are almost exclusively responsible for the disposal of sewage from sewers⁽¹⁷⁾ and no other person may now discharge effluents to a sewer without a licence. The disposal of sewage other than to a drain or sewer (for example, to a septic tank) may be subject to control under the Local Government (Planning and Development) Acts 1963-82.⁽¹⁸⁾

6.2 DISCHARGES TO SEWERS

6.2.1 Prohibited Discharges

As a general rule, Irish legislation does not prohibit the discharge of any particular substances or matter to sewers. However, sections 16 and 17 of the Public Health Amendment Act 1890, are exceptional in that they contain absolute prohibitions on specific discharges. Section 16 provides that it shall be unlawful for any person:

"to throw or to suffer to be thrown, or to pass into any sewer of a local authority or any drain communicating therewith, any matter or substance by which the free flow of sewage or surface or storm water may be interfered with, or by which any such sewer or drain may be injured."

The maximum penalty on conviction for an offence under s.16 is £10 plus £1 for each day the offence continues. Section 17 provides that any person who causes or permits to enter into any local authority sewer or any drain communicating therewith - (a) any chemical refuse, or (b) any waste steam, condensing water, or other liquid (such liquid being of a higher temperature than 110° Fahrenheit) either alone or in combination with the sewage, causes a nuisance or is dangerous or injurious to health, shall be liable to a penalty not exceeding £10 and to a daily penalty not

exceeding £5. Section 17(3), however, provides that a person shall not be liable to a penalty for an offence under the section until the local authority notifies him of the provisions thereof.

Section 16(11) of the Local Government (Water Pollution) Act 1977 provides that it is defence to a prosecution under any enactment other than that Act (e.g. section 16 and 17 above) to prove that the Act constituting the offence is authorised under s.16 of that Act.

There may be obligations under EEC Directives 76/464/EEC and 80/68/EEC to prohibit the discharge of List I substances to sewers.⁽¹⁹⁾

Under s.16(7) of the Water Pollution Act, it is an offence for any person to permit or cause the entry of any polluting matter, including sewage, to any drain or sewer provided solely for the reception or disposal of storm water.

6.2.2 The Obligation to Obtain a Licence for Other Discharges to Sewers

The normal formula for controlling discharges is that employed in s.16(1) of the Local Government (Water Pollution) Act 1977. This section came into force on 1 January 1980.⁽²⁰⁾ Section 16(1) provides that it shall be unlawful to discharge or cause or permit the discharge of any trade effluent or other matter (other than domestic sewage or storm water) to a sewer except under and in accordance with a licence granted by the appropriate sanitary authority.

Sanitary authorities have been advised by the Department of the Environment that liquid waste arising from agricultural activities does not come within the definition of "trade" effluent unless it is discharged from a works, apparatus, plant or drainage pipe.⁽²¹⁾ Recent guidelines⁽²²⁾ circulated have also suggested that discharges from shops, licensed premises, hotels and other service industry premises when relatively small in volume "might be regarded as consisting of domestic sewage and consequently not licensable". A similar suggestion was made in the guidelines with respect to discharges from "small slaughterhouses operated by individual retailers and provided with adequate grease traps". In determining whether discharges from so-called "small trading establishments" ought to

be licensed or not, the "magnitude of the discharge" was to be considered as a deciding factor. It is respectfully submitted that the magnitude of a discharge has little to do with the question of whether an effluent is or is not a "trade effluent". The expression is expressly defined in s.1 of the Act as "effluent ... discharged from premises used for carrying on any trade or industry (including mining) ...". The only effluents from trade premises discharged from any works apparatus, etc., which are not statutorily licensable are domestic sewage or storm water and those which are exempted by the Minister. Domestic effluents and storm water are not statutorily defined, but the judicial definition of domestic sewage in the recent English decision, Thames Water v. Laundrettes Ltd.,⁽²³⁾ as "liquid from water closets and baths, lavatories and sanitary conveniences" would appear to be acceptable. The correct procedure for ensuring that effluents from small trading establishments and service industry premises are exempt from the provisions of s.16(1) is to exempt them by regulation under s.16(10) - not by Departmental circular.

6.2.3 Existing Discharges

Section 18 of the Local Government (Water Pollution) Act 1977 provides that a person shall not be deemed to have contravened s.16(1) in relation to an existing discharge of trade effluent or other matter made before he is granted or refused a licence under s.16 if, before the relevant date (i.e., 1 January 1979), he applies for such a licence and complies with any regulations under s.19 regarding the furnishing of information to a sanitary authority.

6.2.4 Licence Application Procedure

The procedures regulating the submission of applications for licences under s.16(1) are contained in Part III of the Local Government (Water Pollution) Regulations 1977.⁽²⁴⁾ A licence application must be accompanied by:

- (a) such plans, in duplicate, and such other particulars as are necessary to describe the premises, drainage system and any works, apparatus or plant from which effluent or other matter is to be discharged and to identify the point of discharge to the sewer;

- (b) particulars of the nature, composition, anticipated temperature, volume and rate of discharge of, and the proposed method of any treatment of, the effluent or other matter and the period or periods during which the effluent or other matter is to be discharged, and
- (c) in the case of a trade effluent, a general description of the process or activity giving rise to the discharge.⁽²⁵⁾

A licence application for an existing discharge must state that fact.⁽²⁶⁾ An applicant for a licence (other than a licence for an existing discharge) must also furnish such other particulars, including the results of such investigations, as the sanitary authority may reasonably require for consideration of the application.⁽²⁷⁾ Where an applicant fails or refuses to comply with a requirement of a sanitary authority for other particulars, or results of an investigation within three months of being requested to do so, the sanitary authority may carry out the investigation or arrange to have it carried out at the total or partial expense of the applicant.⁽²⁸⁾ There are no provisions requiring the applicant to publicise his application or requiring a sanitary authority to give public notice of intention to grant or refuse a licence.

6.2.5 The Decision on the Application

Section 16 of the Water Pollution Act provides that a sanitary authority may at its discretion refuse to grant a licence, or grant a licence subject to such conditions as they think appropriate and specify in the licence. Conditions attached to a licence may

(a) relate to:

- (i) the nature, composition, temperature, volume, rate, method of treatment and location of a discharge and the periods during which a discharge may be made or may not be made;
- (ii) the provision and maintenance of meters, gauges, other apparatus, manholes and inspection chambers;
- (iii) the taking and analysis of samples, the keeping of records and furnishing of information to the sanitary authority;

- (b) require (by the payment of a capital sum or an annual charge or both) the defrayment of or contribution towards the cost incurred by the sanitary authority in monitoring, treating or disposing of a discharge, and
- (c) specify a date not later than which any conditions shall be complied with.⁽²⁹⁾

In considering whether or not to grant a licence, a sanitary authority must have regard to any objectives contained in any relevant water quality management plan.⁽³⁰⁾ It may not grant a licence in respect of a discharge of a trade effluent which would not comply with any relevant standard prescribed by the Minister for the Environment under s.26 of the Act.⁽³¹⁾ The Minister has not made regulations under s.26, but sanitary authorities are obliged to take into account standards prescribed in certain EEC Directives.⁽³²⁾

A members of the public has no right to inspect documentation lodged with licence applications, or to participate in decision-making on licences. There is no time limit within which a sanitary authority must decide on a licence but "as soon as may be" after coming to a decision, it must, when granting a licence, transmit the licence to, or in the case of a refusal, give notice of such refusal to the applicant, and also inform him that s.20 of the Act provides a right of appeal to An Bord Pleanála where a licence has been refused or granted subject to conditions.⁽³³⁾

An interesting feature in the Act is the express provision in s.16(4)(b) which enables sanitary authorities to require defrayment of or contribution towards the costs of monitoring, treating or disposing of a discharge. Such a practice is relatively rare in Ireland but may be expected to become a common feature of licensing trade and industrial discharges in future. The Minister for the Environment has suggested that, where water pollution is due to a combination of domestic sewage and industrial wastes, a solution to the financial aspects of the problem may lie in the provision of a joint treatment plant (i.e., on the basis of shared costs between local authorities and industry).⁽³⁴⁾ At present only a few towns operate joint treatment works. A few authorities which impose operating charges calculate them in the proportion which the B.O.D. load and volume discharged bears to overall treatment costs; but

a general policy on charges for discharges to sewers has yet to be formulated.

A register, which must be kept open for public inspection, must be kept of all licences granted under s.16.⁽³⁵⁾ Conditions attached to a licence are binding on any person discharging, or causing or permitting the discharge of trade effluent or other matter to which the licence relates.⁽³⁶⁾ The licence lapses if no discharge of the type authorised by the licence is made within three years.⁽³⁷⁾ By June 1982, 285 licences had been granted and decisions on 372 were pending.

6.2.6 Review of Licences

Section 17 of the Water Pollution Act provides that sanitary authorities may review a licence under s.16 at intervals of not less than three years from the date of the licence or of the last review of the licence. A licence may be reviewed at any time in five specified circumstances.⁽³⁸⁾ A sanitary authority must notify a discharger of intention to review a licence.⁽³⁹⁾ The notice must, inter alia, state that written representations relating to the review may be made to the sanitary authority within one month.⁽⁴⁰⁾ The discharger may be required to submit such plans or other particulars as the sanitary authority considers necessary for the purpose of the review within three months.⁽⁴¹⁾ If the required information is not supplied within three months, the sanitary authority may complete the review without it.⁽⁴²⁾ Neither the Act nor the regulations specify a time limit for completing the review. "As soon as may be" after that, a sanitary authority may amend or delete any condition attached to the licence or attach new conditions or grant a revised licence in substitution for the licence reviewed.⁽⁴³⁾ Compensation is not payable if the review necessitates expenditure, but the notice of the decision after the review must include a statement that an appeal lies to An Bord Pleanala and under s.20 of the Act.⁽⁴⁴⁾

6.2.7 Appeals to An Bord Pleanala

Section 20 of the Water Pollution Act provides that:

"A person to whom a licence under s.16 has been refused, or granted subject to conditions, may appeal to the Minister in relation to the refusal to grant such a licence, the conditions attached to

such a licence or amendment or deletion of conditions attached to or attachment of new conditions to such a licence on review."

The Minister's appellate functions have been transferred to An Bord Pleanála, which is empowered to deal with appeals in a manner substantially similar to appeals under the Planning Acts.⁽⁴⁵⁾ It should be noted that locus standi to appeal decisions on licences under sections 16 and 17 is confined to the applicant and the sanitary authority concerned. No individual citizen nor - perhaps more importantly - any other licensee or prospective licensee has the right to appeal a decision. Appeals relating to the grant or refusal of a licence must be brought within one month beginning on the date of the grant or refusal; appeals relating to decisions on review must be brought within one month of the decision.⁽⁴⁶⁾ The Board, after consideration of an appeal, must either "refuse the appeal or give appropriate directions to the sanitary authority concerned relating to the granting of a licence or the attachment, amendment or deletion of conditions."⁽⁴⁷⁾ Where such directions are given, the authority must, as soon as may be after receiving them, comply with them and notify the holder of the licence of such compliance.⁽⁴⁸⁾ By January 1982 only 20 appeals had been made under s.20.⁽⁴⁹⁾

6.2.8 Enforcement

The provisions of the Local Government (Water Pollution) Act 1977, which relate to discharges to sewers are enforceable by sanitary authorities only. A person who contravenes sections 16(1) or 16(7) of the Act is liable on summary conviction to a fine not exceeding £250 plus £100 for every day the contravention continues and/or six months' imprisonment; the corresponding figures on conviction on indictment are £5,000, £500 and two years' imprisonment respectively.⁽⁵⁰⁾ It is a good defence to a prosecution under any enactment other than the Water Pollution Act that the Act constituting the offence is authorised under s.16. As yet, there have been no prosecutions under s.16.

In addition, or as an alternative to their powers to prosecute for breach of sections 16(1) and 16(7), sanitary authorities may serve a notice on any person contravening these subsections requiring that

the contravention be stopped within a specified period and requiring mitigation or remedying of any effects of the contravention within such period and in such manner as may be specified.⁽⁵¹⁾ The sanitary authority may take any steps it considers necessary to prevent the discharge or entry or to mitigate or remedy any effects of the contravention if the person served with the notice does not comply with it within the period specified.⁽⁵²⁾ Costs are recoverable from the defaulter.⁽⁵³⁾

Section 22 of the Act requires sanitary authorities to carry out or arrange for such monitoring and analysis of discharges and receiving waters and empowers them to collect such information as may be necessary for the performance of their functions or as may be directed by the Minister for the Environment. Section 23 empowers them to require the submission of specified particulars of discharges to sewers within a specified period. Failure to supply the requested particulars within the time allowed, or the supply of false or misleading particulars, is an offence punishable by a fine not exceeding £100. Section 28 of the Act contains the necessary powers of entry and inspection for the purpose of performing functions under the Act and also provides for the making of regulations governing the taking of samples, carrying out of tests and ancillary matters.⁽⁵⁴⁾

6.3 COLLECTED SEWAGE

Once in a public sewer, sewage becomes the property of sanitary authorities who are then responsible for treating and disposing of it. Apart from obligations already referred to with respect to providing sewage systems and controlling discharges to sewers, sanitary authorities themselves are empowered under the Public Health (Ireland) Act 1878, to "receive, store, disinfect, distribute or otherwise dispose of sewage," but the Act,⁽⁵⁵⁾ and indeed the common law itself, prohibits sanitary authorities from exercising these powers in such a way as to create a nuisance.

The Public Health (Ireland) Act 1878, obliges sanitary authorities:

- (i) to keep all sewers in repair and to cause to be made such sewers as may be necessary for effectually draining their districts;⁽⁵⁶⁾
- (ii) to purify sewage before discharging it,⁽⁵⁷⁾ and
- (iii) to cause sewers to be so constructed, covered, ventilated and kept as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.⁽⁵⁸⁾

6.4 STANDARDS FOR DISCHARGES FROM SEWERS OR SEWAGE TREATMENT PLANTS

The licensing requirements of s.4 of the Local Government (Water Pollution) Act 1977 do not apply to discharges "from a sewer".⁽⁵⁹⁾ Instead, s.26(1) of the Act provides that the Minister for the Environment may, after consulting the Ministers for Fisheries, Industry and Commerce and any other Minister who appears to him to be interested, and the Water Pollution Council, prescribe for the purposes of the Act quality standards for inter alia, waters and sewage effluents and standards in relation to the methods of treatment of such effluents. Section 26(3) specifically states that where regulations under s.26 relate to sewage effluent from a sewer or to waters to which sewage effluent from a sewer discharges, it shall be the duty of the sanitary authority in which the sewer is vested or by which it is controlled to take steps "as soon as practicable" to ensure that the sewage effluent complies with, or does not result in the waters to which the effluent is discharged not complying with, any relevant standard prescribed under that section.

To date, the Minister has not prescribed any standards under s.26. Indeed, it would be politically unrealistic for him to prescribe mandatory standards unless he also provided the financial resources which would enable sanitary authorities to comply with them. In practice sanitary authorities seek to achieve the standards recommended by the U.K. Royal Commission on Sewage Disposal for sewage effluents discharged to inland waters. Memorandum No. 1 (Water Quality Guidelines circulated to sanitary authorities in 1979) recommends standards for water quality, sewage treatment and sewage effluents, but these are not mandatory.⁽⁶⁰⁾ Sanitary authorities are obliged to take account of standards in EEC Directives

when discharging sewage effluents to waters.⁽⁶¹⁾

6.5 INDIVIDUAL RIGHTS

The remedy open to a person aggrieved by the failure of a sanitary authority to fulfil their duties is by way of complaint to the Minister for the Environment under s.15 of the Public Health (Ireland) Act 1896, which gives the individual statutory rights to complain to the Local Government Board (now the Department of the Environment) of the failure of sanitary authorities to provide their district with sufficient sewers or to maintain existing sewers.

This section provides that the Department, (a) on receipt of a complaint that a sanitary authority has defaulted in providing its district with sufficient sewers, or in the maintenance of existing sewers, or that a local authority has made default in enforcing the provisions in the Public Health (Ireland) Acts 1878-96, which it is its duty to enforce, and (b) on being satisfied that the authority has been guilty of the alleged default, is obliged to make an order limiting a time for the performance of the duty in the matter complained of. If the duty is not performed in the time specified, the order may be enforced by mandamus or the Department itself may act in default.⁽⁶²⁾ An individual who has suffered injury to his private rights may also be able to sue the sanitary authority for breach of statutory duty.⁽⁶³⁾

6.6 ENFORCEMENT

There is very little information available on monitoring carried out by sanitary authorities and on the extent to which provisions in the Acts described in this section are enforced. Matters relating to sewage belong almost exclusively to the public domain. Sanitary authorities are prosecuted for causing water pollution from time to time,⁽⁶⁴⁾ but the solution to their problems and that of pollution caused by their failure to deal with sewage properly is a financial rather than a legal one.

FOOTNOTES

1. Report on Pollution Control, supra, at p.6.
2. Ibid., at p.14.
3. A Review of Water Pollution in Ireland, An Foras Forbartha, 1983, at p.202.
4. See section 5.5.
5. Public Health (Ireland) Act 1878, s.15. See section 5.4.3.
6. Ibid., s.17.
7. Ibid., ss. 16, 17, 20, 30, 31, 32, 200, 107-127.
8. Ibid., s.41 as extended by Public Health Acts Amendment Act 1890, s.23.
9. Supreme Court, unreported, 13 May 1983.
10. Ibid., at p.6 of the unreported judgment.
11. Supreme Court, unreported, 17 February 1983.
12. Ibid., at p.12 of the unreported judgment.
13. Keane, op.cit., at pp.87, 88.
14. R. v. Local Government Board, 9 Q.B.D. 600; 10 Q.B.D. 309.
15. Keane, op.cit., at p.87.
16. [1917] 1 I.R. 377.
17. The only exceptions are those cases where sewers are not vested in the sanitary authority. See Public Health (Ireland) Act 1878, s.15.
18. See sections 3.5.1, 5.3 and 5.4.6.
19. See section 5.5.
20. See Local Government (Water Pollution) Act 1977 (Sections 4 and 16) (Fixing of Dates) Order, 1978, S.I. No. 16 of 1978.
21. Circular ENV. 18/77 of 19 September 1977.
22. Circular ENV. 2/80 of 24 April 1980.
23. [1980] 1 W.L.R. 700, at p.706.
24. Local Government (Water Pollution) Regulations 1978, S.I. No. 108 of 1978, hereafter called the 1978 Regulations.

25. Ibid., article 17(1).
26. Ibid., article 17(2).
27. Ibid., article 17(3).
28. Ibid., article 18.
29. Local Government (Water Pollution) Act 1977, s.16(4).
30. Ibid., s.16(2). See also section 5.4.10.
31. Ibid., s.16(3).
32. See section 5.5.
33. 1978 Regulations, article 20.
34. Circular ENV. 2/80 of 24 April 1980.
35. Local Government (Water Pollution) Act 1977, s.9.
36. Ibid., s.16(5).
37. Ibid., s.16(6).
38. Ibid., ss. 17(1), 17(3).
39. 1978 Regulations, article 22(1).
40. Ibid., article 22(2).
41. Ibid., article 23(1).
42. Ibid., article 23(2).
43. Ibid., article 23(2).
44. Ibid., article 24.
45. Local Government (Water Pollution) Act 1977 (Transfer of Appeals) Order 1978, S.I. No. 96 of 1978. See section 3.6.8.
46. 1978 Regulations, article 26.
47. Local Government (Water Pollution) Act 1977, s.20.
48. 1978 Regulations, article 35.
49. Annual Report of An Bord Pleanála, 1981, at p.6.
50. Local Government (Water Pollution) Act 1977, s.16(8).
51. Ibid., s.16(13).
52. Ibid., s.16(14).

53. Ibid.
54. See section 5.4.11.
55. Public Health (Ireland) Act 1878, s.30.
56. Ibid., s.17.
57. Ibid., s.19.
58. Ibid., s.21.
59. See section 5.4.3.
60. Memorandum No. 1 Water Quality Guidelines, supra, at pp. 35, 44, 49, 50.
61. See sections 5.5 and 7.11.
62. See Keane, op.cit., at p.88.
63. Buckley v. Kerry County Council and Kerry Board of Health (1928) 62 I.L.T.R. 127; Byrne v. Dublin County Council, Irish Times, 8 July 1983.
64. See section 5.2.

SECTION 7

MARINE POLLUTION

Ireland's coastal waters are, except for areas adjacent to major cities and industrial centres, relatively unpolluted. In recent years however the coastal zone has been subject to increasingly strong pressures from almost every activity. More than half of the population of the country lives by the coast and a great number of industries are located in coastal areas. More urban growth, the concentration of major industries in coastal areas, the development of offshore oil and gas industries and a recent practice of dumping large amounts of wastes and other matters at sea are all likely to result in increasing volumes of wastes entering coastal waters and the sea.

Controls over pollution of coastal waters and the sea are exercised almost exclusively by public authorities acting under statutory powers. These authorities are the Ministers for Transport, Energy, Fisheries and Environment, local authorities in their capacities as planning and sanitary authorities, and harbour authorities.

Legislation for the control of pollution of inland waters and on discharges from sewers described in the two preceding sections usually applies also to coastal waters although there may be differences in its practical administration and enforcement. The main controls over marine pollution are the Oil Pollution of the Sea Acts 1956-77 described in the next section, the Foreshore Act 1933, and the Dumping at Sea Act 1981.

Quality standards for certain coastal waters are prescribed in EEC Council Directive 76/160/EEC concerning the quality of bathing water and EEC Council Directive 79/923/EEC on the quality required of shellfish waters. EEC Council Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community prescribes a procedure for setting emission standards for certain pollutants discharged to internal coastal and territorial waters.

In this section it is proposed to deal with legislation and other controls which specifically apply to development control in coastal areas and marine pollution (other than pollution by oil) and to indicate the extent to which controls described in the two preceding sections of this thesis apply to the control of marine pollution.

7.1 FORESHORE ACT 1933

The State owns almost all of the Irish foreshore. In addition the Foreshore Act 1933, empowers the Minister for Transport to purchase or lease by agreement non-State owned foreshore⁽¹⁾ For the purposes of the Act the word "foreshore" means the bed and the shore below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek, and bay of the sea or of any such river or estuary.⁽²⁾ The Act establishes a system under which the Minister for Transport may exercise a certain degree of control over development on or near foreshores and distinguishes between his powers in relation to (a) State owned foreshore and (b) other foreshore.

7.1.1 State Foreshore

Section 2 of the Act enables the Minister to grant a lease of State foreshore if it is in the public interest to do so. The lease may refer to the foreshore itself and to any buildings or structures thereon. It may also include any minerals to a maximum depth of 30 feet from the surface of the foreshore together with a right to exploit those minerals. Leases must contain such terms as the

Minister shall consider proper or desirable in the public interest and shall agree with the lessee and a power or proviso for re-entry for breach, non-performance or non-observance of any term thereof. The Minister has a discretion to hold a public inquiry in regard to the making of a lease under s.2.

Section 3 of the Act empowers the Minister, if it is in the public interest, to grant a licence of State foreshore which authorises the licensee to place or erect any articles, things, structures, or works in or on such foreshore, to remove any beach material from such foreshore, to set and take any minerals in such foreshore to a maximum depth of 30 feet or to use or occupy such foreshore for any purpose. Every licence must contain such terms as the Minister shall consider proper or desirable and shall agree with the licensee. The Minister has a discretion to hold a public local inquiry before deciding to grant a licence under s.30.

There are approximately 150 leases and licences in force under the Act. Minerals exploitable under these leases and licences may include all minerals within the meaning of the Petroleum and Other Minerals Development Acts 1960-79 other than scheduled minerals, mineral compounds and mineral substances.⁽³⁾

The Minister may thus control developments and other activities on State foreshore. Conditions relating to pollution control could in theory be included as terms in leases and licences granted under the Act. In practice,, however, the Minister sees his functions as being confined to ensuring the safety of navigation and fisheries. Occasionally, terms in leases and licences have been used, directly or indirectly, as pollution controls. An example of the use of a foreshore lease to control pollution was the controversial lease granted to Gulf Oil Terminals (Ireland) Ltd. for the development of an oil terminal in Bantry Bay. That particular lease contained pollution control conditions and a proviso stipulating that in the event of agreed pollution control arrangements proving inadequate or defective, the Minister would have the right to set up a harbour authority in the area⁽⁴⁾ - a right which he eventually exercised⁽⁵⁾

Many licences are granted to sanitary authorities authorising them to place sewage disposal pipes in or on the foreshore or to industrialists disposing of effluent to coastal waters. Pollution control conditions are not attached to these licences.

Section 12 of the Act provides that the erection of any building, pier, wall or other structure on State foreshore must be authorised by the Minister. Where such erection is carried out without lawful authority the Minister may obtain a court order requiring or permitting that it be pulled down or removed within a specified time. Section 8 of the Act empowers the Minister to make regulations in respect of the public use of State foreshore. The Minister has not made any regulations under this section.

7.1.2 Non-State Foreshore

Controls exercisable over privately-owned foreshore are naturally less extensive. Section 9 of the Act provides that the erection of sea defence works on such foreshore by any person other than its owner must be authorised by Ministerial order and carried out in accordance with the conditions and restrictions in the order. Section 10 provides that the erection of any building, pier, wall or other permanent structure must be carried out in accordance with maps, plans and specifications approved by the Minister but that the Minister may only withhold his approval on the grounds that the proposed structure would obstruct navigation or fishing.

7.1.3 Deposit of Materials on Foreshore, Seashore or Tidal Lands

Section 13 of the Act provides that Ministerial consent must be obtained, and the conditions therein observed, for the deposit of any material whatsoever on any foreshore or seashore or on any other place from which such material would escape by the operation of natural causes or be transplanted to such foreshore. The penalty on summary conviction is a fine not exceeding £10 but the Court may also order the convicted person to remove the materials within a specified time. Contravention of the court order is punishable by a maximum fine of £10 plus £1 for every day the contravention continues. The "seashore" means the foreshore and every beach, land and cliff contiguous thereto and all sands and rocks.⁽⁶⁾

Section 14(1) prohibits the throwing, depositing, leaving on any tidal lands or throwing into the sea adjacent to such lands of any glass, china, earthenware or other article which would injure a person bathing or wading on or from such lands or otherwise using such lands; the same prohibition applies to any material or substance (whether solid or liquid) which would or might be injurious or offensive to any such person. The penalty on summary conviction is a fine not exceeding £5. The expression "tidal lands" means the bed and shore below the line of high water of ordinary spring tides, of the sea and of every tidal river and tidal estuary and of every channel, creek and bay of the sea or of any such river or estuary. (7)

7.1.4 Removal of Beach Material

Under s.6 of the Act the Minister may make an order prohibiting the removal by any person of beach material of any kind or of any particular kind or kinds from the seashore whenever he is of the opinion that the removal of such material has prejudicially affected any public rights in respect of the seashore or any lands or waters in the neighbourhood thereof or had caused or is likely to cause injury to any land or to any building, wall, pier, or other structure. The Minister has a discretion to revoke or amend any prohibitory order and he may, if he thinks fit, hold a public inquiry into the continuation, making, amendment or revocation of such order. Contravention of a prohibitory order is punishable by a maximum fine of £10 and forfeiture of the beach material removed. Beach material means sand, clay, gravel, shingle, stones, rocks and mineral substances on the surface of the seashore and includes outcrops of rock or any mineral substance above the surface of the seashore and seaweed on the seashore. (8)

Under s.7 of the Act the Minister may serve a notice prohibiting any person from removing beach material from State foreshore whenever he is of the opinion that its removal should be restricted or controlled. Contravention of the order is punishable by a maximum fine of £5 for a first offence and £10 for subsequent offences.

7.1.5 Enforcement

The Act is enforceable by the Minister for Transport. Enforcement of leases granted under s.2 may be by:

- (i) re-entry on the leased foreshore for breach, non-performance or non-observance of any covenant, condition or agreement;
- (ii) action for breach of a term in a lease;
- (iii) threat of non-renewal if the leasee appears to require an extension of a lease.

Licences granted under s.3 may be enforced by:

- (i) termination
- (ii) action for breach of a term
- (iii) threat of non-renewal.

The Minister has not taken any prosecutions under the Act in recent years.

7.2 HARBOURS ACT 1946

Harbour authorities have jurisdiction over harbour areas the limits of which are indicated in the Harbours Act 1946⁽⁹⁾. A harbour authority is obliged, inter alia, to take proper measures for the management, control and operation of its harbour⁽¹⁰⁾, for the maintenance of all property and facilities under its control⁽¹¹⁾ and for cleaning, scouring, deepening, improving and dredging of its harbour and approaches thereto⁽¹²⁾. It has power to provide facilities at its harbour including storage facilities, ballast and oil reception facilities⁽¹³⁾; to remove obstructions within the limits of the harbour⁽¹⁴⁾ and to place and maintain buoys.⁽¹⁵⁾ Harbour authorities have a general power to make bye-laws for the good rule and government of their harbours including bye-laws providing that the harbour master may remove nuisances from within the limits of the harbour⁽¹⁶⁾. Bye-laws made by harbour authorities are not generally motivated by pollution control considerations except perhaps, and then only to a limited extent, where oil pollution is concerned.

Harbour masters must be notified of the arrival of vessels at harbours⁽¹⁷⁾ and may, subject to harbour bye-laws, give directions to the masters of vessels for certain purposes, including the protection of persons or property and the regulation of traffic.⁽¹⁸⁾ Hazardous goods brought within harbour limits must be properly and distinctly marked and the harbour authority may prohibit the bringing of dangerous articles within harbour limits or any specified parts of such limits.⁽¹⁹⁾ It is an offence punishable by a maximum fine of £10 to put, cause or allow to be put, ballast, earth, ashes, stones or any other substance or thing into harbour waters without authorisation from the harbour authority.⁽²⁰⁾ All of the above provisions may operate directly or indirectly to control pollution of coastal waters.

Development in Harbours

Development of land in harbour areas must be permitted by harbour authorities and by the appropriate planning authority.⁽²¹⁾ But much development by harbour authorities in their own areas is exempt from the provisions of the Local Government (Planning and Development) Acts 1963-82.⁽²²⁾ Instead of applying for planning permission, a harbour authority must seek the authorisation of the Minister for Transport for proposed developments under s.138 of the Harbours Act 1946. If the Minister decides to permit the proposed development, he makes a harbour works order. He may also make a harbour works order on his own initiative under s.134 of the Act. A harbour works order may include such "supplemental and ancillary provisions and such conditions and restrictions as the Minister thinks proper".⁽²³⁾ In theory, therefore, the Minister has power to attach pollution control conditions to harbour works orders.

The Act provides that public notice be given of the making of a provisional or of a proposed harbour works order⁽²⁴⁾ that the order be made available for public inspection and that written objections and representations with respect thereto may be made to the Minister.⁽²⁵⁾ Whenever the Minister proposes to make a harbour works order, he may, if he thinks fit, direct that a public local inquiry be held in regard to the proposed order.⁽²⁶⁾

There has been a good deal of public opposition in recent years to the privileged immunity which harbour authorities and the Commissioners for Public Works enjoy from the provisions (especially the citizen-participation provisions) of the Local Government (Planning and Development) Acts 1963-82.⁽²⁷⁾

7.3 FISHERIES (CONSOLIDATION) ACTS 1959-80

Section 171 of the Fisheries (Consolidation) Act 1959,⁽²⁸⁾ applies in respect of discharges to coastal waters; 'waters' for the purpose of this Act includes estuaries and any part of the sea.⁽²⁹⁾ Although the repeal of this section is provided for in the Local Government (Water Pollution) Act 1977,⁽³⁰⁾ it has been continued in force. Briefly S.171 prohibits the entry of deleterious matter into any waters but provides that it shall be a defence to a prosecution for so doing if the entry is under or in accordance with a licence granted by the Minister for Fisheries. In 1980, four licences to dump waste matter at sea were held under s.171. In only one instance were wastes (approximately 6,000 gallons per day of organic sludges arising from the treatment of whey-processing waters) dumped inside territorial waters. The other three licences permitted dumping outside the three-mile limit. These licences covered the dumping of waste mycellium (approximately 800,000 gallons per day), dilute spent caustic soda (approximately 800,000 gallons per day), and domestic septic tank waste and blood (approximately 250 tons per month).⁽³¹⁾ By 1983, however, only one licence for the disposal of waste at sea was in force under this Act because control over sea disposal of wastes has been assumed by the Minister for Transport under the Dumping at Sea Act 1981.⁽³²⁾

Section 253 of the Act, as amended⁽³³⁾, although primarily intended for the protection of molluscs, is in effect a prohibition of certain types of pollution because it makes it an offence to "deposit ballast, rubbish or other substances" or "to place any implement, apparatus or thing prejudicial or likely to be prejudicial to any oyster bed or oysters or brood or spawn thereof or oyster fishery, except for a lawful purpose of navigation or anchorage" within the limits of a licensed oyster bed. This section was extended to include mussel,

periwinkle and cockle fisheries by s.281 of the Act. Section 290, as amended⁽³⁴⁾, makes it an offence to discharge ballast from a vessel within any estuary, harbour or place unless such discharge is lawfully permitted. The penalties on conviction for an offence under sections 253 and 290 are fines not exceeding £500 and £200 respectively.⁽³⁵⁾

7.4 LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS 1963-82⁽³⁶⁾

Although the functional areas of local planning authorities do not extend beyond the foreshore, since 1976, they are empowered to take into account the probable effect which a particular decision by them on a planning application would have on any area which is outside their area.⁽³⁷⁾ This presumably means that conditions designed to prevent pollution of coastal waters attached to planning permissions are prima facie valid. Planning authorities have been specifically empowered to include objectives to control pollution of the seashore in their development plans.⁽³⁸⁾

7.5 LOCAL GOVERNMENT (WATER POLLUTION) ACT 1977⁽³⁹⁾

"Waters" are defined in s.1 of the Local Government (Water Pollution) Act 1977, so as to include 'any tidal waters' and where the context permits, 'any beach, river bank and salt marsh' or other area' which is contiguous to tidal waters. Tidal waters are further defined so as to include the sea and any estuary up to high water medium tide and any enclosed dock adjoining tidal waters. Controls under the Act are therefore applicable to both inland and coastal waters, except where otherwise expressly provided. Where, however, local or sanitary authorities or the Minister for the Environment have power to exercise a discretion it might reasonably be expected that greater latitude will be exercised with respect to discharges of polluting matter to coastal rather than inland waters because of the superior assimilative capacity of the former.

It should, however, be noted that sections 3 and 4 of this Act do not apply in respect of entries to tidal waters of matter from

vessels or apparatus for transferring any matter to or from marine structures.⁽⁴⁰⁾ Water quality management plans made under s.13 of the Act may only relate to the sea to the extent that the Minister for the Environment, after consultation with the Minister for Fisheries, approves.⁽⁴¹⁾ This Act therefore does not operate to control marine pollution from offshore exploration and development or from vessels or pipelines.

7.6 CONTROL OF POLLUTION FROM OFFSHORE EXPLORATION AND DEVELOPMENT

Ireland has rights over the continental shelf by virtue of customary rules of international law. Article 24 of the Convention on the High Seas 1958,⁽⁴²⁾ and article 5(7) of the Convention on the Continental Shelf⁽⁴³⁾ set down general obligations concerning pollution. The former requires of every coastal State to make regulations to prevent pollution of the sea by oil from, *inter alia*, pipelines and off-shore installations; the latter requires coastal States to undertake appropriate measures for the protection of the living resources of the sea from harmful agents in safety zones extending 500 metres around offshore installations. In addition, there is an obligation on every State under customary international law not to exercise its rights in such a way as to cause injury of damage to another State.⁽⁴⁴⁾

7.6.1 National Controls

In Ireland, the rights of the State over the sea-bed and subsoil for the purpose of exploring such sea-bed and subsoil and exploiting their natural resources are vested in the Minister for Energy under the Continental Shelf Act 1968.⁽⁴⁵⁾ Orders designating where these rights may be exercised are made from time to time under s.2 of this Act. Section 4 of the Act extended the application of the Petroleum and Other Minerals Development Acts 1940-79 to the continental shelf. These Acts are currently the only legislative measures under which overall control over offshore exploration and development may be exercised. Because of their relative antiquity, they do not contain many provisions on pollution control.

It is unlawful to engage in any activities prospecting for or exploiting minerals or petroleum without an appropriate authorisation under the Petroleum and Other Minerals Development Acts 1940-79. When granting any authorisation the Minister for Energy has a discretion to attach conditions, including conditions relating to pollution control. He also has a discretion to revoke any authorisation for breach or non-observance of the terms therein.

Under the Minerals Development Act 1940, every minerals prospecting licence must contain an indemnity clause whereby the licensee undertakes to indemnify the Minister against any claim or demand whatever either in respect of the land or minerals the subject of such licence or in any way arising out of the exercise by the licensee of any of the rights conferred on him by such licence.⁽⁴⁶⁾ A similar clause must appear in every petroleum exploration and prospecting licence.⁽⁴⁷⁾ These indemnity clauses could, in theory at any rate, be drafted so as to enable the Minister to require indemnification against claims for environmental damage caused by the licensee. Mineral and petroleum prospecting licences must also contain clauses requiring the licensee to exercise the rights conferred on him so as not to interfere unnecessarily with the amenities of the area.⁽⁴⁸⁾ Compensation must be paid in a manner provided for in the Acts when damage is caused to water supplies or to mineral deposits or whenever a nuisance is caused by a licensee or lessee by the exercise of his rights under a minerals or petroleum prospecting licence or a mineral or petroleum lease.⁽⁴⁹⁾ Leases of State minerals or of petroleum must contain such covenants, conditions and subsidiary agreements as the Minister shall agree with the leasee.⁽⁵⁰⁾ These could therefore contain conditions for pollution control although in practice this is not a primary nor indeed a major concern of the Department of Energy.

Model terms and conditions applicable to the grant of exclusive licences for exploration for oil and gas on the Continental Shelf were published in a booklet, Ireland Exclusive Offshore Licensing Terms.⁽⁵¹⁾ Sections 39, 40, 42, 48, 50, 55, 60 and 65 of the Terms require licensees, inter alia,:

- (i) to use methods and practices customarily used in good oilfield practice for confining petroleum obtained from the licensed area.
- (ii) to prevent the escape or waste of petroleum or other toxic substances to waters in or in the vicinity of the licensed area which would tend to pollute land or water or damage aquatic life or wildlife or public or private property.
- (iii) to remove pollution caused by drilling or production operations where it damages or threatens to damage aquatic life, wildlife or public or private property.
- (iv) to notify the Minister of any event causing the escape or waste of petroleum.

The Minister has reserved powers when granting authorisations for offshore development:

- (i) to require a licensee to take out appropriate insurance against liability for pollution damage.
- (ii) to require that operations be discontinued or continued subject to conditions where he is satisfied that such a requirement is desirable in order to reduce the risk of damage to the environment.
- (iii) to direct a licensee to remove installations or facilities for environmental or safety reasons when a license expires or is determined or revoked or when an area is surrendered by the licensee.
- (iv) to require a licensee to indemnify him against any claim, demand or damage arising out of his operations under the licence for injury or damage to persons or property.
- (v) to revoke a licence.

In addition to the above controls, the Department of Energy requires compliance with Rules and Procedures for Offshore Petroleum Exploration Operations and Rules and Procedures for Offshore Petroleum Production Operations. These require, inter alia, that blow-out preventers and auxiliary equipment be installed prior to drilling being carried out and that the well be provided with the necessary casing and that casing strings be run and cemented in such a manner that all uncontrolled movements of fluids into boreholes are avoided. The operator is

required to ensure that:

- (i) oil in any form is not disposed of into the sea.
- (ii) liquid waste containing substances which may be harmful to aquatic life or wildlife is treated so as to avoid the disposal of harmful substances into the sea.
- (iii) drilling fluid containing oil is not disposed of into the sea.
- (iv) drilling fluid containing toxic substances is neutralised
- (v) drill cuttings containing oil are not disposed of into the sea.
- (vi) solid waste material is incinerated or brought to shore for disposal.

Offshore operators are also required to prepare plans under the general surveillance of the Department of Energy for dealing with oil spills.⁽⁵²⁾

Controls over dumping from marine structures are also imposed under the dumping at Sea Act 1981, described below.⁽⁵³⁾

7.6.2 Industry Practice: Oil Pollution Liability Agreement⁽⁵⁴⁾

Owners and operators of offshore facilities (including pipelines) in Ireland and several other Western European countries have agreed to operate a strict liability scheme for the payment of pollution damage claims and pollution mitigation expenses. Parties to the OPOL agreement become members of the OPOL Association. The Association must be provided with a certificate of insurance or a guarantee or a surety bond or proof of qualification as a self-insurer indicating an ability to pay \$25 million for any one pollution occurrence or \$50 million a year. "Pollution damage" covered is "direct loss or damage by contamination which results from the discharge of oil.... from an offshore facility". OPOL parties agree to reimburse the costs of remedial measures taken by governmental authorities and to pay compensation for pollution damage up to \$25 million per incident on a strict liability basis. Half of the \$25 million is payable for remedial measures and half for pollution damage but if one type of claim has not exhausted its full \$12.5 million, the other type may receive \$12.5 million plus the unexhausted amount remaining after the first claim has been satisfied. Amounts spent by an OPOL party in taking remedial action are deductible.

Excluded liabilities are fines, punitive damages, damage to the insured's facilities, the costs of controlling blow-outs, claims directly or indirectly happening through or in consequence of an act of war, insurrection or Act of God, transport of petroleum at sea, or payments made as guarantees by members of the OPOL Association in the event of the default of one of the members. Furthermore liability is excluded when the polluting incident is caused by an act or omission done by a third person with intent to cause damage or wholly caused by the negligence of any government or as a result of compliance with conditions imposed or instructions given by the government of the State which issued the licence to the offshore facility involved. This provision is motivated by the very practical realisation that the oil industry is often better at coping with pollution incidents than control authorities. Incidents caused by the intentional acts or negligence of the claimant are excluded (as to that claimant) to the extent that his actions were a cause of the incident.

7.6.3 Penalties for Causing Pollution

Section 7 of the Continental Shelf Act 1968, provides that if any oil to which s.10 of the Oil Pollution of the Sea Act 1956, applies or any mixture containing not less than one hundred parts of such oil in a million parts of the mixture is discharged or escapes into any part of the sea:

- (a) from a pipe-line, or
- (b) otherwise than from a ship, as a result of any operation for the exploration of the sea bed and subsoil or the exploitation of their natural resources in a designated area,

the owner of the pipe-line or, as the case may be, the person carrying on the operations shall be guilty of an offence unless he proves, in the case of a discharge from a place in his occupation, that it was due to the act of a person who was there without his permission (express or implied) or, in the case of an escape, that he took all reasonable care to prevent it and that as soon as practicable after it was discovered all the reasonable steps were taken for stopping or reducing it. A person guilty of an offence under s.7 is liable on summary conviction to a fine not exceeding £100 and on conviction on indictment to a fine of such amount as the court may consider appropriate. The

provision for the imposition of an unlimited fine for oil pollution under s.7 is the first example in Irish environmental legislation of the pollution pays principle in a criminal context. Failure to report discharges of oil from vessels, places or apparatus into the territorial seas to the Minister for Transport is an offence under s.11 of the Oil Pollution of the Sea Act 1977, and is punishable by a maximum fine of £500 and/or 12 months' imprisonment.

7.6.4 Enforcement

The Petroleum and Other Minerals Development Acts 1940-79, and the Continental Shelf Act 1968, are enforceable by the Minister for Energy. The Oil Pollution of the Sea Acts 1956-1977, are enforceable by the Minister for Transport. To date there have been no reported incidents of pollution as a result of offshore exploration and development. Further restrictions on dumping at sea from marine structures have come into force under the Dumping at Sea Act 1981. These are described in the next subsection.

The Departments of Energy and Transport lack the personnel and the facilities for policing the operation of pollution controls imposed on offshore operators. There have been difficulties recruiting and retaining the services of technically qualified persons with practical experience in the offshore industry. In view of the shortage of qualified personnel available, the Departments would appear to be almost entirely reliant upon the operators themselves for their assurance that pollution control procedures are observed.

7.7 DUMPING AT SEA

Dumping can be broadly said to be the deliberate disposal of any substance at sea other than through run-off from land. Dumping at sea refers mainly to land-generated wastes loaded on ships, aircraft or platforms for the purpose of disposal to the marine environment.

International concern about protection of the marine environment has led to the promulgation of a variety of international measures designed to protect the marine environment from dumping operations. At national level, increasing control over air and water pollution and, more recently, over the disposal of wastes on land, together with the inadequacy of land-disposal facilities for wastes, is leading to a major increase in the quantities of wastes which are being disposed of at sea. Any discussion of controls over dumping at sea must therefore refer to international as well as national measures designed to prevent marine pollution from this activity.

7.7.1 International measures

Three major international conventions to which Ireland is a party have been promulgated which place direct obligations on the State with respect to dumping of wastes generally and specific kinds of wastes, and pollution control of the marine environment. These are the Convention for the Prevention of Marine Pollution from ships and aircraft, 1972⁽⁵⁵⁾ (the Oslo Convention) the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972⁽⁵⁶⁾ (the London Convention) and the Convention on the Prevention of Pollution from Ships 1973⁽⁵⁷⁾ (MARPOL) and Protocol 1978⁽⁵⁸⁾. The first two of these conventions have been implemented in Ireland.

The Oslo and London Conventions came into force in 1974 and 1975 respectively. Their general purpose is to prevent contracting parties from dumping certain specified toxic wastes at sea and to control strictly the dumping of other pollutants.

The purpose of the Oslo Convention is to ensure that contracting parties regulate dumping operations from ships and aircraft registered in states party to the convention in the north-east area of the Atlantic (which includes Irish territorial waters and waters over the Irish continental shelf) and part of the Arctic sea. This Convention was the first of the regional international conventions concerned with the prevention of marine pollution to categorise substances according to their potentiality for harm to the marine environment.

The Convention introduces a three point-system for controlling dumping:

1. The dumping of wastes and other matter listed in Annex I (the Black List) must be prohibited⁽⁵⁹⁾,
2. The dumping of wastes and other matter listed in Annex II (the Gray List) may only be carried out under a special permit⁽⁶⁰⁾,
3. The dumping of all other wastes and matters must be carried out under a general permit⁽⁶¹⁾.

The official criteria for the exercise of the discretion to permit dumping are specified in Annex III. Exceptions are made for cases of force majeure, for trace contaminants, and in emergencies⁽⁶²⁾ but the state must notify the Oslo Commission which may recommend a suitable method of disposal⁽⁶³⁾. States are bound in these instances to report the method of disposal ultimately used⁽⁶⁴⁾.

States are required to keep records on all dumping permitted and to submit these to the Commission⁽⁶⁵⁾. States also agreed to establish complementary or joint scientific and technological programmes, including research into methods of disposal of harmful agents, and to exchange information⁽⁶⁶⁾. States are placed under a special obligation to report any incidents or conditions on the high seas which give rise to suspicion that dumping in contravention of the provisions of the Convention has occurred or is about to occur⁽⁶⁷⁾.

Unlike many International Conventions, the Oslo Convention set up an organisation to supervise, monitor, and further the objectives of the Convention. This consists of a non-permanent Commission

which comprises representatives of each Contracting Party⁽⁶⁸⁾.

The functions of the Commission are:

- to exercise overall supervision over the implementation of the convention;
- to receive and consider records of permits and approvals issued and of dumping which has taken place....and to define the standard procedures to be adopted for this purpose;
- to review generally the condition of the seas within the area to which the Convention applies and eventually propose the adoption of control measures;
- to keep under review the contents of the annexes and to recommend amendments;
- to discharge such other functions as may be appropriate under the terms of the Convention⁽⁶⁸⁾.

The obligation on Contracting Parties (including Ireland) to file records and reports on dumping enables the Commission to supervise the implementation of the Convention. This, as one learned writer observed:

leads politically to responsible exercise by the national authorities of the discretion left upon them by the Convention. In addition, particulars become publicly available to establish the responsibility of the State in accordance with the principles of international law in cases of damage from dumping carried out under a permit or approval granted without proper consideration and application of the criteria established by the Convention. This may also result in considerable reduction in the cases of abusive exercise of the discretion left to the national authority under the Convention⁽⁷⁰⁾.

Ireland is represented on the Commission which is based in London where it shares a secretariat with the Commission established under the Convention for the Prevention of Marine Pollution from Land-based sources 1974⁽⁷¹⁾ (the Paris Convention).

The Convention contains procedures for amending the articles therein and for amending the annexes⁽⁷²⁾.

Since some black list substances may be present in otherwise acceptable wastes as trace amounts, and since some of these substances may become "non-toxic" or "rapidly converted.... into biologically harmless substances in the marine environment", the Commission established a Prior Consultation Procedure which Contracting Parties must follow before dumping Black List substances⁽⁷³⁾. The Commission has also adopted a number of biological test procedures which must be carried out to evaluate the acute and chronic toxicity, the biodegradability and the bioaccumulative properties of the substances proposed for dumping.

Working groups have been established to study the evolution of pollution by mercury, cadmium and polychlorinated biphenyls. In 1977 the Commission adopted a Code of Practice for the Incineration of Wastes at Sea and in 1981 it established mandatory rules controlling incineration at sea which following a Diplomatic Conference to be convened in 1983 will become part of the Convention in the form of an additional annex. In 1977 a Code of Practice for the Dumping of Acid Wastes from the Titanium Dioxide Industry and guidelines on methods of monitoring dumping grounds for sewage sludge and dredge spoil and for monitoring sea areas where titanium dioxide wastes are dumped were approved and circulated by the Commission.

The Convention requires States to monitor the marine environment⁽⁷⁴⁾. To this end a Joint Monitoring Group has been set up between Parties to the Oslo Convention and the Parties to the Paris Convention 1974. This group has implemented a monitoring programme the aims of which are:

- to assess possible hazards to human health,
- to assess the harm to living resources and marine life (ecosystems),
- to assess existing levels of marine pollution, and
- to assess the effectiveness of measures taken for the reduction of marine pollution in the framework of the Conventions⁽⁷⁵⁾.

In 1983 the substances monitored under the joint monitoring programme are mercury, cadmium, polychlorinated biphenyls. The Commission co-operates on monitoring with the International Council for the Exploration of the Sea (ICES) of which Ireland, represented by the Department of Fisheries, is a member⁽⁷⁶⁾.

The London Convention seeks to prevent and control marine pollution by dumping of wastes and other matter in the general marine environment⁽⁷⁷⁾. It is a global as distinct from a regional Convention.

The system for controlling dumping is similar to that in the Oslo Convention, viz:

1. Wastes or other matter listed in Annex I (the Black List) may not be dumped,
2. Wastes or other matter listed in Annex II (the Gray List) require a special permit,
3. A general permit is required for the dumping of all other wastes⁽⁷⁸⁾.

The various criteria which are to be considered before any permit is granted are listed in Annex III.

While the London and Oslo Conventions are broadly comparable, the contents of their Black Lists and Gray Lists differ. Of particular significance is the exclusion from the London Black List of substances recognised as carcinogenic and organosilicon compounds. On the other hand, high-level radioactive wastes, matters produced for biological and chemical warfare and oil products are not included in the Oslo Black List although this Convention does request Contracting Parties to promote within the specialised agencies and other international bodies measures concerning the protection of the marine environment against pollution from radioactive wastes.

While the Oslo Convention seeks to regulate dumping from ships and aircraft the London Convention, in addition, embraces dumping from platforms and other man-made structures⁽⁷⁹⁾.

The contents of the Black and Gray Lists in the London and Oslo Conventions are broadly comparable, but they differ in some respects as shown in the tables below.

Table 7.7.1	
SUBSTANCES INCLUDED IN LONDON ANNEXES BUT NOT IN OSLO	
<u>BLACK LIST</u>	<u>GREY LIST</u>
Specific acid and alkali compounds	Chromium Nickel
Crude oil and hydrocarbon by-products	Beryllion
High level radioactive wastes	Vanadium
Matter for biological and chemical warfare	Selenium
	Antimony
	Radioactive matters
	Synthetic Organic chemical substances.
	Acid and alkali compounds
	Medium and low level radioactive waste

SUBSTANCES INCLUDED IN OSLO ANNEXES BUT NOT IN LONDON	
<u>BLACK LIST</u>	<u>GREY LIST</u>
Organo-silicon compounds	Tar like substances
Carcinogenic substances	Other substances in large amounts or reducing amenities

The most notable exclusion from the Oslo Black List is radioactive wastes although some compensation for this exclusion is made by a request to Contracting Parties to promote within the specialised agencies and other international bodies measures concerning the protection of the marine environment against pollution from radioactive wastes⁽⁸⁰⁾.

Exceptions from the provisions of the Convention are made for safety of human life and vessels⁽⁸¹⁾, for emergency situations⁽⁸²⁾, trace contaminants⁽⁸³⁾ and for substances rapidly rendered harmless⁽⁸⁴⁾.

States are required to keep records of the nature and quantities of all matter permitted to be dumped and of the location, time and method of dumping and to monitor individually or in collaboration with other Parties and competent international organisations, the condition of the seas for the purposes of the Convention⁽⁸⁵⁾. Co-operation is required between states on procedures including procedures for reporting vessels and aircraft on the high seas observed dumping in contravention of the Convention⁽⁸⁶⁾.

Under the Convention the Contracting Parties agreed to collaborative action necessary to further the aims and principles of the Convention such as "promoting the actual control of all sources of pollution of the marine pollution"⁽⁸⁷⁾. Particular sources which should be controlled (including hydrocarbons, wastes from offshore exploration and development and radioactive pollutants) are listed⁽⁸⁸⁾.

Contracting Parties agreed to develop procedures for the assessment of liability and the settlement of disputes regarding dumping⁽⁸⁹⁾. In 1978 a Court of Arbitration for settling disputes was set up.

The Parties also agreed to designate an existing competent organisation to be responsible for secretariat duties in regard to the Convention⁽⁹⁰⁾. IMCO was designated as the responsible body⁽⁹¹⁾.

It's duties, however, only refer to matters such as consultation, co-ordination and application of the Convention and are not as extensive as those conferred on the Oslo Commission.

The Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP) co-operates with the Contracting Parties and IMCO in connection with the Convention. This is a scientific working group of several specialised agencies of the United Nations and of the International Atomic Energy Agency, whose work is headed by an administrative secretary provided by IMCO.⁽⁹²⁾ Other ad hoc working groups, staffed by the Contracting Parties, dealing with scientific and legal aspects of dumping and incineration have also been established.⁽⁹³⁾

The Convention prescribes procedures for amending the articles and annexes therein.⁽⁹⁴⁾

Ireland is obliged to take appropriate measures to punish violations of these Conventions.⁽⁹⁵⁾ Thus, under the Oslo Convention, Irish authorities are obliged to enforce the Convention on Irish registered ships or aircraft in the Oslo Convention area;⁽⁹⁶⁾ on ships and aircraft (whatever their nationality) which load pollutants for dumping in Irish ports;⁽⁹⁷⁾ and on ships and aircraft (whatever their nationality) believed to be dumping in the Irish territorial sea.⁽⁹⁸⁾ Ireland may only enforce breaches of the Convention in the high seas against Irish registered ships and aircraft.

The provisions of the London Convention must be enforced by Ireland on ships, aircraft and platforms which are registered in, or belong to, the State⁽⁹⁹⁾ wherever the breach of the Convention has occurred; on all ships etc. loading matter to be dumped in Irish ports⁽¹⁰⁰⁾ and, perhaps, on ships etc. of other Contracting Parties after they have loaded and left Irish ports and/or Irish waters;⁽¹⁰¹⁾ and on all ships, (whatever their nationalities) in Irish territorial waters.⁽¹⁰²⁾ Enforcement of dumping in the high seas is primarily a matter of flag state

jurisdiction⁽¹⁰³⁾ but Parties to this Convention have agreed to develop procedures for the effective application of the Convention in the high seas.⁽¹⁰⁴⁾

7.7.2 National Measures

Ireland implemented the Oslo and London Conventions by the Dumping at Sea Act 1981. The definition of dumping in s.1 of this Act covers deliberate dumping as defined in the two Conventions and incineration but it excludes disposals incidental to, or derived from, the normal operation of a vessel, aircraft or marine structure, or its equipment, which is not constructed or adapted for dumping purposes and the use of detergents and dispersants used to emulsify oil causing pollution.

Under s.2(1) of the Act it is an offence if any material or thing:

- (a) is dumped in the territorial seas of the State,
- (b) is dumped anywhere in the sea outside the territorial seas of the State and the vessel, aircraft or marine structure concerned in the dumping is an Irish vessel, an Irish aircraft or an Irish marine structure, or
- (c) is loaded on to a vessel, aircraft or marine structure in the State or in the territorial seas of the State for dumping.

The persons guilty of this offence are the master and the owner of the vessel, or the pilot in command and the owner of the aircraft, or the person in charge and the owner of the structure, as the case may be.⁽¹⁰⁵⁾ The effect of s.2 in practical terms, is to provide for Irish authorities enforcing the provisions of the Oslo and London Conventions within the Irish jurisdiction and on Irish ships, aircraft and marine structure anywhere at sea. This is rather more than is required of Ireland under the Oslo Convention which applies only to the north-east area of the Atlantic and part of the Arctic sea. Thus, for the purposes of national law, substances listed in the Oslo and London Annexes are subject to the same jurisdictional rules.

Section 2(2) provides a number of defences for a person charged with an offence under s.2(1). These are that:

- (a) the Commission of the offence was due to a mistake, the act a default of another person or an accident or some other cause beyond his control and that he took all reasonable precautions and exercised all due diligence to avoid the Commission of the offence by himself or some other person under his control; or
- (b) that the dumping or loading concerned took place in accordance with a permit under s.3 of the Act or , in the case of dumping outside the territorial seas of the State by an Irish vessel, aircraft or marine structure, that the dumping was in under and in accordance with a permit granted by another State party to the Oslo or London Conventions; or
- (c) that dumping in the territorial seas and dumping anywhere at sea by an Irish vessel, aircraft or marine structure was reasonably necessary for the purpose of securing the safety of a vessel aircraft or marine structure or saving life.

In this event the dumping must be reported to the Minister for Transport as soon as may be but not later than seven days after it takes place.

Under articles 15(1) and 7(1) of the Oslo and London Conventions respectively, there is a concurring jurisdiction for the enforcement of these Conventions in the case of dumping by vessels, aircraft and marine structures outside the territorial seas of the States in which they are registered. Thus, for example, an Irish registered ship which loads a waste listed in any of these Conventions in the U.K. (which is a party to the Conventions) for disposal on the high seas or even in U.K. territorial waters is subject to the jurisdiction of the U.K. Authorities under s.1 of the Dumping at Sea Act 1974, and to Irish authorities under s.2(1) of the Dumping at Sea Act 1981. Section 2(2)(b) ensures respect for the principle non bis in idem by providing a defence when the dumping is carried out under and in accordance with the U.K. permit. The other defences provided in s.2(2) mirror exceptions in the Oslo and London Conventions.

Section 3 of the Act provides for the granting of dumping permits for all substances and matter other than those controlled under the Nuclear Energy Act 1971,⁽¹⁰⁶⁾ by the Minister for Transport after consultation with other specified Ministers. The section empowers the Minister to grant or refuse a permit; to include such conditions as the Minister thinks appropriate; and, after consultation with other specified Ministers, to revoke or amend a permit whenever he thinks it appropriate to do so. Section 3(1) specifically obliges the Minister when deciding whether to grant or refuse a permit to "take into consideration" the provisions of Annex III of the London Convention and the provisions of Annex III of the Oslo Convention where the permit, if granted, would relate to a place where the Oslo Convention applies but it does not refer to the obligation on Ireland to prohibit the dumping of certain substances and to restrict the dumping of other substances and materials listed in the other Annexes to these Conventions.

Applicants for permits under s.3 must furnish the Minister with such information as he considers necessary for the purpose of the exercise of his functions under the section including information which will satisfy him that there is "no suitable alternative means of disposal of the substance or material concerned".⁽¹⁰⁷⁾ Fees may be charged for applications for permits⁽¹⁰⁸⁾ and, where the Minister proposes to grant a permit, appropriate fees may be charged to cover costs of monitoring, surveys and examinations carried out to enable the Minister to determine where dumping is to be permitted and to assess the environmental impact of the dumping.⁽¹⁰⁹⁾

It is an offence under s.3(8) of the Act, punishable on summary conviction by a maximum penalty of £500 and/or 12 months imprisonment⁽¹¹⁰⁾ for an applicant for a permit to make a statement that is false or misleading in a material respect to the Minister unless he shows that he did not, and could not reasonably have been expected to, know that the statement was false or misleading in a material respect.

Dumping in the territorial seas must be reported to the Minister by the master of the vessel, the pilot commanding the aircraft, or the person in charge of the marine structure, as the case may be, as soon as may be, but not later than seven days after it takes place.⁽¹¹¹⁾ The maximum penalty for failure for so doing on summary conviction is £500 and/or 12 months imprisonment.⁽¹¹²⁾

Dumping without a permit or in breach of the terms of a permit is punishable on conviction on indictment by a fine and/or five years imprisonment.⁽¹¹³⁾ In theory, therefore, there is no limit on the maximum fine which can be imposed. This is the second example in Irish environmental law of the "polluter pays" principle in a criminal context.⁽¹¹⁴⁾

Particulars of all permits granted must be entered in a register which is to be kept open to public inspection at reasonable times.⁽¹¹⁵⁾

The Act is enforceable by officers appointed by the Minister for Transport; by harbour authorities (within their individual jurisdictions); by the Commissioners of Public Works (for harbours of the Commissioners) and by Coras Iompair Eireann (for harbours managed by them)⁽¹¹⁶⁾ Enforcement of the Act in respect of the dumping of radioactive substances and materials is a function of the Minister for Energy.⁽¹¹⁷⁾

Authorised officers are granted necessary enforcement powers including powers of entry, examination and inspection, powers to take samples of any materials or substances and powers to monitor the effects of any dumping.⁽¹¹⁸⁾ Of particular importance is the power of an authorised officer to detain any vessel, aircraft or marine structure at any place in the territorial seas or at any convenient harbour or airport on reasonable suspicion that a contravention of the Act is taking, or has taken, place.⁽¹¹⁹⁾ Where this power of detention has been exercised, the offending vessels etc may be detained until one of a number of specified events has occurred.⁽¹²⁰⁾

Obstruction or interference with an authorised officer is an offence⁽¹²¹⁾ punishable on summary conviction by a maximum fine of

£500 and/or 12 months imprisonment.⁽¹²²⁾ Proceedings may be brought within 12 months from the date of the offence and if the person to be charged is outside the State at the expiry of that period, within six months if the date on which he enters the State.⁽¹²³⁾ Where an offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of, any director, manager, secretary or other similar officer, or any person purporting to act in that capacity, both the body corporate and that person shall be guilty of the offence.⁽¹²⁴⁾

The Act is seriously defective in that it makes no provision for public participation in decision-making on permits. Attempts by Senator Gemma Hussey to introduce an amendment in the Senate providing for participation by interested environmental and fisheries' associations were unsuccessful although her contribution to the debate did lead to the incorporation of the provision requiring that a register be made available for public inspection.⁽¹²⁵⁾ The Minister is empowered to revoke or amend a permit "whenever he thinks it appropriate to do so"⁽¹²⁶⁾ but no indication is given as to the circumstances or conditions which might justify revocation or amendment. The Minister is not required to give reasons for his decision or to allow disappointed applicants for permits, or holders of permits which have been revoked or amended, to appeal his decision.

The Act is silent on the obligations and responsibilities (for example, obligations to monitor the marine environment and to forward records of dumping permits to the Oslo Commission) imposed on Irish public authorities by the Oslo and London Conventions. The Black and Gray Lists of the Conventions are not mentioned in the Act although the Annexes in the Conventions specifying criteria to be considered before any permit is granted are. Once again, there is evidence in this Act that there is one kind of environmental law for the public sector and another for the private sector. The omission to incorporate the Lists in the Act is serious because copies of the Oslo and London Conventions are not easily available to the Irish public.⁽¹²⁷⁾

Consequently, it is almost impossible for the private citizen to discover the full extent of Ireland's responsibilities with respect to the marine environment.

7.7.3 Implementation in practice

The fees chargeable for applications are £10 where the application relates to sewage sludge or dredge spoil and £10 for a renewal of the permit, and £100 where the application relates to industrial wastes and £50 for a renewal of the permit. Applications to dump dredge spoil and sewage sludge are made by public authorities. Applications to dump industrial wastes are made by the private sector. Fees for monitoring, examinations and surveys are rarely levied and in the few cases where they have been, they have not exceeded £4000.⁽¹²⁸⁾

In 1983, 22 permits were in force under the Act. Fourteen permits were for dredge spoil, six for industrial wastes and two for sewage sludge.⁽¹²⁹⁾ This is a comparatively large number of permits. For example, the corresponding figure for the U.K. is 225 and for Holland (which has particularly difficult problems in disposing of waste on land) was 19 and 16 pending in 1980.⁽¹³⁰⁾ Statistics available from the Oslo Commission⁽¹³¹⁾ indicate that Ireland does not compare favourably with other signatories of the Oslo Convention with respect to amounts dumped. Ireland is the fourth largest dumper in Europe of industrial wastes, a position which reflects neither her population nor her GNP. Although Ireland only disposes of 0.12 million metric tons of sewage sludge at sea, this figure is estimated to rise to around one million tonnes in the next ten years. This is a small amount of sewage sludge globally but it constitutes an exceptionally large proportion of domestically generated sewage sludge.

Monitoring of the marine environment is carried out by the Aquatic Environment Unit of the Department of Fisheries which was set up in 1975. In practice, only one research vessel is available to this Unit and this has been out of action for a significant part

of the last three years.⁽¹³²⁾ On a few occasions, the Unit has hired vessels where the cost was recoverable from an applicant for a licence. The Unit has participated in inter-calibration exercises for ICES and the Joint Monitoring Group set up under the London and Paris Conventions.⁽¹³³⁾

The register of permits granted by the Minister for Transport available for public inspection does not incorporate all the material particulars of permits granted. It merely gives a general description of the wastes to be dumped, information on the amounts permitted to be dumped and on the permitted dumping location. It does not identify the person to whom the permit has been granted nor does it specify what, if any, conditions have been attached to the permit.

7.8 POLLUTION FROM LAND-BASED SOURCES

Many of the pollution controls already described operate to prevent pollution from land-based sources. The term "land-based" however has acquired a special meaning since the conclusion of the Convention for the Prevention of Marine Pollution from Land-Based Sources in 1974 (the Paris Convention)⁽¹³⁴⁾ Under this Convention land-based means pollution in the maritime area to which the Convention applies:

- (i) through watercourses,
- (ii) from the coast including introduction through underwater or other pipelines, and
- (iii) from man-made structures placed under the jurisdiction of a Contracting Party.⁽¹³⁶⁾

The Convention applies to the north-east area of the Atlantic which includes Irish waters.

Ireland has signed but has not yet ratified this Convention.

Like the Oslo and London Conventions, the Paris Convention seeks to control marine pollution by considering substances according to their characteristics for persistence in the marine environment, toxicity or other noxious properties and tendency to bioaccumulation. Contracting Parties undertake to "eliminate" marine pollution from substances listed in Part I of Annex A to the Convention and "to limit strictly" marine pollution from substances listed in Part II of Annex A and to adopt programmes and measures (jointly or individually, as appropriate to these ends.⁽¹³⁶⁾ Radioactive substances are specifically included in substances to be eliminated.⁽¹³⁷⁾ Contracting Parties are also required to "endeavour" to reduce existing pollution from all other land-based sources and to forstall new pollution from this source including that which derives from new substances.⁽¹³⁸⁾ Listed substances may only be discharged after approval has been granted by the appropriate authorities within each Contracting State.⁽¹³⁹⁾

Contracting Parties agreed to establish complementary or joint programmes of scientific and technical research;⁽¹⁴⁰⁾ to set up marine pollution monitoring systems;⁽¹⁴¹⁾ and to assist one another to prevent marine pollution from land-based sources.⁽¹⁴²⁾

A Commission composed of representatives of Contracting Parties was established⁽¹⁴³⁾ the functions of which are:

- to exercise overall supervision over the implementation of the Convention;
- to review generally the condition of the seas within the area to which the present convention applies, the effectiveness of the control measures being adopted and the need for any additional or different measures;
- to fix if necessary, on the proposal of the Contracting Party or Parties bordering on the same watercourse and following a standard procedure the limit to which the maritime area shall extend in that watercourse;
- to draw up, in accordance with Article 4 of the present convention, programmes and measures for the elimination or reduction of pollution from land based sources;
- to make recommendations in accordance with the provisions of Article 9;
- to receive and review information and distribute it to the Contracting Parties in accordance with the provisions of Articles 11, 12 and 17 of the Convention;
- to make, in accordance with Article 18, recommendations regarding any amendment to the lists of substances included in Annex A to the Convention;
- to discharge such other functions, as may be appropriate, under the terms of the Convention.⁽¹⁴⁴⁾

Although Ireland has not yet ratified this Convention, she is represented on, and contributes towards, the expenses of this Commission. Contracting Parties are obliged to transmit the results of monitoring programmes and the most detailed information available on the substances listed in the Annexes liable to enter the marine environment.⁽¹⁴⁵⁾ The Commission is obliged to adopt programmes and measures for the reduction and elimination of marine pollution from land-based

sources and programmes for scientific research and monitoring.⁽¹⁴⁶⁾
 These programmes and measures must be applied by all Contracting States 200 days after their adoption unless the Commission specifies another date.⁽¹⁴⁷⁾

Annex A may be amended on the recommendation of a three quarters majority of the Commission.⁽¹⁴⁸⁾ Amendments become binding on Contracting Parties unless they notify the Commission of inability to approve them.⁽¹⁴⁹⁾

To date the Commission has:

- required Contracting Parties to report annually, by means of standard report formats, the inputs of hydrocarbons from offshore oil and gas platforms, mercury from the chloralkali industry and the discharge of wastes from the titanium dioxide industry,
- surveyed discharges of wastes from oil refineries, and
- gathered information on the input of cadmium, mercury and polychlorinated biphenyls from land-based sources.⁽¹⁵⁰⁾

The EEC concluded the Paris Convention on behalf of the Community by EEC Council Decision 75/437/EEC.⁽¹⁵¹⁾ On Community participation in the interim Commission established on the basis of Resolution No. 111 of the Convention for the prevention of marine pollution from land-based sources.⁽¹⁵²⁾ This also authorises the EEC Commission to represent the Community in the working group entitled "Interim Commission" established pending the entry into force of the Convention. EEC Council Resolution of 3 March 1975 on the Convention for the prevention of marine pollution from land-based sources⁽¹⁵³⁾ invited Member States affected by the Convention (including Ireland) to sign it as soon as possible and in any case before 31 May 1975. Ireland has complied with this obligation.

With regard to its obligation to implement the Paris Convention, the EEC adopted Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community.⁽¹⁵⁴⁾ The preamble to this Directive cites the need to

ensure the co-ordinated implementation of the Paris Convention and other Conventions designed to protect the marine environment, but it also states as part of its justification the need to avoid the creation of unequal conditions of competition which any disparity between the provisions on the discharge of certain dangerous substances into the aquatic environment in Member States might create.

The framework of this Directive follows that of the Paris Convention. It applies to inland surface waters, ground waters, internal coastal waters and territorial waters.⁽¹⁵⁵⁾ Member states are obliged to take "appropriate steps" to "eliminate" pollution by List I substances and to "reduce" pollution from List II substances.⁽¹⁵⁶⁾

All discharges of List I and List II substances must be subjected to prior authorisation procedures by competent authorities in the Member States.⁽¹⁵⁷⁾ Emission standards for discharges of List I substances to waters and, where necessary, to sewers must be prescribed by the EEC Council in accordance with any daughter directives as provided for under article 6.⁽¹⁵⁸⁾ Quality standards for List I substances and monitoring procedures must also be prescribed by the Council.⁽¹⁵⁹⁾ Emission standards for discharges of List II substances must be prescribed in accordance with quality objectives laid down in a programme for reducing pollution in accordance with article 7.⁽¹⁶⁰⁾ The EEC Council must prescribe quality objectives for List II substances which must be met except where a Member State can satisfy the Commission, in accordance with a monitoring procedure set up by the Council, that the quality objectives set by the Council or more severe Community quality objectives, are being met and continuously maintained.⁽¹⁶¹⁾

Competent authorities are obliged, where necessary, to prohibit or refuse authorisations for discharges where emission standards can not be complied with.⁽¹⁶²⁾ Member States are free to adopt more stringent requirements than those prescribed in the Directive.⁽¹⁶³⁾

Information on details of all authorisations granted,⁽¹⁶⁴⁾
results of an inventory of discharges of List I substances,⁽¹⁶⁵⁾

results on monitoring,⁽¹⁶⁶⁾ additional information on the programme to implement the Directive, summaries of the programme, and the results of the implementation programme,⁽¹⁶⁷⁾ must be communicated to the EEC Commission.

This Directive became binding on Ireland on 4 May 1978. Since the Directive is a framework directive, it will not become fully effective until the daughter directives on particular pollutants have been adopted. To date, the only daughter directives adopted are EEC Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances described above⁽¹⁶⁸⁾ and EEC Directive 82/176/EEC on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry⁽¹⁶⁹⁾ which must be implemented by 1 July 1983. The EEC Commission has proposals for further daughter directives on aldrin, dieldrin, endrin cadmium and their compounds.

Local authorities have been advised of the requirements of Directive 76/464/EEC⁽¹⁷⁰⁾ but administrative action has not yet been taken to implement Directive 82/176/EEC.

The application of Directive 76/464/EEC and its daughter directives is somewhat different to that of the Paris Convention. Unlike the latter, it is not applicable beyond the national jurisdictions of the EEC Member States. But, as a measure to control marine pollution from land-based sources, it is superior to the Paris Convention because it is enforceable by the EEC Commission and the Member States.⁽¹⁷¹⁾ Failure by any one Member State to implement and enforce the Directive could result in unequal conditions of competition - a factor which in practice constitutes a far more realistic incentive to other Member States to ensure the enforcement of the Directive than does a desire to control marine pollution.

7.9 MISCELLANEOUS

Section 19 of the Public Health (Ireland) Act 1878, which requires sanitary authorities to purify sewage before discharging it, does not apply in respect of discharges to coastal waters. The nuisance provisions of the same Act do apply to ships and vessels in any river, harbour or district within the jurisdiction of a sanitary authority; and where any river, harbour or water is outside the jurisdiction of a sanitary authority, ships and vessels therein are, unless otherwise provided for by the Minister for the Environment, deemed to be within the jurisdiction of the nearest sanitary authority. (172)

It is an offence under s.4 of the Alkali etc. Works Regulations Act 1906, to deposit or discharge alkali waste without the best practicable means being used for effectually preventing any nuisance arising therefrom. The penalty is £20 in the case of a first offence, £50 for subsequent offences and £5 for every day on which a subsequent offence continues. (173)

Section 41 of the Local Government (Sanitary Services) Act 1964, provides that sanitary authorities may make bye-laws for the regulation of public bathing and that bye-laws may in particular provide for all or any of the matters mentioned in the schedules in the Act. Matters mentioned in the Third Schedule to the Act include the prohibition of public bathing except in specified areas. The Fourth Schedule provides that bye-laws may be made to ensure that water in a bathing place is pure. Bye-laws have never been made for these purposes under s.41.

Under article 71 of the Fishery Harbour Centres (Management, Control, Operation and Development) Bye-Laws 1979, made under s.4(2)(a) of the Fishery Harbour Centres Act 1968, it is an offence to throw, discharge or suffer any substance other than surface water into the sea within a port without the consent of the Minister for Fisheries. For the purpose of the bye-law "substance" is defined as including

polluting matter, sewage effluent and trade effluent within the meaning of the Local Government (Water Pollution) Act 1977, and bilge water.

7.10 INDIVIDUAL RIGHTS

The principal controls over pollution of coastal waters (other than the Local Government (Planning and Development) Acts 1963-82, and the Local Government (Water Pollution) Act 1977), are administered by central government. The Fisheries (Consolidation) Act 1959-80, the Petroleum and Other Minerals Development Acts 1940-79, and the Dumping at Sea Act 1981, are administered by the Department of Fisheries, Energy and Transport respectively. As is usual in legislation administered by central government, the individual has no special rights to enforce the provisions in, or to participate in decision-making on, the various authorisations granted under the Fisheries (Consolidation) Act 1959-80, the Petroleum and Other Minerals Development Acts 1940-79, and the Dumping at Sea Act 1981.

7.11 QUALITY AND EMISSION STANDARDS

The Minister for the Environment has power under s.26 of the Local Government (Water Pollution) Act 1977, to prescribe quality standards for waters and effluents and standards in relation to methods of treatment of effluents to, inter alia, the marine environment. The Minister has not yet exercised this power. The only mandatory quality and emission standards currently applicable in Ireland are those prescribed under and in accordance with EEC Directive 76/160/EEC concerning the quality of bathing water⁽¹⁷⁴⁾ and in EEC Directive 79/923/EEC on the quality required of shellfish waters.⁽¹⁷⁵⁾

There are no national legislative requirements on quality standards for bathing waters.⁽¹⁷⁶⁾ But EEC Directive 76/160/EEC concerning the quality of bathing water was implemented administratively in Ireland partly by circular letter to sanitary authorities and partly by the Memorandum on Water Quality Guidelines⁽¹⁷⁷⁾ issued by the

Department of the Environment to all local authorities. The latter contains recommendations on the values applicable to bathing waters for the parameters in the Annex to the Directive. Claims that the Directive has been implemented have been challenged on a number of occasions. The EEC definition of "bathing waters" is waters in which:

- (a) bathing is expressly authorised by the competent authorities;
or
- (b) bathing is not prohibited and is traditionally practised by a large number of bathers.⁽¹⁷⁸⁾

Bathing is not "expressly authorised" in Ireland so that the sole criterion for identifying a bathing place is (b) above. On at least two occasions⁽¹⁷⁹⁾ the Minister for the Environment has denied in the Dail that specific locations were bathing places on the grounds that they were not used by "a large number of bathers". His perception of a large number is apparently "10,000 persons per linear kilometre" a figure which, as he himself admitted, is not exceeded even "at the most popular beaches in Ireland". One must therefore conclude from the Minister's reported statements that there are no "bathing waters" within the meaning of the Directive in Ireland. However, in 1981 it was decided that the following bathing places would be required to comply with the spirit of the Directive:

Portmarnock and Dollymount, Co Dublin;

Courtown, Co. Wexford;

Fountainstown, Co. Cork;

Salthill, Co. Galway;

Tramore, Co. Waterford.

National limit values have been set for waters in these areas⁽¹⁸⁰⁾

on the recommendations of the Technical Committee on Effluent and Water Quality Standards. These standards must be complied with by 1985. In exceptional circumstances, the Department of the Environment may grant derogations in respect of the ten year time limit and waivers may be allowed for parameters marked (o) in the Annex or when bathing waters undergo natural enrichment in certain substances as outlined in the Directive. The Department of the Environment is required to report to the EEC Commission on bathing water quality

by October 1983 and at regular intervals thereafter.

Directive 79/923/EEC on the quality required of shellfish waters has also been implemented administratively by the Department of the Environment, in consultation with the Department of Fisheries.⁽¹⁸¹⁾ The following shellfish waters are required to meet the standards prescribed in the Directive:

Clarínbridge
Mulroy Bay
Kilkiaran Bay
Killary Harbour

National limit values for the parameters listed in the Directive have been prescribed on the recommendation of the Technical Committee on Effluent and Water Quality Standards. The designated waters must conform to the values set out by the Department of the Environment and the comments in Annex I to the Directive within six years of the designation of the waters. Derogations from the Directive are allowed in the event of exceptional weather or geographical conditions. The designation of waters to comply with this directive may be revised in certain defined circumstances.

A detailed report on designated waters must be submitted six years following the initial designation and thereafter at regular intervals. The Department of the Environment must forward to the EEC Commission the texts of the main provisions of national law adopted to implement this Directive and information on:

- (1) waters which have been designated
- (2) any revision of designations
- (3) provisions laid down establishing new parameters
- (4) derogations from the Directive and
- (5) any information necessary for the application of the Directive on a reasoned request.

Quality and emission standards in respect of discharges of dangerous substances to the marine environment prescribed by EEC Directive 82/176/EEC on limit values and quality objectives for mercury discharges

by the chlor-alkali electrolysis industry will be applicable by 1 July 1983. ⁽¹⁸²⁾

Quality and emission standards prescribed under or in accordance with the Oslo, London and Paris Conventions already described ⁽¹⁸³⁾ are also applicable to discharges to coastal and sea waters covered by these Conventions. No effort has been made to ensure respect for the provisions of these Conventions where this is relevant at local government level.

The most obvious, and arguably the best, way of incorporating the provisions of the above Directives and Conventions into Irish law is by statutory instrument made under s.26 of the Local Government (Water Pollution) Act 1977. This would at least ensure adequate publication of the law on quality and emission standards relevant to marine pollution control. This information is particularly relevant where the quality of bathing and shellfish waters is concerned. Medical authorities have expressed concern about a huge increase in incidents of viral hepatitis in Ireland (509 cases in 1982), ⁽¹⁸⁴⁾ and Irish mussels have been blamed for hepatitis outbreaks in other countries. It is suspected that pollution of coastal waters by untreated sewage discharges is largely responsible for the hepatitis outbreaks. ⁽¹⁸⁵⁾

All other standards for discharges to coastal waters and the marine environment and for coastal water quality are determined on an ad hoc basis by the various authorities charged with the administration of legislation regulating pollution control of coastal waters.

7.12 MONITORING

Monitoring of coastal and sea waters is required under the provisions of the Oslo, London and Paris Conventions. Such monitoring as is carried out in fulfillment of Convention obligations is undertaken by the Aquatic Environment Unit of the Department of Fisheries.

EEC Directive 76/160/EEC on the quality required of bathing waters requires competent authorities in Member States to monitor bathing waters. In Ireland the relevant authorities are Health Boards. Sampling operations, the minimum frequency of which is laid down in the Annex, must begin two weeks before the bathing season starts. Additional sampling must be carried out if a decrease in water quality is suspected. Investigations into the conditions prevailing in bathing waters must also be made and repeated periodically in order to determine the volume and nature of all polluting discharges, and their effects, into these waters. The results of such monitoring as has been carried out to date suggest that the main cause of pollution of bathing waters is the discharge of untreated sewage by sanitary authorities.

EEC Directive 79/923/EEC on the quality required of shellfish waters, requires competent authorities to carry out sampling operations in a prescribed manner. The relevant authority is the Department of Fisheries. The minimum frequency of sampling is prescribed in the Annex but the Directive permits less frequency sampling in certain circumstances. If sampling shows that any value is not respected, the Department of Fisheries must establish the cause and if it is due to pollution, take appropriate measures to ensure respect for the value.

The National Radiation Monitoring Service monitors radioactivity in the Irish Sea and the Institute for Industrial Research and Standards carries out baseline monitoring of coastal and estuarine waters in relation to specific industrial projects and monitoring commissions for public and private sector clients.⁽¹⁸⁶⁾ A number of research organisations have also surveyed pollution levels of coastal waters from time to time but there has been no attempt, as yet, to carry out a comprehensive base-line survey of coastal water quality.⁽¹⁸⁷⁾

7.13 ENFORCEMENT

The enforcement of the various relevant controls has already been described in this section. It is hap-hazard and infrequent.

FOOTNOTES

1. Foreshore Act 1933, s.5.
2. Ibid., s.1.
3. Minerals Development Act 1940, s.82.
4. Dail Reports, Vol. 262, Cols. 495-497, 4 July 1972.
5. Harbours Act 1976. This Act set up a harbour authority for Bantry Bay.
6. Foreshore Act 1933, s.1.
7. Ibid.
8. Ibid.
9. Harbours Act 1946, ss.2(3), 47.
10. Ibid., s.47(1).
11. Ibid., s.47(2).
12. Ibid., s.48.
13. Ibid., ss.50, 52. See also Oil Pollution of the Sea Act 1956, s.13 and section 8.6.
14. Ibid., s.56.
15. Ibid., s.58.
16. Section 60 and Second Schedule.
17. Ibid., s.65.
18. Ibid., s.67.
19. Ibid., ss.86, 87.
20. Ibid., s.58.
21. See section 3.6.2(3).
22. See Local Government (Planning and Development) Regulations 1977, Third Schedule, class 20.
23. Harbours Act 1946, s.134(5).
24. Ibid., ss.135, 136.
25. Ibid.

26. Ibid., s.137.
27. See, for example, Hibernia, 12 July 1979.
28. See section 5.2.
29. Fisheries (Consolidation) Act 1959, s.3.
30. Local Government (Water Pollution) Act 1977, s.34(c).
31. Dail Reports, Vol. 319, Col. 1343, 18 April 1980.
32. See section 7.7.
33. Fisheries (Amendment) Act 1962, s.32; Fisheries Act 1980, s.50.
34. Ibid., s.50.
35. Ibid.
36. See section 3.
37. Local Government (Planning and Development) Act 1976, s.24(1).
38. Local Government (Planning and Development) Act 1963, Third Schedule, Part IV, 11.
39. See section 5.3.
40. Local Government (Water Pollution) Act 1977, ss.3(5), 4(2).
41. Ibid., s.15(4).
42. 450 UNTS 82.
43. 499 UNTS 311.
44. Trail Smelter Arbitration (1941) American Journal of International Law, 684-736; Corfu Channel Case (1949) International Court of Justice Reports, 18. See Dupuy P, "International Liability for Transfrontier Pollution", Trends in Environmental Policy and Law, 1980, at pp.363-389.
45. Continental Shelf Act 1968, s.2.
46. Minerals Development Act 1940, s.8(4).
47. Petroleum and Other Minerals Development Act, 1960, ss.8(5), 9(6).
48. Minerals Development Act, 1940, s.8(5); Petroleum and Other Minerals Development Act 1960, s.9(7).
49. Minerals Development Act 1940, ss.10, 25, 31; Petroleum and Other Minerals Development Act 1960, ss.12, 16, 28.

50. Minerals Development Act 1940, s.26; Petroleum and Other Minerals Development Act 1960, s.13(2).
51. Ireland Exclusive Offshore Licensing Terms, Prl. 4510, published by the Department of Energy.
52. Information from the Department of Energy. These Rules and Procedures are not publicly available.
53. See section 7.7.
54. (1974) 13 ILM 1409.
55. (1972) 11 ILM 262.
56. (1972) 11 ILM 1291.
57. (1973) 12 ILM 1319.
58. (1979) 17 ILM 526.
59. Convention for the Prevention of Marine Pollution from Ships and Aircraft 1972, article 5. See Timagenis G., International Control of Marine Pollution, 1980, at pp.124-167.
60. Ibid., article 6.
61. Ibid., article 7.
62. Ibid., article 8.
63. Ibid., article 9.
64. Ibid.
65. Ibid., article 12.
66. Ibid.
67. Ibid., article 15.
68. Ibid., article 16.
69. Ibid., article 17.
70. Timagenis, op.cit., at p.149.
71. (1974) 13 ILM 325.
72. Convention for the Prevention of Marine Pollution from Ships and Aircraft 1972, articles 17, 18, 25.

73. Hayward P., "Prevention of Marine Pollution in the North-East Atlantic Region", Paper at Conference The New Law of the Sea and the Environment, Brussels, 1983.
74. Convention for the Prevention of Marine Pollution from Ships and Aircraft 1972, article 17.
75. Hayward, op.cit., at p.5.
76. Information from the Oslo Commission.
77. Convention for the Prevention of Marine Pollution from Dumping of Wastes and Other Matters 1972, Preamble, para. 7.
78. Ibid., article 4.
79. Ibid., article 3.
80. Oslo Convention, article 16.
81. London Convention, article 5(1).
82. Ibid., article 5(2).
83. Ibid., Annex 1 para. 8.
84. Ibid., Annex 1 para. 9.
85. Ibid., article 6.
86. Ibid., article 7.
87. Ibid., article 12.
88. Ibid.
89. Ibid., article 10.
90. Ibid., article 11.
91. Cuisine P. and Grant P., The Impact of Marine Pollution, 1980, at pp.73-118.
92. Ibid., at p.196.
93. Ibid.
94. London Convention, article 15.
95. Oslo Convention, article 15(3); London Convention, article 7(2).
96. Oslo Convention, article 15(1).
97. Ibid., article 15(1)(a).

98. Ibid., article 15(1)(c).
99. London Convention, articles 7(1)(a), 7(1)(c).
100. Ibid., article 7(1)(b).
101. Timagenis, op.cit., at p.226.
102. London Convention, article 7(1)(c).
103. Ibid., article 7(1)(c) and traditional rules of international law.
104. Ibid., article 7(3).
105. Dumping at Sea Act 1981, s.2(1).
106. See section 11.4.
107. Ibid., s.3(2).
108. Ibid., s.3(5).
109. Ibid., s.3(6).
110. Ibid., s.8(4).
111. Ibid., s.2(3)(b).
112. Ibid., s.8(4).
113. Ibid., s.8(1)
114. See section 7.6.3.
115. Ibid., s.3(9).
116. Ibid., s.4(1)(a), 4(1)(c), 4(1)(d), 4(1)(e).
117. Ibid., s.4(1)(b). See section 11.7.
118. Ibid., s.4(2).
119. Ibid., s.4(5).
120. Ibid.
121. Ibid., s.4(7).
122. Ibid., s.8(4).
123. Ibid., s.5(3).
124. Ibid., s.5(5).
125. Senat Reports, Vol. 95, Cols. 1278-84, 25 March 1981.

126. Dumping at Sea Act 1981, s.3(4).
127. Investigations by law students in Trinity College Dublin in 1983 revealed that copies of the Conventions could only be obtained from the University libraries and the Department of Foreign Affairs.
128. Information from the Department of Transport.
129. Ibid.
130. Hannequart and Roncarel, "The Control of the Disposal of Wastes at Sea", Paper at Conference The New Law of the Sea and the Environment, Brussels, 1983.
131. See Appendix II.
132. Irish Times, 6 June 1983.
133. See section 7.7.1.
134. (1974) ILM 352.
135. Ibid., article 3(c).
136. Ibid., article 4.
137. Ibid., article 5(1).
138. Ibid., article 6.
139. Ibid., article 4.
140. Ibid., article 10.
141. Ibid., article 11..
142. Ibid., article 12.
143. Ibid., article 15.
144. Ibid., article 16.
145. Ibid., article 17.
146. Ibid., article 18(3).
147. Ibid.
148. Ibid., article 18(3).
149. Ibid.
150. Information from the Paris Commission.

151. O.J. No. L 194, 25 July 1975.
152. O.J. No. L 194, 25 July 1975.
153. O.J. No. C 168, 25 July 1975.
154. O.J. No. L 129, 18 May 1976.
155. EEC Council Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, article 1(1). See also section 5.5.
156. Ibid., article 2.
157. Ibid., article 3(1), 7(2).
158. Ibid., article 6(2).
159. Ibid., articles 3, 5, 6.
160. Ibid., articles 6(2), 7.
161. Ibid., articles 6(3), 7(2).
162. Ibid., article 5(3), 5(4).
163. Ibid., articles 5(2), 10.
164. Ibid., article 13.
165. Ibid., articles 11, 13.
166. Ibid., article 13.
167. Ibid., articles 7(6), 13.
168. O.J. No L 20, 26 January 1980. See section 5.5.
169. O.J. No L 81, 27 March 1982.
170. Technical Committee on Effluent and Water Quality Standards, Memorandum No. 1 Water Quality Guidelines, 1979, at p.29. See section 5.5.
171. See section 1.2.3.
172. Local Government (Sanitary Services) Act 1962, s.10(9).
173. See section 4.2.
174. O.J. No. L 31, 5 February 1976.
175. O.J. No. L 281, 10 November 1979.

176. See section 7.9.
177. Circular ENV 3/1981 of 25 March 1981.
178. EEC Directive 76/160/EEC, concerning the quality required of bathing waters, article 2.
179. Dail Reports, Vol. 310, Col. 478, 30 November 1978; Vol. 320, Col. 1414, 13 May 1980.
180. Dail Reports, Vol. 320, Col. 1414, 13 May 1980.
181. Memorandum No. 1 Water Quality Guidelines, supra, at pp.19-25.
182. See sections 5.5 and 7.8.
183. See sections 7.7 and 7.8.
184. Shattock A., "Water Pollution and Hepatitis", Paper at Conference Resources and Environment, 1983, Dublin.
185. Ibid., see also Irish Times, 12 April 1983.
186. Report on Pollution Control, supra at pp.52-56.
187. Toner P. and O'Sullivan A.J., Water Pollution in Ireland, National Board for Science and Technology, Dublin, 1977, at pp.45, 46, 48, 49.

S E C T I O N 8

OIL POLLUTION OF THE SEAS

The main causes of the environmental degradation of the seas are (1) oil pollution (2) dumping of wastes and other matters at sea and (3) pollution from land-based sources. This section will deal with oil pollution of the seas and coastal areas.

In the last ten years there have been four major and several minor oil spills in Irish waters. The four major spills all occurred in Bantry Bay, the major oil trans-shipment terminal built in 1968 to accommodate large oil tankers. Tanker movements in Ireland are of three kinds: (i) tankers loading and unloading (ii) transit traffic passing through Irish territorial waters, and (iii) the movements around the coast of domestic tankers which are sent from the refinery at Whitegate to Drogheda, Dublin, Arklow, Tarbert, Foynes and Galway. The oil terminal at Bantry was closed in 1979 following the Betelgeuse disaster.

Since oil pollution often occurs beyond the limits of national jurisdiction and can involve ships from many States, it is controlled largely by International Conventions implemented on a national level by domestic legislation.

Responsibility for controlling or dealing with oil pollution is divided between several Ministers. The Minister for Transport has overall responsibility for implementing the Harbours Acts 1946-79 and the Oil Pollution of the Seas Acts 1956-77. The Minister for Energy is responsible for prevention of oil pollution from offshore exploration and development under the Continental Shelf Act 1968. The Minister for Labour has a general responsibility for implementing the Dangerous Substances Act 1972, which, inter alia, operates to prevent oil pollution from activities at oil jetties and

petroleum stores and from dealing with petroleum. The Minister for Fisheries has a general responsibility for safeguarding fishing interests under the Fisheries Acts 1959-80.

Overall responsibility for arrangements for cleaning up oil pollution rests with the Department of the Environment but local authorities clean up oil from beaches and immediately offshore and harbour authorities deal with oil spillages in harbours. The Department of Defence is responsible for cleaning up oil at sea.

8.1 CRIMINAL LIABILITY FOR OIL POLLUTION

The most important legislative provisions regulating criminal liability for oil pollution are contained in the Oil Pollution of the Sea Acts 1956-77. These Acts implement the International Convention on Pollution of the Sea by Oil 1954 and Amendments thereto in 1963, 1969 and 1971.⁽¹⁾

8.1.1 Discharges from Irish registered ships

Section 10(3) of the 1956 Act, as amended,⁽²⁾ provides that:

The owner and also the master of any ship registered in the State which discharges oil or any mixture containing oil, anywhere at sea shall be guilty of an offence.

It should be noted that this subsection explicitly imposes liability on both the owner and the master of the ship. This formulation avoids the interpretational difficulties which arose in England in Federal Steam Navigation Co. Ltd. v. Department of Trade and Industry,⁽³⁾ where the wording of a section similar to s.10(3) imposed liability on the owner or the master. The Oil Pollution of the Sea Acts do not contain any definition of a ship, but s.742 of the Merchant Shipping Act 1894, provides that "a ship includes every description of vessel used in navigation not propelled by oars". A "discharge" is defined as "any discharge or escape howsoever caused".⁽⁴⁾ Section 10(3) applies to crude oil, fuel oil, lubricating oil, heavy diesel oil or "other description of oil" which may be prescribed by Ministerial regulation. The Minister for Transport has extended the application of s.10(3) to:

diesel oil other than distillates of which more than 50% by volume distills at a temperature not exceeding 340°C when tested by the American Society for Testing Materials Standard Method D.86/59,

by article 2 of the Oil Pollution of the Sea Act 1956 (Application of s.10) Regulations 1980.⁽⁵⁾ "Oily mixture" is not defined in current legislation on oil pollution but presumably the commonsense definition contained in the 1969 Amendment to the 1954 Convention (i.e. a mixture with any oil content) would be accepted by an Irish Court.

Section 10 is confined in its application to Irish registered ships because of the current interpretation of rules of international law on flag State jurisdiction which prohibit a State other than that where the ship is registered from prosecuting for an offence committed outside its jurisdiction. However, an Irish registered ship which commits the offence in s.10 can be prosecuted for so doing irrespective of whether the offence is committed in Irish territorial waters, on high seas, or in the territorial seas of another State. In practice, however, it is likely that in the latter case enforcement of oil pollution legislation would be left to the injured State.

Section 10(5) provides that the Minister for Transport and Tourism may prescribe exemptions to s.10(3):

either absolutely or on specified conditions and either generally or for specified classes of ships, or in relation to particular descriptions of oil or oily mixtures, or to their discharge in specified circumstances, or in relation to particular sea areas.

The Minister did so in the Oil Pollution of the Sea Act 1965 (Exceptions) Regulations 1980,⁽⁶⁾ article 3 of which provides that ships other than tankers and tankers in relation only to discharge of oil or mixtures containing oil from their machinery space bilges shall be exempted from the operation of s.10(3) of the Oil Pollution of the Sea Act 1956, as amended,⁽⁷⁾ provided certain specified conditions are complied with. Different conditions apply depending

upon whether the vessel concerned is a ship or a tanker as defined in article 2 of the Regulations.⁽⁸⁾

8.1.2 Discharges into Irish national waters

Section 11 of the Oil Pollution of the Sea Act 1956, as amended,⁽⁹⁾ provides that:

- (1)(a) If any oil of oily mixture is discharged (directly or indirectly) into the territorial seas of the State, or into any of its inland waters that are navigable by sea-going vessels, or on its seashore, then, if the discharge is:
- (i) from a vessel, the owner and also the master of his vessel,
 - (ii) from a place at land, the occupier of that place,
 - (iii) from an apparatus for transferring oil to or from a vessel, the person in charge of the apparatus,
- shall be guilty of an offence.
- (b) In this subsection "seashore" has the same meaning as in the Foreshore Act 1933.

Unlike s.10(3) which is specifically limited in its application to certain types of oil, s.11 relates to oil and oily mixtures as defined in s.3 of the Oil Pollution of the Sea Act 1956, i.e. "oil of any description, and includes spirit produced from oil, and coal tar". This is a somewhat wider definition of oil than that adopted in the 1954 Convention as amended in 1969 and it is unlikely that the problems which arose in Cosh v. Larsen⁽¹⁰⁾ would ever arise in Ireland.

The offence under s.11 consists of polluting Irish waters and - since 1977 - the seashore, by oil or oily mixture. The nationality of the polluting ship is irrelevant because in this case (unlike that covered by s.10) the State is not inhibited by rules of international law from prosecuting in respect of offences committed within its own jurisdiction.

The provision in s.11(1) that the State may prosecute in respect of oil pollution of the seashore - an innovation introduced by the 1977 Act - although not paralleled in the Convention for the Prevention of

the Pollution of the Sea by Oil 1954, as amended - was necessary to provide a sound statutory basis for prosecuting in respect of pollution of the seashore. Since the penalties for oil pollution have been increased, it is possible that a penalty imposed might be sufficient to compensate for damage to the seashore.

The discharge of oil or oily mixture to inland waters navigable by seagoing vessels is also an offence under s.11. The question of whether a particular area comes within the definition of "inland waters navigable by sea-going vessels" has caused difficulty on at least one occasion, in 1974 in the port of Dublin, but the recent decision in Ranklin v. Da Costa⁽¹¹⁾ should resolve some of the difficulties surrounding this question in that it has established that the test of navigability should be primarily a geographical rather than a functional one.

8.1.3 Exceptions to sections 10 and 11 of the 1956 Act

Section 12(1) of the 1956 Act provides that ss.10 and 11 thereof shall not apply to:

- (a) the discharge of oil or an oily mixture from a vessel for the purpose of securing the safety of the vessel, preventing damage to the vessel or her cargo, or saving life, if such discharge was necessary and reasonable in the circumstances, or
- (b) the escape of oil or of an oily mixture from a vessel, resulting from damage to the vessel or from any leakage, not due to want of reasonable care, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purposes of preventing or minimising the escape.

Section 12(2) provides that s.11 is not to apply to the discharge from any place of an effluent produced by operations for the refining of oil, if:

- (a) it was not reasonably practicable to dispose of the effluent otherwise than by so discharging it, and
- (b) all reasonably practicable steps had been taken for eliminating oil from the effluent, and

(c) in the event of the surface of the waters into which the mixture was discharged, or the land adjacent to those waters being fouled by oil at the time of discharge, it is shown that the fouling was not caused or contributed to by oil contained in any effluent discharged at or before that time from that place.

There is only one oil refinery in Ireland, at Whitegate, County Cork. About 40-60% of the nation's oil is refined there.

8.1.4 Penalties for oil pollution

Section 23 of the 1956 Act, as amended,⁽¹²⁾ provides that the penalty on conviction for an offence under s.10 or 11 is:

- (i) on summary conviction, a fine not exceeding £500, or imprisonment for a term not exceeding 12 months, or both such fine and such imprisonment;
- (ii) on conviction on indictment, a fine not exceeding £100,000 together with £10,000 per day for a continuing offence.

There is thus a limit to the maximum fine which can be imposed for offences under ss.10(3) and 11(1). Considering the damage which oil pollution can cause, it is questionable whether these fines are, in the words of article IV of the 1962 Amendments to the 1954 Convention, 'adequate in severity to discourage any such unlawful discharge'. Certainly the owner and/or the master of a ship who wished to effect an unlawful discharge of oil would be well advised, if he had a choice, to do so in Irish rather than in UK waters as by doing so he would reduce his liability for heavy fines and, indeed (in view of the level of enforcement of oil pollution controls in Ireland), he would almost certainly escape being prosecuted at all.⁽¹³⁾ In 1981, the Twelfth Assembly of IMCO adopted Resolution A499(XII)⁽¹⁴⁾ asking states party to IMCO Conventions to take the necessary steps to ensure that penalties for violations of the Convention for the Prevention of Oil Pollution at Sea 1954 are severe enough to discourage violations.

8.1.5 Miscellaneous

Criminal prosecutions for oil pollution of harbour waters may also be brought by harbour authorities under s.88 of the Harbour Acts 1946, and by the Minister for Transport and Tourism in respect of oil pollution of the foreshore under s.14(1) of the Foreshore Act 1933. In practice, these Acts are never used to enforce oil pollution controls. Prosecution powers for oil pollution from offshore exploration and development and from dumping at sea have already been described.⁽¹⁵⁾ Prosecution powers for breach of regulations under the Dangerous Substances Act 1972 are described below. Sections 3 and 4 of the Local Government (Water Pollution) Act 1977, do not apply in respect of discharges to tidal waters from vessels or marine structures.⁽¹⁶⁾

8.2 CIVIL LIABILITY FOR OIL POLLUTION

8.2.1 Legislation

No legislation has been enacted in Ireland for the specific purpose of regulating civil liability for oil pollution damage. Ireland has not yet implemented the International Convention on Civil Liability for Oil Pollution Damage 1969,⁽¹⁷⁾ nor the International Convention on the Establishment of a Fund for Compensation for Oil Pollution Damage 1971.⁽¹⁸⁾ The only legislative provision relative to the question of civil liability for oil pollution is s.13 of the Local Government (Water Pollution) Act 1977, which provides that:

- (1) Where it appears to a local authority that urgent measures are necessary to prevent pollution of any waters in its functional area, to remove polluting matters from waters in that area, or where such matter is in waters outside that area, to prevent it affecting any part of that area, the local authority may take such steps, carry out such operations or give such assistance as it considers necessary to prevent such matters from entering the waters, to remove the matter from the waters, to dispose of it as it thinks fit and to mitigate or

remedy the effects of any pollution caused by the matter.

- (2) Where a local authority takes steps, carries out operations or gives assistance under this section it may recover the cost of such steps, operations or assistance as a simple contract debt in a court of competent jurisdiction from such person as the local authority satisfies the court is the person whose act or omission necessitated such steps, operations or assistance.

Under the arrangements made by the Department of the Environment for the clearance of oil pollution from coastal areas, maritime local authorities are responsible for clearance of oil from beaches and immediately offshore.⁽¹⁹⁾ Before the enactment of s.13, the costs of clean-ups would be recoverable (if at all) by local authorities suing for negligence, nuisance, or trespass. Since 1977 local authorities may recover their costs from the persons responsible provided that (a) they considered that urgent measures were necessary to prevent oil pollution, and (b) waters in their functional area were threatened or polluted by oil. It should be noted that s.13 allows local authorities to claim the costs of preventive as well as curative actions and that the powers given extend to operations outside the functional area of the local authority (e.g. the sea) where waters in a local authority's own area are at risk. A local authority has never yet brought proceedings to recover costs under s.13. It is unfortunate that the section was not framed so as to cover steps taken by harbour authorities and other bodies charged with preventing or cleaning up oil pollution.

8.2.2 The common law⁽²⁰⁾

Apart from s.13, the law on civil liability for oil pollution is the general law of tort. This, however, is peculiarly unsuitable as an instrument for recovering damages for oil pollution. Actions may be brought for trespass but there are difficulties in that the trespass must be direct and intentional and it appears that the courts, since Esso Petroleum Co. Ltd. v. Southport Corporation,⁽²¹⁾ consider that interference by oil pollution from a ship at sea is not direct and that therefore trespass does not lie. Rylands v. Fletcher may

not be used to ground an action for oil pollution originating from the sea as this tort only applies in respect of escapes from land. A person seeking damages for negligence could run into problems of proving causation and establishing reasonable foreseeability. Actions for private nuisance may only be brought by plaintiffs who have suffered injury to their proprietary interest in land, while most oil pollution affects the foreshore (most of which is owned by the State) or the seashore where damage caused is not easily quantifiable or of a commercial nature. The Attorney General could possibly bring an action for public nuisance but it would be more difficult for the private citizen to do so unless he could prove that he had suffered special damage. The possibilities of successfully suing at common law for damage caused by oil pollution are therefore quite limited.⁽²²⁾

8.2.3 Industry practice: TOVALOP and CRISTAL

TOVALOP and CRISTAL are private insurance schemes voluntarily established by those involved in the oil industry to settle claims in respect of civil liability for oil pollution damage without resort to litigation.⁽²³⁾

TOVALOP (Tanker Owners Voluntary Agreement Concerning Liability for Oil Pollution) provides a private fund for compensating for oil pollution damage for which tanker owners are liable. It is administered by the International Tanker Owners Pollution Federation Ltd. in London. Over 97% of tanker owners are parties to the agreement. Parties bind themselves for short periods to pay claims for oil pollution damage up to a certain limit, currently \$160 per ton or £12.8 million, whichever is the lesser. Damages are recoverable on a strict liability basis and cover clean-up costs and "threat removal measures", i.e. "reasonable measures taken by any person after an incident has occurred for the purpose of removing a threat of an escape or discharge of oil".⁽²⁴⁾ Damages are excluded for any loss or damage which is remote or speculative, or which does not result directly from an escape or discharge of oil.⁽²⁵⁾

In 1980 TOVALOP initiated information services for authorities dealing with oil spills. These include computerised data on oil spills, information on anti-pollution experts worldwide and on the availability of anti-pollution equipment.⁽²⁶⁾

CRISTAL (Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution) provides a fund for compensating oil pollution damage for which oil companies are liable up to a maximum per claim of \$36 million. It is administered by the Oil Companies Institute for Maritime Pollution Compensation Ltd. in Bermuda. CRISTAL covers over 97% of the cargoes of the free world.

There are numerous exceptions and qualifications to liability under TOVALOP and CRISTAL,⁽²⁷⁾ but in general these schemes have filled legal lacunae far quicker, and perhaps better, than the Irish legislature.

TOVALOP does not apply in countries which have implemented the International Convention on Civil Liability for Oil Pollution Damage 1969.⁽²⁸⁾ CRISTAL does not apply in countries covered by the International Convention on the Establishment of a Fund for Compensation for Oil Pollution Damage 1977.⁽²⁹⁾ Countries therefore have to choose whether to adopt the statutory regimes introduced by the Conventions or the voluntary schemes introduced by the oil industry under TOVALOP and CRISTAL. Ireland has apparently opted for the voluntary schemes though whether this is as a result of a conscious balancing of the merits and demerits of the options available must be doubted.

All claims by Irish public authorities for compensation for oil pollution damage to date have been paid under TOVALOP.

8.2.4 Experience in recovering compensation for oil pollution damage.

Irish public authorities take the view that primary responsibility for cleaning up oil pollution lies with those responsible for causing it. Irish Refining Ltd., which operated the oil refinery at Whitegate, and Gulf Oil Ltd., which operated the oil terminal at Bantry Bay, had personnel, facilities and equipment for cleaning up oil spills in Cork harbour and Bantry Bay respectively. There have been numerous minor and 4 major oil spills off the Irish coast but no compensation for damage caused has ever been recovered in civil proceedings. A number of claims for compensation have, however, been settled out of court. The clean-up costs after the large Universe Leader and Afran Zodiac spills in 1974 and 1975 were paid by Gulf Oil. Cork

County Council (the public authority most directly affected) was also paid £17,000 for out-of-pocket expenses. The bill for expenses incurred by Irish public authorities co-operating with British authorities dealing with the Christos Bitas incident in October 1978 was submitted by the UK Department of Trade on Ireland's behalf to TOVALOP.⁽³⁰⁾ Ireland could not submit the bill herself because she had not ratified the Convention on Civil Liability for Oil Pollution Damage 1969. The clean-up costs of the Betelgeuse disaster are reported to have exceeded £750,000.⁽³¹⁾ These were also recovered from TOVALOP.

The Department of Transport and Tourism has assumed responsibility for co-ordinating all claims by public authorities for losses occasioned as a result of oil pollution, and for presenting the bill to the polluter and/or his insurers.⁽³²⁾ The Department has not issued any guidelines on what losses are or are not recoverable and no policy on this important issue has been considered or formulated. The EEC and the OECD are currently devising schemes for establishing the scope and concept of compensatable damage for oil pollution.⁽³³⁾

Where civil liability for oil pollution damage cannot be established (e.g. where the polluter is untraceable or has a good defence to his action) clean-up costs must be borne by the public authorities. The Department of the Environment has agreed that the State will meet 50% of the cost to local authorities of clearance of oil pollution from beaches and immediately offshore, including the cost of the purchase of approved disperant, equipment and other materials, subject to a limit on local authority expenditure for this purpose of a sum equal to the produce of 2½ pence in the pound in the rates of any year; expenditure over this limit in any year will be fully subsidised.⁽³⁴⁾ Expenses incurred by harbour authorities, other than those recoverable from the polluter, are payable by the State.

8.3 CONTROL OF NAVIGATION

One of the most effective measures for preventing oil pollution is to prevent tanker collisions. Provisions in the International Convention for the Safety of Life at Sea 1960⁽³⁵⁾ relating to the dissemination of warnings of navigational hazards by and to ships, were implemented by the Merchant Shipping (Navigational Warning)

Rules 1967,⁽³⁶⁾ made under s.35 of the Merchant Shipping (Safety Convention) Act 1952, and s.17 of the Merchant Shipping Act 1966.

The Convention on the International Regulations for Preventing Collisions at Sea 1972,⁽³⁷⁾ was implemented by the Collision Regulations (Ships and Watercraft on the Water) Order 1977⁽³⁸⁾ made under ss. 418 and 412 of the Merchant Shipping Act 1894. These regulations, *inter alia*, give effect to IMCO traffic separation schemes. Two of these schemes operate in areas around the Irish coast - one at Carnsore Point off Tuscar Rock and the other off Fastnet. Failure to comply with the navigational warning rules or collision regulations is an offence for which the owner or the master of an offending vessel may be prosecuted.⁽³⁹⁾ The penalty on summary conviction is £50.⁽⁴⁰⁾

8.4 CREW STANDARDS

One of the primary causes of oil pollution incidents is the employment of inadequately trained crewmen. Action has been taken at international level to ensure proper crew standards. The Merchant Shipping (Certification of Seamen) Act 1979, was enacted, *inter alia*, to implement the International Convention on the Training, Certification and Watchkeeping of Seafarers 1978.⁽⁴¹⁾ This Convention seeks to bring the training and certification of seamen on a worldwide basis up to the highest generally accepted standards. Although the Joint Oireachtas Committee on Secondary Legislation which monitors the implementation of EEC law was advised in December 1977 that 'Irish standards are already as high as those provided in the Convention',⁽⁴²⁾ two sets of regulations prescribing standards for the certification of deck officers⁽⁴³⁾ and marine engineers⁽⁴⁴⁾ were passed under this Act in 1981.

8.5 CONSTRUCTION, EQUIPMENT AND OPERATION OF SHIPS

8.5.1 Implementation of International requirements

The Thirty-Eighth Report of the Joint Committee on Secondary Legislation reported in December 1977 that Ireland was to accede to the Administrative Agreement of 2 March 1978 between eight North Sea countries on the Maintenance of Standards on Merchant Ships and that 'this necessarily involves ratification of ILO Convention No. 147' on Merchant Shipping (Minimum Standards) Convention 1976.⁽⁴⁵⁾

Ireland implemented this Convention by the Merchant Shipping Act 1981.

Ireland ratified the International Convention for the Safety of Life at Sea 1960⁽⁴⁶⁾ by the Merchant Shipping Act 1966, and by regulations made thereunder which require that ships be constructed and equipped to certain standards.⁽⁴⁷⁾ The International Convention for the Safety of Life at Sea 1974 (SOLAS 1974) and Protocol of 1978⁽⁴⁸⁾ were implemented by the Merchant Shipping Act 1981. The International Convention on Load Lines 1966⁽⁴⁹⁾ was implemented by the Merchant Shipping (Load Lines) Act 1968, and by legislation made thereunder.⁽⁵⁰⁾ The Joint Committee on Secondary Legislation was advised that the procedures set out in IMCO Resolution A 321 (IX) are observed by marine surveyors during normal dock inspections.⁽⁵¹⁾ By implementing SOLAS 1974 and Protocol 1978, and ILO Convention No. 147 concerning minimum standards on merchant ships, by the Merchant Shipping Act 1981, Ireland implemented part of EEC Council Recommendation 78/584/EEC on the ratification of Conventions on safety in shipping.⁽⁵²⁾ However, another recommendation therein that the Convention on the Prevention of Pollution By Ships 1973 and 1978 Protocol⁽⁵³⁾ be ratified by 1 June 1980 has not been acted upon.

EEC Council Directive 79/116/EEC as amended by 79/1034/EEC,⁽⁵⁴⁾ concerning the minimum requirements for certain tankers entering or leaving Community ports was implemented by the European Communities (Entry Requirements for Tankers) Regulations 1981⁽⁵⁵⁾ which prescribe minimum reporting requirements for certain oil, gas and chemical tankers entering or leaving Community ports. These regulations also implement requirements of the IMCO codes for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (1977), as amended; for Existing Ships Carrying Liquified Gases (1976), as amended; and for the Construction and Equipment of Ships Carrying Liquified Gases in Bulk (1976), as amended. The master of a tanker to which the regulations apply is required, prior to entering any Irish port, to report inter alia any defects which may arise and which may affect the safe manoeuvrability of the tanker and the safety of other vessels in the vicinity, or which may constitute a hazard to the marine environment or to persons or property on land in the vicinity. The maximum penalty for breach of the regulations is £500.⁽⁵⁶⁾

The Merchant Shipping Act 1981, gave effect to the International Convention for the Safety of Life at Sea 1974,⁽⁵⁷⁾ and provided for the implementation of recommendations on ship safety and operational procedures recommended in the report of the Tribunal of Inquiry into the Whiddy Island disaster.⁽⁵⁸⁾ Section 4 of the Act makes it an offence punishable by a maximum fine of £50,000 for a ship, having regard to the nature of the service for which the ship is intended, to be unfit by reason of the condition of the ship's hull, equipment or machinery or by reason of undermanning or overloading or improper loading to go to sea with serious danger to human life. Both the master and the owner of the ship may be prosecuted. Section 5 of the Act empowers the Minister for Transport to make regulations requiring ships to carry such adequate and up-to-date charts, nautical directions or information or other nautical publications as appear to him to be necessary or expedient for the safe operation of ships. In this case the master or the owner may be liable on summary conviction for breach of the regulations to a maximum fine of £500.

8.5.2 Equipment of ships to prevent oil pollution

The Oil Pollution of the Sea Act (Ships Equipment) Regulations 1980, made under s.16(1) of the 1956 Act, as amended,⁽⁵⁹⁾ provide that every ship registered in Ireland which uses oil as fuel for either engines or boilers must be fitted:

so as effectively to prevent oil fuel from leading or draining into bilges unless the contents of the bilges are subjected to an effective means of separating the oil therefrom before they are pumped into the sea.

These regulations implement Article VII of the Convention for the Prevention of Pollution of the Sea by Oil 1954, as replaced by Article VII of the 1969 Amendments. Section 16(2) of the 1956 Act provides that a surveyor of ships and such other persons as the Minister may appoint may carry out such tests as may be prescribed for the purpose of s.16. Section 16(3) provides that breach of regulations made under s.16(1) shall be an offence for which both the owner and the master of the ship may be prosecuted. Tests have not been prescribed for the purpose of s.16 and there have never been any prosecutions for breach of the Regulations.

Section 18 of the 1956 Act provides that the Government may by order apply s.16 of the 1956 Act to ships registered in other countries while they are in a harbour in the State or within territorial seas while on their way to or from such a harbour unless their presence there is due to stress of weather or some other unforeseen and unavoidable circumstance. The Government is also empowered by s.18(2) of the 1956 Act to exempt foreign ships from the requirements of s.16 if satisfied that the law of the country where a ship is registered is as effective as Irish law and that the ships comply with it. The Government has never made any orders applying s.16 to ships other than those registered in Ireland.

8.6 FACILITIES FOR THE DISPOSAL OF OILY RESIDUES

Authorities concerned with oil pollution control are not statutorily obliged to provide facilities for the discharge and disposal of oily residues. Section 49 of the Harbours Act 1946, merely provides that a harbour authority may provide for, or in connection with, their harbours, such equipment as they think proper. Section 13(1) of the Oil Pollution of the Sea Act 1956 empowers (but does not oblige) harbour authorities to provide facilities for the discharge and disposal of oily residues from vessels using their harbours. Section 13(2) empowers the Minister for Transport and Tourism after consultation with the harbour authority and with any organisation representative of owners of Irish registered ships, to require a harbour authority to provide oil reception facilities or adequate oil reception facilities within a specified time. Under s.5 of the 1965 Act, the Minister for Transport and Tourism is also empowered to require the provision of oil reception facilities or adequate oil reception facilities by oil refineries, ship building and ship repairing yards. Failure to comply with the Minister's requirements is an offence under the section.

The provision of facilities for the disposal of oily residues is one of the most important steps that can be taken in the fight against oil pollution of the sea. Article 8 of the International Convention for the Prevention of Pollution of the Sea by Oil 1954, as amended in 1962, requires the provision of such facilities. The International Convention for the Prevention of Pollution from Ships

1973⁽⁶¹⁾ (not yet ratified by Ireland) requires that the Government of each contracting party undertake to ensure the provision of reception facilities at oil loading ports, terminals, repair ports and in other ports in which the ships have oily residues to discharge.

No facilities for the reception or disposal of oily residues from ships or tankers have been provided by harbour authorities in Ireland. Even the port of Dublin has no such facilities. The Minister for Transport and Tourism has never exercised his powers under s.13(2) of the 1956 Act and s.5 of the 1965 Act to require the provision of oil disposal facilities (it should be noted that, unlike his UK counterpart, the Minister has no power to prosecute harbour authorities for failure to comply with his requirements). However, fixed facilities for the disposal of oily residues have been provided at Whitegate in Cork Harbour and at the Gulf Oil Terminals in Bantry Bay - the country's only oil refinery and the terminal which handled the greatest amount of oil respectively. Mobile facilities are available at the Verholme Dockyard in Cork where ships are built and repaired. All of these facilities are provided by private interests and do not involve any charges on the Exchequer. There are a number of private waste disposal contractors - one of whom specialises in waste oils - who could, if necessary, be employed on a private contractual basis to dispose of oily residues. The overall position appears to be that reception facilities are available at the three places most likely to require them on a regular basis, but not elsewhere. One explanation given for this unsatisfactory state of affairs was the fact that most ships visiting Irish ports do so only to discharge cargoes and so do not need oil disposal facilities. A side effect of an EEC requirement that Member States keep certain minimum stocks of oil is that oil companies who import oil to Dublin and Cork have used their entire oil storage capacities to meet EEC obligations. There is thus no spare capacity which could be used as slop tanks for waste oils.

8.7 OIL RECORDS

Section 17 of the 1956 Act, as amended,⁽⁶²⁾ and regulations made thereunder implement Article IX of the International Convention for

the Prevention of Pollution of the Sea by Oil 1954, as amended in 1962 and 1969. The purpose of s.17 and of the Oil Pollution of the Sea (Records) Regulations 1980⁽⁶³⁾ is to enable competent authorities in Ireland to tell by inspecting a ship's oil record book whether or not an unlawful discharge of oil has been made. In practice, it appears that little effort is made in Ireland to enforce oil records regulations because of a shortage of technical personnel in the Department of Transport and Tourism. There has never been a prosecution under s.7.

Section 18 of the 1956 Act empowers the Government to extend the application of s.17(1) to foreign registered ships while they are in a harbour in the State or within the territorial seas while on their way to or from such a harbour, unless their presence there is due to stress of weather or some unforeseen and unavoidable circumstances. No orders have been made under s.18.

Section 19 of the 1956 Act, as amended,⁽⁶⁴⁾ makes provision for the enforcement of the 1954 Convention by empowering the Minister for Transport and Tourism to make orders declaring that a particular country has accepted or denounced the Convention or that the Convention extends or has ceased to extend to any territory. The Minister has made several such orders from time to time as various countries acceded to the Convention. Section 19 also provides that a surveyor of ships or any person empowered by warrant of the Minister may go on board any ship to which the Convention applies while she is within a harbour in the State, may inspect and take a copy of any entry in the oil record book, and may require the master of the ship to certify it as a true copy. Any person who impedes a surveyor of ships in the exercise of his functions or who fails to accede to a request to produce an oil record book for inspection or to certify a copy of an entry shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding £500 and/or 12 months' imprisonment. No prosecutions have been brought for breach of s.19.

8.8 CONTROLS OVER SHORE INSTALLATIONS AND OIL MOVEMENTS

A number of Acts and statutory instruments contain controls which operate to prevent oil pollution from shore installations and oil

movements. The most important of these are as follows:

1. Harbours Act 1946. Section 88 of this Act makes it an offence, punishable by a maximum fine of £10, for any person to put ballast ... or any other substance or thing within the limits of a harbour without the authorisation of the harbour authority. Section 60 empowers harbour authorities to make bye-laws regulating, inter alia, the ballasting of vessels and the discharging, removal and disposal of ballast.⁽⁶⁵⁾ Contravention of the bye-laws is punishable by a maximum fine of £10.⁽⁶⁶⁾

2. Oil Pollution of the Sea Acts 1956 to 1977. The Oil Pollution of the Sea Acts 1956-1977 makes special provision for the exercise of control by harbour authorities over oil pollution of their areas. Prosecutions for offences created by the Act which occur in harbours may be brought by harbour authorities.⁽⁶⁷⁾ A harbour master may specify where, at what times, and under what conditions, ballast water from a petroleum carrying ship may be discharged in harbour waters.⁽⁶⁸⁾ Failure to report discharges and escapes of oil or oily mixtures from vessels or land into harbour waters to the harbour master, and the cause of such occurrences is punishable by a maximum fine of £100.⁽⁶⁹⁾ Oil may not be transferred to or from a vessel in a harbour at night unless notice of the transfer is given to the harbour master. Failure to give such notice is punishable by a maximum fine of £50.⁽⁷⁰⁾

3. Dangerous Substances Act 1972. The Dangerous Substances Act 1972, requires that petroleum spirit (as defined in the Act)⁽⁷¹⁾ be kept in stores licensed by the appropriate local or harbour authority.⁽⁷²⁾ If the store is owned by such authority, the licence must be granted by the Minister for Labour.⁽⁷³⁾ A local or harbour authority has a discretion to grant or refuse an application for a licence and to attach such conditions as they think proper to any licence granted.⁽⁷⁴⁾ When attaching conditions, the local or harbour authority is bound to comply with any regulations made by the Minister as to the conditions under which licences may be granted.⁽⁷⁵⁾ The Minister also has a discretion to grant or refuse a licence application and to attach such conditions as he thinks proper to any licence.⁽⁷⁶⁾ If a local or harbour authority or the Minister think it proper they may publish particulars of a licence application and invite representations

concerning it from interested persons.⁽⁷⁷⁾ If a local or harbour authority refuses a licence or attach conditions which are unacceptable to the applicant, he may appeal to the Minister.⁽⁷⁸⁾ The appeal must be brought within 10 days after receipt by the applicant of a certificate stating the grounds on which the licence was refused or the conditions attached, unless the Minister allows an appeal outside this time limit.⁽⁷⁹⁾ The Minister, having considered the appeal may, at his discretion, direct the authority to grant or cancel the licence, to attach specified conditions to the licence or to amend or delete a condition attached, and the authority must (unless a successful appeal is taken against the Minister's decision) comply with the Minister's direction.⁽⁸⁰⁾ Appeals against the Minister's decision on a licence application or against his direction on appeal from a decision of a local or harbour authority may be brought to the High Court.⁽⁸¹⁾ The High Court may direct the Minister to grant the licence, to attach specified conditions to, or to amend or delete an existing condition, as appropriate.⁽⁸²⁾ On an appeal from a direction, the Court may either confirm the direction or direct the Minister to vary it.⁽⁸³⁾

The Dangerous Substances Act was not brought into force until 18 September 1979. On that day also the Minister for Labour made the Dangerous Substances (Retail and Private Petroleum Stores) Regulations 1979⁽⁸⁴⁾ and the Dangerous Substances (Petroleum Bulk Stores) Regulations 1979,⁽⁸⁵⁾ which, inter alia, regulate in great detail the design, construction, maintenance and operation of petroleum stores and ancillary plant and prescribe operational procedures and practices to be observed by those dealing with petroleum.

The Minister has also made the Dangerous Substances (Oil Jetties) Regulations 1979,⁽⁸⁶⁾ which provide for all practical steps to be taken to prevent risk of injury to persons or property:

- (i) in the vicinity of petroleum ships and oil jetties;
- (ii) in loading or unloading petroleum ships at oil jetties or in harbours;
- (iii) in the conveying of petroleum by pipeline to or from ships' tanks and storage tanks ashore.

Operational procedures and practices to be observed in loading or unloading petroleum to ships are prescribed to ensure that oil does not escape. The use of an oil jetty for the purpose of loading and unloading petroleum must be with the consent of the Minister or the appropriate harbour master. Loading and unloading operations carried on at the oil jetty and the conveying of petroleum by pipeline may only be carried out in accordance with the relevant requirements in the regulations.

The conveyance of petroleum by road is also regulated in great detail by the Dangerous Substances (Conveyance of Petroleum by Road) Regulations 1979.⁽⁸⁷⁾

Ships carrying petroleum spirit or other dangerous substances must, on entering any harbour, notify the harbour master of the nature of their cargo. Failure to give such notice is an offence for which the owner and master are liable. It is a good defence to prove that they did not know or could not with reasonable diligence have found out the nature of their cargo.⁽⁸⁸⁾

Contravention of any provision of the Act, or of any instrument thereunder, or of any condition attached to a licence is an offence for which the penalty on summary conviction is a fine of up to £100 and/or 6 months' imprisonment plus £20 for each day a contravention is continued after conviction.⁽⁸⁹⁾ Prosecutions may be brought by the Minister or a local or harbour authority, as appropriate.⁽⁹⁰⁾ Regulations may provide for the revocation of licences.⁽⁹¹⁾

8.9 INTERVENTION UNDER THE INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES 1969.⁽⁹²⁾

This Convention was implemented by the Oil Pollution of the Sea (Amendment) Act 1977 which, together with the Oil Pollution of the Sea Act (Application of Section 2) Order 1979,⁽⁹³⁾ confers new and extensive powers on the Minister for Transport and Tourism to deal with maritime casualties likely to result in oil pollution even where such casualties occur outside territorial waters. Action

has never yet been taken under the Act.

No administrative arrangements have been made to ensure that the Minister is in a position to exercise his powers under the 1977 Act with the aid of competent advice or advisors. There are no salvage firms in Ireland with whom possible contingency plans could be negotiated nor have any arrangements yet been made with foreign salvage firms.

Although Article 19 of the 1969 Convention requires coastal State to consult with other States affected and to notify interested parties of the proposed measures which are to be taken except in cases of extreme urgency necessitating immediate action, the Irish Act is, like the equivalent UK legislation, silent on any such duties. No formal arrangements have been made by the Irish authorities as to the manner in which consultations are to be held or as to how notifications are to be given.

The 1973 Protocol to the Convention (94) extending intervention powers to pollution by substances other than oil has not been ratified by Ireland.

8.10 ADMINISTRATIVE ARRANGEMENTS FOR DEALING WITH OIL POLLUTION

8.10.1 Arrangements at International Level

The EEC Council Resolution of 26 June 1978⁽⁹⁵⁾ set up an action programme of the European Communities on the control and reduction of pollution caused by hydrocarbons discharged at sea. This programme emphasised the necessity for ensuring, inter alia,

- (i) access to information on the human and material resources which can be deployed for the control of oil pollution
- (ii) the necessity for Member States being able to ascertain particulars of vessels and offshore structures liable to cause pollution and to receive information on violations by vessels in the territorial waters of a Member State

- (iii) the necessity for legal provisions on insurance against risks of oil pollution to be sufficient to ensure adequate compensation for the victims of such pollution.

It is understood that EEC study contracts were given to the Advisory Committee on Oil Pollution of the Sea and TOVALOP in order to secure the objectives of this Resolution. In 1980, TOVALOP initiated information services for authorities dealing with oil spills.⁽⁹⁶⁾ As envisaged by the Resolution, EEC Council Decision 81/971/EEC on the Community information systems for the control and reduction of pollution caused by hydro-carbons discharged at sea⁽⁹⁷⁾ established a system whereby the Commission is to collect and make available to competent authorities in the Member States information on the means of combating oil pollution, on national and regional contingency plans, and on the properties and behaviour of oils under certain conditions. Member States were required to submit relevant information on oil pollution control arrangements and facilities available before the end of 1982 and subsequently every January.

A draft Directive on the enforcement, in respect of shipping using Community Ports, of international standards for shipping safety and pollution prevention was abandoned when the objectives thereof were achieved by a Memorandum of Understanding on Port Inspection adopted by Members of the EEC and Sweden, Norway, Spain and Portugal at a Maritime Conference held in Paris in December 1980.⁽⁹⁸⁾ The Memorandum provides, inter alia, that parties accepting it (including Ireland) will make available the resources needed to inspect a significant proportion of ships calling at their ports; that ships which are clearly hazardous to safety or the environment will not be allowed to proceed to sea and that information relating to the results of inspections will be forwarded to all parties to the Memorandum. The Memorandum came into effect on 1 July 1981. Another Conference to review the operation of the Memorandum will be held, probably in 1984.

8.10.2 Irish Administrative Structure

Irish authorities take the view that the polluter is primarily responsible for cleaning up oil pollution. Most of the spills which

occurred in Bantry Bay were cleaned up by Gulf Oil Ltd. Similarly, oil pollution at or in the vicinity of the oil refinery at Whitegate was dealt with by Irish Refining Ltd., which operated the refinery until 1981. However, where or when the polluter does not, or cannot, clean up oil pollution, the task falls to the various public authorities with responsibilities for clearance of oil pollution. Overall responsibility for arrangements for cleaning up oil pollution lies with the Department of the Environment which is also responsible for co-ordinating the activities of the many other bodies who may become involved in clean-ups. These are:

- Local Authorities : clearance of oil from beaches and immediately off-shore.
- Harbour Authorities : clearance of oil spillages in harbours.
- Department of Defence : clearance of oil at sea.
- Department of Energy : control of oil pollution arising from off-shore exploration.
- Department of Transport : control of discharges of oil from vessels.
- Department of Fisheries protection of fisheries and
and Forestry : wild-life.

The activities of all authorities concerned are co-ordinated by a Liaison Committee on Oil Pollution chaired by an official of the Department of the Environment.

Maritime local and harbour authorities have made contingency plans for the clearance of oil pollution from beaches and immediately off-shore. Some authorities have co-ordinated their plans or made joint plans; for example, authorities in the south-west of Ireland where almost all major pollution incidents occur have made a joint contingency plan for the south-west region. Oil pollution officers have been appointed by all maritime local and harbour authorities. The oil pollution officers in local authorities are usually civil engineers who have many other responsibilities. The booklet Arrangements for Clearance of Oil Pollution from Coastal Areas

(1979), produced by the Department of the Environment lists the names and methods of communicating with these officers. Regional co-ordinating oil pollution officers have been appointed in most areas.

A Sea Unit Committee, on which various authorities concerned with oil pollution are represented, has been set up to keep arrangements for the clearance of oil at sea under review. Responsibility for sea operations rests with naval officers of the Department of Defence. Authorities who have made joint plans have agreed that there be mutual co-operation in the event of an oil spillage which would overtax the resources of any one authority. They have also agreed arrangements for reimbursing each other.

8.10.3 Methods of dealing with oil pollution

The Department of the Environment issued circular letters providing general advice on methods of dealing with oil slicks at sea and on the removal of oil from beaches together with information on equipment, on the amount and type of dispersants required, and on the correct usage of dispersants.⁽⁹⁹⁾ A number of conferences have been held to acquaint oil pollution officers with recent developments in methods for dealing with oil pollution. Copies of relevant publications including Warren Spring Laboratory Oil Pollution Newsletters 3 and 4 and the IMCO Manual on Oil Pollutions - Practical Information on Means of Dealing with Oil Spillages have been circulated to concerned authorities.

8.10.4 Materials and equipment

Guidelines on suitable materials and equipment have been issued by the Department of the Environment.⁽¹⁰⁰⁾ The guidelines were prepared on the basis that the materials and equipment in any area would be made available if necessary to another area so as to avoid duplication. Appendix II to the guidelines contained information on dispersants and advice on their use. Lists of approved dispersants were given together with the names and addresses of suppliers. Appendix III provided technical information on booms and devices for the mechanical removal of oil from water. The basic requirements of

craft suitable for spraying dispersant with inshore Warren Spring Laboratory spraying equipment were given in Appendix IV. The more modern document Arrangements for Clearance of Oil Pollution from Coastal Areas (1979) contains information on the nature and location of materials and equipment for dealing with oil pollution.

8.10.5 Communications

The Marine Rescue Co-ordination Centre (MRCC) at Shannon Airport acts as the communications centre for the receipt of information on oil slicks. This information can be communicated by naval officers or by others, e.g. airplane pilots, who have spotted oil pollution. On receipt of information from air and surface craft, MRCC assesses the likely rate and direction of the oil slick and transmits all relevant information to regional co-ordinating and/or local oil pollution officers in areas likely to be affected as well as to the responsible officials in the Department of the Environment and the Department of Defence. MRCC keeps notified officers up to date with the situation as it develops.

8.11 INDIVIDUAL RIGHTS

The only provision for citizen participation in oil pollution control in any of the above statutes are provisions in ss. 131 and 132 of the Dangerous Substances Act 1972, which provide that if a local or harbour authority or the Minister for Labour when dealing with an application for a licence under the Act "think proper" they may publish particulars of the licence application and invite representations concerning it from "interested persons". Whether or not an ordinary member of the public qualifies as an interested person is a moot point.

8.12 ENFORCEMENT

It is extremely difficult to get information on the number and effects of oil pollution incidents in Ireland. There are no effective monitoring units for oil pollution and most authorities responsible

for enforcing oil pollution legislation treat enquiries as to how they are exercising their functions with a good deal of suspicion. The Department of Transport and Tourism is the prosecuting authority in respect of pollution at sea or on the seashore (other than in harbour areas) and harbour authorities are empowered to prosecute in respect of offences committed within harbour jurisdictions.⁽¹⁰¹⁾

In the years 1970-73, Cork Harbour Commissioners brought seven, four and one prosecutions respectively under the Oil Pollution of the Sea Act 1956, although in fact there were 24 in Cork Harbour in that period, 11 of which caused residual pollution. Eighteen spills originated from vessels, three from premises and the sources of three spills were unknown. In the same period Dublin Port and Docks Board brought two prosecutions and the Minister for Transport six. In the period 1975-78 Cork Harbour Commissioners brought three prosecutions. The Department of Transport has not brought any prosecutions under the Acts since 1975. One reason for this is said to be a jurisdictional defect in the 1956 Act but this was remedied in the 1977 Act. In 1980 only one prosecution was undertaken and a fine of £50 was imposed with costs of £20.⁽¹⁰²⁾ The Acts are enforceable on behalf of the Minister of Transport by the Marine Service Section of his Department. The staff in this section consists mostly of surveyors. In 1977, 1978 and 1979 there were only six, four and six surveyors respectively employed in the section.⁽¹⁰³⁾

FOOTNOTES

1. 327 UNTS 3; 1962 Amendment, 600 UNTS 333; 1969 Amendment, 600 UNTS 336; 1971 Amendment, 11 ILM 267.
2. OPSA, 1977, s.9.
3. [1974] 2 All E.R. 97.
4. OPSA, 1956, s.3.
5. S.1. No. 353 of 1980.
6. S.1. No. 354 of 1980.
7. OPSA, 1977, s.9.
8. Oil Pollution of the Sea Act 1965 (Exceptions) Regulations 1980, articles 3, 4.
9. OPSA, 1977, s.9.
10. [1971] 1 Lloyd's Rep. 577. The question which arose was whether vegetable oil came within the definition of "oil or oily mixture".
11. [1975] 2 All E.R. 303.
12. OPSA, 1977, s.16.
13. See section 8.11.
14. Annual Report Advisory Committee on Pollution of the Sea, (ACOPS), 1981, at p.18.
15. See sections 7.6 and 7.7.
16. Local Government (Water Pollution) Act 1977, ss.3(5), 4(2).
17. (1970) 9 ILM 45. See Abecassis D.W., The Law and Practice Relating to Oil Pollution from Ships, 1979, at pp.172-219.
18. (1972) 11 ILM 284; Abecassis, op.cit., at pp.220-234.
19. Arrangements for Clearance of Oil Pollution from Coastal Areas, Department of the Environment, 1979.
20. See Civil Liability for Oil Pollution Damage, Department of Trade, London, 1979.
21. [1956] A.C. 218.
22. Abecassis, op.cit., at pp.109-136.

23. Ibid., pp.235-239; TOVALOP, (1969) 8 ILM 497; CRISTAL (1971) 10 ILM 137.
24. New TOVALOP, clause 1(i).
25. Ibid.
26. ACOPS Annual Report, 1981, at p.17.
27. Abecassis, op.cit., at pp.238, 242.
28. See section 8.2.1.
29. Ibid.
30. See Christos Bitas - The Fight Against Pollution, Department of Trade, London, 1978.
31. Smets H., "Some Economic Aspects of Accidental Oil Spills", Report to the Troisième Assises Internationales de l'Environnement, Paris, 9 December 1980.
32. Circular ENV.16/75 of 15 May 1975.
33. ACOPS, Annual Report, 1981, at p.17; see also OECD Transfrontier Pollution Group Papers on "Compensation Ceilings in the Event of Marine Oil Pollution", 19 September 1979; "The Oil Spill Risk - Economic Assessment and Compensation Limit", 26 November 1981; "Calculating the Clean-Up Costs which might be claimed after an Oil Spill", 10 December 1979.
34. Circular ENV. 19/73 of 25 June 1973.
35. 536 UNTS 27.
36. S.I. No. 108 of 1967.
37. U.K. Misc. No. 28 of 1973 (Cmnd 5471).
38. S.I. No. 229 of 1977.
39. Merchant Shipping Act 1952, s.35(3); Merchant Shipping Act 1892, s.419(2).
40. Ibid., s.35(3).
41. Cmnd. 7543, 1979.
42. Thirty-Eighth Report of the Joint Committee on Secondary Legislation, Prl. 7928, 1977, at p.17.

43. S.1. No. 13 of 1981.
44. S.1. No. 12 of 1981.
45. Thirty-Eighth Report of the Joint Committee on Secondary Legislation, 1977, supra, at p.17.
46. 536 UNTS 27.
47. S.1. No. 99 of 1967.
48. (1975) 14 ILM 959; Protocol 1978, (1978) 17 ILM 579.
49. 640 UNTS 133.
50. See Merchant Shippint (Load Lines) Rules 1968, S.1. No. 205 of 1968; Merchant Shipping (Load Lines)(Exemption) Order 1968, S.1. No. 237 of 1968; Merchant Shipping (Load Lines)(Length of Ship) Regulations 1968, S.1. No. 208 of 1968; Merchant Shipping (Load Lines)(Amendment) Rules 1971, S.1. No. 71 of 1971; Merchant Shipping (Load Lines)(Particulars of Depth of Loading) Regulations 1974, S.1. No. 331 of 1974.
51. Thirty-Eighth Report of the Joint Committee on Secondary Legislation, supra, at p.19.
52. O.J. L 194 of 19 July 1978.
53. (1973) 12 ILM 1319; Protocol (1978) 17 ILM 526.
54. O.J. L 33, 8 February 1979 as amended O.J. L 315, 11 December 1979.
55. S.1. No. 301 of 1981.
56. Ibid., article 8.
57. (1975) 14 ILM 959.
58. Report of the Tribunal of Inquiry into the Whiddy Island Disaster, Prl. 8911, 1980.
59. OPISA 1977, s.12.
60. S.1. No. 352 of 1980.
61. (1973) 12 ILM 1319; Protocol (1978) 17 ILM 526.
62. OPISA 1977, s.13.
63. S.1. No. 119 of 1980.
64. OPISA, 1977, s.14.

65. Harbours Act, s.60 and Second Schedule, clause 40. See, for example, Cork Harbour Commissioners Bye-laws of 11 June 1956, bye-laws 99-101.
66. Ibid.
67. OPISA 1956, s.24.
68. Ibid., s.11(2). See also Harbours Act 1946, s.88.
69. Ibid., s.14.
70. Ibid., s.15.
71. Dangerous Substances Act 1972, s.20.
72. Ibid., s.21(1).
73. Ibid.
74. Ibid., ss.32(1), 32(3).
75. Ibid., s.32(2).
76. Ibid., ss.31(1), 31(2).
77. Ibid., ss. 32(4), 31(3).
78. Ibid., s.33(1)
79. Ibid., s.33(2).
80. Ibid., s.33(4).
81. Ibid., s.34(1), 34(2)
82. Ibid., s.34(3).
83. Ibid., s.34(4).
84. S.1. No. 311 of 1979.
85. S.1. No. 313 of 1979.
86. S.1. No. 312 of 1979.
87. S.1. No. 314 of 1979.
88. Dangerous Substances Act 1972, s.63.
89. Ibid., s.52.
90. Ibid., s.55.
91. Ibid., s.36(2).

92. (1970) 9 ILM 25.
93. S.1. No. 318 of 1979.
94. (1974) 13 ILM 605.
95. O.J. No. C. 162 of 8 July 1978.
96. See section 8.2.3.
97. O.J. L 355, 10 December 1981.
98. ACOPS Annual Report, 1981 at p.18; De Bieve A., Memorandum on Shipping and the Environment, European Environmental Bureau, 1981.
99. Circulars ENV 251/1 of 12 December 1972; ENV. 16/75 of 15 May 1975.
100. Circular ENV. 16/75 of 15 May 1975.
101. See sections 8.1, 8.3, 8.4, 8.5, 8.7, 8.8.
102. ACOPS Annual Report, 1980, at p.17.
103. Directory of State Services for 1977, 1978, 1979.

SECTION 9

WASTE DISPOSAL ON LAND

An examination of waste disposal laws and practices in Ireland results in an alarming picture of the inadequacy of existing legislation and of arrangements made for waste disposal on land.

Until 1979 the main sources of law on waste disposal were the Public Health (Ireland) Act 1878, and the Public Health Acts Amendment Act 1907. Provisions in other Acts, notably the Petroleum and Other Minerals Development Acts 1940-79, the Foreshore Act 1933, the Local Government (Planning and Development) Acts 1963-82, the Local Government (Water Pollution) Act 1977, and the Litter Act 1981, also operate to control improper waste disposal. In 1979 and 1982 three sets of regulations viz., the European Communities (Waste) Regulations 1979, the European Communities (Waste) (No. 2) Regulations 1979 and the European Communities (Toxic and Dangerous Wastes) Regulations 1982, were hastily enacted to ensure compliance with EEC obligations but these can in no way be described as providing a satisfactory system for the regulation of waste disposal in Ireland.

Local authorities are now responsible for the planning, authorisation and supervision of waste operations in their areas. But their obligations with respect to waste collection are limited to the collection of household and trade wastes only, and they are not specifically obliged to provide for the disposal of any wastes other than household wastes, vehicles and metal scrap. In practice many local authorities dispose of trade waste or allow it to be disposed of on their dumps. The collection and disposal of industrial wastes

is generally left to private concerns which were not regulated by law until 1979. Many of these concerns operate in an irresponsible manner. There is no official toxic waste dump in the country.

There are, as yet, no legislative provisions specifically dealing with such matters as the selection and operation of waste disposal sites, and the manner in which wastes are to be treated prior to their disposal on land. Neither are there any legislative or fiscal incentives aimed at encouraging citizen participation in decision-making on waste disposal matters, at reducing at source the quantities of wastes generated or at encouraging the use of waste products beneficially. The Department of the Environment has been preparing comprehensive legislation on waste disposal for several years.

9.1 WASTE DISPOSAL SITES

9.1.1 Public Waste Disposal Sites

Waste disposal is carried out by local authorities or private concerns. Statutory responsibility for waste disposal rests with sanitary authorities under the Local Government (Sanitary Services) Acts 1878-1964, and with certain major local authorities under the European Communities (Waste) Regulations 1979,⁽¹⁾ and the Local Government (Waste No. 2) Regulations 1979.⁽²⁾ Section 55 of the Public Health (Ireland) Act 1878, obliges sanitary authorities to provide "fit buildings and places" for the deposit of any matters collected by them in pursuance of Part II of that Act. This obligation did not extend to the provision of places for the deposit of trade or industrial waste as these were not dealt with in Part II of the Act but s.48 of the Public Health Acts Amendment Acts 1907, provides that local authorities must remove trade refuse (other than sludge) if required to do so by the owner or occupier of any premises on payment of a reasonable sum for so doing.

The Act does not, however, deal with the disposal of trade wastes. Sanitary authorities, as local authorities, have rather

inadequate powers - but not duties - to provide places for the disposal of waste under the Local Government (Planning and Development) Acts 1963-82.⁽³⁾ Under the 1963 Act, planning (i.e. most local) authorities are obliged to make development plans for their areas. Among the objectives which may be indicated in development plans are provisions for "prohibiting, regulating and controlling the deposit and disposal of waste materials and refuse".⁽⁴⁾ Planning authorities are obliged to take such steps as are necessary for securing the objectives which may be contained in the provisions of their development plans⁽⁵⁾ and may therefore provide sites for waste disposal. The selection and designation of a waste disposal site, if contained in a draft development plan or variation or amendment thereof, is subject to the controls (which require that the public be given an opportunity to participate in the decision-making process) in Part III of the 1963 Act.⁽⁶⁾ In practice, planning authorities, in a misguided effort to avoid a public controversy, do not often include objectives for public waste disposal sites in development plans. The development and operation of such a site, if carried out by a local authority in their own area constitutes "exempted" development and need not be authorised under Part IV of the 1963 Act.⁽⁷⁾ It is however, a general principle of the common law and also an express statutory requirement that sanitary authorities may not carry out their duties with respect to waste disposal in such a way as to cause a nuisance.⁽⁸⁾ Thus a public dump may not be operated so as to occasion a nuisance. The Minister for the Environment has advised local authorities in circular letters on site selection and on the operation of their waste disposal sites.⁽⁹⁾

Under article 4(2) of the European Communities (Waste) Regulations 1979, the larger local authorities are obliged to prepare a plan indicating, inter alia, suitable waste disposal sites. The Minister for the Environment required the submission of draft waste disposal plans to his Department by 30 June 1980 and provided local authorities with an outline plan to promote standardisation in plan content.⁽¹⁰⁾ Plans are required to contain a map indicating local authority sites for (a) household waste only, (b) general waste (excluding hazardous

waste), (c) disposal facilities for hazardous wastes and (d) local authority waste oil depots. It would appear from this that the intention is to involve local authorities in the disposal of all kinds of wastes. Many local authorities had not complied with the Minister's request by June 1983.

Under article 4(1) of the European Communities (Toxic and Dangerous) Waste Regulations 1982,⁽¹¹⁾ local authorities are required to draw up plans for the disposal of toxic and dangerous waste indicating, inter alia, suitable disposal sites for wastes regulated under EEC Directive 78/319/EEC on toxic and dangerous waste⁽¹²⁾ but local authorities themselves are not expressly required to provide such sites.

Section 9 of the Litter Act 1982, obliges local authorities to provide, or procure the provision of, places where vehicles and metal scrap can be abandoned.

There is no express legal obligation on local or sanitary authorities to provide places for the disposal of any wastes other than what might loosely be termed domestic wastes, vehicles and metal scrap. There are, as has been illustrated, implied powers for local authorities to provide places for the disposal of all kinds of waste. In practice, almost every local authority has provided waste disposal sites for household and trade wastes. Sometimes local authorities also permit the disposal of industrial wastes on their dumps.

Local authorities usually own the land on which public waste disposal sites are located. Occasionally, a local authority (usually an urban authority which has not got a lot of land at their disposal) arranges for the disposal of their waste on another local authority's site. Where a local authority does not own land suitable for waste disposal purposes, they may acquire it. Section 271 of the Public Health (Ireland) Act 1878, provides that when it becomes necessary for a sanitary authority for the exercise of their statutory powers, to enter and examine and lay open any lands and

the owner refuses to allow them, they may apply for a District Court order authorising them to enter, examine and lay open the lands. The nature of the Court's function under this section was at issue in Cork County Council v. Fawsitt and Others.⁽¹³⁾ This case involved an application for an order of certiorari to quash a decision of the Circuit Court (on appeal) refusing Cork County Council permission to enter land identified by them as potentially suitable for the disposal of hazardous wastes and to make trial holes and test bores for the purpose of ascertaining the suitability of the lands for the purposes required. The Circuit Court had refused the application to enter on the land because in the opinion of the trial judge the lands were unsuitable for the purposes required. The High Court granted the order of certiorari holding that it was not the function of the trial judge to determine the suitability or otherwise of the land for the disposal of hazardous wastes. Unless satisfied that the lands were "manifestly unsuitable", his task was to permit the entry requested where it was not disputed that the making of trial holes and test bores was necessary to ascertain its suitability for the purposes required. The County Council's power to enter on land for the purpose of determining its suitability as a hazardous waste disposal site was not questioned.

9.1.2 Private Waste Disposal Sites

The development and operation of a waste disposal site by any person, other than a local authority, is subject to control under s.3 of the Local Government (Planning and Development) Act 1963, which expressly provides that where land is used for "the deposit of bodies or other parts of vehicles, old metal, mining or industrial waste, builder's waste, rubble or debris", the use of the land shall be taken as having materially changed. Planning permission under Part IV of the Act is therefore necessary, and conditions regulating the development and operation of the site may be attached to any planning permission granted.⁽¹⁴⁾ Where however, the deposit of waste material is ancillary to a main development forming part of an overall construction operation rather than a use in its own right it may not be subject to planning control. Unfortunately,

the vast majority of private waste disposal sites are not controlled under the Planning Acts either because they were in existence before 1 October 1964 or because local authorities (conscious of their own shortcomings with respect to the provision of waste disposal sites) have chosen to ignore their existence.

If land is being used for waste disposal purposes without the required planning permission or in breach of a condition attached to a permission, a planning authority or any other person may have recourse to enforcement powers under the Planning Acts 1963 and 1976.⁽¹⁵⁾ In addition, s.107 of the Public Health (Ireland) Act 1878, states that "any accumulation or deposit which is a nuisance or injurious to health" shall be deemed to be a statutory nuisance. There is a proviso to the section which provides that no penalty is to be imposed:

in respect of any accumulation or deposit necessary for the effectual carrying on of any business or manufacture if it is proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best practicable means have been taken for preventing injury thereby to the public health.

Local authorities are obliged under ss. 110 and 111 of the Act to abate such nuisances on receipt of complaints about them from specified persons.⁽¹⁶⁾ A private individual is also empowered by s.121 of the 1878 Act to prosecute in respect of a statutory nuisance.⁽¹⁷⁾

Under article 5(3) of the European Communities (Waste) regulations 1979, it is an offence for any person, other than a public waste collector,⁽¹⁸⁾ to carry out the treating, storing or tipping of waste on behalf of another person without a permit from his local authority or in a manner contravening the terms of such a permit. The operation of a private dump on a commercial

basis must thus be authorised under the regulations as well as under the Planning Acts. A permit must specify the type and quantity of waste to which it applies and must be conditional on compliance with any general technical requirements and precautions it specifies and on the making available to the local authority of such information as they request in relation to the origin, destination, treatment, type and quantity of the waste.⁽¹⁹⁾ Where a producer/holder disposes of his own waste he is obliged to do so in a manner which would not endanger human health or harm the environment, or in particular, which would:

- (i) create a risk to water, air, soil, plants or animals,
- (ii) cause a nuisance through noise or odours, or
- (iii) adversely affect the countryside or places of special interest.⁽²⁰⁾

The penalty on summary conviction for operating a waste disposal site without a permit or in a manner contravening the terms of a permit or for breach of article 3(b) is £600 and/or six months imprisonment.⁽²¹⁾

Under article 5(4) of the European Communities (Toxic and Dangerous Waste) Regulations 1982, it is an offence for any person, other than a local authority (as defined in the regulations),⁽²²⁾ acting in their own area, to carry out the storage, treatment or disposal of toxic and dangerous waste as defined in the regulations, whether on his own behalf or on behalf of another except under and in accordance with a local authority permit. A permit may specify the type and quantity of the waste permitted for the particular disposal site, technical requirements, precautions to be taken, the disposal sites, the method of disposal and may include conditions and obligations, require that information be made available to the local authority in relation to the waste, be granted for a specified period and be renewed.⁽²³⁾ The above requirements differ from those prescribed in respect of general wastes in that the obligation to obtain a permit extends to a local authority (as defined in the regulations) operating in the area of another local authority, to

sanitary authorities who are not local authorities within the meaning of the regulations, to producers who store, treat and deposit their own wastes and undertakings who do so on behalf of others.

The penalty on summary conviction for operating a toxic and dangerous waste disposal site without a permit or in a manner contravening the terms of a permit is £1000 and/or six months imprisonment.⁽²⁴⁾

Other penalties may be imposed where a breach of planning control is involved.⁽²⁵⁾ There may thus be some overlap between planning controls and controls under the 1979 and 1982 Regulations but conditions imposed on waste disposal permits are a more flexible means of control than planning conditions because they can be updated (usually without attracting liability to pay compensation) and because they impose direct criminal liability and thus avoid the lengthy enforcement procedures prescribed under planning legislation. Local authorities have been advised by circular letter to attach conditions in all permits under the 1979 Regulations giving them power to review a permit and its conditions after a stated time or at any time under certain circumstances.⁽²⁶⁾ There is an express power in the 1982 Regulations to grant permits for a specified period and to renew permits.⁽²⁷⁾

The responsibilities placed on local authorities relating to the planning organisation and supervision of waste disposal generally⁽²⁸⁾ and to the disposal of toxic and dangerous wastes⁽²⁹⁾ in their areas constitutes a significant extension of local authority responsibility with respect to the operation of private waste disposal sites.

9.2 GENERAL WASTES

The most comprehensive controls over wastes in general, as distinct from specific wastes, are those contained in the European Communities (Waste) Regulations 1979, which were enacted specifically to give effect to EEC Directives 75/442/EEC on waste⁽³⁰⁾ and 75/439/EEC

on waste oils.⁽³¹⁾ The regulations came into operation on 1 April 1980 but have not yet been fully implemented. Local authorities, (i.e. county borough corporations, county councils and Dun Laoghaire borough corporation) are charged with responsibility for the "planning, organisation, authorisation and supervision of waste operations in their area"⁽³²⁾ and are required to prepare waste disposal plans.⁽³³⁾ The Minister for the Environment required the preparation of plans by 30 June 1980 and requested local authorities to consider the preparation of joint waste disposal plans in areas which are closely interdependent in regard to the movement of waste.⁽³⁴⁾ Guidelines on the nature and contents of plans were sent to all local authorities and conferences on plan preparation were organised by An Foras Forbartha.⁽³⁵⁾ A holder of wastes must not permit its disposal by any person other than (a) a public waste collector or (b) a permit holder.⁽³⁶⁾ If he disposes of waste himself he must not do so in such a way as would endanger human health or harm the environment.⁽³⁷⁾ A person other than a public waste collector must have a local authority permit for treating, storing or tipping waste if doing this on behalf of another person.⁽³⁸⁾ A "public waste collector" means a local or other sanitary authority for the purposes of the Local Government (Sanitary Services) Acts 1878-1964.⁽³⁹⁾ Permits may be limited to certain wastes or certain quantities of wastes and must be conditional on compliance with any general technical requirements and precautions specified and on making information on the origin, destination, treatment, type and quantity of the waste available to the local authority when requested.⁽⁴⁰⁾ Registers of waste operations must be kept by holders of permits or if the local authority so requires, by any person transporting, collecting, storing, tipping or treating their own or another's waste showing the type and quantities of all wastes handled and its origin, treatment and destination.⁽⁴¹⁾ The regulations are enforceable by the Minister for the Environment or the appropriate local authority.⁽⁴²⁾ Authorised persons have been given the necessary powers of entry and inspection.⁽⁴³⁾ The penalty on summary conviction for operating without a permit or in contravention of the terms therein is a fine not exceeding £600 and/or six months imprisonment.⁽⁴⁴⁾ Penalties (£250 on summary conviction) are also provided for failure to keep or produce a proper register of waste

operations or to give relevant information to an authorised person and for obstructing or interfering with such a person.⁽⁴⁵⁾

The regulations do not apply to:

- (a) radioactive waste,
- (b) waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries,
- (c) animal carcasses and agricultural waste comprising faecal matter or substances used in farming,
- (d) waste waters (but not including waste in liquid form),
- (e) gaseous effluents emitted into the atmosphere.⁽⁴⁶⁾

These regulations implement some of the requirements in EEC Directive 75/442/EEC on waste but they are silent as to many of the duties on Irish public authorities under this Directive. Thus the obligations in the Directive with respect to promoting beneficial uses of waste;⁽⁴⁷⁾ with respect to the duties of local authorities to carry out periodic inspections of waste disposal facilities.⁽⁴⁸⁾ to ensure respect for the "polluter pays" principle⁽⁴⁹⁾ and to forward periodic situation reports to the EEC⁽⁵⁰⁾ are not mentioned in the regulations. Another manifestation of the special treatment accorded to public authorities is the fact that "public waste collectors" (i.e. sanitary authorities) are not required to obtain a permit for treating, storing or tipping waste though they may be subject to the supervision of the appropriate local authority.⁽⁵¹⁾ There is no obligation on local authorities to permit citizen participation in decision-making on waste disposal permits or even to ensure that registers and waste disposal plans are made available for public inspection. In so far as can be ascertained there has never been a prosecution for breach of these regulations.

9.3 SPECIFIC WASTES

9.3.1 Wastes Oils

The European Communities (Waste) Regulations 1979, were enacted inter alia, to implement EEC Directive 75/439/EEC on waste oils.⁽⁵²⁾

The total lubricating oil market in Ireland in 1977 was 8.7 million gallons and the maximum recoverable quantity of waste oils was about 2.7 million gallons. Local authorities have set up a number of waste oil depots in association with disposal dumps but there are still many areas where waste oils are not collected or disposed of in a manner envisaged by the Directive. Some waste oils are collected by private contractors and are recycled and used for horticultural heating purposes. These regulations have been described above.⁽⁵³⁾

9.3.2 Polychlorinated Biphenyls and Polychlorinated Terphenyls

EEC Directive 76/403/EEC on the disposal of polychlorinated biphenyls and terphenyls⁽⁵⁴⁾ has been largely implemented by the European Communities (Waste) (No. 2) Regulations 1979,⁽⁵⁵⁾ the purpose of which is to ensure the safe disposal of waste PCB, including PCB contained in objects or equipment no longer capable of being used. The Electricity Supply Board (ESB) - a semi-state body - has been designated as the authority authorised to dispose of PCB.⁽⁵⁶⁾ Holders of waste PCB must notify the ESB, hold such waste and make it available for disposal by the ESB.⁽⁵⁷⁾ The ESB must maintain a register of notifications and of waste held or disposed of (including the date and method of disposal) and must furnish information required by the Minister for the Environment.⁽⁵⁸⁾ It is an offence punishable on summary conviction by a fine not exceeding £600 and/or six months' imprisonment for any person to discharge, dump or tip PCB in a way which could endanger human health or harm the environment.⁽⁵⁹⁾ The regulations are enforceable by the Minister for the Environment and local authorities as defined in the regulations.⁽⁶⁰⁾ Authorised officers have been given powers of entry and inspection.⁽⁶¹⁾ Obstruction of an authorised officer is punishable on summary conviction by a fine of £250.⁽⁶²⁾

Further controls over the use of PCB's are contained in the European Communities (Dangerous Substances and Preparations) (Marketing and Use) Regulations 1979,⁽⁶³⁾ and the European Communities (Dangerous Substances) (Classification, Packaging and

Labelling) Regulations 1979.⁽⁶⁴⁾

9.3.3 Waste from the Titanium Dioxide Industry

It has not been found necessary to implement EEC Directive 76/176/EEC on waste from the titanium dioxide industry⁽⁶⁵⁾ because this type of waste does not arise in Ireland.

9.3.4 Toxic and Dangerous Waste

There has been a great deal of concern in recent years about the lack of disposal facilities for toxic and dangerous wastes. Most of the waste classifiable as toxic and dangerous arises from the chemical industry. There are 70 major companies in the chemical/pharmaceutical sector in Ireland representing an investment of over £400 million towards which the Industrial Development Authority has provided more than £60 million in grants. Exports in 1982 amounted to over £500 million comprising 28 per cent of total business exports. There is no officially approved disposal site for many wastes which are disposed of by private waste disposal contractors over whom there were no controls until 1 January 1983. In 1979, about 250 people were employed in the industrial waste disposal trade, only one of whom was technically qualified.⁽⁶⁶⁾

Methods by which these wastes are disposed of include:

- (a) dumping in private dumps (80%),
- (b) dumping on public dumps,
- (c) treatment or incineration by the producer,
- (d) dumping at sea,
- (e) export to waste disposal facilities abroad,
- (f) re-use, recovery and re-cycling.

In 1980 Raybestos Manhattan Ltd. was successfully sued by Cork County Council for dumping asbestos waste on an open dump and on a public road.⁽⁶⁷⁾ In the same year a truck driver employed by William O'Brien Ltd. (the largest private waste disposal contractor in the country) pumped hundreds of gallons of chromium waste into

a roadside drain near Mitchelstown.⁽⁶⁸⁾ In 1981, large amounts of DDT were discovered in a dump on private lands in Aranmore, County Galway.⁽⁶⁹⁾ In the High Court proceedings in Cork County Council v. Fawsitt and Others⁽⁷⁰⁾ the Chief Environmental Officer in Cork County Council (which has the greatest problems with toxic waste disposal) told the court that industrialists were refusing to give the council information on where toxic wastes were being dumped in the country.⁽⁷¹⁾ Existing legal controls were inadequate. The Industrial Development Authority, environmentalists and even waste disposal contractors called for reform. Nothing was done until the Minister for the Environment, faced with the necessity of implementing EEC Directive 78/319/EEC on toxic and dangerous waste,⁽⁷²⁾ finally made the European Communities (Toxic and Dangerous Waste) Regulations 1982,⁽⁷³⁾ two years after the Directive came into force.

These regulations seek to control the disposal of waste containing or contaminated by one or more of 27 substances listed in the annex to the Directive. They do not control any other kinds of hazardous waste. Consequently, unless a hazardous waste is listed in, or in accordance with, EEC Directive 78/319/EEC, it is subject only to the limited controls in the European Communities (Waste) Regulations 1979.⁽⁷⁴⁾

For the purposes of the regulations, "disposal" includes:

the collection, sorting, carriage and treatment of toxic and dangerous waste as well as its storage and tipping above or under ground and the transformation operations necessary for its recovery, re-use, or recycling.⁽⁷⁵⁾

Local authorities (i.e. county borough corporations, county councils and Dun Laoghaire borough corporation)⁽⁷⁶⁾ are designated as responsible for the planning, organisation and supervision of operations for the disposal of toxic and dangerous waste, and the authorisation of the storage, treatment and depositing of such waste⁽⁷⁷⁾ and are required to prepare "special waste plans" indicating, inter

alia,

- (a) the types and quantities of toxic and dangerous wastes to be disposed,
- (b) the methods of disposal
- (c) specialised treatment centres where necessary, and
- (d) suitable disposal sites.⁽⁷⁸⁾

Plans are to be designed to secure that these wastes are not disposed of so as to endanger human health and the environment.⁽⁷⁹⁾ Plans may be reviewed and varied, or new plans may be made as the occasion may require or if the Minister for the Environment so directs.⁽⁸⁰⁾ Notice of the making of the plan must be published in at least one newspaper circulating in the area⁽⁸¹⁾ but there is no provision for citizen participation in plan making. Copies of the plan must be made available for public inspection.⁽⁸²⁾ Detailed guidelines on the making of special waste plans has been given to local authorities affected.⁽⁸³⁾ A list of wastes to be regarded as toxic and dangerous was circulated but authorities were advised that they had a certain amount of discretion to decide that a particular waste was toxic and dangerous and that account should be taken of evidence submitted to the contrary.⁽⁸⁴⁾ All arisings of controlled wastes, including those where the producer has on-site facilities for their disposal, are to be contained in special waste plans but authorities were specifically told that:

It will not be necessary to include the names and addresses of producers of toxic and dangerous wastes in the plan itself but these should be preserved and kept available for reference.⁽⁸⁵⁾

This instruction gives official sanction to the widespread practice of concealing information on environmental matters from the public.

By June 1983, not one special waste plan had been produced although local authorities had been advised since 1978 of the requirements of Directive 78/319/EEC.⁽⁸⁶⁾ Local authorities apparently take the view that the ultimate disposal of toxic and dangerous wastes

is a national rather than a local responsibility and no local authority appears willing to provide public facilities for the storage, treatment or disposal of toxic and dangerous waste. In June 1981, the Minister for the Environment, in what was probably a recognition of this fact, announced the establishment of a "central depot and possible treatment facilities for industrial and other wastes for which acceptable alternative means of disposal are not available".⁽⁸⁷⁾ This facility is to be at Baldonnel, County Dublin and is to be developed by the State-sponsored National Building Agency. There has been vociferous opposition to this proposal from the residents at Baldonnel and work on the project had not commenced in June 1983.

Any person (including all local authorities other than those within the meaning of the regulations operating in their own areas) who stores, treats or deposits toxic and dangerous waste must do so under and in accordance with a local authority permit.⁽⁸⁸⁾ Persons producing or holding toxic and dangerous waste without a permit are obliged to have the waste stored, treated or deposited as soon as possible by a permit holder or by a local authority.⁽⁸⁹⁾ Permits must specify the type and quantity of the waste, technical requirements, precautions to be taken, disposal sites and methods of disposal.⁽⁹⁰⁾ They may include conditions and obligations, require the making available of information to the local authority, be of limited duration and be renewed.⁽⁹¹⁾

Authorities have been advised to specify particular locations for the disposal of particular wastes in permits in the interests of safety and with a view to segregating incompatible wastes and to ensure that permit holders keep records of the precise location of different types of wastes deposited.⁽⁹²⁾ They were also advised to integrate permit issue with planning controls but to avoid using the latter to regulate waste disposal processes and methods.⁽⁹³⁾

Article 8 of the regulations provides that what is known in the trade as a "trip ticket" must accompany waste movements. The object of this requirements is to ensure that the local authority can monitor and record all collections, transport and disposals of waste in their area. The "trip ticket", or as it is called in the regulations, the

consignment note, starts with the waste generator/holder who completes Part A of a form providing information on the description of the waste, the components therein which are toxic/dangerous (giving concentrations in each case), the quantity of the waste including the size, type and number of containers, hazardous properties and specific handling instructions (if any), and the ultimate destination of the waste. Four copies of the note must be given to the waste collector: the remaining copy must be kept by the producer/holder. The collector in turn must complete Part B of the note acknowledging collection and notification to him of the hazards of the materials collected. He must also ensure that the note accompanies the waste in transit. Finally, on delivery of the waste to its destination, four copies of the notes, with Parts A and B completed, must be given to the waste receiver who must complete Part C which provides information on the name and location of the waste disposal facility, the registration of the vehicle delivering the waste, the name of the carrier, the time and date of delivery of the waste, acknowledgement of acceptance of the waste, the permit number of the waste depositer, and the location of the place where the waste is to be disposed of. The waste receiver having completed Part C must retain one copy, return a copy to the collector, send a copy to the local authority where the waste was produced and a further copy to the local authority where the waste was received. The waste collector must retain his copy with Parts A, B and C completed.

A similar system applies where toxic and dangerous waste is to be exported although in this case there are (because it would not be legally possible so to require) no provisions placing obligations on foreign waste receivers.⁽⁹⁴⁾ The onus of sending copies of the note to the appropriate local authority rests on the producer/holder who is consigning the waste for export. There is thus no way under the regulations in which a local authority can monitor the ultimate disposal of exported waste. However since the treatment and/or disposal of virtually all exported wastes is dependent on the co-operation of the U.K. public authorities, administrative arrangements have been made whereby Irish local authorities are required to send copies of the note sent to them by the producer/holder to the local authority in the U.K. having jurisdiction over the facility to which

the waste is consigned.⁽⁹⁵⁾ Exporters of waste must obtain documentary evidence of the arrival of the waste at its destination or inform the local authority why they have been unable to obtain this evidence.⁽⁹⁶⁾

As a general rule, consignment notes must be sent to the appropriate local authority the day after the waste is consigned or received, as the case may be⁽⁹⁷⁾ and must be kept for at least two years from the date of the completion of the movement of waste to which they refer.⁽⁹⁸⁾

Local authorities have been advised to keep copies of consignment notes carefully and to keep a register of the data they contain in a computerised form if possible.⁽⁹⁹⁾ They have also been instructed to investigate if there has been any failure to receive forms in respect of waste which in the normal course might be expected to have been produced.⁽¹⁰⁰⁾

It is an offence under the regulations to abandon or consign, tip, carry or discharge toxic and dangerous waste other than in accordance with the regulations.⁽¹⁰¹⁾ Persons dealing with toxic and dangerous wastes are obliged to ensure that it is kept separate from other matter or residues where contact between the two is likely to give rise to a danger to human health or the environment.⁽¹⁰²⁾ Persons consigning such wastes must ensure that it is labelled as required by the regulations and that the labelling is maintained in a legible condition.⁽¹⁰³⁾

Article 7 of the Regulations requires holders of permits and any person producing, holding or disposing of toxic and dangerous waste to maintain a register of those operations. Model forms of registers setting out transport details, details of the waste and of disposal and other relevant information have been provided by local authorities to persons liable to maintain registers.⁽¹⁰⁴⁾

The regulations are enforceable by officers authorised by the Minister for the Environment and local authorities.⁽¹⁰⁵⁾ Authorised officers have been given appropriate powers to enter, inspect, examine and search structures or vehicles, as appropriate.⁽¹⁰⁶⁾ The penalty for breach of any of the regulations or for obstruction or

interference with an authorised officer in the exercise of his duties is an offence punishable on summary conviction by a maximum fine of £1000 and for six months imprisonment.⁽¹⁰⁷⁾

The regulations do not apply to:

- (a) radioactive waste,
- (b) animal carcasses and agricultural waste of faecal origin,
- (c) explosives,
- (d) hospital waste,
- (e) effluents discharged into sewers and watercourses,
- (f) emissions to the atmosphere,
- (g) household waste,
- (h) mining waste,
- (j) other toxic and dangerous waste covered by specific Community rules.⁽¹⁰⁸⁾

There are no provisions in the regulations for citizen-participation in decision-making on permits but copies of the toxic and dangerous waste disposal plan must be made available for public inspection.⁽¹⁰⁹⁾ By June 1983 no such plan had been prepared. Local authorities are concerned with the size and scale of the problem in relation to available manpower and resources. Dublin County Council officials estimate that there are between 1000-1500 industries in their area which may be producing toxic and dangerous wastes. Cork County Council has drawn up a preliminary list of over 100 sources. Registers of permits issued under the Regulations are not available for public inspection.

These regulations implement some of the requirements of EEC Directive 78/319/EEC on toxic and dangerous waste. But the obligations in the Directive with respect to the "polluter pays" principle⁽¹¹⁰⁾ and relating to the duty on competent authorities to prepare situation reports for the EEC Commission⁽¹¹¹⁾ are not mentioned in the regulations.

The regulations may be deemed to have formally complied with Directive 78/319/EEC but they are grossly defective as instruments

for the control of hazardous waste disposal. They merely seek to control the disposal of 27 kinds of hazardous wastes (there are many other kinds of such wastes) and not the disposal of all hazardous wastes. While the consignment note system may serve to ensure that waste movements and disposal can be traced (and thus help fix legal liability for breach of the regulations and in tort) no attempt has been made to control carriers of dangerous wastes. Empirical studies indicate that most incidents of improper waste disposal occur during transport and result from disposal contracts between the waste generator and haulier rather than between the waste generator and disposer.⁽¹¹²⁾ Thus any reduction in the costs for disposal (for example, by means of improper dumping) increases the profit of the waste haulage firm. Proper control over hazardous waste disposal is impossible unless high standards are imposed on the qualifications and performance of carriers as well as ultimate disposers.⁽¹¹³⁾ There are no permit requirements in Ireland for the carriage or transport of toxic and dangerous wastes.⁽¹¹⁴⁾ Consequently, there is a built-in economic incentive for fly-by-night operators who are prepared to engage in the waste transport business cheaply and irresponsibly.

The real problem in the long term with the improper disposal of dangerous wastes is that of fixing liability for improper disposal and recovering damages for loss suffered. In many cases damage does not become apparent for some years after the disposal of the wastes by which time the persons responsible are untraceable and/or, if incorporated, have ceased to exist, or if they do exist, have not the financial capacity to meet claims. No attempt has been made in Irish legislation to fix liability on persons responsible for improper hazardous waste disposal or to ensure that persons potentially liable in actions by persons who have suffered damage have or acquire the capacity to meet future claims. Many countries have now established funds to which persons dealing with hazardous wastes must contribute to meet future compensation costs arising from the improper disposal of hazardous waste.⁽¹¹⁵⁾ An alternative sometimes adopted is to require that operational and incidental risks of hazardous waste disposal be insured against.⁽¹¹⁶⁾ Two international conventions are being drafted under the auspices of the International

Maritime Consultative Organisation and the United Nations to clarify the position on liability for the consequences of incidents involving hazardous cargoes.⁽¹¹⁷⁾

A Committee on the Adaptation to Technical Progress was established under Directive 78/319/EEC to facilitate the adaptation of the list of toxic and dangerous substances to which the Directive applies. Ireland is represented on this Committee by an official in the Department of the Environment. The Directive has not been amended since its adoption.

9.3.5 Trade Wastes

Section 128 of the Public Health (Ireland) Act 1878, states that the written consent of the appropriate local authority must be obtained before an "offensive" trade can be established in an urban area. An offensive trade includes the trade of - bloodboiler, boneboiler, fellmonger, soap boiler, tallow melter, tripe boiler, gut manufacture or any other noxious or offensive trade, business or manufacture. The penalty on conviction for breach of s.128 is a maximum fine of £50 plus £2 each day for a continuing offence. Local authorities are not empowered to attach conditions to consents given but s.129 of the Act empowers them to make bye-laws with respect to offensive trades "in order to prevent or diminish the noxious or injurious effects thereof". These provisions are of little practical importance nowadays and have to a large extent been superseded by requirements in planning legislation. The Public Health Acts Amendment Act 1907, provides for the removal of trade refuse by local authorities subject to a reasonable payment for the service.⁽¹¹⁸⁾ Trade wastes are also regulated under the European Communities (Waste) Regulations 1979⁽¹¹⁹⁾ and the Litter Act 1982.⁽¹²⁰⁾

9.3.6 Domestic Wastes

The Public Health (Ireland) Act 1878, provides that a sanitary authority may, and if required by the Minister for the Environment must, undertake or contract for the removal of house refuse.⁽¹²¹⁾

Once such service has been undertaken or contracted for, a sanitary authority will be guilty of an offence if, having been required by notice from the occupier of any house to remove such refuse within seven days, it fails without reasonable excuse to perform or have that service performed.⁽¹²²⁾ Where a sanitary authority does not contract for or undertake the removal of house refuse, they may make bye-laws imposing the duty of such removal on the occupier of premises.⁽¹²³⁾ Sanitary authorities are also obliged to provide, if necessary, receptacles for the temporary deposit and collection of dust, ashes and rubbish provided that no nuisance is created by the exercise of this power.⁽¹²⁴⁾ Domestic waste disposal may also be controlled under local authority bye-laws,⁽¹²⁵⁾ under the European Communities (Waste) Regulations 1979⁽¹²⁶⁾ and under the Litter Act.⁽¹²⁷⁾

9.3.7 Litter and Graffiti

The Litter Act 1982, introduced new and comprehensive controls over litter. The Act followed the main recommendations of a report Litter and the Environment⁽¹²⁸⁾ produced in 1980 by the now defunct Environmental Council.

Section 3 of the Act places a general obligation on local authorities as defined in the Act⁽¹²⁹⁾ to:

take measures for the prevention of the creation, and for the prevention and overcoming of the harmful effects, of litter in its area and for the disposal of litter.

Measures taken may include the obvious measures of collection and disposing of litter and also measures to encourage public participation in litter control, to facilitate and encourage recycling and to undertake works and services including publicity, advisory and educational services.

Occupiers of land that is a public place or of land visible from a public place are obliged to keep it free of litter.⁽¹³⁰⁾ Other persons who litter public places or places visible from a public place are guilty of an offence as is any person who places

articles or advertisements without lawful authority in or on land or structures in or fronting on a public place.⁽¹³¹⁾ The defacement of land and certain structures in or fronting on a public place is also an offence.⁽¹³²⁾ Persons other than the person who committed the act constituting the offence may be prosecuted for the unauthorised exhibition of articles or advertisements or defacement where they stand to benefit from these acts.⁽¹³³⁾ Local authorities are empowered to make bye-laws requiring occupiers of any land in their areas or of land of a specified class or specified classes or of land in a specified area or specified areas in their jurisdictions to keep free of litter certain footpaths or pavements, road gutters and areas forming part of a public road between a footpath or pavement and the carriageway (if any) of the public road.⁽¹³⁴⁾

The enforcement provisions with respect to littering, wrongful advertising and defacement are comprehensive and potentially very effective. Litter wardens may serve "on the spot" notices on persons who litter, requiring the payment of £5 to the appropriate local authority within 21 days.⁽¹³⁵⁾ Local authorities have power to take, or to require the occupier of land or premises in or fronting on a public place to take, remedial action in certain circumstances.⁽¹³⁶⁾ The Act is enforceable by local authorities.⁽¹³⁷⁾ The penalty on summary conviction for litter offences or for the illegal placing of advertisements or articles or defacement or for contravention of bye-laws made under the Act or for failure to comply with a notice requiring the taking of remedial action is a maximum fine of £800.⁽¹³⁸⁾ Model forms of notices which may be served under the Act are provided in the Litter Regulations 1982.⁽¹³⁹⁾

9.3.8 Abandoned Vehicles and Scrap Metal

The Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations 1971,⁽¹⁴⁰⁾ empower road authorities⁽¹⁴¹⁾ to remove, store and dispose of a vehicle which has been abandoned on a public road or in a car park provided under s.101 of the Road Traffic Act 1961. This power includes the power to make arrangements with any person for the removal or storage of such vehicles. Section 97 of the Road Traffic Act 1961, defines a vehicle as including part of a

vehicle or article designed as a vehicle but not at the time capable of functioning as a vehicle.

Local authorities were requested to provide special places in central locations for old vehicles and worn out bulky domestic equipment and encouraged to cooperate with private companies engaged in the reclamation of scrap metal by circular letter in 1975.⁽¹⁴²⁾

Section 9(1) of the Litter Act 1982, provides that a local authority, having made an examination of the matter, is obliged to provide or procure the provision (whether by another local authority or otherwise) of such place or places where vehicles or metal scrap may be abandoned as appears to it to be necessary and reasonable. Local authorities were instructed in 1978 to prepare waste disposal plans for, inter alia, abandoned cars.⁽¹⁴³⁾ Most local authorities have now prepared such plans and have provided or secured the provision of places where vehicles and metal scrap may be abandoned. Authorities are empowered to charge a reasonable amount for accepting vehicles or scrap at their sites.⁽¹⁴⁴⁾ A vehicle or scrap metal left at a place provided by or on behalf of a local authority is deemed to have been abandoned and the local authority may dispose of it or secure its disposal.⁽¹⁴⁵⁾

Under s.10(1) of the Litter Act it is an offence to abandon a vehicle on any land without the consent of the occupier. The person who abandoned the vehicle as well as the registered owner of the vehicle (if the former and the latter are not one) shall each be guilty of the offence unless the registered owner can prove that the abandonment of the vehicle was not authorised by him.⁽¹⁴⁶⁾ Local authorities are empowered under s.11 of the Act to remove abandoned vehicles from any land in their areas other than a public road within the meaning of the Road Traffic Act 1961, or a car park provided under s.101 of that Act but notice of intention to do so in the form prescribed by the Litter Regulations 1982, must be served on the occupier who must consent to its removal or who must not object to its removal within 14 days of service of the notice. Vehicles so removed may be stored by or on behalf of the local authority.⁽¹⁴⁷⁾ Under s.12 local authorities may take action or

require occupiers of land to take action in the interests of the amenity or the environment of their areas to clean up or improve what are commonly known as scrap yards. The procedures for so doing are prescribed in s.12. This power does not apply where the scrap yards are authorised under Part IV of the Local Government (Planning and Development) Act 1963.⁽¹⁴⁸⁾ Where vehicles or metal scrap are stored by virtue of powers vested in local authorities under sections 10 and 11, prescribed measures must be taken to ascertain and inform the owners or occupiers of land, as appropriate, that they may reclaim their property, and in the event of their failure to do so within two weeks, that the local authority may dispose of it, or secure its disposal.⁽¹⁴⁹⁾ In certain circumstances, a local authority may dispose of abandoned or apparently abandoned vehicles without having stored it or contacting the owner.⁽¹⁵⁰⁾ Charges may be levied on owners or occupiers who reclaim their property.⁽¹⁵¹⁾ The provisions in the Litter Act are enforceable by the local authority in whose area the offence was committed.⁽¹⁵²⁾ Where, however, a vehicle has been abandoned on private land, the occupier thereof may prosecute the person who abandoned the vehicle and/or the registered owner thereof who has authorised its abandonment.⁽¹⁵³⁾ The penalty on summary conviction for any offence relating to abandoned vehicles or scrap metal is a maximum fine of £800.⁽¹⁵⁴⁾

The use of privately owned land for the dumping of vehicles or vehicle parts must be permitted under Part IV of the Local Government (Planning and Development) Act 1963.

9.3.9 Street Cleansing

The combined effect of s.52 of the Public Health (Ireland) Act 1878, and s.1 of the Public Health (Ireland) Act 1896, is that local authorities may, and if required by the Minister for the Environment must, undertake or contract for the proper watering of streets in their district. Where a sanitary authority does not undertake or contract for the cleansing of streets adjoining premises, s.54 of the 1878 Act provides that they may make bye-laws imposing such a duty on the occupier of premises. Section 53 of the 1896 Act provides for the imposition of penalties on sanitary authorities for

neglecting their duties with respect to street cleansing and s.55 empowers them to provide receptacles for the temporary deposit and collection of dust, ashes and rubbish.

Further powers for the control of litter are contained in the Litter Act 1982 described above.⁽¹⁵⁵⁾ A public place for the purposes of that Act includes "any street, road seashore or other place to which the public have access whether as of right or by permission and whether subject to or free of charge".⁽¹⁵⁶⁾

9.3.10 Mining Waste

The Minerals Development Act 1940, and the Petroleum and Other Minerals Development Act 1960, contain a number of provisions by which extensive controls over waste from mines may be exercised. These controls include:

- (i) powers to attach conditions to licences, leases, permits and permissions granted under the said Acts;
- (ii) provisions requiring the payment of compensation for damage caused to the surface of land or to mineral deposits or water supplies, or for causing a nuisance, by mining or petroleum operations;
- (iii) provisions requiring that operations be carried on in such a manner as not to interfere with the amenities of the locality near the mines, etc.;
- (iv) provisions empowering the Minister for Industry and Commerce to make regulations in respect of, inter alia, the disposal of waste products.

Furthermore, mineral extraction and ancillary operations, such as the erection of buildings and tipping of waste, come under planning control. Mining waste is exempt from the provisions of the European Communities (Waste) Regulations 1979, and the European Communities (Toxic and Dangerous Waste) Regulations 1982.⁽¹⁵⁷⁾

9.3.11 Miscellaneous

Provisions in various statutes and other less formal methods of

pollution control may operate to prevent the deposit of wastes or of specific kinds of wastes in certain places. The deposit of wastes from vehicles or trailers to roads is controlled under the Road Traffic (Construction Equipment and Use of Vehicles) Regulations 1963⁽¹⁵⁸⁾ and under s.3 of the Litter Act 1982. The deposit of waste on the foreshore is regulated under the Foreshore Act 1933⁽¹⁵⁹⁾ and under ss.3, 4 and 10 of the Litter Act 1982. The deposit of alkali waste on land is regulated under the Alkali etc. Works Regulations Act 1906.⁽¹⁶⁰⁾ Other controls in water and air pollution legislation may operate indirectly to prevent the deposit of waste on land.

9.4 CONTROLS OVER WASTE TREATMENT BEFORE DISPOSAL AND METHODS OF DISPOSAL

It is a general principle of the common law and sometimes also an express statutory requirement⁽¹⁶¹⁾ that local and sanitray authorities in carrying out their duties do so in such a manner as not to create a nuisance. Local authorities who dispose of wastes improperly may be liable for negligence, in trespass or under the rule in Rylands v. Fletcher. These requirements may operate as a general control over the method in which waste is treated before disposal and the methods by which waste is disposed of.

Objectives which may be included in development plans include measures for "prohibiting, regulating or controlling the deposit or disposal of waste materials and refuse ..."⁽¹⁶²⁾ As already mentioned, few planning authorities include objectives with respect to waste disposal in their development plans.⁽¹⁶³⁾

The European Communities (Waste) Regulations 1979, provide that a waste disposal plan "may include measures to encourage rationalisation of the collection, sorting and treatment of waste".⁽¹⁶⁴⁾ Public waste collectors are not required to obtain a permit under the 1979 Regulations though they may be subject to the supervision of the appropriate local authority.⁽¹⁶⁵⁾ The Minister for the Environment has indicated that he is less than satisfied with the standards

observed by many local and sanitray authorities in their waste disposal operations and has issued several circulars recommending treatment methods and remedial action.⁽¹⁶⁶⁾ In the main circular providing guidelines for waste disposal plans the Minister instructed local authorities that plans must be made "with due regard to the needs of environmental protection and of development".⁽¹⁶⁷⁾ Authorities were specifically required to consider methods for the recovery of useful materials from waste to the extent to which this is feasible and appropriate and to indicate planned local authority action to promote or accommodate waste recycling.⁽¹⁶⁸⁾ By June 1983, most local authorities had prepared waste disposal plans under the European Communities (Waste) Regulations 1979. The most common recommended method of waste disposal is controlled tipping whereby refuse is dumped in an inoffensive manner and land is reclaimed for amenity or agricultural use.⁽¹⁶⁹⁾ Waste is ideally compacted before being deposited and covered with soil and other suitable inert material.

The larger local authorities⁽¹⁷⁰⁾ were required to prepare "special waste plans" indicating, inter alia, methods of toxic waste disposal under the European Communities (Toxic and Dangerous) Waste Regulations 1982. By June 1983, no local authority had completed a special waste plan. Information gathered for the preparation of general waste plans is facilitating the preparation of special waste plans. Plans must be designed to secure that wastes covered by the regulations are not disposed of so as to endanger human health or harm the environment.⁽¹⁷¹⁾ Authorities have been advised by circular letter to place special emphasis on measures to prevent, reuse and recycle present and future toxic and dangerous wastes.⁽¹⁷²⁾ Any person (including a local authority other than one within the meaning of the regulations operating in their own area) who stores, treats or tips toxic or dangerous waste whether it is his own or not must obtain a local authority permit for so doing.⁽¹⁷³⁾ Permits may specify, inter alia, technical requirements and precautions to be taken by permit holders.⁽¹⁷⁴⁾ Local authorities granting permits have been told that the technical requirements should be interpreted as:

relating to such technical aspects of the design, construction and management of a storage or treatment centre or the preparation and management of a landfill site as are considered necessary and not covered by other headings.⁽¹⁷⁵⁾

On the question of precautions to be taken, authorities were advised to specify:

- (a) how, where and when a particular waste may be accepted at the facility,
- (b) requirements as to labelling/segregation both on arrival and during the course of disposal at the facility,
- (c) safety requirements generally,
- (d) precautions in respect of particular wastes which require special care in handling, storing, treating or depositing,
- (e) sampling and analysis of individual wastes, discharges and emissions,
- (f) operational standards to be respected,
- (g) the keeping of records.⁽¹⁷⁶⁾

Particular attention is to be paid to the accurate designation of waste disposal sites on maps and to the necessity to specify particular locations for particular wastes in the interests of safety and with a view to segregating incompatible wastes.⁽¹⁷⁷⁾ The aims are to ensure safe disposal and that the local authority will have on record the precise location of where any particular toxic or dangerous waste is deposited.

Authorities are to specify methods of disposal for different wastes, for example, deposition in a containment site, co-disposal with ordinary waste, solidification or de-watering prior to disposition, treatment such as oxidation, reduction, neutralisation, and where and how they are to be deposited etc.⁽¹⁷⁸⁾ The enforcement of requirements made under the 1982 Regulations has already been described.⁽¹⁷⁹⁾

The Litter Act 1982, specifically empowers local authorities to

take measures to facilitate and encourage the recycling of waste.⁽¹⁸⁰⁾

An Foras Forbartha has carried out a number of surveys for local authorities on suitable waste disposal sites and has, in particular instances, recommended suitable waste treatment methods. There has been a general improvement in recent years in the standard of local authority waste disposal sites and methods of waste disposal, but this is not to say that all local authorities act in an environmentally responsible manner when selecting and operating waste disposal sites.

Apart from the recycling of some waste oils and scrap metal, there has been little effort to ensure the beneficial use of wastes in Ireland. This is largely because recycling is not considered economically feasible for most wastes. The Institute of Industrial Research and Standards participated in an EEC Commission research project on formation and hydrolysis of organic waste of agricultural, industrial and household origin in 1979.⁽¹⁸¹⁾

Disposal by Others

Various penalties and controls provided in respect of waste disposal by persons other than local or sanitary authorities have been described above. A person who disposes of waste in an improper manner may also be liable in negligence, in trespass, nuisance and/or under the rule in Rylands v. Fletcher.

Controls over methods of treatment of waste before disposal and of waste disposal methods may be imposed by conditions attached to planning permissions or approvals granted under the Local Government (Planning and Development) Acts 1963-82.⁽¹⁸²⁾

Under the European Communities (Waste) Regulations 1979 a person who engages in treating, tipping or storing wastes on behalf of others is obliged to obtain a local authority permit for so doing.⁽¹⁸³⁾ Permits must be conditional on compliance with any general technical requirements and precautions specified therein.⁽¹⁸⁴⁾ These requirements and precautions may require the treatment of wastes before disposal or the adoption of particular waste disposal methods. A holder of

waste, if he does not dispose of it himself, must give it to a public waste collector or to a person permitted to dispose of waste.⁽¹⁸⁵⁾

If he does dispose of it himself he must do so in a manner which would not endanger human health or harm the environment.⁽¹⁸⁶⁾ Requirements

relating to the preparation (e.g. sorting and packaging) of trade and household wastes for collection by local authorities may be stipulated in bye-laws.⁽¹⁸⁷⁾ Holders of waste PCB must make it

available for disposal by the Electricity Supply Board (ESB) as required in the European Communities (Waste) (No. 2) Regulations 1979.⁽¹⁸⁸⁾

The ESB may not dispose of waste PCB in a way which would endanger human health or harm the environment.⁽¹⁸⁹⁾ In practice, the ESB exports waste PCB.

Any person who stores, treats or deposits any of the 27 wastes listed in the European Communities (Toxic and Dangerous) Waste Regulations 1982, must do so under and in accordance with a local authority permit.⁽¹⁹⁰⁾ The conditions which may be attached to these permits have been described above.⁽¹⁹¹⁾ It should be noted that this obligation applies to a person storing, treating or depositing his own waste.

9.5 ENFORCEMENT

There are no published statistics on the extent to which controls described in this section are enforced. A study of the extent to which planning controls were used to regulate waste disposal by 31 industries in the chemical, pharmaceutical and textile sectors, found that explicit waste disposal conditions had been prescribed for four industries; that conditions subjecting waste disposal to a later agreement with local authorities had been imposed in 10 cases; that no conditions relating to waste disposal had been prescribed in 15 cases and that it was impossible to determine what, if any, controls had been imposed in two cases.⁽¹⁹²⁾ In this writer's opinion, conditions subjecting waste disposal arrangements to later agreement between the industrialist and the planning authority are ultra vires.⁽¹⁹³⁾

The author of the study found that in two cases, the conditions set related to authorised sea disposal and in one case to the operation

of a land-fill site by the company itself. No indication appeared in the planning files of 80 per cent of the industries surveyed of proposed methods of solid waste disposal. Investigations by the author of the survey revealed that 11 industries paid contractors to dispose of their wastes (though no information was forthcoming on the ultimate destination of these wastes) or were using approved or unapproved land-fill sites. In three cases waste was being re-used, mainly in agriculture. Many companies used a combination of methods for disposing of their wastes. In a number of cases it proved impossible to extract information from industrialists on waste disposal methods used. This was an experience shared by local authorities preparing waste disposal plans. (194)

All of the industries surveyed were established before 1976. It is arguable that planning control has become more sophisticated since then. Nonetheless the study indicates that the Planning Acts have not been consistently or effectively used to control waste disposal from permitted developments. This despite the fact that the industries surveyed constituted the types of development most likely to experience problems with waste disposal.

9.6 INDIVIDUAL RIGHTS

Statutes regulating the activities of public as distinct from private bodies rarely contain provisions on individual rights. The individual enjoys rights with respect to participation in, and enforcement of waste laws under the Public Health (Ireland) Act 1878, (enforcement of remedies for statutory nuisances), under Part III of the Local Government (Planning and Development) Act 1963 (participation in development planning) and under s.27 of the Local Government (Planning and Development) Act 1976 (enforcement of planning controls). Under s.16(3) of the Litter Act 1982, the occupier of land on which a vehicle has been abandoned may prosecute the person who abandoned it and the registered owner thereof unless the latter can prove that the abandonment was unauthorised by him.

FOOTNOTES

1. S.I. No. 390 of 1979. Article 2 defines "local authority" for the purpose of the regulations as county borough corporations, county councils and Dun Laoghaire borough corporation.
2. S.I. No. 388 of 1979. See section 9.3.2.
3. See section 3.
4. Local Government (Planning and Development) Act 1963, s.4(1). Third Schedule, clause 11.
5. Ibid., s.22.
6. See section 3.1.2.
7. Local Government (Planning and Development) Act 1963, s.4(1). See section 3.5.2.2.
8. Public Health (Ireland) Act 1878, s.55.
9. Circular ENV 2/74 of 8 January 1974.
10. Circulars ENV 13/76 of 9 July 1976 and ENV 10/78 of 19 April 1978.
11. S.I. No. 33 of 1982.
12. O.J. No. L 84, 31 March 1978.
13. High Court, unreported, 13 March 1981.
14. See section 3.5.5.
15. See section 3.6.13.
16. See Keane R., The Law of Local Government in the Republic of Ireland, 1982, at pp. 97-105 and section 4.1.
17. Ibid.
18. Under article 2(d) of these regulations a public waste collector is a local or other sanitary authority.
19. European Communities (Waste) Regulations 1979, article 5(2).
20. Ibid., article 3(b).
21. Ibid., articles 3(2), 5(4).

22. Article 2(1) of the European Communities (Toxic and Dangerous) Waste Regulations 1982, provides that a local authority means county borough corporations, county councils and Dun Laoghaire borough corporation.
23. Ibid., articles 5(2) and 5(3).
24. Ibid., article 10.
25. See section 3.6.13.
26. Circular ENV 2/80 of 20 February 1980.
27. European Communities (Toxic and Dangerous Waste) Regulations 1982, articles 5(3)(c), 5(3)(d).
28. European Communities (Waste) Regulations 1979, article 4(1).
29. European Communities (Toxic and Dangerous Waste) Regulations 1982, article 3.
30. O.J. No. L 194, 25 July 1975.
31. O.J. No. L 194, 25 July 1975.
32. European Communities (Waste) Regulations 1979, article 4(1).
33. Ibid., article 4(2).
34. Circular ENV 10/78 of 19 April 1978.
35. See Memorandum on Waste Disposal and Collection (1978) and Circular ENV 2/1980 of 20 February 1980.
36. European Communities (Waste) Regulations 1979, article 3(1).
37. Ibid., article 3(2).
38. Ibid., article 5(3).
39. Ibid., article 2(1)(d).
40. Ibid., article 5(2).
41. Ibid., article 6(1).
42. Ibid., article 7.
43. Ibid., article 6(2).
44. Ibid., article 5(4).
45. Ibid., article 6(3).

46. Ibid., article 8.
47. EEC Directive 75/442/EEC on waste, article 3.
48. Ibid., article 9.
49. Ibid., article 11.
50. Ibid., article 12.
51. European Communities (Waste) Regulations 1979, article 4(1).
Note that where sanitary authority is a local authority within the meaning of the regulations there will be no supervising authority.
52. O.J. No. L 194, 25 July 1975.
53. See section 9.1.2.
54. O.J. No. L 108, 26 April 1976.
55. S.1. No. 388 of 1979.
56. European Communities (Waste) (No. 2) Regulations 1979, article 1.
57. Ibid., article 4.
58. Ibid., article 7.
59. Ibid., article 5.
60. Ibid., article 9.
61. Ibid., article 8(1).
62. Ibid., article 8(4).
63. S.1. No. 382 of 1979.
64. S.1. No. 383 of 1979.
65. O.J. L 54, 25 February 1978.
66. See O'Grady P., "Waste Disposal - The Contractor's View", Today's and Tomorrow's Wastes, National Board for Science and Technology, 1979.
67. International Environment Reporter, Vol. 3 No. 7 1980, p. 285.
68. Ibid.
69. Ibid., Vol. 5 No. 5, 1982, at p. 191.
70. High Court, unreported, 13 March 1981.

71. Irish Times, 12 July 1979; Irish Independent, 12 July 1979.
72. O.J. No. L 84, 31 March 1978.
73. S.1 No. 33 of 1982.
74. See European Communities (Toxic and Dangerous Waste) Regulations 1982, Memorandum for the Guidance of Local Authorities, 1982. Department of the Environment, p. 2.
75. European Communities (Toxic and Dangerous Waste) Regulations 1982, article 2(1).
76. Ibid.
77. Ibid., article 3.
78. Ibid., article 4(1).
79. Ibid., article 4(2).
80. Ibid., article 4(4).
81. Ibid., article 4(5).
82. Ibid., article 4(6).
83. Memorandum for the Guidance of Local Authorities, 1982.
84. Ibid., at p. 2.
85. Ibid., at p. 3.
86. Circular ENV 12/78, of 12 May 1978.
87. Circular ENV 5/1981, of 4 June 1981.
88. European Communities (Toxic and Dangerous Waste) Regulations 1982, article 5(4). See section 9.1.
89. Ibid., article 5(5).
90. Ibid., article 5(2).
91. Ibid., article 5(3).
92. Memorandum for the Guidance of Local Authorities, 1982, p. 6.
93. Ibid.
94. European Communities (Toxic and Dangerous Waste) Regulations 1982, articles 7, 8.

95. Memorandum for the Guidance of Local Authorities 1982, pp. 9, 10.
96. European Communities (Toxic and Dangerous Waste) Regulations, 1982, articles 8(4)(d) and 8(4)(c).
97. Ibid., article 8(5).
98. Ibid., article 8(6).
99. Memorandum for the Guidance of Local Authorities, 1982, p. 9.
100. Ibid.
101. European Communities (Toxic and Dangerous Waste) Regulations 1982, article 6(1).
102. Ibid., article 6(2).
103. Ibid., articles 6(2) and 6(3).
104. Memorandum for the Guidance of Local Authorities, 1982, pp, 39, 40.
105. European Communitite (Toxic and Dangerous Waste) Regulations 1982, Article 11.
106. Ibid., article 9.
107. Ibid., article 10.
108. Ibid., article 12.
109. Ibid., article 4(6).
110. Directive 78/318/EEC on toxic and dangerous waste, article 11.
111. Ibid., article 16.
112. See Hazardous Waste Management, Health Aspects of Chemical Safety, Interim Document 7, World Health Organisation, 1982, p. 38.
113. Ibid.
114. The Dangerous Substances (Conveyance of Scheduled Substances by Road) (Trade and Business) Regulations 1980, (S.l. No. 235 of 1980) do not cover the toxic and dangerous wastes listed in Directive 78/318/EEC.
115. See "Allocating the Costs of Hazardous Waste Disposal", 1981 Harvard Law Review, pp. 584-604.
116. See Hazardous Waste Management, op.cit., at p. 42.

117. Ibid., at p. 43.
118. See section 9.1.1.
119. See section 9.2.
120. See section 9.3.7.
121. Public Health (Ireland) Act 1878, s.52. House refuse means such as arises from inhabitancy or domestic occupation only: Lyndon v. Standbridge 26 L.J. Ex. 386.
122. Ibid., s.53.
123. Ibid., s.54.
124. Ibid., s.55. See also Litter Act 1982, s.2.
125. Municipal Corporations (Ireland) Act 1840, s.125; Dublin Corporation Act 1890, s.63; Local Government (Ireland) Act 1898, s.16; Litter Act, 1982, s.4. A number of local authorities have made bye-laws under these Acts. See Keane , op.cit., at pp. 114-115.
126. See section 9.2.
127. See section 9.3.7.
128. Litter and the Environment, 1980, Pr1. 8953.
129. Litter Act 1982, s.1.
130. Ibid., s.4.
131. Ibid., ss.3, 7. The placing of advertisements on land or structures is controlled under the Local Government (Planning and Development) Act 1963. Certain advertisements constitute exempted development. See Local Government (Planning and Development) Regulations 1977, Third Schedule, Part II.
132. Ibid., s.7(1).
133. Ibid., s.7(2).
134. Ibid., s.4(4).
135. Ibid., s.5.
136. Ibid., ss.4(3), 7(3), 8.
137. Ibid., s.16(1).

138. Ibid., s.15.
139. S.1. No. 233 of 1982.
140. S.1 No. 5 of 1971.
141. Road authority means (a) the Council of a county, (b) the Corporation of a county or other borough, or (c) the Council of an urban district. See Road Traffic Act 1961, s.3.
142. Circular ENV. 6/75 of 1 March 1975.
143. Circular ENV. 10/78 of 19 April 1978.
144. Litter Act 1982, s.9(2).
145. Ibid., s.9(3).
146. Ibid., s.10(4).
147. Ibid., s.11(4).
148. Ibid., s.12(8).
149. Ibid., s.13.
150. Ibid., s.13(6).
151. Ibid., s.13(2).
152. Ibid., s.16(1).
153. Ibid., s.16(3).
154. Ibid., s.15.
155. See section 9.3.8.
156. Litter Act 1982, s.1.
157. See sections 9.2. and 9.3.4.
158. Road Traffic (Construction Equipment and Use of Vehicles) Regulations 1963, article 33.
159. Foreshore Act 1933, ss.13, 14. See section 7.1.
160. Alkali etc. Works Regulation Act 1906, s.4.
161. See, for example, Public Health (Ireland) Act 1878, s.55; Litter Act 1982, s.2.
162. Local Government (Planning and Development) Act 1963, Third Schedule, clause 11.

163. See section 9.1.1.
164. European Communities (Waste) Regulations 1979, article 4(3).
165. See section 9.2.
166. Circular ENV. 2/74 of 8 January 1974; ENV. 9/81 of 23 September 1981; ENV. 10/78 of 19 April 1978.
167. Circular ENV. 10/78, "Waste Disposal Plans", p. 5.
168. Ibid., p. 6.
169. See Circular ENV. 2/74 of 8 January 1974.
170. See section 9.3.4.
171. European Communities (Toxic and Dangerous Waste) Regulations 1982, article 4(2).
172. European Communities (Toxic and Dangerous Waste) Regulations 1982, Memorandum for the Guidance of Local Authorities, 1982, p. 4.
173. European Communities (Toxic and Dangerous Waste) Regulations 1982, article 5. See section 9.3.4.
174. Ibid.
175. Memorandum for the Guidance of Local Authorities, 1982, p. 6.
176. Ibid.
177. Ibid.
178. Ibid., p. 7.
179. See section 9.3.4.
180. Litter Act 1982, s.2.
181. Fortieth Report of the Joint Committee on Secondary Legislation of the European Communities, Recycling of Urban and Industrial Waste, Prl 9730, 1979.
182. See sections 3.6.5. and 9.5.
183. European Communities (Waste) Regulations 1979, article 5(3).
See section 9.2.
184. Ibid., article 5(2).
185. Ibid., article 3(1).

186. Ibid., article 3(2).
187. Municipal Corporations (Ireland) Act 1840, s.125; Dublin Corporation (Ireland) Act, 1890, s.63; Local Government (Ireland) Act 1898, s.16.
188. European Communities (Waste) (No. 2) Regulations 1979, article 4.
189. Ibid., article 5.
190. European Communities (Toxic and Dangerous Waste) Regulations 1982, article 5(4). See sections 9.1 and 9.3.4.
191. See sections 9.1 and 9.3.4.
192. Levigne D., The Enforcement of the Environmental Controls of Industrial Development within the Planning Acts, 1983, pp. 32, 33.
193. See Kelleghan Dodd and O Brien v Dublin Corporation, High Court, unreported, 12 November 1976. and section 3.6.5.
194. See section 9.3.4.

SECTION 10

NOISE

There are very few statutory controls over noise and vibration in Ireland. There are no national noise level standards. Neither are there any national standards for noise emissions from construction plant and equipment, motorcycles, household goods nor many other products which generate excess noise. EEC standards on permissible sound levels from some products have been adopted.⁽¹⁾

Control over noise, such as it is, is exercised primarily through conditions attached to planning permissions, to authorisations of various kinds for certain activities and to grants which may be available from the Industrial Development Authority.⁽²⁾

Local Authorities are primarily responsible for the enforcement of environmental noise controls though this is an area where greater reliance than usual is placed on individual enforcement.

10.1 CONTROLS OVER LAND-USE

Controls over the siting and location of developments which might create or be subject to excess noise or vibration may be exercised by land-use zoning in development plans.⁽³⁾ Section 13 of the Local Government (Planning and Development) Act 1963, specifically declares that all plans in county boroughs, urban districts and

scheduled towns shall include objectives restricting particular areas for particular purposes. The Third Schedule of the Act, which specifies objectives which may be indicated in development plans, has a special section on roads and traffic and a section on structures which specifically enables the regulation and control of "building lines, coverage and the space about dwellings and other structures ...".⁽⁴⁾ Local authorities in their capacities as planning and road authorities use the UK Department of the Environment publication Calculation of Road Traffic Noise⁽⁵⁾ when predicting noise levels from proposed new roads.⁽⁶⁾ This publication permits the calculation of L_{10} noise level for the period 06.00 to 24.00 hours for various road and traffic conditions. UK recommendations on tolerable noise levels are also followed.

Under the Air Navigation and Transport Act 1950, the Minister for Transport is empowered to make orders imposing restrictions prohibiting building or the erection of structures exceeding a specified height in areas near aerodromes.⁽⁷⁾ The Minister has not made any orders for this purpose but, in practice, planning authorities consult with him when considering applications for developments near airports.

Conditions relating to noise and vibration may also be attached to planning permissions or approvals. Section 26(2) of the Local Government (Planning and Development) Act 1963, as amended,⁽⁸⁾ expressly provides that conditions attachable to planning permissions may include conditions for requiring the taking of measures to reduce or prevent:

- (i) the emission of any noise or vibration from any structure comprised in the development authorised by the permission which might give reasonable cause for annoyance either to persons in any premises in the neighbourhood of the development or to persons lawfully using any public place in that neighbourhood, or
- (ii) the intrusion of any noise or vibration which might give reasonable cause for annoyance to any persons lawfully occupying any such structure.

Planning authorities have been advised by circular letter that permissible conditions might, for example, require double glazing, solid doors, insulation or a particular type of wall construction.⁽⁹⁾

Planning permission has been refused on the grounds that the development in question would be exposed to excess noise and vibration caused by traffic from nearby roads. Conditions for the control of noise and vibration are attached, when appropriate, to planning permissions. For example, in the planning permission granted to Tara Mines Ltd. conditions were imposed requiring that noise levels conform to internationally recognised standards.⁽¹⁰⁾ The loudest noise level permissible for this mining development is 75 decibels during the day and 65 decibels at night while vibration from blasting may not exceed 0.3 inches per second peak velocity.⁽¹¹⁾

10.2 ENTERTAINMENT

The Public Health Acts Amendment Act 1890, requires that houses, rooms, gardens or other places kept or used for public dancing, singing, music or other public entertainment of a like kind be licensed for such purposes.⁽¹²⁾ Licences may be granted upon such terms and subject to such restrictions (including terms and restrictions relating to noise and vibration) as the District Court determines. Breach or disregard of a term or restriction is punishable on summary conviction by a penalty not exceeding £20 plus £5 a day for a continuing offence. The licence may also be revoked. The Public Dance Halls Act 1935, exercises somewhat similar control over public dancing with one major difference viz. that any interested individual or any member of the Garda Siochana has a right to object to the granting or renewal of public dancing licences.⁽¹³⁾ Objections raised often include objections to noise caused by dancing and associated activities. The Supreme Court has held in Re Application of Quinn⁽¹⁴⁾ that one of the relevant matters which a District Justice has a general discretion to take into account under s.2(2) of the Public Dance Hall Act 1935, when considering an application for a licence, is the "noisy conduct, disorderly behaviour and obscene language" of dance hall patrons.

Certain other social activities must also be authorised by the

District or Circuit Courts. Clubs, for example, must be certified under the Registration of Clubs (Ireland) Act 1904. Section 5 of that Act provides as follows: The Court shall not consider any objection to the grant or renewal of a certificate unless it is taken on one or more of the following grounds. Among the enumerated grounds on which objection may be taken is one that the club is "habitually used for any unlawful purpose". In Re Comhaltas Ceolteoiri Eireann,⁽¹⁵⁾ the High Court held that the habitual use of club premises in plain contravention of the Planning Acts would constitute an unlawful use of those premises justifying the District Court in refusing the grant or renewal of a certificate of registration.

10.3 CONTROLS OVER DESIGN AND CONSTRUCTION OF NOISE GENERATING PLANT AND EQUIPMENT

There are no specific statutory controls over the design and construction of noise generating plant and equipment. The Industrial Development Authority may require that plant and equipment be so designed and used so as not to create excess noise as a condition for grant-aids.⁽¹⁶⁾ Under the Factories Act 1955, the Minister for Labour, if satisfied that any manufacture, machinery plant, equipment, appliance, process or description of manual labour is of such a nature as to cause risk of bodily injury to persons employed may, after consultation with the Minister for Health, make such special regulations as appear to him to be reasonably practicable and to meet the necessity of the case.⁽¹⁷⁾ This power also exists in relation to work carried out on ships and to building operations.⁽¹⁸⁾ The Minister for Labour has made the Factory (Noise) Regulations 1975⁽¹⁹⁾ requiring the occupier of a factory within the meaning of the Factories Act 1955, to ensure that sound pressure levels which are likely to harm employees are kept at the lowest practicable level. Where sound pressure levels exceed 90 dBA, certain precautions must be taken. Similar requirements are contained in the Quarries (General) Regulations 1974.⁽²⁰⁾ The Safety in Industry Act 1980, requires occupiers of factories or specified premises to take appropriate steps to reduce sound levels to ensure that the hearing or health of their employees are not adversely affected. The Minister for Labour may make regulations requiring occupiers to carry out their duties in this respect.⁽²¹⁾ These

regulations are enforceable by the Industrial Inspectorate attached to the Department of Labour.

EEC Directive 79/113/EEC relating to the determination of the noise emission of construction plant and equipment⁽²²⁾ seeks to harmonise methods of measuring the sound levels of construction plant and equipment. The Annex to the Directive lays down the technical methods of determining the sound power level of construction equipment, which is essential for assessing the acoustic impact of a machine on the environment. It is understood that this Directive has been brought to the attention of persons affected.

When Directive 79/113/EEC was adopted the Council of Ministers stated that the purpose of the Directive was to enable a limit to be fixed, in separate Directives, to the sound emission level of machines and, if necessary, to sound pressure levels at the operator's position.⁽²³⁾ Since then, proposals for an amendment to Directive 79/113/EEC prescribing the method of determining noise levels of machines at the operator's position have been submitted to the Council.⁽²⁴⁾ In addition, Directives have been prepared to prescribe noise control standards for jack hammers,⁽²⁵⁾ tower cranes,⁽²⁶⁾ welding generators⁽²⁷⁾ and power stations.⁽²⁸⁾

Other statutory controls relating to noise described in this section may operate indirectly as controls over the design and operation of noise generating plant and equipment.

10.4 MOTOR VEHICLES

10.4.1 Implementation of EEC Directives

The European Communities (Motor Vehicle Type Approval) Regulations 1978-82⁽²⁹⁾ implement the provisions of certain EEC Directives which relate to the type approval of motor vehicles, trailers and components. The relevant Directives are Directives 70/157/EEC as amended by 73/350/EEC and 77/212/EEC relating to permissible sound levels and the exhaust systems of motor vehicles.⁽³⁰⁾ The European Communities (Vehicle Type Approval) Regulations 1980⁽³¹⁾ implement Directive 74/151/EEC relating to certain parts and characteristics of wheeled agricultural or forestry

tractors⁽³²⁾ and Directive 77/331/EEC relating to the driver-perceived noise level of wheeled agricultural or forestry tractors.⁽³³⁾ All of the above Directives fix permissible limits for the sound levels of regulated vehicles and components and prescribe the equipment, conditions and methods for measuring this level. The enforcement of these Directives has already been described.⁽³⁴⁾ The Council of Ministers has announced an intention to reduce noise levels from all motor vehicles to 80 dB(A) by 1985.⁽³⁵⁾

10.4.2 National Requirements

(a) Control Over Design and Construction

The Road Traffic (Construction Equipment and Use of Vehicles) Regulations 1963,⁽³⁶⁾ require that every vehicle be fitted with an audible warning device but, subject to certain exceptions, gongs, sirens, and other strident-toned devices are forbidden.⁽³⁷⁾ They also require that every vehicle be fitted with an exhaust silencer or other suitable device for reducing noise to a "reasonable level".⁽³⁸⁾

(b) Controls Over Maintenance

The 1963 Regulations require that every vehicle and parts and equipment thereof (which includes silencers and similar contrivances) be maintained in good and efficient working order. The alteration of a silencer in such a way as to increase noise is an offence.⁽³⁹⁾ All parts of a vehicle subject to severe vibration and all parts relevant to the control of a vehicle are required to be efficiently fastened so as to prevent their working or coming loose.⁽⁴⁰⁾

(c) Controls Over Use

Vehicles - whether mechanically propelled or not⁽⁴¹⁾ must not be used on public roads while there are attached to the vehicles a public address system incorporating a loudspeaker or similar device. Exceptions are made and there is provision for local authority licensing of such use of vehicles.⁽⁴²⁾ Vehicles may not be used in a public place so as to cause excessive noise which could have been avoided by

the use of reasonable care.⁽⁴³⁾ Neither may audible warning devices be sounded between 23.00 hours and 7.00 hours in certain areas.⁽⁴⁴⁾ The use of any vehicle without an exhaust silencer or other similar contrivance is an offence.⁽⁴⁵⁾ Races on public roads are not permitted without the prior consent of the appropriate local authority.⁽⁴⁶⁾

(d) Enforcement

Annual testing for compliance with noise reduction requirements is carried out on certain vehicles under the European Communities (Vehicle Testing) Regulations 1981.⁽⁴⁷⁾ The 1963 regulations are enforceable by the Garda Síochána only. There are no published statistics on the extent to which they are enforced. The penalty on conviction for breach of these regulations is £20 for a first offence and £50 for a second or subsequent offence.⁽⁴⁸⁾ The maximum penalty for breach of the 1981 Regulations is £500 and six months imprisonment.⁽⁴⁹⁾

10.5 AIRCRAFT

Noise and vibration caused by aircraft are specifically exempted from the provisions of s.51 of the Local Government (Planning and Development) Act 1963-82.⁽⁵⁰⁾

Ireland has accepted noise standards for aircraft agreed upon at the International Aviation Organisation meeting in Montreal in 1970. The Air Navigation (Noise Certificate and Limitation) Order 1976,⁽⁵¹⁾ gives effect to Amendment 2 Annex 16 of the Chicago Convention and contains a number of controls over noise caused by subsonic aircraft. Noise abatement procedures must be followed and scheduled flights of jet aircraft are not permitted between 23.00 hours and 7.00 hours but charter flights are allowed. Runway selection takes into account the need to avoid populated areas. These controls are enforceable by the Department of Transport.

There is no special legislation in force in Ireland at present concerning supersonic flights of civil and military aircraft. It is understood that such legislation has been drafted and can be introduced if necessary. EEC Directive 80/51/EEC on the limitation of noise

emissions from helicopters has not yet been adopted.⁽⁵³⁾

Restrictions on actions for trespass and nuisance caused by aircraft noise are contained in s.55 of the Air Navigation and Transport Act 1936, which provides that:

no action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight or aircraft over any property at a height above the ground, which, having regard to wind, weather and all the circumstances of the case is reasonable, or the ordinary incidents of the flights, so long as the provisions of part II of this Act and any order made under the said part II and any regulations made by virtue of any such order are duly complied with.

10.6 GENERAL RESTRICTION ON EMISSIONS OF NOISE AND VIBRATION

Section 51 of the Local Government (Planning and Development) Act 1963, as amended,⁽⁵⁴⁾ provides that it shall be an offence punishable on summary conviction by a fine not exceeding £50 plus £10 for each day the offence continues for any person:

- (a) in any public place or in connection with any premises which adjoins any public place and to which the public are admitted, or
- (b) upon any other premises, either:
 - (i) by operating, or causing or suffering to be operated any wireless, loudspeaker, television, gramophone, amplifier, or similar instrument, or any machine or other appliance, or
 - (ii) by any other means,
 to make or cause to be made, any noise or vibration which is so loud, so continuous or so repeated or of such duration or pitch or at such times as to give reasonable cause for annoyance to persons in any premises in the neighbourhood or to persons lawfully using any public place.

Proceedings may not be taken by any person for an offence in respect of any premises referred to in (b) above unless the annoyance is continued after the expiration of seven days from the date of a notice alleging annoyance, signed by not less than three persons residing or carrying on business within the area in which the noise or vibration is felt.⁽⁵⁵⁾ This means that there is no effective statutory remedy for preventing occasional or once-off noise and vibration. There may also be difficulties, especially in small, closely-knit communities, in getting three complainants to sign the notice alleging annoyance. A local authority is not empowered under the section to prosecute under s.51(1)(b), but it may prosecute under s.51(1)(a) since the nuisance involved here is essentially a public nuisance. There are saving clauses for noise caused by aircraft or by statutory undertakers in the exercise of powers conferred on them.⁽⁵⁶⁾ In proceedings brought in respect of noise or vibration caused in the course of a trade or business or in performing any statutory functions, it is a good defence for the defendant to prove that the best practicable means have been used for preventing and for counteracting the effect of the noise or vibration.⁽⁵⁷⁾

10.7 INDIVIDUAL RIGHTS

An individual may have a remedy for noise nuisance under s.27 of the Local Government (Planning and Development) Act 1976, where a breach of planning control is involved.⁽⁵⁸⁾ Other legislation described in this section does not confer any rights on the individual qua member of the public. .

Where traffic noise exceeds tolerable levels due to road development schemes, the individual has no right to compensation or to have premises insulated against noise. Road authorities are not required to obtain planning permission for the development of roads so that the individual has no right under the Planning Acts to participate in decision-making on roads. Section 4 of the Local Government (Roads and Motorways) Act 1974, however, provides that a road authority, in making a scheme for the provision of a motorway (not an ordinary road) must "have regard to the preservation of scenic and natural amenities" and for that purpose must "consult with such bodies as the

road authority considers necessary". The scheme when made must be submitted for the approval of the Minister for the Environment.

Section 5 of the Act provides that before submitting the scheme to the Minister, the road authority must publish a notice in one or more newspapers circulating in the area to which the scheme relates that the scheme has been made and indicating times, days and places where a copy of the scheme and the map referred to therein may be inspected. (Contrast this with the procedure for development plans where the proposed plan may be inspected and where the citizen, in theory at least, is not presented with what is virtually a fait accompli). A prescribed notice must also, unless the Minister grants a dispensation, be served on the owners and occupiers of any land to which the scheme relates and on the owners and occupiers of land affected by the scheme. This notice must state:

- (i) the nature and extent of the scheme,
- (ii) that the scheme will be submitted to the Minister for approval, and
- (iii) the time within which, and the manner in which objections can be made to the scheme.

Only the aforementioned persons have, at this stage a right to object to the road authority in respect of the scheme.

Section 6 of the Act provides that the Minister shall cause a public local inquiry into all matters relating to the scheme to be held before approving a scheme submitted to him. He is obliged to consider the report of the person holding the inquiry and any objections to the scheme which have been lodged and have not been withdrawn. Although the locus standi of persons who may participate in the public inquiry is not defined, the section as drafted appears to permit any person to attend and object. The Minister, having complied with the statutory procedures, may approve the scheme with or without modifications or he may refuse to approve it. Section 6 also provides for the payment of compensation to persons whose interests in, or enjoyment of, land have been detrimentally affected by reason of the denial of previous access to the road, but not where the enjoyment of land has been diminished due to traffic noise.

Noise or vibration may also amount to a wrongful interference with a person's common law rights in which case an action may lie in trespass, nuisance or negligence.⁽⁵⁹⁾

10.8 ENFORCEMENT

Local authorities are primarily responsible for the enforcement of noise and vibration controls applicable under the Local Government (Planning and Development) Acts 1963-82, although private individuals have increasingly participated in the enforcement of planning controls under s.27 of the 1976 Act. A number of applications have been made to the High Court under s.27 of the 1976 Act for what was essentially an order for the abatement of noise nuisances.⁽⁶⁰⁾ Many of these applications were brought by private individuals. This is as might be expected because noise and vibration nuisances are often very noticeable breaches of planning control.

There are no national statistics on the extent to which local authorities enforce s.51 of the 1963 Act but the annual reports of Dublin Corporation for 1979-1981 indicate the extent to which noise problems occupy the attention of the Corporation's Environment Department.

TABLE 10.8	1978-9	1979-80	1980-81
Number of complaints investigated	58	55	124
Number of complaints where action not possible (insufficient evidence, unfounded complaints, insufficient number of complaints)	44	43	33
Nuisance abated	14	12	N/A
Number of planning applications checked	105	155	151
Number of planning recommendations	77	114	122

FOOTNOTES

1. See sections 10.3, 10.4, 10.5.
2. See section 2.4.3.
3. See section 3.1.
4. Local Government (Planning and Development) Act 1963, Third Schedule, Part II.
5. Calculation of Road Traffic Noise, H.M.S.O., London 1975.
6. O'Kinneide, D., "The Use of UK Methods for Traffic Noise Prediction in Ireland", Irish Journal of Environmental Science, (1980) Vol.1, pp.78-79. Healy, J. "Local Authority Monitoring Experience", paper at Seminar on Noise, National Board for Science and Technology, 1980.
7. Air Navigation and Transport Act 1950, s.14.
8. Local Government (Planning and Development) Act 1976, s.39(c).
9. Circular PD 103/1 of 30 July 1976.
10. It is understood that the standards referred to by planning authorities are those in I.S.O. 01996, Assessment of Noise with regard to Community Response.
11. Irish Times, 26 March 1974.
12. Public Health Amendment Act 1890, s.51.
13. Public Dance Halls Act 1935, s.2(3).
14. In re Application of Quinn [1974] I.R. 19.
15. In re Comhaltas Ceoltoiri Eireann, H.C., unreported, 4 December 1977.
16. See section 2.4.3.
17. Factories Act 1955, ss.71, 83-9.
18. Ibid., s.88.
19. Factories (Noise) Regulations 1975, S.1, No.235 of 1975.

20. Quarries (General) Regulations 1974, S.1, No.146 of 1974.
21. Safety in Industry Act 1980, s.13.
22. O.J. No. L 33, 8 February 1979.
23. International Environment Reporter (1979), Vol.2, No.12, 1007.
24. Ibid.
25. Ibid., Reference File 2, 171:3051.
26. Ibid., 171:3151.
27. Ibid., 171:3201.
28. Ibid., 171:3251.
29. S.1. No. 169 of 1980; S.1. No. 134 of 1982.
30. O.J. L 42, 23 February 1970; as amended by O.J. L 321, 22 November 1973, and O.J L 66, 12 March 1977.
31. S.1. No. 41 of 1980.
32. O.J. L 84/74, 28 March 1974.
33. O.J. L 105/77, 27 September 1977.
34. See section 4.8.
35. International Environment Reporter, (1980), Vol.3, No.10, 479.
36. S.I. No. 190 of 1963.
37. Road Traffic (Construction Equipment and Use of Vehicles) Regulations 1963, article 29.
38. Ibid., article 29.
39. Ibid., article 34(1).
40. Ibid., article 34(2).
41. Road Traffic (Construction Equipment and Use of Vehicles) (Amendment) Regulations 1965, S.1. No. 79 of 1965.
42. Road Traffic (Construction Equipment and Use of Vehicles) Regulations 1963, article 35.
43. Ibid., article 85(2).

44. Ibid., article 85(3).
45. Ibid., article 85(2).
46. Ibid., article 88.
47. See section 4.9.2(d). These regulations implemented EEC Directive 76/143/EEC, O.J. No. L 47, 18 February 1977. See section 4.8.
48. Road Traffic Act 1961, ss. 11(4), 103; Road Traffic Act 1968, s.8.
49. European Communities (Vehicle Testing) Regulations 1981, article 14.
50. Local Government (Planning and Development) Act 1963, s.51(5). See section 10.6.
51. S.I. No. 250 of 1976.
52. O.J. L 18, 24 January 1980.
53. O.J. C 275, 21 October 1981.
54. Local Government (Planning and Development) Act 1976, s.40.
55. Local Government (Planning and Development) Act 1963, s.51(3).
56. Ibid., s.51(5).
57. Ibid., s.51(6).
58. See section 3.6.13.
59. See section 2.1.2.
60. See section 3.6.13.

SECTION 11

ENVIRONMENTAL CHEMICALS

One of the most (if not the most) pressing environmental problems of this decade is the control of environmental chemicals. This is a topic which merits a thesis in itself. This section therefore merely attempts to outline Irish controls over various environmental chemicals.

There is, as the Inter-Departmental Environment Committee concluded, "no overall system for the control of environmentally harmful chemicals and chemical products used in industry, commerce and domestically."⁽¹⁾ Instead, Irish law has traditionally divided chemicals into a number of different groups in that they have been treated by the legislature differently, not according to their chemical properties or their hazardous characteristics but by reference to the fields in which they are employed. The main groups are radioactive substances, agricultural chemicals, pharmaceutical chemicals and chemicals used in foodstuffs. To this must be added a new general category of dangerous substances.

Most legislation regulating environmental chemicals has been made under the Health Act 1947, the Fertilisers Feeding Stuffs and Mineral Mixtures Act 1955, the Persons Act 1961, the Nuclear Energy Act 1971, and the European Communities Act 1972.

11.1 RADIOACTIVE SUBSTANCES

Radioactive substances are used in hospitals, research institutions and in industry. There is no nuclear power station in Ireland and plans for the erection of one in the 1980s have apparently been shelved. Responsibility for matters relating to nuclear energy and radioactive substances lies mainly with the Minister for Energy and the Nuclear Energy Board under the Nuclear Energy Act 1971. The Ministers for Labour and Health also enjoy limited control powers over the use of radioactive substances in factories and hospitals under the Factories Act 1955, and the Health Act 1956, respectively. The main source of national law on radioactive substances is, however, the Nuclear Energy Act 1971. While the scope of sections 5 and 6 of this Act is extensive, the Act is defective in many ways. It does not deal with civil liability for damage caused by radioactive substances. The provisions in it on criminal liability are grossly inadequate. It provides for the regulation of matters of extraordinary importance by subordinate legislation. The powers of the Minister for Energy or the Nuclear Energy Board to revoke licences are limited to when they are of the opinion that licence conditions have been broken: there is no provision for revoking or amending licences in the interests of public health or safety. There are no special or detailed provisions dealing with the development of nuclear installations or the disposal of radioactive wastes.

There is no officially sanctioned depository for the storage, treatment or disposal of radioactive wastes in the country. There are no standards for levels of radioactivity in the environment.

11.1.1 Development Control

Controls over radioactive substances may be exercised by provisions in development plans and by conditions attached to planning permissions and approvals in cases where planning permission is necessary for new development.⁽²⁾ In so far as can be discovered, the only instance where this has actually happened was in 1979 when Trinity College Dublin obtained permission for the development of storage facilities and an incinerator for radioactive wastes.⁽³⁾

11.1.2 Controls over Storage Accumulation and Use

Section 59 of the Health Act 1953, as amended,⁽⁴⁾ specifically empowers the Minister for Health to make regulations "for the control of the storage, exportation or other disposal of medical radioactive substances generally or of any particular radioactive substance." This section has never been activated and the Minister's functions in this respect have been assumed by the Nuclear Energy Board.

Under ss. 6, 20, and 71 of the Factories Act 1955, the Minister for Labour has made the Factories Ionising Radiation (Sealed Sources) Regulations 1972,⁽⁵⁾ and the Factories Ionising Radiations (Unsealed Radioactive Substances) Regulations 1972,⁽⁶⁾ under which protective measures must be observed in factories to which the regulations apply.

The main source of law relating to radioactive substances is now the Nuclear Energy Act 1971, and the Nuclear Energy (General Control of Fissile Fuels, Radioactive Substances and Irradiating Apparatus) Order 1977.⁽⁷⁾ Article 4 of the Order, inter alia, prohibits the custody and use of radioactive substances, radioactive devices, irradiating apparatus and radioactive waste products save in accordance with a licence issued by the Nuclear Board as agent for the Minister for Energy. The Order is intended to complement controls exercisable by the Ministers for Health and Labour. It does not, however, apply to the medical uses of ionising radiation for the prevention, diagnosis and treatments of patients "in order not to impinge on the doctor-patient relationship."⁽⁸⁾ Some apparatus and manufactured items may be exempted from licensing requirements under Article 5 of the Order, provided they are of a type approved by the Nuclear Energy Board and comply with restrictions specified therein.

One of the particular functions of the Nuclear Energy Board under s.5(1) of the Nuclear Energy Act is:

to prepare draft safety codes and regulations dealing with fissile fuel or other radioactive substances or devices and irradiating apparatus, taking into account relevant standards recommended by international bodies dealing with nuclear energy.

The Board has not published any of these codes but it does exercise control over the use, accumulation and storage of radioactive substances

by conditions attached to licences which require the observance of recommended practices and procedures. Conditions attached to licences typically require the appointment of suitably qualified Radiation Protection Officers, the use of the appropriate type of radiation measuring instrument, warning devices and personnel monitoring equipment. In preparing licence conditions the Board takes note of recommendations issued by the International Commission on Radiological Protection, the EEC, the International Atomic Energy Agency, the Nuclear Energy Agency and the World Health Organisation.⁽⁹⁾ Section 5(2) of the Nuclear Energy Act provides that the Minister for Energy may by order assign to the Board a number of functions including the making of arrangements to ensure the safe custody of fissile fuel, the safe operation of radioactive devices and the making of arrangements to ensure compliance with any safety codes established or regulations made under any of the three Acts mentioned in this section. The Minister has not made any order under s.5(2).

11.1.3 Controls over Packaging and Transport

11.1.3.1 General.

Controls over the packaging and transport of radioactive substances are exercised by conditions attached to licences granted by the Nuclear Energy Board. In licensing the transportation of radioactive substances the Board requires that International Atomic Energy Regulations and the rules of the International Civil Aviation Authority, when relevant, be observed. When necessary the Board imposes additional specific conditions appropriate to the particular licensee. In cases where large consignments of radioactive materials are involved, the Board will make special arrangements for their transport in Ireland, including the provision of an appropriate escort.

Under s.5 of the Nuclear Energy Act 1971, the Minister for Energy may, by order, assign to the Nuclear Energy Board the function of making arrangements for the transportation of fissile fuel or such other radioactive substances or devices as he specifies in the Order. Furthermore, the transportation of fissile fuel, or of such other radioactive substances or devices or irradiating apparatus, including radioactive waste products, as are specified, is a matter which may be regulated

directly by Ministerial order under s.6 of the Act. The Minister has not made any of these orders.

The Dangerous Substances (Conveyance of Scheduled Substances by Road) Regulations 1980,⁽¹⁰⁾ the European Communities (Dangerous Substances) (Marketing and Use) Regulations 1979-81,⁽¹¹⁾ the Dangerous Substances (Classification, Packaging and Labelling) Regulations 1980-81,⁽¹²⁾ and the European Communities (Dangerous Substances) (Classification, Packaging, Labelling and Notification) Regulations 1982,⁽¹³⁾ do not apply to radioactive substances.

11.1.3.2 Transport by Rail.

The transport of "dangerous goods" by Coras Iompair Eireann (the National Transport Company) is regulated under s.60 of the Transport Act 1960, which deals with the transport of dangerous goods by rail. The Act does not define dangerous goods. The section provides that nothing is to impose any obligation on CIE to accept dangerous goods by rail but that if such goods are accepted, they are to be conveyed subject to such bye-laws, regulations and conditions as CIE thinks fit in regard to the conveyance and storage thereof, that the owner or consignor must indemnify CIE for all loss or damage which may result to it or to which it may become liable owing to non-compliance with the said bye-laws, regulations or conditions, and that full compensation must be paid to CIE or its servants for injuries or damage save when the injury or damage is due to the wilful misconduct of CIE servants. CIE has not made specific provisions relating to the carriage of radioactive substances in its legislation or administrative arrangements.

11.1.3.3 Transport by Sea.

The packaging and transport of radioactive substances by sea is subject to two kinds of controls, viz. controls applicable to the transport of "dangerous goods" and controls enacted with specific reference to radioactive materials.

The Merchant Shipping Act 1894, as adapted and applied in Ireland, contains provisions on the carriage of dangerous goods. Under s.38(4) of the Merchant Shipping (Safety Convention) Act 1952, and the Merchant Shipping (Dangerous Goods) Rules 1967,⁽¹⁴⁾ radioactive materials come within the statutory definition of dangerous goods and are subject

to the requirements of s.446 of the Merchant Shipping Act 1894, and the Merchant Shipping (Dangerous Goods) Rules 1967. The Rules implement the provisions of the International Convention for the Safety of Life at Sea 1960, relating to the carriage of dangerous goods.

11.1.3.4 Transport by Air.

Effect has been given to the Chicago Convention on International Air Aviation and amendments thereto in the Air Navigation and Transport Act 1946. Under s.6 of the 1946 Act, the Minister for Transport has made the Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Order 1973,⁽¹⁵⁾ which operates to control the carriage of radioactive substances by air.

11.1.3.5 Sending by Post.

The sending of dangerous goods by post is prohibited by s.63 of the Post Office Act 1908. The Post Office Regulations set out in the Post Office Guide⁽¹⁶⁾ state that radioactive materials with any significant alpha, beta, gamma or neutron radiation may not normally be transmitted by post. In exceptional circumstances the transmission of small quantities is permitted on condition that they are packed in accordance with the regulations and provided that when made up for postage, the radiation measured at the outside of the packet does not exceed 10 millirontgen per 24 hours. Containers must be submitted for inspection and approved for use. The Universal Postal Union, of which Ireland is a member, permits the transmission by post of radioactive materials whose contents and make-up comply with the regulations of the International Atomic Agency and with the provisions of the detailed regulations of the Universal Postal Union.

11.1.4 Control over Radioactive Waste Disposal

Statutory responsibility for controlling the disposal of radioactive wastes lies exclusively with the Nuclear Energy Board, the Minister for Health's functions in this regard having been terminated by s.24(c) of the Nuclear Energy Act 1971. The Nuclear Energy Board has power to regulate the disposal of radioactive wastes by conditions attached to licences.⁽¹⁷⁾ Limits have been laid down to control the discharge of small quantities of low level radioactive effluents to the

environment. The Board also exercises control over methods of processing radioactive wastes so that suitable management systems are used. Hospitals and laboratories usually incinerate slightly contaminated combustible refuse produced daily. Interim storage facilities for solid radioactive wastes are provided by a Dublin hospital specialising in cancer treatment. Spent radioactive sources are returned to their suppliers abroad. There are no officially approved facilities for the disposal of radioactive wastes.

Provisions in the Convention for the Prevention of Marine Pollution from Ships and Aircraft 1972, (the Oslo Convention), and in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter at Sea 1972, (the London Convention) already described⁽¹⁸⁾ in the Dumping At Sea Act 1981, are also relevant to the disposal of radioactive wastes at sea.

The Oslo Convention does not expressly prohibit or restrict the dumping of radioactive wastes⁽¹⁹⁾ but Contracting Parties are requested to promote measures to protect the marine environment against pollution from radioactive wastes within the specialised agencies and other international bodies.⁽²⁰⁾ High level radioactive wastes do appear in the London Black List and other radioactive wastes and matter appear in the London Gray List. In issuing permits for Gray List radioactive wastes and matter, Contracting Parties must take account of the recommendations of the International Atomic Energy Agency (IAEA). The IAEA has temporarily defined "high level" radioactive wastes and has issued regulations for the issue of special permits and the control of dumping operations.

Under s.9(8) of the Dumping At Sea Act 1981, the functions of the Minister for Transport in respect of dumping at sea are vested in the Minister for Energy and the Nuclear Energy Board as his agent where licences are sought for the dumping of substances, devices, apparatus and products to which the Nuclear Energy Act 1971, or any order under s.6 thereof applies. Section 5(1) of the Dumping At Sea Act 1981, provides that offences under the Act may be prosecuted by the Minister for Energy or the Nuclear Energy Board as his agent and s.5(4) provides that offences committed at sea shall be treated as having committed in the State for the purposes of proceedings under the Act or under s.6(4) of the Nuclear Energy Act 1977. Radioactive wastes are not dumped by Irish authorities at sea and it is understood that no Irish registered ship or aircraft is involved in radioactive waste disposal.

The OECD on behalf of its Member States has become involved in the regulation of radioactive waste disposal. In 1977 it set up a procedure for establishing a multilateral consultation and surveillance mechanism for sea dumping of radioactive waste.⁽²¹⁾ Irish authorities are notified by the OECD when dumping of radioactive wastes off the Irish coast is to take place and officials from the Nuclear Energy Board are permitted to supervise dumping operations.

Radioactive wastes are specifically included in substances to be eliminated in the Convention for the Prevention of Marine Pollution from Land-Based Sources 1973, (the Paris Convention),⁽²²⁾ which has not yet been ratified by Ireland.

11.1.5 Legal Standards, Objectives and Guidelines for Levels of Radioactivity in the Environment

There are no legally binding standards, objectives or guidelines for levels of radioactivity in the environment. The Nuclear Energy Board in preparing licence conditions takes note of recommendations and guidelines issued by such international organisations as the International Commission on Radiological Protection, the European Communities, the International Atomic Energy Agency, the Nuclear Energy Agency, the World Health Organisation and others.⁽²³⁾

11.1.6 Monitoring and Enforcement

The provisions of the Factories Ionising Radiations (Sealed Sources) Regulations 1972, and the Factories Ionising Radiations (Unsealed Radioactive Substances) Regulations 1972, are enforced by the Industrial Inspectorate of the Department of Labour, or, where appropriate, by officers of the Nuclear Energy Board.⁽²⁴⁾ The Board operates a monitoring and inspection system to ensure that conditions attached to licences are observed and safety standards maintained. Over 150 licences were in operation in 1981 covering principally medical, research and industrial users of ionising radiation.⁽²⁵⁾ A National Radiation Monitoring Service is operated by the Nuclear Energy Board. In 1981 the service issued over 60,000 personal dosimeters to persons dealing with radioactive substances.⁽²⁶⁾ The Board also monitors radioactivity in the Irish Sea. The Meteorological Service of the Department of Transport carries out regular measurements of the

radioactivity of precipitation, settled dust and airborne particles in a number of selected locations throughout the country.

Contravention of the provisions of s.6 of the Nuclear Energy Act 1971 (establishing a licensing system) is an offence for which the maximum penalty is a fine not exceeding £500 and/or five years imprisonment.⁽²⁷⁾ Refusing to allow an officer or servant of the Board to enter or inspect premises or obstructing such person is an offence for which the maximum penalty is £100.⁽²⁸⁾ Non-compliance with the provisions of the Merchant Shipping Act 1894, relating to the carriage of dangerous goods by sea is punishable by a maximum fine of £500 and, at the discretion of the court, forfeiture of the goods.⁽²⁹⁾ The maximum fine for breach of the Merchant Shipping (Dangerous Goods) Rules 1967, is £300. Contravention of regulations made under s.71 of the Factories Act 1955, is punishable by a fine not exceeding £20 and £5 for each day the offence is continued.⁽³⁰⁾ In so far as can be discovered, no prosecutions have been brought in respect of breach of any of the above-mentioned Acts or regulations.

11.2 AGRICHEMICALS

Many environmental problems are caused by the use and abuse of chemicals used in agriculture. These problems have been increasing in recent years with the rapid growth of Irish agriculture since Ireland joined the EEC. The production of large quantities of effluent, some of which are contaminated with medicaments and high levels of minerals such as copper, and the use of chemical sprays based on salts and heavy metals, seed dressings, fertilisers, mineral mixtures and animal feeding stuffs, can all have deleterious effects on the environment.

11.2.1 Fertilisers, Feeding Stuff and Mineral Mixtures

The object of controlling fertilisers, feeding stuffs and mineral mixtures is to control tolerances of the nutrient contents in the interest of agricultural uses and, to a lesser but increasing extent, the environment. Control over chemical substances in these products is exercised by the Minister for Agriculture under the Fertilisers, Feeding Stuff and Mineral Mixtures Act 1955, the European Communities Act 1972, and regulations made under both Acts.

Matters relating to chemical substances in non-EEC manufactured fertilisers are regulated under the 1955 Act, the Fertilisers, Feeding Stuffs and Mineral Mixtures Regulations 1957,⁽³¹⁾ the Marketing of Non-EEC Fertilisers Regulations 1978 and 1979,⁽³²⁾ and the Fertilisers, Feeding Stuffs and Mineral Mixtures (Methods of Analysis) Regulations 1978 and 1980.⁽³³⁾ The European Communities (Marketing of Fertilisers) Regulations 1978,⁽³⁴⁾ on the other hand, provide for the designation of an "EEC fertiliser" and prescribe criteria under which fertilisers marketed under this designation must comply. These regulations were amended in 1979.⁽³⁵⁾ Both sets of regulations implement EEC Council Directive 76/116/EEC on the approximation of the laws of the Member States relating to fertilisers.⁽³⁶⁾

The effect of the regulations is to prescribe Community rules on the designation, composition, labelling and packaging of the most important straight and compound fertilisers in the Community. A further Directive 80/876/EEC on the approximation of the laws of the Member States relating to straight ammonium nitrate fertilisers of high nitrogen content⁽³⁷⁾ must be implemented by 1 January 1984. The European Communities (Sampling and Analysis of Fertilisers) Regulations 1978 and 1979⁽³⁸⁾ implement EEC Commission Directive 77/535/EEC as amended by 79/138/EEC on sampling and analysis of fertilisers,⁽³⁹⁾ and they lay down standardised methods of sampling and analysis of fertilisers.

Chemical substances in animal feeding stuffs are also regulated under the 1955 Act, the Fertilisers Feeding Stuffs and Mineral Mixtures Regulations 1957,⁽⁴⁰⁾ the Fertilisers Feeding Stuffs and Mineral Mixtures (Methods of Analysis) Regulations 1978 and 1980,⁽⁴¹⁾ and the Fertilisers Feeding Stuffs and Mineral Mixtures (Methods of Sampling) Regulations 1980.⁽⁴²⁾

EEC Directives 70/524/EEC and 75/296/EEC as amended from time to time on the use of additives in feeding stuffs⁽⁴³⁾ have been implemented by the European Communities (Feeding Stuffs) (Additives) Regulations 1974, 1979, 1980, 1981 and 1982.⁽⁴⁴⁾ These regulations prohibit the marketing of feeding stuffs containing additives other than those listed in the Annex to Directive 70/524/EEC. Directives 74/63/EEC, 76/14/EEC, 76/934/EEC and 80/502/EEC fixing maximum permissible levels of certain undesirable substances and products in animal feeding stuffs⁽⁴⁵⁾ have been implemented by the European Communities (Feeding Stuffs) (Tolerance

of Undesirable Substances and Products) Regulations 1977 and the European Communities (Feeding Stuffs) (Tolerances of Aflatoxin B1) Regulations 1982.⁽⁴⁶⁾ The Animal and Poultry Feeding Stuffs and Mineral Mixtures (Control of Arsenic) Regulations 1972,⁽⁴⁷⁾ prohibit the use of arsenic or any arsenical compound in feeding stuff, compound feeding stuff or mineral mixture.

Standardised methods by which sampling and analysis of animal feeding stuffs must be carried out in order to comply with EEC Commission Directives 81/580/EEC and 81/715/EEC⁽⁴⁸⁾ have been prescribed in the European Communities (Feeding Stuffs) (Methods of Analysis) Regulations 1978, as amended in 1980 and 1982.⁽⁴⁹⁾

Manufacturers of fertilisers, feeding stuffs and mineral mixtures must be licensed by the Minister for Agriculture under s.5 of the 1955 Act. The Minister has power under this section to attach, add to, or vary, conditions attached to licences or to revoke a licence whenever he considers it proper to do so. There are currently about 200 manufacturers licensed under s.5. All offences for breach of these regulations are minor offences. Products found to be in breach of the regulations can be disposed of pursuant to a district court order.

11.2.2 Pesticides

The only legislative controls over pesticides and pesticide use are those contained in the European Communities (Pesticide Residues) (Fruit and Vegetable) Regulations 1979 and 1981,⁽⁵⁰⁾ which implement EEC Directive 76/895/EEC on pesticides.⁽⁵¹⁾ EEC Directive 78/631/EEC on the classification, packaging and labelling of dangerous preparations (pesticides)⁽⁵²⁾ has not yet been implemented.

These regulations prohibit the putting into circulation of any fruit or vegetable to which the regulations apply if it contains the residue of a pesticide specified in the regulations in a quantity greater than the maximum allowed for that pesticide. In certain circumstances Member States may authorise the circulation of fruit and vegetables containing pesticides in excess of the limits specified. Ireland has done this.

The penalty for breach of the regulations is a maximum fine of £400 plus £40 a day (to a maximum of £600) or six months imprisonment and liability for forfeiture of the product.

Other controls over pesticides are of a non-statutory nature and consist solely of liability for damage at common law for mis-use of pesticides and restrictions on the distribution of pesticides by administrative action taken by the Department of Agriculture which operates a voluntary pesticide registration scheme under which about 50 pesticide formulation plants are registered.

11.2.3 Plant Protection Products

The European Communities (Prohibition of Certain Active Substances in Plant Protection Products) Regulations 1981⁽⁵³⁾ implement EEC Directive 79/117/EEC.⁽⁵⁴⁾ These measures are designed to stop the use of mercury components and persistent organo-chlorine compounds, including DDT and dieldrin, in plant protection products by prohibiting the marketing of products containing them. The penalty for breach of the regulations is a maximum fine of £500 and/or six months imprisonment. A person may also be ordered to dispose of the product concerned.

11.2.4 Animal Remedies

Under s.7 of the Animal Remedies Act 1956, the Minister for Agriculture is empowered to control the manufacturing, preparation, packing, importation, or sale of any animal remedies. Section 5 of the Act requires that the composition of animal remedies, the proportion of ingredients therein, the commercial or scientific name of the remedy and the specific remedial property or properties claimed for the remedy be disclosed on containers of animal remedies and in advertisements. Containers must also indicate the name and address of the manufacturer, packer, distributor or importer, as appropriate. The Minister has made two sets of regulations under the Act prohibiting the sale, except under licence, of any anti-abortion vaccine for use in the vaccination of cattle against brucellosis⁽⁵⁵⁾ and for the sale of chloramphenicol or its salts or derivatives or any preparation containing such substances.⁽⁵⁶⁾

Section 35 of the Disease of Animals Act 1966, provides that only sheep dips approved by the Minister for Agriculture may be used for dipping sheep for the prevention or treatment of sheep scab. There are 25 different sheep dips approved by the Minister and the amount of dip used varies from 5000 to 10000 litres annually.

The Sheep Dipping Order 1965⁽⁵⁷⁾ provides that the owner or occupier of land where dipping takes place shall dispose of the sheep bath in a safe manner so as not to pollute any river, well or water.

Three of the substances used in sheep dips (tar phenols and organochlorine and organophosphorus compounds) appear in the Listed substances in EEC Directive 80/68/EEC on the discharge of dangerous substances to the aquatic environment of the Community.⁽⁵⁸⁾ Furthermore, as a biocide, spent sheep dip is a toxic and dangerous waste for the purposes of EEC Directive 78/319/EEC on toxic and dangerous waste and must be disposed of as required in the European Communities (Toxic and Dangerous Waste) Regulations 1981.⁽⁵⁹⁾

Pollution problems from the misuse of sheep dips were so serious in 1982 that the Minister for the Environment sent a circular to county councils urging them to apply all existing controls over sheep dips.⁽⁶⁰⁾

Guidelines on precautions to be observed in the use of toxic chemicals in agriculture and horticulture have been circulated to farmers by the Department of Agriculture.⁽⁶¹⁾ Further controls over certain weedkillers and other poisons are contained in the Poisons Regulations 1982.⁽⁶²⁾

11.3 CHEMICALS AND FOODSTUFFS

The Minister for Health is empowered by sections 5, 54 and 59 of the Health Act 1947, to make regulations prescribing food standards for the protection of public health. He is advised on such matters by a statutory food advisory committee. Regulations made by the Minister under the Act typically prohibit the manufacture, importation, distribution, sale or exposure to sale of foodstuffs containing specified chemicals except in accordance and to the extent allowed by the regulations. They also prescribe requirements for labelling and advertising. To date, regulations have been made controlling cyclamates, antioxidants, arsenic and lead, mineral hydrocarbons, certain colouring agents, preservatives and solvents in food.⁽⁶³⁾ Where a sample of food containing any of the aforementioned substances is certified not to comply with the regulations, an authorised officer may seize, remove or detain such food as being food unfit for human consumption, and destroy it. Penalties are provided for breach of the regulations.

The Food Standards Act 1974, enables regulations to be made for the control of activities relating to food, including the sale of food. The regulations may deal with food composition, the use of additives, and contaminant levels. The Act provides for powers of inspection, sampling and certification, and for an enforcement system. It is designed to implement the Codex Alimentarius, EEC and national food standards. Regulations may be made by the Ministers for Agriculture, Health or Industry and Energy.

11.4 MEDICAL PREPARATIONS

The Minister for Health is empowered by sections 5 and 65 of the Health Act, 1947, to regulate all matters relating to medical preparations. Manufacturers of medical preparations must be licensed in accordance with the Medical Preparations (Licensing of Manufacturers) Regulations, 1974 and 1975.⁽⁶⁴⁾ The Medical Preparations (Control of Sale) Regulations, 1966, as amended in 1976,⁽⁶⁵⁾ control the retail sale of a number of scheduled substances. These substances and preparations may be retailed only by pharmaceutical chemists, dispensing chemists and druggists and registered druggists. In addition, the prescription of a registered medical practitioner, dentist or veterinary surgeon is required for the purchase of preparations listed in the First Schedule to the Regulations. Preparations must be labelled with, inter alia, precautionary notices. The Medical Preparations (Wholesale Licences) Regulations, 1975,⁽⁶⁶⁾ prohibit the wholesale sale or supply of medical preparations, with certain exceptions, except under licence granted by the Minister for Health. The European Communities (Proprietary Medical Products) Regulations, 1975,⁽⁶⁷⁾ prohibit the marketing of proprietary medical products unless they comply with EEC Directives 65/65/EEC, 75/318/EEC, 75/319/EEC.

11.5 VETERINARY PRODUCTS

The Minister for Agriculture operates a non-statutory voluntary veterinary products control scheme to ensure the proper use of safe veterinary products. It is anticipated that this scheme will become

mandatory in the near future.⁽⁶⁸⁾ Further controls over veterinary products are contained in the Poisons Regulations 1982 described below.

11.6 POISONS

The Poisons Regulations 1982,⁽⁶⁹⁾ made under s.15 of the Poisons Act 1961, introduced new and comprehensive controls over a wide variety of chemicals including weedkillers, veterinary products, pesticides, and poisons. The regulations control the retail sale of poisons listed in the schedules. Poisons listed in Part I to the First Schedule may only be sold by licensed pharmacies; poisons listed in Part II may, in addition, be sold in licensed retail outlets.⁽⁷⁰⁾ Obligations are imposed with respect to labelling, record keeping, packing, storage and transport of poisons.⁽⁷¹⁾ Special restrictions apply in respect of strychnine and certain other pest control substances.⁽⁷²⁾ Animal feeding stuffs and medicines are not controlled under these regulations.⁽⁷³⁾ All offences for breach of these regulations are minor offences punishable by minimal penalties.⁽⁷⁴⁾

11.7 DANGEROUS SUBSTANCES

11.7.1 EEC Legislation on Dangerous Substances

The EEC Action Programmes on the Environment of 1973 and 1977 emphasise that the protection of man and his environment requires that particular attention be paid to chemical products. This is because particular difficulties have been encountered by the use of chemical compounds the effects of which on the environment were not, or not sufficiently, tested before they were marketed. Consequently, the EEC adopted a number of Directives which have become applicable in Ireland, the object of which is to eliminate technical barriers to trade and to protect human health and the environment. These Directives fall into three categories:

- (1) Directives establishing Community standards in respect of certain types of chemical product. These are, in particular, the Directives on pesticides, animal feeding stuffs, plant

protection products and fertilisers described above;⁽⁷⁵⁾
 Directive 77/728/EEC adapted to technical progress by Commission Directive 81/916/EEC relating to the classification, packaging and labelling of paints, varnishes, printing inks, adhesives and similar products,⁽⁷⁶⁾ and Directive 73/173/EEC relating to the classification, packaging and labelling of dangerous preparations (solvents).⁽⁷⁷⁾

- (2) Directives regulating the use of certain substances and preparations which prove dangerous in individual cases. This category includes Directive 76/769/EEC relating to the marketing and use of certain dangerous substances and preparations as amended by Directive 79/663/EEC;⁽⁷⁸⁾ and Decision 80/372/EEC concerning chlorofluorocarbons in the environment.⁽⁷⁹⁾
- (3) Preventive measures introducing general control procedures. These are Directive 79/831/EEC relating to the classification, packaging and labelling of dangerous substances,⁽⁸⁰⁾ commonly known as the Sixth Amendment since it amended for the sixth time an earlier Directive 67/548/EEC on the same subject.⁽⁸¹⁾ This Directive is extremely important because it introduces the principle, accompanied by an appropriate procedure, that the development of a new chemical substance must be accompanied by an assessment of its impact on man and his environment, a criterion which must henceforth carry the same weight as its technical and commercial value.

11.7.2 National Legislation on Dangerous Substances

Directive 77/728/EEC adapted to technical progress by Commission Directive 81/916/EEC relating to the classification, packaging and labelling of paints, varnishes, printing inks, adhesives and similar products has been implemented by the European Communities (Paints Etc.) (Classification and Labelling) Regulations 1980,⁽⁸²⁾ which require suppliers to ensure that preparations listed in article 1 of the Directive are not placed on the market unless they and their packaging comply with the Directive. The European Communities (Dangerous preparations) (Solvents) Classification, Packaging and Labelling Regulations 1983⁽⁸³⁾ implement Directive 73/173/EEC relating to the classification, packaging, and labelling of dangerous preparations (solvents).

Directive 76/769/EEC relating to the marketing and use of certain dangerous substances and preparations as amended by Directive 79/663/EEC has been implemented by the European Communities (Dangerous Substances and Preparations) (Marketing and Use) Regulations 1979 and 1981.⁽⁸⁴⁾ The regulations limit the marketing and use of polychlorinated biphenyls and polychlorinated terphenyls, and ban the use of monomer vinyl chloride as an aerosol propellant. The 1981 Regulations prohibit the use of 2, 3 ditromopropyl phosphate in textile articles intended to come into contact with the skin, and certain toxic, flammable or other harmful substances in ornamental lamps, ashtrays or other objects and the marketing of objects containing such substances.

The Sixth Amendment and all of the Directives which it amends was implemented by the European Communities (Dangerous Substances) Classification, Packaging and Labelling Regulations 1979 to 1983.⁽⁸⁵⁾ Any new chemical substance going on the Irish market must be subjected to tests as prescribed in the Directives and the results of the tests must be submitted to the Hazardous Substances Assessment Unit of the Department of Labour. The proposed classification and labelling of the substances must be approved by the Unit which will also receive notifications of new substances submitted to corresponding authorities in other EEC countries.

The maximum penalty for any offence under the above Regulations is only £600. There has never yet been a prosecution for breach of the Regulations. There are no personnel employed in the Hazardous Substances Unit in the Department of Labour. The fact of the matter is that Ireland has not got the resources to implement EEC measures on dangerous substances. There are only five qualified toxicologists in the entire country, excluding those employed in the Universities.⁽⁸⁶⁾ In practice, therefore, the above Regulations are not implemented.

The transport of 25 dangerous chemicals is regulated under the Dangerous Substances (Conveyance of Scheduled Substances by Road) (Trade and Business) Regulations 1980,⁽⁸⁷⁾ made under the Dangerous Substances Act 1972.⁽⁸⁸⁾ The transport of petroleum by road is regulated under the Dangerous Substances (Conveyance of Petroleum by Road) Regulations 1979.⁽⁸⁹⁾ These regulations are enforced by the industrial inspectorate of the Department of Labour.

11.8 MISCELLANEOUS

The European Communities (Detergents No.2) Regulations 1975,⁽⁹⁰⁾ implement Directive 73/404/EEC⁽⁹¹⁾ and prohibit the placing on the market and use of detergents where the average level of biodegradability of certain essential constituents is less than 90 per cent. The European Communities (Aerosol Dispensers) Regulations 1977⁽⁹²⁾ implement Directive 75/324/EEC⁽⁹³⁾ and prescribe conditions and standards regulating the manufacture, filling, marketing and labelling of certain aerosol dispensers.

11.9 MONITORING

It is impossible, given the lack of resources and trained personnel, for Irish authorities to monitor environmental chemicals. Accordingly, as the Inter-Departmental Environment Committee has prognostically concluded "a highly selective approach only can be envisaged."⁽⁹⁴⁾

In practice, there are far too many (14 in all) bodies involved in monitoring environmental chemicals,⁽⁹⁵⁾ none of which, with the possible exception of An Foras Taluntais, is adequately equipped for this function.

A certain amount of monitoring is carried out in respect of products (especially foodstuffs) which are imported or exported but there is little or no monitoring of products placed on the domestic market. There have been numerous complaints from the public relating to pesticide residues in foodstuffs and high antibiotic residues in foodstuffs. There is no systematic monitoring, even on a selective basis, of agricultural products in the vicinity of chemical pollution sources and in the flight-paths of chemicals in the atmosphere.⁽⁹⁶⁾

Apart from the occasional testing undertaken by Health Boards to establish blood lead levels in order to comply with EEC Directive 73/312/EEC on the biological screening of the population for lead,⁽⁹⁷⁾ no monitoring is carried out to evaluate the health affects of chemical pollution on the population at large or of particularly exposed groups.⁽⁹⁸⁾

11.10 ENFORCEMENT AND INDIVIDUAL RIGHTS

There are no published statistics on the extent to which the provisions of the various statutes in this section are enforced. There are not special provisions in any legislation mentioned in this section on individual rights.

1. Atomic Energy Act, 1971, s.24.
2. S.I. No. 17 of 1972.
3. S.I. No. 218 of 1972.
4. S.I. No. 168 of 1972.
5. Atomic Energy (Safety) Regulations, No. 2, May 1972.
6. ibid.
7. S.I. No. 215 of 1980.
8. S.I. No. 192 of 1972; S.I. No. 149 of 1981.
9. S.I. No. 383 of 1972; S.I. No. 36 of 1980.
10. S.I. No. 218 of 1972.
11. S.I. No. 301 of 1982.
12. S.I. No. 224 of 1972.
13. Post Office Regulations, Vol. 1, p.44.
14. Atomic Energy Act, 1971, s.3(2)(c).
15. ibid section 7.7.
16. See Fitzgerald, op.cit. 11.7 at p.140, who argues that since the copying of any substance or material is forbidden without approval it would seem to follow that the copying of radioactive materials must be approved.
17. ibid Convention, article 14. See section 1.7.
18. ibid Convention on establishing a multilateral non-nuclear zone - protocol and declaration, resolution for non-dumping of radioactive waste, 1972, Annex II, para 4(a).
19. ibid, 11.10.72, see section 1.8.
20. Atomic Energy Act, No. 2, May 1972.

FOOTNOTES

1. Report on Pollution Control, supra, at p.12.
2. See section 3.6.
3. Annual Report of the Nuclear Energy Board, 1979.
4. Nuclear Energy Act, 1971, s.24.
5. S.1. No. 17 of 1972.
6. S.1. No.249 of 1972.
7. S.1. No.166 of 1977.
8. Nuclear Energy Board News, No.2, May 1979.
9. Ibid.
10. S.1. No.235 of 1980.
11. S.1. No.382 of 1979; S.1. No.149 of 1981.
12. S.1. No.383 of 1979; S.1. No. 34 of 1980.
13. S.1. No.258 of 1982.
14. S.1. No.105 of 1967.
15. S.1. No.224 of 1973.
16. Post Office Regulations, Vol. 1, p.48.
17. Nuclear Energy Act, 1971, s.5(2)(f).
18. See section 7.7.
19. But see Timagenis, op.cit., at p.140, who argues that since the dumping of any substance or material is forbidden without approval it would seem to follow that the dumping of radioactive materials must be approved.
20. Oslo Convention, article 16. See section 7.7.
21. OECD Decision on establishing a multilateral consultation and surveillance mechanism for sea dumping of radioactive waste, 1977, (1978) 17 ILM 445.
22. (1974) 13 ILM 352. See section 7.8.
23. Nuclear Energy News, No. 2, May 1979.

24. Factories Act 1955, s.93; Nuclear Energy Act 1971, s.25.
25. Annual Report of the Nuclear Energy Board, 1981, at p.2.
26. Ibid.
27. Nuclear Energy Act, 1971, s.64.
28. Ibid.
29. Merchant Shipping Act, 1894, ss. 447, 449.
30. Factories Act, 1955, s.101.
31. S.1. No. 264 of 1957.
32. S.1. No. 248 of 1978; S.1. No.410 of 1979.
33. S.1. No. 249 of 1978; S.1. No. 13 of 1980.
34. S.1. No. 13 of 1978.
35. S.1. No. 411 of 1979.
36. O.J. No.L.24, 30 January 1976.
37. O.J. No.L.250, 23 September 1980.
38. S.1. No.13 of 1978; S.1. No.409 of 1979.
39. O.J. No.L.213, 22 August 1977; O.J. No.L.39, 14 February 1979.
40. S.1. No.264 of 1957.
41. S.1. No.249 of 1978; S.1. No.13 of 1980.
42. S.1. No. 13 of 1980.
43. O.J. No.L.270, 14 December 1970; O.J. No.L.124/29, 15 May 1975.
44. S.1. No.302 of 1974; S.1. No. 6 of 1979; S.1. No.250 of 1980;
S.1. No.262 of 1981; S.1. No.377 of 1981; S. . No.260 of 1982.
45. O.J. No.L.38/31, 11 February 1974; O.J. No.L.4/24, 9 January 1976;
O.J. No.L.364/20, 31 December 1976; O.J. No.L.124/17, 20 May 1980.
46. S.1. No.246 of 1977; S.1. No.96 of 1982.
47. S.1. No.124 of 1972.
48. O.J. No.L.246/32, 29 August 1981; O.J. No.L.257/38, 10 September
1981.
49. S.1. No.250 of 1978; S.1. No. 13 of 1980; S.1. No. 14 of 1980;
S.1. No.261 of 1982.

50. S.1. No.183 of 1979; S.1. No.164 of 1981.
51. O.J. No.L.340, 9 December 1976.
52. O.J. No.L.206, 29 July 1978.
53. S.1. No.320 of 1981.
54. O.J. No.L.33/36, 8 February 1979.
55. Animal Remedies (Control of Certain Anti-Abortion Vaccines) Regulations 1965, S.1. No.112 of 1965.
56. Animal Remedies (Control of Chloramphenicol) Regulations 1975, S.1. No.10 of 1975.
57. S.1. No.105 of 1965.
58. See section 5.5.
59. See section 9.3.4.
60. Circular ENV.12/82 of 20 August 1982.
61. Farm Bulletin, November 1975.
62. S.1. No.188 of 1982.
63. See S.1. Nos. 49 of 1970; 42 of 1972; 44 of 1972; of 1972; 304 of 1972; 147 of 1973; 148 of 1973.
64. S.1. No.225 of 1974; S.1. No.302 of 1975.
65. S.1. No.261 of 1966; S.1. No. 82 of 1976.
66. S.1. No.333 of 1975.
67. S.1. No.301 of 1975.
68. Report on Pollution Control, supra, at p.17.
69. Poisons Regulations 1982, S.1. No.188 of 1982
70. Ibid., article 6.
71. Ibid., articles 7, 8, 11, 12.
72. Ibid., articles 16, 17.
73. Ibid., article 19.
74. Poisons Act, 1961, s.17.
75. See section 11.2.

76. O.J. No.L.342/7, 28 November 1981; O.J. No.L.303, 28 November 1977.
77. O.J. No.L.189, 11 July 1973.
78. O.J. No.L.262 of 27 September 1976, as amended, O.J. No. L.179, 3 August 1979.
79. See section 4.11.
80. O.J. No.L.259, 15 October 1979.
81. O.J. No.L.196, 16 August 1967.
82. S.1. No.365 of 1980.
83. S.1. No.189 of 1983.
84. S.1. No.332 of 1979; S.1. No.149 of 1981.
85. S.1. No.383 of 1979; S.1. No. 34 of 1980; S.1. No. 258 of 1982; S.1. No. 27 of 1983.
86. See Toxicology in Ireland, National Board for Science and Technology, 1983.
87. S.1. No.235 of 1980.
88. See "How the New Regulations will Affect the Transport of Chemicals," Technology Ireland, October 1980, at pp.26-31.
89. S.1. No.314 of 1979.
90. S.1. No.107 of 1975.
91. O.J. No.L.347/51, 17 December 1973.
92. S.1. No.144 of 1977.
93. O.J. No.L.147, 9 June 1975.
94. Report on Pollution Control, supra, at p.19.
95. Ibid., Appendix IV.
96. Ibid., at p.20.
97. O.J. No.L.105, 28 April 1977.
98. Report on Pollution Control, supra, at p.20.

SECTION 12

CONCLUSIONS

Irish planning and pollution law is still at the evolutionary stage despite the proliferation of legislation in these areas in the last ten years. The features peculiar to each method of planning and pollution control and the defects and inadequacies of these methods have been described in preceding sections. This brief concluding section merely underlines general deficiencies and offers some broad suggestions for reform.

12.1 ENVIRONMENTAL CONSCIOUSNESS

Public consciousness of the effectiveness of planning and pollution controls and of their achievements is low in Ireland by comparison with Britain, Holland or Germany where there is a general acceptance of the utility and desirability of environmental control. This failure to appreciate the benefits of environmental regulation is a reflection of different value systems and of the failure of the Irish educational system and environmental management authorities to facilitate and promote environmental awareness. Casual observation of town and countryside will confirm a lack of sensitivity among the community at large towards the environment. Practical experience in opposing various authorisations for environmentally harmful activities has convinced this writer that in any balancing of interests economic

considerations almost invariably prove decisive.

The 1977 EEC Action Programme on the Environment specifically stated that:

The protection of the environment is a matter for everyone in the Community and public opinion should therefore be made aware of its importance.⁽¹⁾

Financial and other aids are available from the EEC to attain this objective. Unfortunately the Irish alacrity for exploiting EEC funding does not extend to seeking resources to promote environmental awareness.

12.2 MAJOR AREAS OF UNREGULATED ACTIVITIES REMAIN

Despite the multiplicity of legal and other measures on planning and pollution control, major areas of unregulated activities remain. Thus there are virtually no controls over many industries established before 1 October 1964 - the date on which the Local Government (Planning and Development) Act 1963, came into force.

Neither are there any overall regulatory systems for air pollution control, noise, offshore development, environmental chemicals, agricultural activities and development and activities carried out by State and local authorities.

Even where overall regulatory systems have been introduced, like those for development control and water pollution, there has been a failure to provide the resources and to enact the subordinate legislation necessary for the full and effective implementation of the Local Government (Planning and Development) Acts 1963-82 and the Local Government (Water Pollution) Act 1977.⁽²⁾

12.3 PUBLIC SECTOR AND AGRICULTURAL ACTIVITIES PRIVILEGED

A feature of Irish planning and pollution law is the special treatment accorded to activities carried out by State and local

authorities and, to a lesser extent, agricultural activities.

Throughout the entire system activities carried out by what has (somewhat inaccurately) been termed the public sector are either exempted completely from controls or are subject to more lenient or merely cosmetic controls. Thus development carried out by State and local authorities is exempted from planning control,⁽³⁾ including requirements for the submission of environmental impact studies.⁽⁴⁾ Regulations envisaged for citizen participation in decision-making by planning authorities in relation to developments which they propose to carry out have not been made.⁽⁵⁾ Local authorities are not subject to licensing systems for discharges of trade and sewage effluents to waters.⁽⁶⁾ The alternative regulatory system which could control local authority discharges has not been introduced.⁽⁷⁾ No water quality management plan has yet been made.⁽⁸⁾ Local authorities are not required to obtain permits for the disposal of general wastes and the larger local authorities are not required to obtain permits for the disposal of toxic and dangerous wastes.⁽⁹⁾ EEC measures prescribing obligations for the public sector are almost invariably implemented surreptitiously.⁽¹⁰⁾ When EEC measures prescribing obligations for both the public and private sectors are implemented by regulations, obligations specifically applicable to the public sector are not laid down in the regulations.⁽¹¹⁾

There is an arguable (though not a strong) case for treating public and private sector activities differently provided the same objectives are imposed and achieved. There is no case for placing the burden of complying with planning and pollution laws almost exclusively on the private sector.

Neither is there a good case for the indulgent treatment accorded to activities carried out by the agricultural sector. The use of land for the purposes of agriculture or forestry and the carrying out of most agricultural works in "rural areas" is exempted from planning control.⁽¹²⁾ Farmers are not required to dispose of effluents from point sources when this is practicable.⁽¹³⁾ Agricultural wastes are exempted from permit requirements on waste disposal.⁽¹⁴⁾ Enforcement action is rarely taken against polluting farmers.⁽¹⁵⁾

This special treatment of these privileged sectors is inequitable and undemocratic. Effective environmental controls (not necessarily identical to those applicable to all other sectors) should be introduced over agricultural and public sector activities affecting the environment.⁽¹⁶⁾

12.4 CODIFICATION OR CONSOLIDATION NECESSARY

There are so many laws and administrative directions on planning and pollution control that it is difficult for the public, and even for those who are charged with their enforcement, to know what they are. The Minister for the Environment is frequently forced into reminding local authorities of their environmental management powers under various Acts. Moreover many laws have now become obsolete⁽¹⁷⁾ or conflict or overlap with each other⁽¹⁸⁾ or provide widely dissimilar penalties for what is basically the same offence.⁽¹⁹⁾

Given that the regulatory mechanisms for controlling the various environmental media are substantially similar, the codification of all environmental controls, or the consolidation of controls relevant to individual environmental media in separate Acts, should not present any insurmountable problems. This exercise would also focus the attention on the incongruities in the present system which often provides for stringent controls and penalties for activities which in practice have a relatively small impact on the environment and lenient or no controls over activities widely acknowledged as being environmentally harmful. Thus, for example, controls over oil pollution are far more stringent than controls over toxic wastes and environmental chemicals even though the probability of damage from the latter is much greater.

Codification or consolidation of planning and pollution laws would secure a general uniformity in approach to questions of authorisation requirements, standards, other means of control and enforcement procedures while also ensuring greater public awareness of, and participation in, environmental regulatory procedures.

12.5 ENVIRONMENTAL DIMENSION NEGLECTED IN SECTORAL PLANNING

Sectoral plans, programmes and projects have a major influence on environmental quality yet there are still no procedures for ensuring consideration of the environmental dimension in sectoral plans for agriculture, energy, transport or industrial location. Consequently decisions are sometimes made in these areas which conflict fundamentally with principles of sound environmental management. For example, the EEC and the Department of Agriculture have grant-aided the drainage of 150,000 hectares of land under Directive 78/628/EEC setting up a programme to accelerate drainage operations in the less favoured areas of the West of Ireland,⁽²⁰⁾ a programme which has resulted in much unnecessary and avoidable ecological damage.⁽²¹⁾ The Whitegate Oil Refinery which is incapable of meeting EEC standards on lead and sulphur dioxide in petrol⁽²²⁾ has been kept in operation at an annual cost to the taxpayer of about £30 million. When oil prices soared, the Department of the Environment itself urged and financially aided householders to instal solid fuel heating systems, although this led to a marked deterioration in urban air quality.⁽²³⁾ Industrial location is greatly influenced by IDA policies which give priority to economic and social considerations when choosing suitable locations for industries which they grant-aid.⁽²⁴⁾

Sectoral plans and programmes are independently prepared by or under the auspices of different Government Departments and are not subjected to environmental impact requirements under the Local Government (Planning and Development) Act 1976.⁽²⁵⁾

Greater efforts should be made to co-ordinate, integrate and rationalise the activities of the various authorities charged with the promotion of economic and social development so as to ensure that environmental implications of their proposals are considered at an early stage in the decision-making processes. All sectoral plans should be subjected to statutory procedures for environmental impact assessment. The integration of environmental and other policies could be facilitated by the appointment of an Environmental Ombudsman.

12.6 PUBLIC PARTICIPATION DISCOURAGED

Developed nations, including Ireland, have increasingly begun to accept the principle that the public, interested citizens and, more recently, environmental protection organisations, have a right to participate in the management and enforcement of planning and pollution controls.⁽²⁶⁾ Thus Irish law is apparently relatively liberal in providing for public participation in decision-making on development plans, on planning applications, and on applications to discharge effluents to waters⁽²⁷⁾ and for public enforcement of certain planning and water pollution controls.⁽²⁸⁾

In practice, however, public participation in environmental decision-making and enforcement is more a myth than a reality. The procedures which permit it are defective in many respects.⁽²⁹⁾ Public participation is not permitted at all in decision-making on public sector developments and sectoral plans, nor in most of the laws specifically enacted to deal with sewage, air, oil and marine pollution, waste disposal and environmental chemicals.

Even when, theoretically, a citizen is entitled to participate, public authorities fail to encourage and facilitate him. Legislation permitting public access to information is almost invariably interpreted strictly. Access to information is frequently frustrated by bureaucratic rules, delaying tactics and other petty-minded restrictions. Thus, for example, Levigne in her study⁽³⁰⁾ found that none of the 19 planning authorities which she visited had allocated space to the public for the examination of planning files. Of the 31 files which she wished to examine, 18 were completely open for inspection, access was restricted in six cases, in one case 24 hours notice was expected before files could be inspected and in one case she was informed (wrongly) that inspection was not allowed. This writer had similar experiences with Clare County Council and Dundalk Urban District Council.

Added to the practical difficulties which a member of the public can experience in seeking information are the facts that control authorities do not usually make information available to the public on the results of their own surveys and investigations into activities

for which authorisations are sought⁽³¹⁾ and that the information which they require of applicants for various authorisations on the environmental impacts of a proposed development is frequently inadequate. In Levigne's opinion information on planning application files was inadequate to convey the environmental impacts of the proposed developments in 88 per cent of the cases surveyed.⁽³²⁾

Whatever the difficulties the public may experience in obtaining information in order to participate in decision-making on authorisations, the difficulties in obtaining information in order to enforce planning and pollution controls are even greater. There are no provisions in Irish law requiring public disclosure of this information. Planning applications and applications for licences for discharges of effluents to waters together with accompanying information submitted by the applicant must be made available for five years after the final decision on a planning application and until a final decision has been taken on a licence application respectively.⁽³³⁾ These positive duties are regarded by many local authorities as a justification for denial of access to applications after the expiration of the appropriate specified periods. Therefore members of the public may not be able to obtain information vitally necessary for the enforcement of their rights under s.27 of the Local Government (Planning and Development) Act 1976 and s.11 of the Local Government (Water Pollution) Act 1977.

Public enforcement of environmental standards prescribed in permissions and licences is also hampered by the unavailability of, and the denial of access to, monitoring records and other relevant information.⁽³⁴⁾

Another practical deterrent to the public exercise of rights to enforce planning and water pollution controls is the high cost of litigation. The assembly of scientific information can be expensive and the Planning and Water Pollution Acts provide that proceedings taken by individuals may only be brought in the High Court.⁽³⁵⁾

The recognition of planning and pollution control and enforcement

as matters of public concern demands also the recognition of the public's right to all the information possessed by, or available to, public authorities on the environment and the impacts thereon of particular activities as well as the facilitation of the exercise of those rights by reasonable provision for subsidising and/or indemnifying members of the public who enforce environmental controls in the public interest.

12.7 ENFORCEMENT INADEQUATE

The key to the practicality of environmental protection is, as in all branches of law, to be found in the rules which govern powers for the enforcement of environmental controls. In Irish planning and pollution law, enforcement is primarily a matter for the various public authorities charged with different aspects of environmental management though there is a recent and welcome trend towards granting enforcement rights to the private citizen. Nonetheless one of the main problems with planning and pollution control is not so much the lack of legislation but the fact that existing legislation is not properly implemented and enforced by public authorities.

The only empirical study on the enforcement of planning laws showed that many local authorities either neglect to use their powers for proper planning control or that they use them in an improper manner, for example, by attaching ultra vires or unenforceable conditions to planning permissions.⁽³⁶⁾

There are very few prosecutions for breaches of planning and pollution laws. Although it is impossible to obtain information on the number of undetected offences, a certain amount of information is available on the proportion of infractions leading to prosecutions. This indicates that the only Acts which local authorities - or rather some local authorities - have genuinely attempted to implement are the Local Government (Planning and Development Acts 1963-82. An analysis of the instances in which these Acts were judicially enforced shows that they are rarely used to control pollution and that, as a general rule, only breaches which are visually detectable or in respect of which there

is public dissatisfaction are enforced.⁽³⁷⁾ In the period 1978-81 inclusive Dublin Corporation received 237 complaints about noise nuisances. The nuisances were reportedly abated in 24 cases but no prosecutions were taken under s.51 of the Local Government (Planning and Development) Act 1963.⁽³⁸⁾

Implementation and enforcement of pollution control legislation is seriously deficient. Only one prosecution under the Control of Atmospheric Pollution Regulations 1970, has been taken in the years 1972-82 inclusive although there were 1322 established breaches of the regulations in Dublin alone in that period.⁽³⁹⁾ In June 1982 local authorities had a backlog of 705 applications for licences for discharges of effluents under the Local Government (Water Pollution) Act 1977 and no water quality management plan had been made. By the same date 1511 pollution incidents had been investigated under s.3 of the Act but only 31 prosecutions had been taken.⁽⁴⁰⁾ Sixty six cases of "irregular" discharges to sewers were investigated but no prosecution resulted.⁽⁴¹⁾ Over 244 notices were served under s.12 of the Act: no prosecution resulted.⁽⁴²⁾ Many Acts and regulations have never been judicially enforced. Assuming that all breaches of pollution control under the above mentioned legislation were detected and reported, the percentage of cases where prosecutions are taken is about .3. In so far as can be discovered a maximum penalty have never been imposed for a pollution offence and the largest fine for an environmental offence which can be traced is £2000.⁽³⁾ No case has come to this writer's notice where the power to imprison has been exercised.

Planning and pollution control authorities claim that they prefer to operate a system of "negotiated compliance" rather than confrontation. It must be quite difficult to negotiate compliance with an unscrupulous polluter who has at least a 99.7 per cent chance of escaping prosecution.

As a general rule enforcement action taken is stimulated by complaints from the public or persons who are immediately affected by a planning or pollution offence. Since the public in general is not environmentally conscious, nor particularly interested in, or equipped to, detect many breaches of planning and pollution laws, public

complaints tend to be confined to offences which the public can see, hear or smell.

Many reasons have been suggested for the failure to enforce planning and pollution controls. Amongst them are the lack of resources available to control authorities, absence of the political will to prosecute polluters (especially farmers and industrialists providing employment), inadequate knowledge and experience of law enforcement and a general feeling that prosecuting is a waste of resources in view of the lenient penalties which the courts tend to impose for environmental offences.⁽⁴⁴⁾

12.8 INFORMATION AND RESOURCES INSUFFICIENT FOR PROPER ENVIRONMENTAL MANAGEMENT

One of the greatest difficulties experienced by planning and pollution control authorities is the insufficiency of scientific information on existing environmental quality, sources of pollution and the properties of pollutants and their effects on the environment. This insufficiency of information is to some extent the result of the failure by planning and pollution control authorities to implement their environmental management powers properly. Thus, for example, Levigne found that effluent standards had not been prescribed in the planning permissions of nine of the 31 industries surveyed although all nine were discharging effluents.⁽⁴⁵⁾ Only one of the 19 industries required to monitor their effluents was, in her opinion, doing so adequately.⁽⁴⁶⁾ Only six of the 14 industries discharging polluting emissions to the atmosphere were required to monitor emissions.⁽⁴⁷⁾ Ultra vires conditions had been set for ten industries required to meet waste disposal conditions.⁽⁴⁸⁾ At the time the survey was carried out (1980-81) only one of the 19 industries subjected to water pollution control conditions had obtained a licence under the Local Government (Water Pollution) Act 1977.⁽⁴⁹⁾

If control authorities used their existing powers properly a great deal of environmental information would be available at little cost to the taxpayer. It is however unlikely that Irish planning and pollution control authorities will, for the foreseeable future, have the resources to carry out the scientific and other investigations

necessary to independently establish environmental quality everywhere in Ireland. Indeed, it is questionable whether this exercise is necessary at all. Nonetheless two pragmatic and economically realistic proposals would ensure a considerable improvement in the existing situation. (1) All polluters should be required to monitor and to supply the results of monitoring regimes to control authorities and (2) extra resources should be allocated to facilitate the accumulation of data on the state of the environment.

10.9 STRUCTURES OF ENVIRONMENTAL AGENCIES NOT ADJUSTED TO THEIR TASKS

There are far too many agencies, many of which are subject to completing and conflicting interests, concerned with environmental management.⁽⁵⁰⁾ In addition, the jurisdictions of these agencies are not such as to create conditions in which services can be provided in an efficient and economic manner. Thus, for example, the management of water resources is the responsibility of 31 local authorities although river channels are no respecters of local authority boundaries. Urban local authorities can not administer waste disposal controls without the co-operation of adjoining local authorities. Authorities are too small to justify the employment of the various personnel. (legal, administrative, technical and scientific) necessary for the proper implementation of all planning and pollution controls. Local authorities, and particularly those with small jurisdictions, cannot act as neutral guardians of the common good but must accommodate the various conflicting interests of their electorates.

There is a strong case for the regionalisation of environmental management functions. By reducing the political pressures on local authority decision-makers this would result in more independent and neutral decision-making on environmental matters and would secure the more efficient and economic management of environmental resources. It would also reduce competition and conflicts between local authorities.

There is also a case for considering the establishment of a National Environmental Protection Agency independent of the Department of the Environment. This Agency could co-ordinate the activities of regional authorities, resolve conflicts between them and operate as a

prior authorisation authority for activities proposed by State and local authorities. It might also provide facilities and services needed by regional authorities which they could not provide individually and jointly. The nucleus for such an agency already exists in An Foras Forbartha.

FOOTNOTES

1. Bulletin of the European Communities, Supplement 6/76 at p.47.
2. See sections 3.5, 3.7, 3.11, 5.4.3, 5.5, 5.8, 6.4, 6.6.
3. See section 3.6.2.
4. See section 3.6.3.5.
5. See section 3.5.
6. See sections 5.4.2, 6.2.2.
7. See sections 5.4.2, 6.4.
8. See section 5.4.10.
9. See sections 9.2 and 9.3.4.
10. See sections 10.2.4, 4.11, 4.15, 5.5, 5.11.
11. See sections 9.2, 9.3.4.
12. See sections 3.6.2, 5.7.
13. See section 5.4.3.
14. See section 9.2.
15. See section 5.4.11.
16. See Scannell Y., "Agriculture and Environmental Law", Paper at Conference on the Environment, University College, Dublin, 1983.
17. See, for example, sections 19, 77 of the Public (Health) Ireland Act 1878, the Alkali etc Works Regulation Act 1906.
18. See sections 5.2, 5.4, 6.2.
19. See sections 5.1, 5.2, 5.4.2.
20. O.J. No. 1 206/5, 29 July 1978.
21. See Kelly P., "Time to Consider Arterial Drainage", Institute for Fisheries Management, 1980; "Impact of Drainage in Ireland", National Board for Science and Technology, 1981; Kelly P., "Resources down the Drain", Taisce Journal, 1980, Vol. 4 No. 1.
22. See sections 4.6, 4.7.
23. Dublin Corporation Environmental Pollution Reports 1980-81, 1981-82.
24. See section 2.4.3.

25. See section 3.6.3.
26. Gundling L., "Public Participation in Environmental Decision-Making" in Trends in Environmental Policy and Law, 1980, at pp.131-153.
27. See sections 3.1, 3.6.3, 3.6.8, 5.4.5, 5.4.7.
28. See sections 3.6.13, 5.4.11.
29. See sections 3.1.4, 3.6.3, 3.6.8, 3.6.13, 3.10, 5.3.5, 5.4.7, 5.4.11, 5.10.
30. Levigne D., The Enforcement of the Environmental Controls of Industrial Development within the Planning Acts, 1983 at p.17.
31. See sections 3.10, 5.10.
32. Levigne, op.cit., at p.36.
33. Local Government (Planning and Development) Regulations 1977, article 29 as amended by article 9 of the 1982 Regulations; Local Government (Water Pollution) Regulations 1977, article 10.
34. See sections 3.10, 3.11, 5.10, 5.11.
35. Local Government (Planning and Development) Act 1976, s.27; Local Government (Water Pollution) Act 1977, s.11.
36. See sections 3.6.5, 3.10, 3.11, 5.10, 5.11, 5.12, 9.5.
37. See section 3.11.
38. See section 10.8.
39. See section 4.4.4.
40. See section 5.4.2.
41. Information from Department of the Environment.
42. See section 5.4.11.
43. Galway County Council v. Connacht Proteins Ltd., High Court, unreported 28 March 1980.
44. See Levigne, op.cit., at pp.75-77.
45. Ibid., at p.23.
46. Ibid., at p.26.
47. Ibid., at p.31.
48. Ibid., at p.32.

49. Ibid., at p.30.

50. See section 2.

APPENDIX IQuestionnaire Circulated to all Planning Authorities

1. For what period
at what times
and at what place/s
were citizens invited to inspect the last draft development plan?
2. How many people actually inspected the plan?
3. How many ratepayers asked for an opportunity to be heard before a person appointed by the planning authority?
How many availed of the opportunity?
4. Can you classify the objections made into categories e.g. what percentage related to:
 - (a) Roads and traffic issues
 - (b) Amenities
 - (c) Conservation areas
 - (d) Zoning
 - (e) Obsolete areas
 - (f) Pollution
 - (g) Community planning
 - (h) Structures

If you have not got percentages, please indicate impressions of which of these or other issues generated the most public interest by numbering them in order of priority.

5. Were there any appeals to the Circuit Court under S. 21(3) of the Local Government (Planning and Development) Act, 1963?
How many?
6. What charges are made for copies of the plan or parts thereof?

How many people applied for copies of the plan or parts thereof?

7. What resources were needed by the planning authority in order to facilitate public participation in the making of the plan (variation thereto) amendment?

Personnel engaged -

Costs incurred e.g. in

- (a) Renting premises
- (b) Diverting personnel from routine work
- (c) Travelling expenses
- (d) Providing literature film shows, etc.
- (e) Public hearings
- (f) Engaging additional staff etc.
- (g) Other matters (specify)

8. What types of people participated?

Conservation groups	Yes	No	Mostly
Individuals from particular areas e.g. areas on main roads	Yes	No	Mostly
amenity areas	Yes	No	Mostly
Cranks	Yes	No	Mostly

9. Was public participation -

- (a) Very good (meaning that a lot of people participated!)
- (b) Good
- (c) Fair
- (d) Bad

10. Was public participation

- (a) Very constructive Yes No Mostly Sometimes
- (b) Constructive

(c) Limited to destructive criticism

(d) Concerned with property values

11. Was the draft changed as a result of public participation?

(a) In many respects

(b) In a few respects

(c) In no respect

12. With respect to what matters was the draft changed -

(a) Roads re-routed

(b) Amenity areas restricted/enlarged/changed

(c) Zoning changed

(d) Other matters changed (specify if possible)

13. Did you take any particular measures other than those prescribed by the Act to encourage public participation?

Yes No

If yes - what measures?

14. Did local or national newspapers take Local National

(a) a great interest

(b) some interest

(c) little interest

(d) no interest

in the draft plans?

15. Which of the prescribed bodies took the most interest in the drafts?

16. Indicate the amount of interest participation by the following:

The Arts Council	None	A Lot	Some
Bord Failte	"	"	"

An Taisce	None	A Lot	Some
National Monuments Advisory Council	"	"	"
The Minister for Industry and Commerce	"	"	"
The Minister for Defence	"	"	"

17. How many planning applications are made to you in any one year?

How many were appealed?

How many appeals upheld your initial decisions?

18. What percentage of appeals are lodged by third parties?

19. In your experience, are third party appeals mostly, usually or seldom genuine?

Are they usually lodged by

(a) A person whose property values or enjoyment of land will be affected?

If yes - what percentage of appeals (roughly) come under this head? or

(b) by persons genuinely interested in protecting the environment. Give percentage (roughly).

20. How many High Court proceedings have been taken under S. 27 of the 1976 Act in respect of development in your area?

Have any been taken to quash any of your decisions?

21. Would you favour more or less public participation.

More

Less

More if finance provided

More if it were more constructive

22. Has the Minister for the Environment required that you plan be co-ordinated with that of another planning authority?

If so in respect of what matters?

23. Has the Minister ever requested that your plan be varied?

If yes, in what respect?

APPENDIX II

AMOUNTS OF DREDGE SPOILS DUMPED IN 1979 (IN TONS) IN OSLO CONVENTION AREA

Country	Total Amount	Hg (Mercury)	Cd (Cadmium)	Organo-halogens	Cu (Copper)	Pb (Lead)	Zn (Zinc)	Other metals and metalloids
Belgium	30 483 640	6,9	?	1,0	417,3	1 072,2	5 543,8	1 754,2
Denmark	230 000	0,002	0,067	?	0,492	0,853	1,843	0,830
France	1 432 330	0,8	0,08	?	5,8	1,8	12	71,8
Ireland	65 000	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
Netherlands	17 526 600 (1)	13,8	34,2	63,8	416,3	737,5	2 757,5	32 126,6
United-Kingdom	12 124 375	13,6	9,1	0	499,4	935,7	2 082,3	988,4
TOTAL	61 861 945	35,102	43,447	64,8	1 339,292	2 748,053	10 397,443	34 941,830

(1) Scotland, Northern Ireland and the Netherlands have given the amounts in M³.
 Supposed density: 1,3

AMOUNTS OF INDUSTRIAL WASTES DUMPED IN 1979 (TONS) IN THE OSLO CONVENTION AREA

Country	Total Amount	Hg (Mercury)	Cd (Cadmium)	Organo-halogens	Cu (Copper)	Pb (Lead)	Zn (Zinc)	Other metals and metalloids
Belgium	702 054	0	0	0	0	0	0	170 72
Denmark	142 500	0	0	0	0	0	0	0
France	1 662 689	0,166	5,237	0	7,648	6,983	22, 446	731,986
F.R.G.	740 330	not discernible	not discernible	not discernible	0,9	1,2	23, 4	42 227,4
Ireland	1 089 176	0	0	0	0	0	486, 72	0
Netherlands	1 670 946	0,1	0,2	12,5	2,8	6,7	38	1 247,3
Spain	454 444	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable	unavailable
United Kingdom	2 885 692	0,3	0,1	0	237,6	254,0	510, 3	131,1
TOTAL	9 347 832	0, 566	5,537	12,5	248,948	268,853	1080, 966	61 409,786

AMOUNTS OF SEWAGE SLUDGE DUMPED IN 1979 (IN TONS) (Ø MEAN VALUE) IN THE OSLO CONVENTION AREA

Country	Total Amount	Hg (Mercury)	Cd (Cadmium)	Organo-halogens	Cu (Copper)	Pb (Lead)	Zn (Zinc)	Other metals and metalloids
F.R.G.	235 620	Ø 0,136	Ø 0,433	Ø 0,795	Ø 17,6	Ø 10,2	Ø 46,5	226,38(1)
Ireland	94 390	unavailable	0,031	unavailable	1,650	3,066	9,803	
United-Kingdom	8 468 875 (2)	2,76	8,57	0,301	236,57	197,55	939,55	240,80
TOTAL	8 798 885	2,896	9,034	1,096	255,82	210,816	995,853	467,18

- (1) This sludge contained as well a mean amount of 40,1 kg of flourides (a compound of annex II)
- (2) Northern Ireland is given in m³. Supposed density: 1,0

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