



A Review of the Environmental Protection Agency

Presented to the Minister for the Environment,
Community and Local Government by

The Environmental Protection Agency Review Group

May 2011

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	5
TABLE OF FIGURES.....	6
TABLE OF ABBREVIATIONS.....	7
EXECUTIVE SUMMARY	9
I. GENERAL STAKEHOLDER VIEW OF THE EPA	9
II. SAFEGUARDING ACHIEVEMENTS	9
III. THE CRUCIAL ROLE OF ENFORCEMENT	10
IV. THE ADVISORY COMMITTEE.....	10
V. STATUTORY IMMUNITY.....	11
VI. OMBUDSMAN OVERSIGHT	11
VII. HUMAN HEALTH IMPACTS.....	11
VIII. NEW POLICIES ASSESSMENT.....	12
IX. THE LEGISLATION	12
X. ENVIRONMENTAL GOVERNANCE	12
CHAPTER 1 - INTRODUCTION.....	14
1.1 BACKGROUND	14
1.2 TERMS OF REFERENCE.....	14
1.3 COMPOSITION OF THE REVIEW GROUP	15
1.4 CONTEXT	16
1.5 APPROACH TO CARRYING OUT THE REVIEW.....	24
CHAPTER 2 - GOVERNANCE, INTERNAL STRUCTURE AND RESOURCES.....	26
2.1 GOVERNANCE PRINCIPLES	27
2.2 KEY GOVERNANCE RELATED ISSUES.....	29
2.3 EPA GOVERNANCE STRUCTURES.....	31
2.4 ADVISORY COMMITTEES	33
2.5 EPA STRUCTURE	34
2.6 EPA RESOURCES.....	35
CHAPTER 3 - LICENSING, ASSESSMENT AND MONITORING	38
3.1 LICENSING OVERVIEW.....	38
3.2 LICENSING PERFORMANCE AND ENFORCEMENT	39
3.3 INTEGRATED POLLUTION PREVENTION AND CONTROL LICENSING.....	41
3.4 WASTE LICENSING	43
3.5 PUBLIC PARTICIPATION.....	44
3.6 ENVIRONMENTAL IMPACT ASSESSMENT AND STRATEGIC ENVIRONMENTAL ASSESSMENT	44
3.7 MONITORING ISSUES.....	45
3.8 AIR QUALITY MONITORING	46
3.9 WATER QUALITY MONITORING	47
3.10 LABORATORIES.....	48
3.11 BIODIVERSITY MONITORING	48
CHAPTER 4 - ENVIRONMENTAL RESEARCH AND INFORMATION	49
4.1 REPORTING ON THE STATE OF THE IRISH ENVIRONMENT	50
4.2 PROVIDING STRATEGIC GUIDANCE AND FUNDING FOR RESEARCH AND DEVELOPMENT	51
4.3 CLIMATE CHANGE RESEARCH	53
4.4 DISSEMINATING INFORMATION ON THE ENVIRONMENT	54
CHAPTER 5 – RELATIONSHIPS WITH STAKEHOLDERS.....	57
5.1 RELATIONSHIP WITH CENTRAL GOVERNMENT.....	58
5.2 RELATIONSHIPS BETWEEN THE EPA AND STATE AGENCIES	59

5.3	REGIONAL AND LOCAL GOVERNMENT	61
5.4	ENTERPRISES SUBJECT TO EPA LICENSING	64
5.5	ENVIRONMENTAL NGOS	64
5.6	INDIVIDUALS AND LOCAL INTEREST GROUPS.....	65
5.7	INTERNATIONAL RELATIONSHIPS	66
CHAPTER 6 – LEGISLATIVE FRAMEWORK.....		67
6.1	COHERENCE, QUALITY AND ACCESSIBILITY OF LEGISLATIVE FRAMEWORK.....	67
6.2	FUNCTIONS OF THE EPA.....	67
6.3	IMMUNITY FROM SUIT.....	68
6.4	OVERSIGHT BY OMBUDSMAN	68
6.5	INDEPENDENT ADMINISTRATIVE APPEAL	70
6.6	JUDICIAL REVIEW.....	71
6.7	INTER-RELATIONSHIP BETWEEN PLANNING AND POLLUTION CONTROL	73
6.8	PROTECTION FOR WHISTLEBLOWERS	74
6.9	PERSONAL LIABILITY OF DIRECTORS FOR ENVIRONMENTAL CLEAN-UP COSTS	75
6.10	CONTAMINATED LAND.....	76
6.11	LICENCE REVIEW	76
6.12	AIR POLLUTION APPEALS	77
CHAPTER 7 - RECOMMENDATIONS.....		78
7.1	INTRODUCTION	78
7.2	GOVERNANCE, INTERNAL STRUCTURE AND RESOURCES	79
7.3	LICENSING, ASSESSMENT AND MONITORING	80
7.4	ENVIRONMENTAL RESEARCH AND INFORMATION	81
7.5	RELATIONSHIPS WITH STAKEHOLDERS	82
7.6	LEGISLATIVE FRAMEWORK	83
BIBLIOGRAPHY		85
TABLE OF LEGISLATION		89
TABLE OF CASES		92
APPENDICES		93
APPENDIX ONE: LIST OF STAKEHOLDER MEETINGS.....		93
APPENDIX TWO: LIST OF SUBMISSIONS RECEIVED DURING PUBLIC CONSULTATION.....		95

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Table of Figures

FIGURE 1: Cumulative total of legislation assigning functions to the EPA 1992 to 2010.....	17
FIGURE 2: Air quality index for the Netherlands at 14 April 2011.....	62

Table of Abbreviations

AER.....	Annual Environmental Report
C&AG.....	Comptroller and Auditor General
CAFÉ.....	Clean Air for Europe (Directive)
CCMA.....	City and County Managers Association
DAFF.....	Department of Agriculture, Fisheries and Food
DECLG.....	Department of Environment, Community and Local Government
EDEN.....	Environmental Data Exchange Network
EEA.....	European Environment Agency
EIA.....	Environmental Impact Assessment
EIS.....	Environmental Impact Statement
ELV.....	Emission Limit Value
ENGO.....	Environmental Non-Governmental Organisation
EPA.....	Environmental Protection Agency
ERTDI.....	Environmental Research, Technological Development and Innovation
ETS.....	Emissions Trading Scheme
EU.....	European Union
GHG.....	Greenhouse Gas
GIS.....	Geographic Information System
HIA.....	Health Impact Assessment
HSE.....	Health Service Executive
IBEC.....	Irish Business and Employers Confederation
IFI.....	Inland Fisheries Ireland
IPC.....	Integrated Pollution Control
IPPC.....	Integrated Pollution Prevention and Control
MoU.....	Memorandum of Understanding
NESC.....	National Economic and Social Council
NGO.....	Non-Governmental Organisation
NHA.....	Natural Heritage Area
NPWS.....	National Parks and Wildlife Service
OCCS.....	Office of Communications and Corporate Services (EPA)
OCLR.....	Office of Climate, Licensing and Resource Use (EPA)
OEA.....	Office of Environmental Assessment (EPA)
OECD.....	Organisation for Economic Cooperation and Development
OEE.....	Office of Environmental Enforcement (EPA)

OPW..... Office of Public Works
PRTR..... Pollutant Release and Transfer Register
SAC..... Special Area of Conservation
SEA..... Strategic Environmental Assessment
SEAI..... Sustainable Energy Authority of Ireland
SiPOC..... Standards in Public Office Commission
SME..... Small and Medium sized Enterprise
STRIVE..... Science, Technology, Research and Innovation for the Environment

Executive Summary

I. General stakeholder view of the EPA

In reviewing the submissions it received, numerous papers presented to it by the EPA and other parties, and further input received during meetings with key stakeholders, it quickly became apparent to the Review Group that the achievements of the Agency since its foundation are widely recognised. The Agency has grown and matured, providing considerable benefit for Ireland's environment, and for the health and well-being of its people.

That is not to say that the EPA does not have its critics. Numerous comments that were submitted included reservations that form the evidential basis for many of the Review Group's recommendations, though a number of those most forcefully expressed referred to specific issues, or individual cases, and were beyond the Review Group's remit.

The 58 recommendations in Chapter 7 (Recommendations) are not intended to detract from the widespread respect and regard for the Agency's work, and its staff; they reflect the added significance that has been progressively attached to environmental matters since the Agency's foundation, the complexity of the issues that arise, and the fact that no such review has been undertaken previously.

II. Safeguarding achievements

Throughout its work, the Review Group was mindful of the current economic pressures. In a period of austerity it will not be easy to maintain the current impact of the EPA in protecting Ireland's environment; or to achieve increased effectiveness. However, whether in its role of licensing, monitoring and enforcing or of researching, informing and improving our understanding, cutting back on the EPA's resources would be false economy – the longer term consequences, impacts on human health and well-being, wider impacts on biodiversity, our obligations under European Union (EU) law – all of these and more, will simply not permit it.

The EPA is already in danger of becoming under-resourced as a result of natural wastage and the standstill on public sector recruitment, and staffing levels are in urgent need of review to ensure existing legislative requirements continue to be met.

Natural synergies that exist between the EPA and other public bodies need to be explored to eliminate duplications and maximise efficiency through consolidation of roles. Care must be taken, however, not to diminish the effectiveness of environmental monitoring and reporting which are the bedrock of environmental protection, as there is a continuing need for better quality environmental data and greater access to it. It is vital that the EPA is adequately resourced and that its funding base, including access to the Environment Fund for important activities such as environmental research, is maintained at a level adequate to meet its obligations.

III. The crucial role of enforcement

Demonstrable improvements in respect for the environment and the standards of operations of relevant facilities have resulted from the introduction of the EPA's licensing regimes. It is essential that the legislative and other tools necessary to support rigorous enforcement of environmental licences are available to the Agency. A particular issue which arises is the need to ensure that there is legal certainty as regards environmental liabilities following insolvency and that appropriate mechanisms are put in place to ensure that funds are available for remediation where necessary, including through strong enforcement by the EPA of licence conditions relating to financial provision for the continuing aftercare of facilities. A review of the relationship between insolvency and environmental law would be a key element in this process. In addition, further precautionary support for the enforcement effort, in responding to concerns about licence non-compliance, could be provided by the introduction of a generic law protecting whistleblowers (already promised in the Programme for Government (2011)).

IV. The Advisory Committee

The Review Group gave careful consideration to various comments and proposals regarding the EPA's own governance and related issues, but concluded that the current structure is broadly fit for purpose. Amplifying the present EPA board through the introduction of Non-executive Directors (proposed in a number of submissions) would not provide any significant benefit either for governance or environmental protection, and the introduction of an independent external appeals procedure to deal with objections to proposed licences would, in practice, require the establishment of a substantial parallel body of expertise at significant cost though for little likely benefit.

There is, however, scope for improvement in arrangements concerning the Advisory Committee, whose remit should be updated, with a revised membership, drawing

significantly on people with appropriate environmental expertise, and with an external Chairperson.

V. Statutory immunity

The EPA's current blanket statutory immunity when carrying out its functions is difficult to justify in a modern context and should be revised.

VI. Ombudsman Oversight

The Programme for Government (2011) recommends the extension of the remit of the Ombudsman to all statutory bodies. Given its quasi-judicial role in respect of licensing and the technical environmental expertise required, it would not be appropriate for the substance of decisions taken by the EPA to be subject to such review. It would, however, be appropriate for the EPA to be brought under the remit of the Ombudsman in respect of any alleged maladministration.

The combination of a strengthened Advisory Committee, revision of the blanket statutory immunity and the extension of the Ombudsman's powers to cover any alleged maladministration should together meet the concerns expressed by critics of the present EPA governance structure, without introducing unduly costly duplication of effort.

VII. Human health impacts

Of all the concerns about environmental matters, it is the potential for impacts on human health that gives rise to most anxiety. The EPA uses a standards based approach in assessing the potential health impacts of proposed activities, in its monitoring of industrial licensee's performance, waste disposal and water quality. Many other countries now use a risk based approach building on formal health impact assessments (HIA), which combine quantitative risk estimates and more qualitative outcomes from community and stakeholder engagement and the Review Group considers that there is a strong case for HIA, where appropriate, to become a formal requirement of the licensing process carried out by the EPA.

For support in assessing the health impacts of licence applications or when other advice and guidance in health matters is needed, the EPA is currently dependent on support from a few qualified professional staff of the Health Service Executive (HSE). This system needs to be made more robust if it is to match best practice elsewhere and its importance should be reflected in the level of resources available. The new statutory Advisory Committee on the

interface between the environment and human health, recommended by the Review Group, should examine the overall issue of human health protection in environmental decision-making and ought to, as a priority, give urgent attention to the further consideration of issues associated with the introduction of HIA.

VIII. New policies assessment

Some progress has been made in the development and application of Environmental Impact Assessment (EIA) techniques (these are intended to identify foreseeable consequences of licensing decisions, before they are authorised, and allow for optimum mitigation of undesirable outcomes and enhancement of desirable ones), though we do still lag some way behind best practice elsewhere.

Of greater concern to the Review Group was the equivalent process for evaluating the consequences of future plans and programmes of public bodies, known as Strategic Environmental Assessment (SEA). Government Departments must ensure that there is sufficient clarity and rigour in the application of SEA to avoid the introduction of major policy initiatives without sufficient consideration of long-term environmental consequences. While it is clear that each public body must be responsible for meeting obligations under the SEA legislation at the appropriate time in its policy development process, consideration should be given to the EPA assuming a wider statutory role to independently support, monitor and critique the SEA process, from a sound scientific viewpoint.

IX. The legislation

Statutes governing the protection of the environment, waste management and water quality, together with the establishment of the EPA itself, and associated licensing regulations, have been amended numerous times, resulting in a piecemeal and complex web of instruments. The time is now ripe to consolidate the existing environmental legislation and provide for periodic reviews.

X. Environmental governance

However competent, energetic and able, the EPA does not act in isolation; it is crucially dependent on close working relations with other Government Departments and local authorities (indeed virtually every Department and arm of Government) for information, and for collaboration in achieving its goals. By and large these relationships are in good working order, with many of them governed by detailed Memoranda of Understanding, though they do need reinforcing in places.

Notwithstanding its title, the EPA is not the sole organisation responsible for the protection of the environment in Ireland. Transposition of EU Directives on environmental matters lies largely in the hands of Government Departments. Submissions that drew attention to previous failures by Ireland to meet obligations under various EU Directives were mostly referring, in truth, to failures attributable to entities other than the EPA.

Effective environmental governance, and meeting our EU obligations, is therefore critically dependent on active ongoing support right across Government for implementing policies in an environmentally responsible manner. In view of the highly inter-connected nature of the issues and the prominence of matters such as climate change, the preservation of biodiversity and sustainability, it is clear that better and authoritative means must be found to coordinate all the relevant aspects of Government actions. This is beyond the competence of the EPA alone and it is appropriate, therefore, to establish a high level Environmental Governance Network for this purpose.

Chapter 1 - Introduction

1.1 Background

It is some 18 years since the EPA was established in 1993, following on from the enactment of comprehensive underpinning legislation the previous year¹. The EPA's remit and functions have evolved considerably over the intervening period, in parallel with the modernisation of the Irish environmental regulatory regime across a range of sectors and reflecting also the evolution of the environmental agenda at national, EU and wider international levels.

Against that background and given the importance of good environmental governance in terms of sustainable development, the Minister for the Environment, Heritage and Local Government, in February 2010, established this Group to review the EPA's scope, mandate, structures and performance, having regard to the central role played by the Agency in monitoring, maintaining and improving Ireland's environmental performance.

1.2 Terms of Reference

The specific Terms of Reference given to the Group were as follows:

- i. To review the legislation governing the EPA, including the licensing functions and the processes in place to ensure public participation and the various remedies and sanctions available to the EPA for enforcement provided in the Acts, and to identify any necessary improvements in the legislation;
- ii. To assess the performance of the EPA against the mandate which it was given when it was originally established in 1993, in relation to the expanding goals which have been set for it in the past decade and in comparison with best practice elsewhere, and to identify any necessary improvements in the EPA's procedures and approaches;
- iii. To assess the scope of the EPA's mandate and whether it could be strengthened to include other areas;
- iv. To review the resources allocated to the EPA in relation to current obligations and further functions that may arise, on foot of EU legislation;

¹ Environmental Protection Agency Act 1992

v. To assess the structures and governance of the EPA including the operation of Advisory Committees and whether Non-executive Directors should be provided for; and

vi. To re-assess the ongoing relationship between the EPA and other parts of the environmental governance structure in Ireland, having regard to the environmental challenges facing Ireland and developments in society.

1.3 Composition of the Review Group

The Review Group was not designed to be directly representative of the range of constituencies with which the EPA engages; rather the aim was to bring together a broadly based spectrum of expertise relevant to the work of the EPA, including academic experts from a wide range of environmental areas (environmental law, water quality, biodiversity, human health), as well as persons with relevant experience and expertise in the industrial and agricultural sectors, the Non-Governmental sector and the public sector at both Government Department and agency levels. The membership of the Group was as follows:

Name	Background
Mr. John McCarthy (Chair)	Assistant Secretary, Department of the Environment, Community and Local Government
Mr. Dick Budden	Director (Ireland), Carbon Disclosure Project
Dr. Kenneth Irvine	School of Natural Science, Zoology Department, Trinity College Dublin
Mr. Fred Langeweg	Former Deputy Director, Netherlands Environmental Assessment Agency
Mr. Richard Moeran	Farmer and Forester
Mr. Jack O'Sullivan	Director, Environmental Management Services
Dr. Áine Ryall	Law Faculty, University College Cork
Prof. Anthony Staines	School of Nursing, Dublin City University
Mr. Larry Stapleton	Former Director, Environmental Protection Agency

1.4 Context

1.4.1 The focus of the review

The establishment of the EPA in 1993 reflected a recognition of the significant challenges for Ireland in ensuring a robust environmental protection regime. Shortcomings in Irish environmental governance were clear – there were problems of water and air pollution in the early years of the EPA’s existence and breaches of a range of EU environmental legislation were a significant problem. This presented many challenges for the Agency and its performance in responding to those challenges in the early years was the subject of criticism by some stakeholders. However, taking account of the steps taken by the Agency to address many issues and complaints, the Group has not conducted, nor would it have been appropriate (or indeed possible) to conduct, a detailed historical review of individual issues which have arisen over the course of the Agency’s 18 years of operations. While the Group has, of course, had regard to relevant historical issues cited by way of examples or supporting information in the course of its work, the focus was more contemporary - looking at the Agency as it now stands, the context in which it operates and the key environmental challenges arising - and was also forward-looking - in terms of considering how the context and challenges are likely to evolve in the years ahead and how best to position the Agency to respond.

1.4.2 The EPA’s legislative base

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

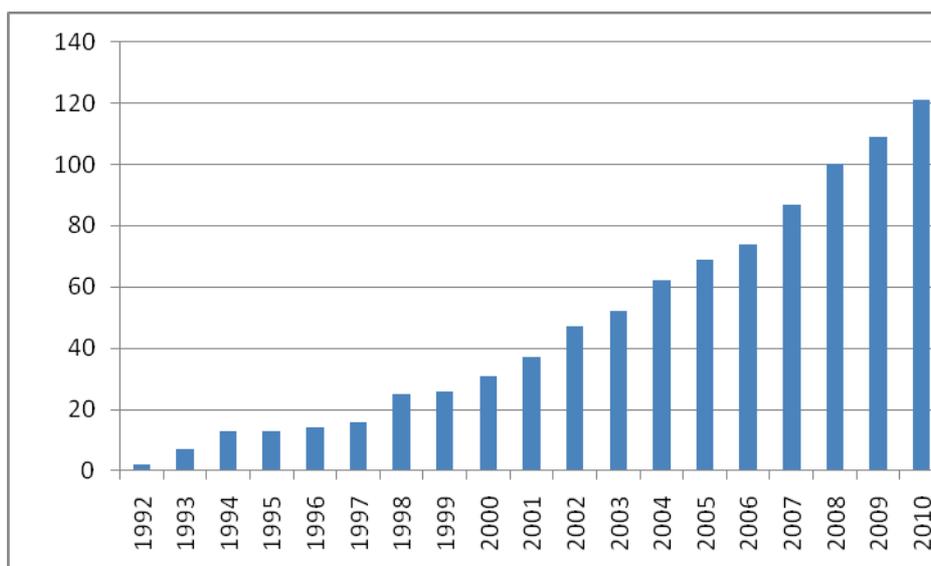


Figure 1: Cumulative total of legislation assigning functions to the EPA 1992 to 2010
(Number of Acts and Statutory Instruments)

In carrying out its work, the Group was particularly mindful of the importance of the legislative base underpinning the EPA. Strong and persistent concerns have been expressed about the standard of legislative drafting in the environmental field generally, particularly in the case of secondary legislation (statutory instruments), as poor quality legislation can be a major impediment to effective implementation and enforcement. It is essential that individuals preparing secondary legislation have the necessary skills and legal expertise to perform this specialised task and resources should be made available to achieve this goal. As the platform from which it derives its functional remit and its powers to act, the Agency's legislative base is of critical importance to its overall performance and is the subject of specific examination by the Group in Chapter 6 (Legislative Framework) of this report.

1.4.3 The EPA's mission, governance and structure

The EPA's mission (EPA 2011)² is to protect and improve the natural environment for present and future generations, taking into account the environmental, social and economic principles of sustainable development. It has a wide range of functions to protect the environment (EPA 2011)³, and its primary responsibilities encompass:

- Environmental licensing
- Enforcement of environmental law

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

³ Text available at <http://www.epa.ie/about/roles/>

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

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

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

There are 321 full-time staff equivalents currently employed in the EPA and it has an annual budget of approximately €60 million for 2011. Issues in relation to corporate governance and structures are addressed in Chapter 2 (Governance, Internal Structure and Resources) of this report.

1.4.4 The environmental challenges

The EPA's 2008 State of the Environment Report (EPA 2008b) and the Organisation for Economic Cooperation and Development's (OECD) Environmental Performance Review of Ireland (OECD 2010), taken together, set out clearly the short to medium term environmental priorities for Ireland, in response to which the EPA will have to play a central role. The State of the Environment Report categorises the key environmental challenges under four broad headings, as:

- Limiting and adapting to climate change;
- Reversing environmental degradation (water pollution, habitats and species, contaminated land);
- Complying with environmental legislation and agreements (culture of compliance, enforcement, meeting obligations); and
- Mainstreaming environmental considerations (incorporation into policies and plans, environmentally responsible business, changing behaviour).

More recently, the OECD Environmental Performance Review of Ireland, completed in 2010, summarises the key environmental challenges for Ireland as follows:

- Maintaining the commitment to meet the objectives of environmental policies and programmes, notwithstanding the difficult economic context, by increasing the cost-effectiveness of such policies and providing adequate funding for environmental infrastructure;
- Integrating environmental concerns in economic decisions and phasing out environmentally harmful subsidies;
- Improving and advancing harmonisation of environmental legislation with EU Directives, promoting implementation and considering how best to consolidate environmental regulations into a coherent framework to clarify requirements and promote better compliance;
- Examining the environmental responsibilities of different administrative levels to identify opportunities for better co-ordination, economies of scale and improved policy development and implementation;
- Mitigating greenhouse gas emissions, incentivising more efficient use of water; and
- Ratifying the Aarhus Convention⁴.

The succinct summaries above disguise the scale of the challenges involved and the complexity of the responses required. While individual elements of the responses will be distributed across a range of public sector players, and indeed across many sectors of society, the central role to be played by the Agency, both directly and indirectly, is clear (Relationships with Stakeholders are examined in Chapter 5). The Review Group recognises that there are likely to be increased responsibilities for the EPA in a number of areas in the future, such as air quality, water monitoring, climate change issues and industrial emissions. Effective research, which supports the policy development agenda, will also play an important role in meeting these challenges and this is discussed in more detail in Chapter 4 (Environmental Research and Information).

1.4.5 The economic context

An obvious reality that the Group took into account as it progressed its work was the radically changed economic environment and the much more constrained financial and staffing resource context within which all public bodies, including the EPA, have to operate into the future, as discussed in Chapter 2 (Governance, Internal Structure and Resources).

⁴ United Nations Economic Commission for Europe, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) – text available at <http://www.unece.org/env/pp>

The application of the Employment Control Framework arrangements, the need to deliver efficiencies under the Public Service Agreement 2010-2014 (Croke Park Agreement⁵) and the pressures on financial resources generally all provided important contextual checks for the Group's deliberations. This report is cognisant of that context but also recognises that adequate resources must be provided to the Agency in order to fulfil a growing list of requirements and responsibilities.

As the volume of legislation has increased, so too has the pressure on the Agency, particularly in relation to its enforcement role. This led to the establishment in 2003 of a dedicated Office of Environmental Enforcement, which has a vital role not just in relation to direct enforcement action by the Agency, but in supporting other enforcement authorities in the effective discharge of their functions. This is an example of the type of co-ordinated, streamlined arrangements that can yield efficiencies which are so crucial in times of scarce resources and which may have more general application in the assumption and discharge by the Agency of additional responsibilities in the future and in responding to some of the recommendations in this report.

1.4.6 Wider environmental governance

While the review was focused on the EPA, including its relationships with the other elements of the wider environmental governance landscape, the Review Group's mandate did not extend to carrying out a review of that broader governance landscape itself or of environment policy generally. Nevertheless, in the course of the Review Group's work, particularly in submissions received and in the course of consultations carried out, issues of wider overall environmental governance in Ireland were raised. It was abundantly clear that fragmentation in the governance arrangements within and among the various tiers of Government was militating against the achievement of the most effective and efficient outcomes; others questioned whether the overall package of institutional arrangements are fit for purpose in terms of ensuring that environmental considerations are fully integrated into the decision-making processes of all public bodies in Ireland.

Some of the concerns raised during the review process, although presented in the context of assessing the performance of the EPA, were in reality more reflective of issues or concerns with matters outside the Agency's remit, falling within the wider environmental governance landscape. The Group therefore exercised particular care in carrying out its work to ensure

⁵ Text available at http://www.onegov.ie/eng/Publications/Public_Service_Agreement_2010_-_20141.pdf

that its assessment of EPA performance was based on considering matters for which the Agency is, in fact, responsible. At the same time, the Group recommends that consideration be given to carrying out a wider review of environmental governance in Ireland so that issues of suggested fragmentation in structures and processes can be examined more fully. This exercise, which should take account of other review / reform programmes of relevance, including in relation to local government⁶, could be particularly useful in supporting the effort to address infringements of EU environmental legislation where, although significant improvements have been achieved in recent years, considerable further work remains to be done, work which must continue to be accorded the highest possible priority.

In the specific context of enforcement, notwithstanding the creation of the Office of Environmental Enforcement, the Review Group was alerted to a range of general issues during the consultation process and in particular:

- the number of public authorities involved in environmental enforcement;
- the lack of consistency in the various pieces of legislation dealing with enforcement matters (for example, appointment of authorised persons, powers of entry and powers to require information);
- the significant amount of time and resources required to be invested by a public authority to bring an alleged breach of environmental law before the Courts; and
- the relatively low fines imposed by the Courts for environmental offences in certain cases.

More specifically, the Group noted the very substantial gap between the penalties available at District Court level and those available in the Circuit Court and the High Court. These important practical issues are relevant not only to EPA enforcement activity, but also that of other environmental regulators, including local authorities, Government Departments, the National Parks and Wildlife Service (NPWS) and Inland Fisheries Ireland. The Review Group concluded that these general issues around enforcement should be examined as part of a wider review of environmental governance as they have resonance beyond the EPA. Submissions to the Review Group also indicated the desirability of more formal co-operation arrangements between the EPA, local authorities, An Garda Síochána and the Office of the Director of Public Prosecutions, as discussed in Chapter 3 (Licensing, Assessment and Monitoring). A potential way forward in this context is the adoption of Memoranda of

⁶ The Report of the Local Government Efficiency Review Group, which reviewed the cost base, expenditure and numbers employed in local authorities, was published in July 2010 and is available at - <http://www.environ.ie/en/LocalGovernment/LocalGovernmentEfficiencyReviewGroup/PublicationsDocuments/FileDownload,23533,en.pdf>.

Understanding (MoU) to affirm and clarify operational relationships among the various agencies involved in enforcement. All MoU developed in the future, and any others currently in existence between the EPA and other public authorities, should be made available on the EPA's website in the interest of transparency.

The Review Group also concluded that the proposed wider review of environmental governance would be the most appropriate context in which to consider whether a specialist Environment Court/Tribunal and/or a system of administrative sanctions⁷ should be put in place, and if so, what form such mechanisms and measures might take. This is particularly relevant in relation to the Aarhus Convention, which guarantees access to information, public participation in decision-making and access to justice in environmental matters.⁸ The Review Group noted that Ireland is now the only EU Member State not to have ratified this Convention; the Group strongly recommends that immediate steps are taken to rectify this situation in the interest of promoting effective environmental governance, compliance and enforcement, and welcomes the commitment to ratification of the Convention set out in the Programme for Government (2011).

The Review Group noted with interest that a system of environmental civil sanctions has been introduced recently in England and Wales.⁹ These sanctions are now available to the Environment Agency and Natural England for some of the activities that they regulate and include: compliance notices; restoration notices; enforcement undertakings; fixed and variable monetary penalties; third party undertakings and stop notices.¹⁰ One of the main rationales behind a civil sanctions regime is to ensure that regulators have a more flexible range of enforcement options at their disposal so as to enable them to match the sanction more appropriately to the gravity of a particular breach of the law.¹¹ It is notable that submissions to the Review Group expressed very mixed views as to the desirability of

⁷ Lynott and Cullinane have provided a useful definition of 'administrative sanctions' as follows: 'Administrative sanctions are broadly understood as being sanctions imposed by the regulator without intervention by a court or tribunal.' See Lynott, J.D. and Cullinane, R. (2010), 'Administrative Sanctions' 17 *Irish Planning and Environmental Law Journal* 12.

⁸ <http://www.unece.org/env/pp/>

⁹ The enabling powers to introduce civil sanctions are set down in the Regulatory Enforcement and Sanctions Act 2008. See generally, Department for Business Enterprise and Regulatory Reform, *Regulatory Enforcement and Sanctions Act 2008: Guidance to the Act (2008)* – text available at <http://www.bis.gov.uk/files/file47135.pdf>

¹⁰ Environmental Civil Sanctions (England) Order 2010 (SI 2010 No 1157); Environmental Sanctions (Miscellaneous Amendments) (England) Regulations 2010 (SI 2010 No 1159); Environmental Civil Sanctions (Wales) Order 2010 (SI 2010 No 1821) and Environmental Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010 (SI 2010 No 1820). See generally Environment Agency, *Enforcement and Sanctions – Guidance*, (Issued 4 January 2011) text available at <http://publications.environment-agency.gov.uk/pdf/GEHO0910BSZL-E-E.pdf>. For a brief summary see <http://www.environment-agency.gov.uk/business/regulation/116844.aspx>

¹¹ For a detailed analysis of the underlying principles for regulatory sanctions see Macrory, R., *Regulatory Justice: Making Sanctions Effective* (Final Report, November 2006) Chapter 2 – text available at: <http://www.bis.gov.uk/files/file44593.pdf>. See also Macrory, R., 'Presentation to the Environmental Protection Agency Review Group', 19 November 2010.

administrative sanctions in Ireland. Moreover, a major issue that would need to be considered if such sanctions were to be introduced in Ireland is the necessity of an effective regulatory appeals mechanism. In this regard, the Review Group noted the establishment in 2010 of a specialised Environment Tribunal in England and Wales to deal with, *inter alia*, appeals concerning the new environmental sanctions regime.¹² This Tribunal has both legal and technical expertise available to it as appropriate. The Review Group considered that it would be prudent for the proposed wider review of environmental governance to examine recent developments in England and Wales, to see what insights could be gained from the experience to date and to inform the Irish approach to reform in this area.¹³

The Review Group noted that the judiciary plays a vital role in the national environmental enforcement effort and in environmental governance more generally. Environmental law is a rapidly developing and often highly technical area and tackling environmental crime effectively raises particular challenges. The Review Group recommends that the Committee for Judicial Studies (formerly the Judicial Studies Institute) considers putting in place regular information sessions for the judiciary on a range of issues relating to environmental governance and, in particular, civil and criminal liability for breaches of environmental law. The possibility of exploiting available fora at EU level, such as the EU Forum of Judges for the Environment and the European Judicial Training Network, should also be examined. Similar arrangements should be put in place for those involved in the prosecution of environmental offences.

The work undertaken by the Review Group highlights the importance of ensuring that the very evident general increase in awareness of environmental issues in Ireland in the last 20 years is matched by actions to fully integrate environmental considerations in public policy development across the State. While the EPA clearly has a role in promoting this, in partnership with the Department of the Environment, Community and Local Government (DECLG), the ultimate responsibility for environmental integration into policy making rests

¹² The First-tier Tribunal (Environment) is part of the new Tribunal system in England and Wales - <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/environment/index.htm>. See further Macrory, R. (2011), *Consistency and Effectiveness: Strengthening the New Environment Tribunal* (London: Centre for Law and the Environment, University College London) – text available at: http://www.ucl.ac.uk/laws/environment/content/Consistency&Effectiveness_webfinal.pdf

¹³ An interesting body of research and commentary has already begun to emerge on the potential of administrative sanctions in Ireland. This material provides a useful starting point for the proposed wider review of environmental governance. See in particular EPA (2009), *A Study on the Use of Administrative Sanctions for Environmental Offences in other Comparable Countries and Assessment of their Possible Use in Ireland* (2009), Report prepared for the Office of Environmental Enforcement, EPA by A & L Goodbody and ERM Environmental Consulting – text available at: http://www.epa.ie/downloads/pubs/enforcement/Admin_Sanctions_final.pdf; Law Society of Ireland (2008), *Enforcement of Environmental Law: The Case for Reform* – text available at: <http://www.lawsociety.ie/Documents/committees/lawreform/Envir%20Report.pdf>; and Lynott, J.D. and Cullinane, R. (2010), 'Administrative Sanctions', 17 *Irish Planning and Environmental Law Journal* 12.

primarily with the custodians of the individual policies concerned. The implementation of the SEA and EIA Directives is paramount in this regard and Chapter 3 (Licensing, Assessment and Monitoring) includes recommendations in relation to the role of the EPA as an “environmental champion” through enhanced responsibility in the area of SEA, while Chapter 2 (Governance, Internal Structure and Resources) recommends that a high level Environmental Governance Network be established to facilitate formal liaison between public bodies across the environmental sphere.

1.5 Approach to carrying out the review

The Review Group met on a total of 13 occasions. In order to focus its work and the associated process of public consultation, the Group decided at an early stage to structure its consideration of issues, and this report, around the following themes:

- Governance, Internal Structure and Resources
- Licensing, Assessment and Monitoring
- Environmental Research and Information
- Relationships with Stakeholders
- Legislative Framework

A key feature of the Group’s approach to its work was to engage directly with the EPA itself. The experience and expertise which the Agency has built up over the years and its in-depth knowledge of the environmental sector in which it operates was an essential foundation stone for the review. At various stages of the review process, the Group met Directors of the Agency, who also provided the Group with a range of comprehensive supporting written materials. The extent and quality of the Agency’s engagement with the Review Group was of the highest calibre and the Group wishes to record its deep appreciation in this regard to the Director General, Dr. Mary Kelly, her Director colleagues and the staff of the Agency.

A comprehensive public and stakeholder consultation process was undertaken as an integral part of the review exercise. An invitation to the general public to make submissions to the review process generated a very significant response, with some 130 submissions received, providing a very diverse range of views to the Group – a full list of the submissions received is included at Appendix 2. In addition, having considered the submissions received, 13 in-depth engagements were undertaken with key stakeholders, listed in Appendix 1. The Group is very grateful to all those who made submissions to it and to the stakeholders with whom direct consultations took place; the engagement through these channels provided

crucially important inputs into the Group's deliberations. A summary of the final recommendations of the Group is set out in Chapter 7 (Recommendations).

1.6 Secretariat

The Secretariat service for the Review Group's work was provided by the Environment Policy and Awareness Section of the DECLG. The Group would particularly like to thank Fiona Quinn and her colleagues, Lorraine O'Donoghue, Alex Hurley, Frank Daly and Stella McKervey, for the very significant time, effort and creativity which they invested in support of the Group's work.

Chapter 2 - Governance, Internal Structure and Resources

The principal features of the governance structure of the EPA are set down in the 1992 Act, as amended, which states, *inter alia*, that the “Agency shall consist of a Director General and four other directors” and it is the function of the Director General (or, in specified circumstances, the Deputy Director General) “to arrange the distribution of the business of the Agency among its directors.”

In fulfilment of the latter requirement, as noted in Chapter 1, the Agency is at present organised into four main Offices (apart from the Office of the Director General), each headed by one of the Directors:

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

While the number of Offices, matching the number of Directors, has remained unchanged since the establishment of the Agency, the functions of individual Offices have been altered over the course of the intervening period in response to changes in environmental protection priorities.

Section 27 of the 1992 Act provides for the appointment by the Minister for Environment, Community and Local Government of a 12 member Advisory Committee to be chaired by the Director General. Section 28 sets out the functions of this Advisory Committee. In addition, there are now three further statutory Advisory Committees, established under section 41 of the 1992 Act, in the following areas: genetically modified organisms, emissions trading and waste prevention. The Agency also co-ordinates a national environmental enforcement network.

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

By 2008, the Agency's total income had reached over €70 million and its approved staff numbers were 340. There has since been an appreciable reduction in budget owing to the current pressure on the public finances and staff numbers have fallen to 321 in April 2011.

The Review Group examined the EPA's governance structure, and evaluated the extent to which it remains fit for purpose in the context of current challenges in environmental protection. The Review Group, in its consultation process, also sought views on resource allocation in the light of current and future obligations. The Group noted, in particular, the view of the Agency that it does not have sufficient resources to effectively meet all of the existing and emerging challenges and especially the steadily increasing number of statutory functions assigned to it.

2.1 Governance principles

2.1.1 Independence

Three priorities or essential characteristics for the EPA were set out when the Bill to establish the Agency was introduced: "independence from Government, public authorities or any other interested bodies; power to carry out their functions effectively; and transparency in all their decisions"¹⁴ and also that its scientific integrity should be beyond reproach.

A subsequent comparative assessment of the EPA's independence showed that it fell into the middle of the range of independent Irish regulatory agencies, but that it had more formal, structural independence than environment agencies in other European countries (Shipan 2006). A 2009 survey by the Network of Heads of Environment Protection Agencies¹⁵ showed that the great majority of such agencies across Europe, including Ireland's EPA, were classified as 'quasi-independent' – having strong ties to, and cooperation with, the relevant Ministries. In submissions to the present review, the need to safeguard and maintain the independence of the EPA was stressed by bodies including environmental NGOs, business, and the Agency's Advisory Committee.

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

¹⁴ See 127 *Seanad Debates* Col 684 (23 January 1991).

¹⁵ Reports from Network of Heads of European EPAs and individual country EPA Booklets, text available at <http://epanet.eu.eea.europa.eu/>

2.1.2 Transparency

Independence brings with it a particular imperative for ensuring transparency (and, more generally, accountability, as discussed below). The Review Group considers that the EPA is very progressive in the transparency of its licensing functions. It uses the Internet to make available current licence application documentation, submissions, Inspectors' reports and the relevant extracts from Board minutes, in addition to the final decisions on licensing; this has been referred to as a model of best practice by the European Commission¹⁶. In relation to enforcement, the EPA maintains public files available for inspection in order to provide transparency in its enforcement activities, even though it is not required under legislation to do so. In addition, the Annual Environmental Reports (AERs) from Integrated Pollution Prevention and Control (IPPC), waste and urban waste water treatment facilities are currently available on the EPA website, and the European Pollutant Release and Transfer Register (PRTR) information is similarly to be made available during 2011.

The Review Group recommends that the process of making licence performance and enforcement information available on the Internet be continued and progressively extended.

2.1.3 Accountability

The coverage by the White Paper *Regulating Better* (Department of the Taoiseach 2004) of the issue of accountability is pertinent in the present context. It states:

“Regulators and enforcement agencies should be clearly accountable to citizens through the Houses of the Oireachtas and Government There should be well publicised, accessible and equitable appeals procedures that balance rights of appeal with the need for speedy action, in a fair manner. Where regulatory decisions are referred to the courts, there are particular requirements of speed and expertise.”

The document also notes that accountability is served through good information flows, with full disclosure of the details of the decision-making process and of all submissions and representations made to the regulator.

The Review Group has concluded that the EPA's governance and functioning complies in most respects with the above criteria for accountability, although the matter of an independent appeals mechanism is a significant issue and is addressed in the next section

¹⁶ This reference relates to comments made at a Licensing (Impel) Meeting 2006, Riga, Latvia. Marianne Wenning of DG Environment referred to the approach by the Irish EPA to making all information available as a model for other countries.

and in Chapter 6 (Legislative Framework). It was noted that the EPA Directors are appointed by Government and the Agency is required to lay an Annual Report before both Houses of the Oireachtas. There have been regular attendances by the EPA at Oireachtas Committees, for example to discuss issues such as climate change, waste and water management. This interaction with the Oireachtas is clearly vitally important. An example in this regard of the relationship between the Dutch EPA and Parliament is given in the box below.

In the Netherlands, a ministerial regulation signed by the Prime Minister on behalf of the full Cabinet regulates the relationship between the Dutch EPA and the Government. The Agency is part of a Ministry which means that a Minister is politically responsible for the Agency but Parliament can request information and assessments from the Agency; these requests are presented to the Agency through the relevant Minister and the results will be sent to Parliament by that Minister, who is not permitted to alter the response. Factual information can also be provided directly to Parliament by the Director of the Agency.

While not entirely comparable with the Irish context, the Review Group recommends that elements of the Dutch approach should be considered by making the EPA more answerable to the Oireachtas through, for example, the extension of the parliamentary questions process to State agencies, as set out in the Programme for Government (2011).

It may be noted that while accountability to citizens is achieved through its interaction with the Oireachtas, the EPA has a good record also of direct engagement with citizens on key matters, such as engagement at a senior level with concerned residents at local meetings in relation to licensed activities.

2.2 Key governance related issues

2.2.1 Objections to proposed licences

On the matter of appeals, the Review Group considered that there are two distinct aspects to this. The first, whether the EPA should be subject to the Ombudsman's jurisdiction in respect of alleged maladministration, is addressed in Chapter 6 (Legislative Framework). The second is the matter of substantive appeals and objections to proposed licences, and whether the internal governance provisions that the EPA has put in place for this are fit for purpose.

The EPA has put in place procedures aimed at ensuring that any objections to a proposed licence are addressed by a technical committee comprising staff other than those involved in the preparation of the proposed licence. There is no other existing body in the State having the necessary breadth and depth of technical environmental expertise and the appropriate governance structures required of an independent external appeals process. While comparisons are sometimes made with the planning process, where an appeals system is provided for, the Group considers that there is an important distinction between the consideration of broad and more subjective issues of proper planning and sustainable development which arise in the planning process and the considerations arising in IPPC / waste licence applications which are much more technical in nature. As third party objections have been relatively few in number in recent years (from 2005 to 2009 there were between zero and five per annum in the case of proposed IPPC licences and between one and three per annum in the case of proposed waste licences),¹⁷ it would be difficult to justify the establishment of such a body, duplicating the technical expertise within the Agency itself. The Review Group has concluded that, while obviously not comparable with the separation that would be achieved in an external appeals process, a reasonable measure of separation is nevertheless achieved in the current EPA internal procedures for the consideration of objections to proposed licences.

Key aspects of licensing and enforcement are considered in Chapter 3 (Licensing, Assessment and Monitoring).

2.2.2 Independent advice

The environmental expertise within the EPA is a significant national resource. It is likely that the environmental performance of public bodies could be improved by increased advice and input from the EPA. Clearly, where there is an appreciable real and immediate threat to human health and the environment, this input has been readily forthcoming, but for more routine matters this has not been prioritised against an ever-increasing core workload. SEA, as discussed in Chapter 3 (Licensing, Assessment and Monitoring), and EIA (Chapter 6 - Legislative Framework) are vital tools for environmental protection in Ireland and ensure that environmental considerations must be taken into account in policy development and implementation across the State. With so many competing priorities, it is often difficult for the environment to take its equal place in policy analysis and the Review Group recommends that the EPA should increase its role in driving this goal by engaging more broadly with sectors interacting with the environment; for example, local government, agriculture, transport, energy, enterprise and fisheries. This engagement should have the

¹⁷ Information provided by the EPA in response to questions from the EPA Review Group, September 2010, p.10.

objective of promoting integrated assessments of existing and emerging environmental challenges for each sector and should take place through the formation of a high level Environmental Governance Network involving all of these key stakeholders.

2.3 EPA governance structures

2.3.1 General corporate governance

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

“[I]t is our opinion that corporate governance standards are given high priority within the Agency, that there is high levels of management awareness of corporate governance obligations and that these are kept under regular scrutiny and that, as appropriate, the Agency’s governance policies and practices are consistent with the Code of Practice for the Governance of State Bodies.”¹⁸

Although the Department of Finance granted a waiver in 2003 to the Agency on the requirement to appoint an Audit Committee (requiring Non-executive Directors), the EPA proceeded to establish such a committee later that year. The Audit Committee comprises an external Chairperson and other external legal and financial expertise in lieu of Non-executive Directors. The Committee has full, free and unrestricted access to all Agency activities, records, property and personnel. All systems and activities within the Agency may be audited and over twenty areas have been subject to internal audit, with follow-up on audit recommendations.

The Review Group has concluded that the EPA is satisfactorily in compliance with its general corporate governance obligations.

2.3.2 Customer service

The EPA’s suite of governance procedures includes a Quality Customer Service Action Plan and a Customer Charter, available on its website,¹⁹ which include a commitment to respond to queries within five working days from the receipt of the enquiry or within twenty working

¹⁸ Turpin, P. (2010) *EPA Compliance with the Code of Practice for the Governance of State Bodies*, (IPA report privately commissioned by EPA). EPA Archives.

¹⁹ Text available at <http://www.epa.ie/about/qcs/>

days in the case of an enquiry that is particularly complex. In the specific context of licensing, some consultees expressed dissatisfaction with the time taken for decisions and responses; but there was acknowledgement also of the numerous factors involved. The Review Group was not in a position to examine the specifics of individual issues raised and would therefore recommend further engagement by the EPA with the relevant stakeholders to examine methods to keep such delays to a minimum. (See also Chapter 3 (Licensing, Assessment and Monitoring) and Chapter 5 (Relationships with Stakeholders)).

2.3.3 Non-executive Directors

In the consultations undertaken for the review, several submissions called for the appointment of Non-executive Directors. Almost all of these submissions were made in the context of a particular enforcement matter. The EPA Directors, in addition to their general corporate governance responsibilities, have two major areas of responsibility: (i) decision-making on licence applications, on significant enforcement actions and on other regulatory matters; (ii) directing the operations of an individual EPA Office. Given the quasi-judicial aspect of the EPA Directors' functions, and the highly technical nature and significant volume of decisions, a large level of preparatory work and weekly Board meetings are essential for the proper discharge of this function. Such an intensive and quasi-judicial role would not normally be appropriate to Non-executive Directors.

Once a month, the EPA's Board meetings deal with more general matters related to corporate governance and strategic matters, which could be considered to be somewhat more appropriate for input from Non-executive Directors. A further consideration, however, is the independence of the Agency, which was a major consideration in setting up the current system for the appointment of the executive Directors (see below). Anything less than this standard in the appointment of Non-executive Directors would risk diminishing the independence and competence of the Agency. A further consideration is that there is external input to the Agency's work arising through the Advisory Committee structures and a strengthening of such input is proposed later in this Chapter.

The Review Group has concluded that, on balance, the appointment of Non-executive Directors to the EPA would not result in significant advantages, in terms of either governance or environmental protection, and that the Board of the Agency should continue to consist entirely of full-time Directors.

2.3.4 Method of appointment of Directors

The Director General and other Directors are appointed by Government based on the recommendations of a selection committee, the membership of which is set down in section 21(2) of the 1992 Act. The committee is required to have regard to a potential appointee's special knowledge and experience including, in the case of Directors, relevant experience in environmental matters. The Review Group has concluded that this process has been successful overall to date, that its general features are robust, conform to the criteria in the White Paper *Regulating Better* (Department of the Taoiseach 2004) (for an independent selection process and appointment by Ministers – by the Government in this case) and should remain unchanged. However, the composition of this committee should be reviewed to take account of changes since the early 1990s and new challenges ahead. In addition, it is recommended that the factors that the selection committee must take into account should include relevant knowledge and experience in climate change and sustainable development.

2.3.5 Board meetings in public

The 1992 Act set out general requirements in relation to the meetings of the Agency. The Board, as is the norm with regulatory agencies in Ireland, does not meet in public. Elsewhere, in the few cases where the Boards of environmental agencies meet in public (for example as happens from time to time in England and Wales), the agenda does not include licensing and enforcement issues, and attendees have observer status only. As noted earlier, licensing information already provided by the EPA on its website includes the relevant extracts from Board minutes and the Agency is considering how it might make the generality of Board minutes available in similar fashion (excluding the limited elements which contain confidential information).

The Review Group has concluded that the present arrangements concerning EPA Board Meetings are generally fit for purpose. However, the Group, as a result of its meetings with stakeholders, also formed the view that a more meaningful engagement between key stakeholder groups and senior staff of the Agency, than would be afforded by mere observer status at Board meetings, would be welcome. The Review Group recommends that this alternative should be pursued, for example, by way of an annual focused discussion between senior EPA staff and key stakeholders, held in public, with the theme centering on one or more of the main “live” environmental challenges, or significant emerging issues.

2.4 Advisory Committees

The EPA has a statutory Advisory Committee consisting of twelve members, appointed by the Minister for the Environment, Community and Local Government, seven of whom come

from a list of nominees from specified categories of organisations. The procedure for the selection of the Advisory Committee is set out in the 1992 Act and in regulations made under the Act.

The Review Group recommends that the role of the Advisory Committee should be strengthened by providing for the appointment of an external Chairperson and by increased emphasis on the selection of Advisory Committee members who have particular knowledge and experience of the environment, including health impacts, climate change and sustainable development. There should also be strong representation of key stakeholders, including those in the public sector, thereby contributing to the achievement of an integrated public service (in this case for the environment sector) in Ireland, as recommended in the OECD Public Management Review (2008).

In the course of the Group's work, an area for a possible further Advisory Committee was identified, concerning the interface between the environment and human health, which is discussed in detail in Chapter 3 (Licensing, Assessment and Monitoring). The Review Group recommends that this be established at an early stage.

2.5 EPA structure

2.5.1 Existing office structure

The existing Office structure reflects the number of Directors provided for in the 1992 Act. The range of functions in each Office is appreciable. To date, the EPA Directors and staff have shown flexibility in adapting the remits of individual Offices according as circumstances require. This has been done, in particular, to give greater focus to the issues of environmental enforcement and climate change, and is an ongoing process.

The Review Group concluded that the flexibility and change management shown by the EPA is a major strength for a public sector organisation. It should be maintained and fostered, particularly in the difficult prevailing economic circumstances, and should not be limited by overly prescriptive statutory provisions on its structure in any future legislative amendments. However, the Review Group recommends that key considerations in any future revisions of Office structures should include the importance of maintaining separation of enforcement from licensing and maintaining the objectivity of environmental assessments.

2.5.2 Regional structure

The EPA's regional structure involves a broad geographic spread, with resulting local knowledge and linkages as well as operational efficiencies in environmental monitoring

operations and timeliness in response to incidents. The provision of laboratory services to local authorities is discussed in Chapter 3 (Licensing, Assessment and Monitoring). The Review Group concluded that there are important strategic advantages in the regional presence of the Agency and recommends that, while cost efficiencies must continue to be achieved, this should not be to the detriment of the strategic advantage to the Agency in having a regional presence.

2.6 EPA resources

2.6.1 Expanding remit

Virtually every year since it was established, the EPA has been assigned additional functions, most typically through secondary legislation. This practice has accelerated in recent years to the extent that the cumulative total for these items of legislation doubled in an eight-year period (see Figure 1, Chapter 1 - Introduction). While some functions could be absorbed without additional resources, others could not, and overall, there has been a steady upward trend, accelerated in recent years, in resource-intensive functions being assigned to the EPA.

A survey by the Network of the Heads of Environment Protection Agencies (2009) of the profiles of 29 agencies across Europe showed that Ireland's EPA is similar to the majority of the agencies in having as its main field of work "pollution prevention" and "sustainable development". But, in terms of major work areas within these fields, Ireland's EPA, jointly with those of Northern Ireland, England and Wales, and Germany, has the highest range embracing research; monitoring and information systems; assessment; advice; licensing; and enforcement. While obtaining like-for-like comparisons can be difficult, it may be noted that relative to similar bodies in Northern Ireland and Great Britain the EPA is a slim-line organisation.

The European Environment Agency (EEA) assesses the annual performance by its member countries in delivering specified priority data. The EPA is the EEA National Focal Point for Ireland and co-ordinates the delivery of data. The performance score for Ireland improved from 68% in 2000 to 94% in 2008. For the twelve month period to April 2010 the score reduced somewhat to 86%.

2.6.2 Training and development

There is a particular focus in the Agency on staff development and teamwork. The annual budget for staff training and development has been approximately four per cent of payroll²⁰ and the EPA was named as the 'Best Public Sector' award winner by the *Great Places to Work Institute* in February 2010.

2.6.3 Staffing levels

The staffing levels of the Agency peaked at 340 in 2009, at which point the Agency still considered itself to be significantly under-resourced, when staffing levels were assessed against its ever-expanding remit, much of which is statutorily required. The EPA expressed its concern to the Review Group about its ability to carry out all of its statutory functions and to protect the environment effectively, where new work is assigned with no matching resources. The consequent risk of adverse impact on the good name of the Agency and of Ireland, in relation for example to the implementation of EU Directives, is obvious. The Agency advised the Group that it considers that, due to the moratorium on staff recruitment in the public sector and the non-replacement of staff availing of long-term statutory leave entitlements, it now has significant staff shortages, including vacancies in some key senior management roles. The Agency's staff complement had reduced to 321 by April 2011.

In 2010, a reduced budget limited the scope for outsourcing (which has been important in the EPA business model across all its Offices). Many units have recently acquired additional workloads (e.g. climate change, licensing and the Environmental Liability Directive), with further new work areas likely to be assigned to the EPA by the DECLG in the future. The Review Group recognises, however, that this position is evident across the public sector and that there is a need for public bodies to maximise operational efficiencies to ensure that services are maintained with reducing staff numbers in the future.

As the numbers have fallen, the Agency has sought to adapt through measures including internal adjustments, a corporate learning strategy, and increased performance targets. Delivery on the better regulation agenda includes strong cross-Office collaboration, a major IT initiative and risk-based approaches to enforcement. The EPA has adopted and published a detailed action plan for its implementation of the Public Services Agreement 2010 – 2014 (Croke Park Agreement),²¹ including efficiencies and measures for cost reductions and shared services. Inevitably, problems caused by declines in staffing, the possible dilution of scientific and technical expertise, and the reduction in the funds for

²⁰ Figures taken from reply from EPA to questions from the EPA Review Group, September 2010, p.111.

²¹ Text available at <http://www.epa.ie/about/psa/>

outsourcing will require adequate responses in order to ensure that there is not a detrimental impact on the environment. The Review Group recommends that the issue of staffing levels be urgently reviewed to ensure that, in making decisions in relation to the allocation of scarce staff resources across the public sector, adequate account is taken of the priority attaching to the Agency's role in meeting critical legislative requirements.

2.6.4 Funding

The EPA's income derives primarily from three sources: Oireachtas grants, the Environment Fund, and directly earned income. Total income has fallen from over €70 million in 2008 to a budgeted figure of €60.31 million for 2011. Over the past couple of years there has been not only a downward pressure on the Oireachtas grants, but also a slight reduction in directly earned income. The reduction in Oireachtas grants has been offset by an increase in income from the Environment Fund. The high dependence on the Environment Fund is particularly striking as much of this funding is for core EPA activities in the areas of research, implementation of the Water Framework Directive, enforcement and waste prevention.

For protecting the environment, and to ensure that the EPA can play its part in protecting the State from the risk of having fines imposed by the Court of Justice, it is essential that the EPA's resources are commensurate with its legal obligations, particularly under EU Directives. The Review Group recommends that top priority be attached to securing overall funding for the EPA at a level which ensures that these obligations can be met in the future. The issue of licensing fees, which make up part of the EPA's own income, is dealt with in Chapter 3 (Licensing, Assessment and Monitoring).

Chapter 3 - Licensing, Assessment and Monitoring

Current mandatory functions of the EPA are concentrated in the areas of licensing, monitoring, reporting and assessment. Some activities that potentially impact the environment require licences; notably industrial activities, waste management, and urban waste water discharges. As at March 2011, the EPA had issued 1,500 licences²². The EPA gathers extensive information on waste, greenhouse gas emissions, acid gas emissions and runs hydrometric and air and water monitoring programmes. The Review Group looked at both the effectiveness of the EPA's licensing activities and its performance and interaction with other bodies in environmental monitoring. While these are core functions, evaluating the feasibility and relevance of wider monitoring of impacts on human health and ecosystems was also considered by the Review Group. This Chapter is divided into two broad but related sections on licensing and assessment and monitoring in order to assess:

1. the effectiveness of EPA licensing and monitoring;
2. the cost-effectiveness and statistical reliability of monitoring;
3. the effectiveness of modelling and Geographic Information Systems (GIS) in environmental assessment and management;
4. the institutional network of monitoring and reporting;
5. the relevance of EPA monitoring for public health and biodiversity; and
6. links with other national monitoring programmes.

3.1 Licensing Overview

Prior to the establishment of the EPA, larger and potentially polluting industry was regulated through local authority licensing. The 1992 Act set up Integrated Pollution Control (IPC) licensing targeting, initially, activities with the highest potential for acute pollution. This was in advance of Directive 96/61/EC on Integrated Pollution Prevention and Control, which was transposed into Irish law in the Protection of the Environment Act 2003.

There are also a number of EU Directives that deal specifically with waste and discharges to water. The implementation of the Waste Management Act 1996 and the significant range of measures adopted in response to a Court of Justice ruling against Ireland in 2005 (Case C-494/01 *Commission v Ireland* [2005] ECR I-3331) in relation to the implementation of the Waste Framework Directive (Directive 75/442/EEC as amended) led to significant improvements in waste management, although some issues remain in relation to low-scale

²² Figures confirmed by the EPA in March 2011

illegal dumping, the technical management of some landfills and lack of regional coordination of some aspects of waste management. Concern was expressed in a number of submissions to the Review Group about the length of time it takes to bring legal sanction against non-compliant operations, especially landfills, and the apparent limitations on the Agency to effect immediate, short or long-term solutions to specific issues in this regard. It is clear that some delays or apparent limitations are outside the Agency's control, however, as the Court system is, of course, independent and matters before the Courts must take their course in the usual way. Some further changes in national waste management law and policy have been introduced to give effect to obligations arising under the Revised Waste Framework Directive (Directive 2008/98/EC),²³ which emphasises waste avoidance and recycling; it should be noted also that Ireland has had a National Waste Prevention Programme since 2004, administered by the EPA.

Investment over the last decade in the upgrading of waste water treatment plants has led to a high level of compliance with the Urban Waste Water Treatment Directive (Directive 91/271/EEC) (OECD 2010). While some problems remain, licensing of local authority waste water treatment plants has been carried out since 2007 by the EPA under the Waste Water Discharge (Authorisation) Regulations 2007 (S.I. No. 684 of 2007). Licensing has been prioritised based on risk assessment, addressing the larger municipal discharges first and the EPA estimates that, given current resources, it will take up to five years before this licensing is completed. This will include licensing of moderate to small municipal discharges to help meet obligations under the Water Framework Directive (Directive 2000/60/EC).

3.2 Licensing performance and enforcement

The effectiveness of EPA licensing procedures has been verified through the internal EPA audit of the Environmental Licensing Unit, and external reviews (OECD 2010; NESC 2010). The National Economic and Social Council (NESC) (2010) report cites the EPA OEE as an example of an organisation that has successfully responded to the demands of EU legislation and previous criticisms from the Court of Justice. It is notable that the NESC (2010) report emphasised the importance of incorporating environmental protection within the mainstream of activities across the Irish public sector. This is a recurrent theme within this review.

While licence holders must monitor and report on emissions (this requirement is a standard condition in licences), the EPA undertakes its own separate monitoring of emissions; such

²³ The Revised Waste Framework Directive (Directive 2008/98/EC) was transposed in Ireland by the European Communities (Waste Directive) Regulations 2011 (S.I. No 126 of 2011) which were signed into law on 31 March 2011.

monitoring visits form part of its overall enforcement activity, which also includes audits and inspections. Some stakeholders argued that EPA site inspections should always be unannounced, to minimise the risk of malpractice being hidden from the regulator. The OEE's audit of licensed operators' performance is in fact conducted through both unannounced inspections and, when it is important to ensure senior management are available, through prior arrangement; the EPA advised the Review Group that in 2009, approximately 74% of inspections carried out were unannounced²⁴. Business interests expressed concern at the relatively high turnover of enforcement Inspectors that can affect continuity and the knowledge of a licensee's operation. Others expressed concern that the same Inspectors should not be responsible for both licensing and enforcement of a facility. This potential problem was addressed by the setting up of the OEE in 2003, which provided for separate teams of licensing and enforcement Inspectors.

There has been a steady reduction since 1998 in the number of complaints received by the EPA against IPPC licensed facilities (EPA, 2009a); complaints have fallen by nearly 60%, from 1041 in 1998 to 429 in 2008. Approximately 10 prosecutions per annum are taken against such facilities for non-compliance, with 43 successful prosecutions from 45 cases taken between 2006 and 2010²⁵. These facts suggested to the Review Group that the licensing, monitoring and enforcement process is working with reasonable effectiveness. Concerns were expressed by some stakeholders, however, at the apparently relatively low level of prosecutions being taken. The Group accepts the complex case management requirements falling on the Agency, or indeed any prosecutor, and the independent role of the Director of Public Prosecutions in relation to the progression of some of these cases, but notes that prosecutions are very visible enforcement actions that can serve as a powerful disincentive to facilities to breach their licence terms. The Group recommends that the EPA, in deciding on the appropriate enforcement action in individual cases, should always take into account the strong deterrent effect of prosecutions and should pursue the prosecution route to optimum effect.

One aspect of licensing activity, which some stakeholders referred to specifically, is the consideration of the impacts on human health of licensed activities. The assessment of the impacts on human health of licensed activities is based on information provided by the applicants as part of the licensing process, usually as a section of the Environmental Impact Statement (EIS) dealing specifically with human health. EPA licensing procedures include consultation with the HSE, as a statutory consultee in respect of the health impacts of a

²⁴ EPA response to questions from the Review Group in supplementary material, November 2010, p.4.

²⁵ Figures confirmed with the EPA in April 2011. Annual prosecution statistics are available at <http://www.epa.ie/whatwedo/enforce/prosecute/>

licence application and as the experts in this area, but there was a strong view among those stakeholders that commented on human health issues that there has been a lack of effective evaluation of these potential health impacts in licence applications. There is a Memorandum of Understanding (2006) between the HSE and the EPA, which provides mechanisms for consultation in this area, but stakeholders claim this has been ineffective, blaming both resource and capacity issues.

Formal HIA processes, based on quantitative risk assessment methods and appropriate community engagement are widely used elsewhere in Europe to ensure that reasonable public concerns about possible human health impacts are adequately addressed. Stakeholders believe that many of the human health assessments submitted as part of the EIA process in Ireland are insufficient to enable the relevant authority to decide on the nature and scope of the health impacts of the proposed development. The Review Group considers that there is a strong case for HIA, where appropriate, to become a formal requirement of the licensing process carried out by the EPA, subject to further consideration of best practice in this area and associated issues concerning data and costs (recognising that necessary resources must be available in, or to, the body responsible for assessing the health impacts of licence applications; a capacity which is not currently available in the EPA).

As referred to already in Chapter 2 (Governance, Internal Structure and Resources), the Review Group recommends that a statutory Advisory Committee on the interface between the environment and human health should be established to examine the overall issue of human health protection in environmental decision-making and in particular how this issue should be managed effectively between the various regulatory authorities. This group should comprise members of the EPA, the HSE and other relevant State agencies and should, as a priority, give urgent attention to the further consideration of issues associated with the introduction of HIA.

3.3 Integrated Pollution Prevention and Control licensing

A recent review (Styles and Jones 2010) of the IPPC framework in four sectors (Power Generation, Food and Drink Manufacture, Pharmaceuticals, and other Chemicals manufacture) concluded that IPPC licensing has driven a reduction in emissions and in permitted Emission Limit Values (ELVs). The review, however, outlined concerns of under-reporting and a lack of production data in some sectors. Submissions to the Review Group on behalf of industry and the agricultural sectors argued that EPA charges for licensing were onerous and a burden, particularly on Small and Medium sized Enterprises (SMEs) and smaller licensed farms. Overall, however, Styles and Jones (2010) concluded that while the

cost to industry is high (estimated to be €22 million per annum), the benefit to society was estimated to outweigh the financial cost to industry by a multiple of 2.3. Charges for an IPPC licence have not increased since set in legislation in 1994 (Environmental Protection Agency (Licensing Fees) Regulations 1994 (S.I. No. 130 of 1994)). Although some anxieties were expressed on behalf of SMEs competing with rivals in Northern Ireland, no evidence was submitted to the Review Group that licence costs in Ireland were out of line with that elsewhere in the EU. On the specific matter of licence application fees, the Review Group concluded that these are due for upward revision.

On the other hand, submissions also argued that greater flexibility is needed when determining the need for a full licence review, in the interests of effectively controlling licence costs while permitting the EPA to deliver a timely response and encouraging licensed enterprises to innovate. The Group recommends, as set out in Chapter 6 (Legislative Framework) that, subject to EU environmental law obligations, the legislation should provide for amendments to be made to an IPPC or waste licence in certain circumstances without the need for a full-scale licence review.

The OEE has a central role in monitoring IPPC licence compliance, including verification of the accuracy of AERs. In the course of the review, different categories of stakeholders expressed contrasting views about the degree of rigour deployed by the EPA in monitoring compliance by industry, but there was no convincing evidence that this is a particular problem. The number of IPPC and waste inspections and monitoring visits averaged 1,882 a year between 2006 and 2008²⁶. The OEE prioritises visits and formal inspections to licensed industries based on a systematic risk assessment taking into account the complexity of the activity, emissions, environmental sensitivity (the activity location in relation to human beings, groundwater, surface water, air quality, protected ecological species and sensitive agricultural receptors) and operator management and compliance history (EPA, 2009a). The Review Group concluded that the issue of potential human health risk assessment in the criteria currently used in practice should be examined and recommends that the proposed Advisory Committee on the interface between the environment and human health should consider this issue at an early stage and make recommendations, building on the expertise currently available in the various regulatory authorities.

²⁶ Figures confirmed with EPA in April 2011.

3.4 Waste licensing

In relation to waste licensing applications, the legislation provides that the EPA “shall not grant a waste licence” unless it is satisfied *inter alia* that the applicant is “a fit and proper person to hold a waste licence,” (Waste Management Act 1996, as amended, sections 40(4)(d) and 40(7)). Certain submissions strongly asserted that the waste licensing process needs to be more rigorous in ensuring that this test is met, to guarantee that the responsibilities attached to holding a waste licence are discharged effectively by the operator. Having considered the matter, the Review Group recommends that this provision should be strengthened in terms of allowing the EPA greater access to the past track records of licence applicants generally in order to ensure that maximum protection is afforded to the environment at all times.

Large scale illegal waste disposal, tackled through liaison between the key stakeholders, including the OEE, local authorities, An Garda Síochána and other public bodies represented on the Environmental Enforcement Network (EEN), is no longer considered the very serious problem it once was. Local authorities play a key role in the enforcement of a number of waste controls and the OEE, through the EEN, provides a significant programme of support for that work. In light of significant staffing changes in local authorities, it is considered essential that the OEE continue to provide support and guidance to ensure uniformity of approach and the sharing of best practice.

The quality and national integration of waste management, including the management of hazardous waste and tackling smaller scale illegal waste disposal, remains a concern. Although it may be appropriate that waste disposal be managed locally, the OECD (2010) comments on the importance of national coordination in waste matters, stating that, “the combined regional strategies do not necessarily achieve the national waste policy targets.” The OECD report also identifies the need to progress more substantially the reduction of landfilling of municipal waste, increased recycling and treatment capacity for hazardous waste. The policies to meet most of these challenges exist under the 2006 National Strategy on Biodegradable Waste, the 2008 National Hazardous Waste Management Plan and other policy documents. The EPA has a critical role in this regard and has recommended various actions to achieve improvements in recent National Waste Reports. The Review Group recommends that the EPA should continue to contribute to the development of national waste policy through provision of data and analysis of Ireland’s performance in the annual National Waste Reports.

3.5 Public participation

The legislative framework underpinning IPPC and waste licensing provides for public participation in the licensing process. On balance, the Review Group concluded that current arrangements governing public participation operate reasonably well in practice. However, a number of submissions received indicated that the costs involved in engaging experts can be considerable and that measures to alleviate this cost burden should be examined. In particular, it was suggested to the Review Group that provision should be made in the legislative scheme to allow experts to give evidence to oral hearings via video-conferencing. The Review Group considered this to be a sensible suggestion. Furthermore, depending on the Government's response to the recent Court of Justice ruling²⁷ on the "split" environmental decision-making arrangements between planning authorities/An Bord Pleanála and the EPA, there may, in future, be potential for joint oral hearings and joint engagement of consultants which could offer cost and time savings for all concerned.

3.6 Environmental Impact Assessment and Strategic Environmental Assessment

The EPA has a role in relation to the completion of an EIA, as a consultee of the planning authority in cases where the planning application relates to a facility which will require either an IPPC or a waste license. In these cases, an EIS must be submitted by the applicant and the EPA can provide comments to the planning authority on the impact of the development on the environment. The EPA is also required to take the EIS into consideration as part of its licensing process. The difficulties in managing this "split" decision-making process are discussed in more detail in Chapter 6 (Legislative Framework). The EPA has produced guidance in respect of the completion of an EIS (EPA 2002) and also published, in 2003, Advice Notes on Current Practice (in the preparation of an EIS) to accompany the guidelines. The Review Group recommends that this guidance should be updated to take account of the specific concerns about public health discussed earlier in this Chapter and to reflect changes in law and practice during the intervening years.

SEA legislation requires that environmental considerations are to be fully integrated into the preparation of plans and programmes of public bodies prior to their final adoption. Under the Environmental Research Technological Development and Innovation Programme (ERTDI), the EPA published guidance (EPA 2003) in relation to the completion of SEAs. The EPA has developed an SEA web-based GIS and reporting tool to help local and national authorities prepare an SEA. As a designated environmental authority to be consulted on development plans, the EPA has a role to provide advice on screening and scoping and to

²⁷ Case C-50/09 *Commission v Ireland*, judgment of the Court of Justice, 3 March 2011

comment on SEA reports, but it does not have a statutory function to require the production of SEAs by other public bodies.

Stakeholders contended that some sectors seem unwilling to embrace their SEA obligations. The implementation of SEA is at an early stage in Ireland and an example highlighted during the Review Group's work was the lack of completion of an SEA by the Department of Agriculture, Fisheries and Food on the Food Harvest 2020 strategy (DAFF 2010) prior to its adoption. That Department informed the Review Group, however, that each plan or programme adopted under that strategy will be subject to SEA as required, and the EPA is working with that Department to achieve this result. While it is clear that each public body must be responsible for meeting its requirements under the SEA legislation at the appropriate time in its policy development process, as SEA forms an integral part of sustainable development policy for Ireland, the Review Group recommends that consideration should be given to the assignment of a wider statutory role to the EPA in respect of SEA, with a view to strengthening the practical implementation of SEA in a more uniform way.

3.7 Monitoring issues

Monitoring is essential to keep track of the quality of the environment, and the EPA has statutory duties related to this. It is the reporting authority under a range of EU Directives, gathering information from its licensing activities and from other public agencies. It is clearly important that the EPA is provided with relevant and quality assured information in order for it to fulfil its monitoring remit. A number of MoU with other agencies facilitate this, but these are not obligatory or necessarily harmonised. While the memoranda demonstrate that the EPA coordinates the provision of environmental data, there is scope for extending this remit to cover a wider range of environmentally relevant data, to review and assess what data may be missing and to identify and reduce duplication of effort.

The EPA is investing in development of an IT system (Environmental Data Exchange Network - EDEN) to collect and share environmental data electronically among public bodies across the State. There are high expectations that the EDEN system will support environmental assessment and improve data provision across relevant agencies.

National monitoring networks can include improved use of automatic samplers, remote sensing and robust modelling. The use of environmental modelling to support exposure assessment and decision-making appears variable across the EPA, while development of GIS expertise has progressed substantially in the last ten years. The EPA benefits from a

dynamic Informatics team which should continue to develop its high level support across the organisation in areas such as remote sensing and modelling to support environmental assessment and reporting. Development and validation of air and catchment models for loadings of nutrients and other pollutants can help address any limitations of spatial networks.

Some stakeholders argued that Ireland's failure to meet obligations under various EU Directives (evidenced most markedly by the initiation of infringement proceedings against Ireland by the European Commission) is tantamount to a failure of the EPA to act as an effective guardian of the environment. While the EPA has a remit for licensing and reporting (and it has been assigned responsibility for implementing environmental obligations under a large number of legal instruments), it is not its role to directly transpose international or EU environmental law requirements into Irish law. The infringement proceedings referred to are largely related to transposition issues which are plainly outside the remit of the EPA. Direct monitoring of, or reporting on, environmental quality by the EPA is, however, an essential component in assessing whether Ireland is fulfilling its obligations under international and EU law and in identifying pressures and impacts in order to broker solutions where problems arise.

The principal environmental monitoring activities of the EPA are in respect of air and water quality, while a number of other agencies also monitor the environment. These include local authorities, Inland Fisheries Ireland, Waterways Irelands, the Marine Institute, Teagasc and the NPWS.

3.8 Air quality monitoring

The EPA has, since 1994, monitored air quality, expanding this remit on foot of the Air Framework Directive (Directive 96/62/EC). More recently the Clean Air for Europe (CAFÉ) Directive (Directive 2008/50/EC) consolidated existing air quality legislation and introduced new requirements for monitoring and reducing exposure to fine particulate matter (PM_{2.5}). The EPA has commenced monitoring PM_{2.5} for the purpose of calculating the average exposure indicator of the population and establishing an exposure reduction target.

The CAFÉ Directive requires that pollutant levels remain below specified limit values as well as the preservation of best ambient air quality standards. Overall, compliance with air quality objectives is generally good. The EPA has advised that increased domestic coal burning and road vehicle traffic may lead to corresponding increases in sulphur dioxide (SO₂), nitrogen dioxide (NO₂) and particulate matter (PM₁₀ and PM_{2.5}). EPA air quality data

is accessible in real time, providing a good example of instantaneous availability of data, but the reporting on noise is a better example of a useful assessment of the available raw data in terms of exposure impacts. The national air quality data network appears effective and contributes to national reporting obligations under EU law. However, there is scope for upgrading and improvement to fully meet reporting and information requirements.

A working seminar was held on Air Quality and Health in December 2010 for members of the air quality network (local authorities, Met Éireann, EPA, and HSE) and a Working Group on Air Quality and Health information, which met for the first time in January 2011, has now been established; it includes representatives from the EPA, HSE, Met Éireann and the DECLG. This integrated approach is commendable and should be further developed and imitated in other monitoring areas.

3.9 Water quality monitoring

The EPA has monitored hydrometric flows and surface / groundwater quality since its inception, taking on the role of its forerunners, An Foras Forbartha, and the Environmental Research Unit. There is an extensive national network of hydrometric data collection involving collaboration between the EPA, local authorities and the Office of Public Works (OPW). In order to meet the requirements of the Water Framework Directive (Directive 2000/60/EC), the EPA has expanded its biological monitoring of lakes and estuaries and its network of ground water sampling.

The EPA has statutory responsibilities for coordination and design of monitoring programmes and reporting of ecological status to meet the requirements of the Water Framework Directive. Internationally, monitoring and classification of water bodies under that Directive presents ongoing and difficult challenges (Howarth, 2006; Nõges et al., 2010), which may be accentuated by climate change. There is a requirement for flood risk management plans under the Floods Directive (Directive 2007/60/EC) requiring coordination with the OPW (which has the national responsibility for matters related to flooding) and with DAFF.

The Review Group concluded that there is need for more integrated water data collection across national agencies such as the EPA, OPW, Inland Fisheries Ireland, Marine Institute and local authorities. The Review Group recommends that consideration should be given to the EPA assuming this role, subject to the realignment of resources currently available in various public authorities across the State.

3.10 Laboratories

The EPA operates five laboratories, three of which provide a service to local authorities under a historical arrangement, in addition to meeting the Agency's own needs. Under new and extensive monitoring obligations required by the Water Framework Directive, the EPA has an overall coordination role as well as responsibility, along with the local authorities, for major aspects of monitoring. The EPA considers that its provision of these services to certain local authorities could give rise to potential conflicts of interest, as the EPA is also responsible for licensing some of those local authorities' activities. The cessation of this service, with suitable alternative arrangements put in place, would enable resources within the EPA to be redirected to other key priority areas.

A more optimised use of laboratory services could provide scope to develop national centres of expertise, quality assurance and advice for local authority laboratories. However, any shift of emphasis from field sampling to assessment within the EPA requires a careful and statistically justifiable approach. A vision for field staff to become more involved in reporting and knowledge transfer is not without risk. Sophisticated knowledge transfer does not substitute for reliable data collection and analysis.

3.11 Biodiversity monitoring

The role of the EPA in the monitoring of biodiversity is set out in the EPA's Biodiversity Action Plan (2010). There appears to be a need to better coordinate the remit for biodiversity monitoring of the EPA with that of the NPWS (as discussed in Chapter 5 (Relationships with Stakeholders)), the local authorities and DAFF. It is also important that development of data systems across the relevant agencies are mutually compatible, which will greatly facilitate the implementation of the INSPIRE Directive (Directive 2007/2/EC) which lays down general rules for the establishment of an infrastructure for spatial information and its availability. The EPA can play an important coordinating role in this effort.

Chapter 4 - Environmental Research and Information

The EPA is the national centre of environmental expertise and information. This resource is extensive, comprising actual data arising from monitoring and grant-aided research, and in-house understanding of environmental policies and the scientific principles that underpin them. Over the last decade the EPA has been the primary funding body for environmental research in Ireland, given its statutory remit in relation to environmental research. Since 2000, total funding of over €100 million has been provided by the State for environmental research and innovation.²⁸ An additional €23 million has been provided through co-funding arrangements. This money has funded research in Irish universities, many of the Institutes of Technology, and many SMEs encompassing a large range of research areas, from research to support EPA core duties such as monitoring, to innovation of green technology. The funding has enabled the development of Irish capacity in environmental research and knowledge on a scale from individual postgraduate research projects to large integrated projects co-funded by Government agencies. In reviewing this role of the EPA the Review Group considered:

- the extent to which research is targeted to support EPA core duties in environmental protection and monitoring;
- the extent to which the work of the EPA supports the local authorities and others in fulfilling their obligations in environmental protection;
- the extent to which findings and recommendations of funded research feed into policy or monitoring, or are linked to the market in terms of innovation technology;
- the mechanisms for optimal exploitation and dissemination of research results; and
- the coordination and possible duplication of research between EPA and other funding bodies.

With regards to EPA monitoring programmes, whether required under the 1992 Act or not, there is a natural link between research and the examination of methods to improve monitoring. The review considered:

- the extent and timing of results being put into the public domain; and
- any obstacles to data provision and dissemination.

²⁸ For more information on the EPA R&D programme and funding see <http://www.epa.ie/researchandeducation/research/research/>

4.1 Reporting on the state of the Irish environment

Under section 70 of the 1992 Act, the EPA has a duty to report on the state of the Irish environment. Subsequent legislation provides for a coordinating role for reporting certain data to the European Commission on the implementation of EU legislation. Four State of the Environment reports (1996, 2000, 2004, 2008) summarising trends in environmental indicators have been produced.²⁹ The reports provide data from monitoring carried out directly by the EPA, notably on air and water quality, and data collated from a number of other sources, including other Government Departments, their agencies and local authorities. More detailed reports on national trends of individual sectors or pollutants (e.g. water quality, greenhouse gas (GHG) emissions, waste management) have been produced at either regular or irregular intervals. Owing largely to historical reasons (e.g. water quality), or in response to emerging issues driven by EU policy (e.g. soil, noise), or international agreements (e.g. collation of information across sectors on GHG emissions), some sectors are monitored more intensively and extensively than others.

It is important to recognise that capacity building within the Agency over all sectors is time consuming and also needs to be responsive to new policy, arising mainly from EU Regulations, Directives or Communications. Ongoing effective dialogue across Government Departments, agencies and local authorities should be strengthened with respect to monitoring, reporting and research coordination and it is important that the EPA is supported fully by other areas of Government in order to fulfil national objectives.

Since its establishment, the EPA has inherited a number of monitoring functions, such as the river network programme. An emphasis on monitoring of water quality is, therefore, based on a strong tradition. The Water Framework Directive has placed a significantly enhanced role for the monitoring, and hence reporting, on the state of surface and groundwaters on a range of public bodies. The EPA's statutory obligation under the European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003) (as amended) to coordinate implementation of the Water Framework Directive presents key challenges to ensure that:

- coordination arrangements across local authorities and other agencies are effective; and
- data collected through monitoring is reliable and statistically fit for purpose.

While it is important that the EPA remains diligent in these matters, in order to ensure timely provision of information, the structure of River Basin Management is largely outside of its

²⁹ The third and fourth State of the Environment Reports are available to download at <http://www.epa.ie/downloads/pubs/other/indicators/>

control. The Review Group has discussed the role of the EPA in water data collection governance in Chapter 3 (Licensing, Assessment and Monitoring).

4.2 Providing strategic guidance and funding for research and development

Given its legal remit for the coordination of environmental research in Ireland, the EPA is a key influence on the direction of that research. Seven key thematic areas were identified in the Agency's most recent research programme *STRIVE - Science, Technology, Research & Innovation for the Environment 2007-2013*. The research is targeted to support policy needs and is commissioned through calls for proposals and their evaluation by a group of experts. This investment has been of major importance in building environmental research capacity (CIRCA 2007). The Review Group welcomes the fact that research projects funded by the EPA are subject to independent peer review and, post funding, subject to review by steering groups comprising EPA and non-EPA personnel; this enhances the credibility of the research programme. A comprehensive summary of the EPA research programme's support to environmental policy is provided by Colgan and Donlon (2010). While developing expertise in environmental research and understanding is a highly important goal *per se*, it is also necessary to review the impact this has had, or will have, for environmental protection.

A policy-orientated research programme requires a clear mechanism for considering research findings to strengthen environmental protection and monitoring. A series of examples of how research has been used by the EPA and others is provided in Colgan and Donlon (2010). The process for considering adaptation of research findings and recommendations is, nevertheless, unclear. Research reports to the EPA are required to contain clear summary conclusions and recommendations. Colgan and Donlon (2010) summarise how such research findings are being used to support eight key areas of environmental policy and also to support the knowledge economy. Currently, however, there appears to be no formal process for adopting, or not adopting, recommendations as the case may be. The EPA should provide a clear process for reviewing research recommendations and effecting their inclusion into wider policy development, with further discussions as necessary with relevant researchers. It is not the intention here to restrict innovative ideas, or to provide a requirement for the EPA to accept and adopt research recommendations, but to support an ongoing structured appraisal of funded research for policy implementation.

A focus on what might be considered purely applied research is not, however, without its dangers (Talling 2008)³⁰. An excellent example is the research and monitoring to support the implementation of the Water Framework Directive. Across the EU, many Member States have provided extensive resources for monitoring and research programmes to meet a series of requirements outlined in Annex V of that Directive. This has tended to focus on regional perspectives rather than, as was formerly the case, detailed studies based on individual sites that provided important insights into the ecosystem response to particular pressures. The EPA individual PhD scholarship programme provided an excellent mechanism for innovative research more loosely aligned to policy support than the larger integrated projects. It has also provided a steady input to environmental capacity building and support for fourth level education, providing a forum for young researchers to meet and interact with each other and the EPA, and the Review Group recommends that the Agency should continue to fund this programme.

The vast majority of funding for research comes from the DECLG Environment Fund. This funding is separate from the Exchequer funding of the EPA and is susceptible to increased demands on the Environment Fund for various purposes other than research. Environmental research and continued capacity building is essential to maintain a national expertise and support for national and international obligations. Given the inevitable reduction in the overall availability of resources in the short to medium term a number of key strategic questions arise. The Review Group considers that it would be a serious error to either redirect the Environment Fund for general Exchequer distribution, or to reassign the management of environmental research funding to a single centralised agency (such as Science Foundation Ireland (SFI) or the Irish Research Council for Science, Engineering & Technology (IRCSET)). The danger of such a strategy is that wider short term economic pressures to promote a “smart economy” or provide running costs for large infrastructure programmes which have already been built or commissioned will seriously undermine the national environmental knowledge base, the further development of which is essential from a number of perspectives, not least in terms of supporting:

- the implementation of the EU2020 strategy in Ireland over the next decade, particularly the elements in relation to climate change and resource efficiency; and

³⁰ Talling, J. (United Kingdom) (2008), *The developmental history of inland-water science*. *Freshwater Reviews*, Freshwater Reviews, Vol 1, No 2, 1: 119-141.

- the effort to remedy deficits in the transposition and implementation of EU environmental legislation in Ireland, which is essential if the impositions of significant fines by the Court of Justice is to be avoided.

There is a continued need for effective dialogue among Government agencies and Departments in order to optimise funding and cost-effectiveness of environmental research. While the EPA has increased efforts to develop effective working relationships with other key research funders in the State, there is room for even greater coherence in this coordinated approach, while, importantly, still taking account of the different core duties of agencies. Liaison through fora such as the National Platform for Biodiversity Research, which is funded jointly by the EPA and the NPWS, provides an example whereby research priorities and funding mechanisms can be identified and agreed.

The “Celtic Tiger” years provided an essential boost of funding for the EPA research programme, resulting in greater capacity for Irish researchers to be involved in EU funded programmes. Involvement in larger EU funded projects cannot, however, provide a substitute for the targeted research required by the EPA in support of national environmental and sustainable development policies. It is essential that Ireland maintains the strong and independent research base it has built up over the last 15 years.

The EPA funded research programmes have resulted in substantial outputs of peer-reviewed literature. The EPA research programme has also provided the opportunity for Irish researchers to be involved in national and international fora. However, because there is no formal mechanism or requirement for this, there is undoubtedly a substantial amount of valuable information that has not been published in peer reviewed journals. This provides a difficult conundrum, because it is probably impossible to ensure that researchers submit their work for peer reviewed publication. While there appears to be a mechanism for collating the numbers of peer reviewed papers, this does not assess the quality or relevance for policy support. Optimising publication of EPA funded research is clearly desirable and it would be highly informative for the EPA to evaluate any obstacles that Irish environmental researchers face in publishing, and the means to overcome these.

4.3 Climate change research

Climate change presents a particularly difficult global and national challenge and effective research to support climate adaptation and mitigation policy remains vitally important. Predictive models for the “climate proofing” of land-use policies require further development. In this regard it is important to bear in mind that current environmental protection, as

highlighted in the EPA 2008 State of the Environment Report (EPA 2008b), faces significant challenges irrespective of further climate driven pressures, such as enhanced climate extremes including flooding and drought, shifting baseline conditions for biodiversity and spread of alien species. It is important that research to meet the challenges of climate change continues to be designed in full consultation with other relevant bodies, including those charged with duties for flood management, agriculture and biodiversity.

The very challenging 2020 targets under the EU Effort Sharing Decision³¹ and the demands that will arise from the recently published EU Roadmap for moving to a competitive low carbon economy in 2050³² are also likely to require additional research work in support of the development of mitigation policies/measures. Important research in the sphere of economic analysis and forecasting has already yielded significant gains in deepening our understanding of the impact of the economy on the environment and also enlightened us to cost efficient measures to mitigate this damage. It is imperative that short to medium term projects that help to quantify our mitigation challenge are operationalised and located within the appropriate agency or body in a cost effective manner.

It is also important that future research and management priorities, well identified by Colgan and Donlon (2010), are not overshadowed by a climate change research agenda. A balance between research supporting existing policies and mitigating pressures, and responsive to uncertain climatic effects is required. A significant challenge to the value of environmental research is that projects are usually short-term. Medium to long-term research programmes that provide spatial data over extended temporal scales provide an extremely valuable national resource in order to evaluate policies relating to e.g. land-use and climate change. This is especially the case where infrastructure conducive to long-term research has been set up. A number of examples exist in Ireland, for which the EPA is the funding body or provides a collaborative input with other agencies. The Review Group recommends that future climate change research funding should include medium to long-term research projects as appropriate.

4.4 Disseminating information on the environment

The EPA is an extensive information resource, comprising not only data arising from monitoring and commissioned research, but also an in-house understanding of environmental policies and the scientific principles that underpin them. Its work contributes

³¹ Text available at http://ec.europa.eu/clima/documentation/effort/index_en.htm

³² Text available at http://ec.europa.eu/clima/documentation/roadmap/index_en.htm

directly to Government policy on all aspects related to environmental protection. Information from research and monitoring on the environment can be disseminated in three broad ways: first, research reports and data, available for download from the EPA website; second, the EPA produces reports on the State of the Environment and other sectors, such as Water Quality; and third, data from the EPA's own monitoring programmes.

In general, the EPA relies on providing extensive environmental information and research findings through its website, targeting primarily a well-informed and technically proficient audience. Research reports from EPA-funded programmes are available for download from its website and it is desirable that full and summary reports continue to be made available. Dissemination of research findings and environmental management is further supplemented through EPA organised meetings and conferences. A particularly successful series of climate change lectures has been held in recent years, with key international speakers. This type of initiative is a useful way to disseminate important information and facilitate vital debate around key issues; possibilities for expansion of this initiative to address other key environmental priority areas should be explored in the future.

Under conditions of current research funding from the STRIVE programme, the EPA requires that research results are archived to a publicly accessible database, the SAFER-Data system; this is a welcome development. It is, however, essential that this facility is supported by good data management, and quality assurance protocols through appropriate screening. It is equally important that the EPA's own research and monitoring results are placed in the public domain in a timely manner. The EPA real-time air quality results and maps of environmental noise provide examples of this. The air quality data is available in its raw form, but many other data sets are not yet made publicly available in such detail.

While environmental data can be complex, and subject to misinterpretation, this should not restrict its availability. The Review Group welcomes the EPA OEA's commitment to provide timely and accurate information in the public domain. In terms of stakeholder and general public confidence, it is desirable to have more of the basic data available. By way of example, the EPA has provided a significant first tranche of species level river, lake and marine biological data (almost 36,000 records) to the Waterford based National Biodiversity Data Centre, which allows public access to species distribution maps from the Centre's website (www.biodiversityireland.ie). The data, collected by the EPA's extensive water monitoring programme, that lie behind these maps are, however, not currently accessible. The Review Group would encourage further dissemination of this type of raw data into the public domain. In this respect the EPA can act as a best practice model for other publicly

funded agencies to follow, and this could also provide a useful model for implementation of the INSPIRE Directive (Directive 2007/2/EC) to promote availability of publicly funded spatial information.

As discussed in Chapter 3 (Licensing, Assessment and Monitoring), the EPA's remit has strong connections with the remits of other agencies and Departments (e.g. local authorities, the NPWS, the Marine Institute, Inland Fisheries Ireland, Teagasc). As part of general environmental governance, there is a need for environmental data collected by other agencies, or publicly funded quasi-agencies, to be publicly available and the Review Group welcomes the continued liaison between the EPA and other agencies and Departments to encourage open and convenient access to monitoring and research results.

Provision of information does not rely exclusively on the web and the EPA has a dedicated Communications Unit which issues 40-50 press releases per year and produces about 10 general articles annually on topical environmental issues of local and regional interest. The EPA has a key role in dissemination of environmental information and environmental awareness-raising and education and should continue to develop partnerships with the DECLG, the broader Environmental Non-Governmental Organisation (ENGO) network, and other public bodies to ensure that synergies are maximised and that overlaps of initiatives/activities are avoided. Given the limited resources of the Communications Unit, effective dissemination of information to the general public inevitably requires a strategic approach for prioritising activities, utilising existing networks and working with other key actors. The provision of environmental information can also be enhanced through continuous liaison with local authority Environmental Awareness and Heritage Officers, who play a key role in environmental fora.

Chapter 5 – Relationships with Stakeholders

Environmental management is a complex issue, involving an array of stakeholders, including Government Departments, local authorities, other public bodies, members of the public and supra-national and international organisations. For Ireland to achieve its environmental objectives, all public bodies must take their share of environmental responsibility willingly, including the responsibility for collaborating meaningfully with the EPA. The Review Group was impressed by the EPA's open, participatory style of engagement with stakeholders generally. Over seventy submissions were received by the Agency in the preparations of its strategy, *2020 Vision – Protecting and Improving Ireland's Environment* (EPA 2000), showing a reciprocal interest on the part of stakeholders to engage with the EPA.

A commonly agreed and shared ethic of environmental responsibility, based on “putting the environment first”, without undue influence by sectoral interests, is essential for robust environmental protection and promotion of sustainability. As stated in the Environmental Pillar's submission to the Review Group:

“The ultimate customer and stakeholder for an Agency charged with ‘Environmental Protection’ is of course the Environment itself – with all other parties effectively being ‘users’ of that resource or system.”

Ensuring smoothly functioning relationships between the Agency and its stakeholders is a key issue in integrating environmental matters into policy development and it involves reconciling a range of expectations and attitudes to environmental protection. This is particularly true in the areas of planning, agriculture, forestry, fisheries, transportation and energy; not all stakeholders agree that the State has met its responsibilities in this regard and some questioned the performance of the EPA as an “environmental champion” in promoting such integration.

Clearly, it is not possible within the scope of this Review to examine all of the relationships between the EPA and potential stakeholders; but as each sector can have varying experiences of the Agency, the review is focussed on six broad groups of stakeholders:

- Central Government, (including the Oireachtas, and Government Departments);
- State agencies;
- Local Government;

- Enterprises subject to EPA licensing;
- ENGOs; and
- Individuals and local interest groups.

5.1 Relationship with central Government

The issues of independence of the Agency from central Government and its interaction with the Oireachtas are dealt with in Chapter 2 (Governance, Internal Structure and Resources), which recommends that this relationship should be further developed to increase the accountability of the EPA to the Oireachtas, through the extension of the parliamentary questions process to the Agency. In order for the EPA to fulfil its mandate effectively, it must encourage all Government Departments to work closely with it; in particular those Departments whose functions directly impact on the environment – the Departments of Agriculture, Fisheries and Food (DAFF); Arts Heritage and the Gaeltacht, Communications, Energy and Natural Resources; Transport, Tourism and Sport; Enterprise, Jobs and Innovation; and, of course, the DECLG. Some submissions criticised the effectiveness of this engagement in the past and questioned whether the EPA has been successful in ensuring that environmental considerations have been taken into account in decision-making by these Departments, where relevant. Chapter 2 (Governance, Internal Structure and Resources) accepts that this is not the sole responsibility of the EPA and recommends that a high level Environmental Governance Network should be established to drive this work; all of these key public sector stakeholders of the EPA should be involved in this initiative.

There appear to be reasonably good working relationships between the EPA and the Departments that the Review Group interacted with. It is clear, however, that specific issues arise where the EPA and a Department may have seemingly competing priorities, requiring consultation and agreement on the most appropriate approach to ensure that legislative requirements are met. Stakeholders brought to the attention of the Group an example where agricultural imperatives seem to compete with environmental requirements, in relation to whether animal by-products constitute waste or manure. This matter has been under discussion between both parties for a number of years and it should be noted that the issue is the subject of a legal challenge currently. While it is not within the remit of the Review Group to interpret various pieces of national legislation, we would recommend that the Agency should continue to prioritise formal mechanisms for managing ongoing discussions with DAFF, licence holders and all relevant Departments in relation to contentious issues, while maintaining an appropriate degree of environmental protection.

5.2 Relationships between the EPA and State agencies

5.2.1 An Bord Pleanála

Even though the role of the EPA has expanded significantly since its establishment, the separation of functions between the Agency and An Bord Pleanála has been the subject of general criticism by ENGOs. While the Board has stated that its relationship with the EPA has been positive, and the Agency has been helpful and co-operative in areas of mutual concern and interest, ENGOs claim that a number of problems have arisen. It is clear that this functional relationship between the EPA and An Bord Pleanála is necessarily complex (given the variety of planning applications and licences), but must also work effectively. The legislative aspects of this relationship are explored more fully in Chapter 6 (Legislative Framework); in terms of the practicalities of the relationship, the Review Group notes that a MoU exists between the two agencies and recommends that this should be kept under review and updated to address issues where they arise.

5.2.2 Inland Fisheries Ireland

Inland Fisheries Ireland (IFI) confirmed in submissions that there have been good informal and formal communications between the EPA and the fisheries service since the establishment of the Agency. The Review Group agrees with the recommendation of IFI that, “the opportunity should now be taken to formalise regular managerial and technical contact between both organisations”. In this context it is important that the relationship between IFI and the Agency be appropriately defined, minimising overlap and duplication while at the same time ensuring that there are no gaps in water management, as discussed in Chapter 3 (Licensing, Assessment and Monitoring).

5.2.3 National Parks and Wildlife Service

The first National Biodiversity Plan required, “relevant Government Departments and State agencies to prepare, with stakeholders, their own Biodiversity Action Plans in line with agreed guidelines to ensure and promote the conservation and sustainable use of biodiversity”.³³ While the EPA does not have the primary statutory responsibility for protecting biodiversity, it made a commitment to this objective in its strategy, *2020 Vision – Protecting and Improving Ireland’s Environment* (EPA 2000), and subsequently published its own Biodiversity Action Plan (EPA 2010). The EPA provides substantial information to the NPWS in relation to reporting obligations to the EU under the Habitats Directive (Directive 92/43/EC), and also in relation to Ireland’s input to reviews of the implementation of the EU Biodiversity Strategy. In turn, the NPWS contributes substantially to the biodiversity

³³ Department of the Arts, Heritage, Gaeltacht and the Islands (2002), *National Biodiversity Plan*, p 40.

elements of the EPA State of the Environment reports. Relationships with other stakeholders are addressed in the EPA's Biodiversity Plan, and these include liaison with NPWS, the Heritage Council, the National Biodiversity Data Centre, other statutory organisations and ENGOs.

The promotion of these relationships is particularly relevant in relation to the management of any future biodiversity-related incidents under the European Communities (Environmental Liability) Regulations 2008 (S.I No. 547 of 2008). The Review Group recommends that a MoU should be drawn up between the Agency and the NPWS to support a unity of purpose and sharing of information between the two organisations, for example, to improve the protection of Special Areas of Conservation (SAC) and Natural Heritage Areas (NHA), especially bogs where both parties have responsibilities along with other State bodies. This MoU should also seek to promote a good working relationship at local and regional level between the two organisations through encouraging regular contact between personnel. The Group also suggests that the EPA should liaise with Coillte and Bord na Móna in respect of biodiversity matters, where relevant.

5.2.4 Sustainable Energy Authority of Ireland

The Sustainable Energy Authority of Ireland (SEAI) has recently published its strategic plan for the period 2010 to 2015, but the plan contains no references to any liaison or co-operation with the EPA. In response to a question raised by the Review Group, the Agency indicated that it has a very good working relationship with the SEAI and has recently signed (November 2010) a MoU with them. The EPA recognises the function of the SEAI in playing a leading role in transforming Ireland into a society based on sustainable energy structures, technologies and practices, and the MoU provides a framework for cooperation in areas of mutual responsibility and shared interest between the two organisations. The Review Group recommends that the EPA and SEAI should, as appropriate, explore opportunities for expanding this collaboration further in the future, particularly in support of the national climate change effort.

5.2.5 Marine and maritime agencies

There are a number of State agencies with responsibility for marine, estuarine and coastal waters, e.g. the Irish Coast Guard, DAFF, the Sea-Fisheries Protection Authority and the Marine Institute. The Review Group would question the adequacy of the monitoring framework currently in place and recommends that the EPA would continue to work with these organisations, underpinned by legislation as appropriate, to ensure that monitoring is

completed effectively and efficiently, especially as the EPA includes these waters in its State of the Environment reports.

5.2.6 Health Service Executive

While the Agency has collaborated with other State agencies in the investigation of a number of issues concerning human and animal ill-health, and also in the context of its licensing activities, some stakeholders would argue that there is scope for improvement in the quality of its engagement with the relevant authorities in the health sector.

There are a number of agreed mechanisms for contact between the HSE and EPA at different levels, both formal and informal. The protocol for the investigative approach to serious animal and human health problems³⁴ provides a basis for inter-agency investigation. A MoU was signed in 2006 between the HSE Population Health Directorate and EPA, and regular meetings are held.

In discussions with the HSE, it proposed to the Review Group that consideration should be given to the establishment of multi-disciplinary teams to address cross-cutting issues in the area of environment and health. A recommendation in relation to this interaction between environmental and human health impacts and assessments is dealt with in detail in Chapter 3 (Licensing, Assessment and Monitoring) where the Review Group proposes that the Agency should establish a statutory Advisory Committee to consider the interface between the environment and human health in more depth (in particular the use of HIA in EPA licensing).

5.3 Regional and local Government

5.3.1 Local authorities

The EPA has a multifaceted relationship with local authorities; it licenses certain local authority activities; it exercises a supervisory role in relation to the discharge by local authorities of certain functions; and there are other areas which require the Agency and the local authorities to collaborate. Some of the recommendations made elsewhere in this report will have a bearing on certain aspects of these various relationships. A particularly complex issue is the “split” decision-making process that exists between the EPA and the planning authorities in relation to the implementation of the EIA Directive (Directive 85/337/EEC), which is discussed in more detail in Chapter 6 (Legislative Framework). A

³⁴ Text available at http://epa.ie/downloads/advice/general/EPA_protocol_investigation_animal_human_health.pdf

number of further specific relationship-related issues, in relation to air quality, water quality and contaminated land, which were raised during the review, are addressed below.

5.3.1.1 Air

In relation to monitoring and reporting on air quality in the urban environment, it appears that the EPA has a good working relationship with those City Councils involved. Some 28 air monitoring stations are operated jointly by the EPA and local authorities and, in addition, there are 15 monitoring stations measuring black smoke and 11 measuring sulphur dioxide (SO₂) operated by local authorities (O'Dwyer 2010). The EPA and local authorities also regulate air emissions from industrial facilities. Exchange of information between the local authorities and the EPA appears to be working well. However, while the Review Group welcomes the availability of the raw data from these sites, it is recommended that these data be further processed, as is done with noise data at the moment, to prepare regularly updated maps of estimated human exposure, as is the practice in, for example, the Netherlands (see Figure 2).

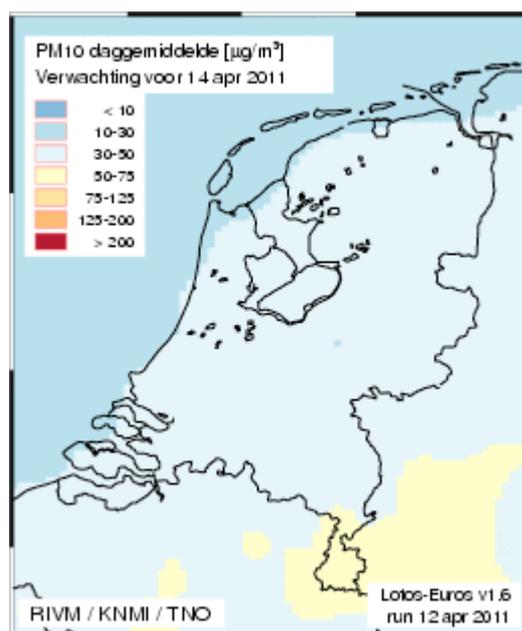


Figure 2: Air quality index for the Netherlands³⁵

5.3.1.2 Water resources, water quality and local authority waste water discharges

Protecting Ireland's water resources is a key task, with many responsibilities having been assigned to the Agency; it is becoming increasingly important following the introduction of the Water Framework Directive (Directive 2000/60/EC) and the relevant Irish statutory provisions. As stated in *2020 Vision* (EPA 2000), the Agency will, "promote sustainable

³⁵ Available at http://www.gse-promote.org/services/aq_nl/promote_aq_nl.php

infrastructure development, and will provide advice and assistance to local authorities to assist them in protecting local water resources in their areas” (Goal 3). The issues of licensing, assessment and monitoring of water quality are dealt with in detail in Chapter 3 (Licensing, Assessment and Monitoring).

The City and County Managers’ Association (CCMA) noted that the engagement between the EPA and local authorities has been strengthened in recent years, and much of the success of the OEE was attributed to the positive partnership approach which has led to the development of significant practical expertise at local authority level. Nevertheless, the cost to local authorities of environmental compliance, particularly in relation to aquatic discharges, was emphasised as an area of difficulty. While the Review Group can appreciate the difficulties faced by local authorities, including from a financial perspective, it is clear that the same requirements must apply for local authorities as for private bodies.

5.3.1.3 Contaminated soils and brownfield sites

Resolving problems with contaminated soils and former industrial sites is another area where the Agency must co-operate closely with local authorities, in connection with the latter’s responsibility for formulating development plans and for development control.

Local authorities have a responsibility for deciding on planning issues related to the redevelopment of brownfield sites, and they may require risk assessments to be undertaken at smaller contaminated land projects that lie outside the licensing remit of the EPA. Contaminated soils in Ireland, which are discussed in Chapter 6 (Legislative Framework), are relatively rare and are associated mainly with the legacy of historical operations, for example old mining, gasworks and waste disposal sites; submissions to the Review Group questioned the responses by the relevant public authorities in dealing with specific legacy waste issues.

The application of the risk assessment philosophy to contaminated land clean-up in Ireland has increased due to the EPA’s involvement in contaminated land/risk assessment networks, such as CARACAS and CLARINET. The Review Group recommends that the EPA and local authorities should continue to work closely together to ensure that the inventories of contaminated land are complete and up-to-date and that local and regional development plans identify brownfield sites within their areas and promote the appropriate redevelopment of such sites.

5.4 Enterprises subject to EPA licensing

A key issue in the relationship between the Agency and holders of IPPC and waste licences is in relation to enforcement. The Irish Business and Employers Confederation (IBEC), which represents the interests of many licensed businesses, believes that, “the Agency has been broadly successful in meeting stakeholders’ appropriate interests,” and, “in meeting the expectations of stakeholders and regulatory partners.” IBEC and the EPA appear to have a constructive relationship; issues around the cost and timeliness of reviews of IPPC licenses, which were raised by IBEC, are dealt with in Chapter 3 (Licensing, Assessment and Monitoring) and in Chapter 6 (Legislative Framework).

The IBEC submission also raised other issues in respect of the relationship between the Agency and industrial enterprises subject to EPA licensing, including the length of time taken by the Agency to make decisions; the resource implications of further functions added to the EPA’s remit; the need for a more streamlined regulatory framework with reduced administration which could make it easier for business to comply, without reducing environmental performance; and, consistency of practice by the Agency. Recommendations elsewhere in the report are relevant to some of these issues – for example, the recommendations that the IPPC and waste licensing regulations be consolidated and that streamlined arrangements for partial reviews of licences be introduced in Chapter 6 (Legislative Framework).

The EPA has been assigned responsibility for the implementation of the EU Emissions Trading Scheme (ETS) in Ireland. In March 2008 the EPA finalised Ireland’s second National Allocation Plan for the period 2008–2012 (EPA 2008a). As stated in *2020 Vision* (EPA 2000), “Ireland will achieve major reductions in greenhouse gas emissions and will be prepared for the unavoidable impact of climate change”. Meeting this objective will require a high degree of co-operation between the EPA and participating industrial installations. The Review Group considers that this aspect of the Agency’s work has been conducted well, with a constructive and co-operative relationship between the EPA and the installations concerned.

5.5 Environmental NGOs

The submission from the Environmental Pillar noted that some members of the Pillar acknowledged positive relationships with the EPA. However, given the scale and complexity of environmental challenges which Ireland currently faces, the effectiveness of the twice yearly meeting between the EPA and the sector’s representative ENGOs is questioned by a

number of members and is not considered sufficient by the ENGOs to cover all the main issues in depth. The Environmental Pillar believes that improvements are needed to the EPA's follow-up on issues raised by the ENGOs at these sessions or in other fora. Equally, the Review Group recognises the significant improvements that have been made by the EPA in recent years in terms of consulting and working with ENGOs. Accordingly, the Group recommends that the EPA and the ENGOs engage directly to review their structured arrangements for engagement, with a view to identifying ways in which outcomes might be improved in a resource efficient manner.

5.6 Individuals and Local Interest Groups

Some stakeholders contended that the relationship between the EPA and persons living near licensed facilities was problematic, particularly in the earlier years of the Agency's operations. Monitoring of licensed facilities was reasonably well resourced from the start; however, stakeholders claimed that the need to achieve licensing targets may have left insufficient resources for enforcement or for responding to residents' complaints, with odour issues associated with licensed facilities being a cause of particular concern. The establishment of the OEE in 2003 is recognised by many stakeholders as a turning point in this relationship with local interest groups.

In recent years, stakeholders recognise the Agency's willingness to respond quickly to complaints and to involve local residents as witnesses in legal proceedings against non-compliant licensees. Consultees to this review confirm that this has led to increased confidence among members of the public in relation to their perception of the Agency's willingness to prosecute offenders. For example, in the period 2006 to 2010, the EPA prosecuted 25 offenders in connection with emissions to air from licensed facilities, and more than half of these prosecutions (15) were taken because of complaints of odour.³⁶

Divergent views are provided by consultees on the success of this engagement by the EPA but, on balance, the Review Group believes that the interface between the EPA and the public is, in overall terms, working more effectively than suggested in some submissions. The Agency's website has continually been improved and offers the user more access to all significant licensing documents produced by the Agency, by licence applicants and by third parties. It is now also possible to make a submission online to the Agency. The website provides an illegal dumping hotline, lists of prosecutions undertaken by the Agency, online access to research reports and publications, and an enormous variety of environmental

³⁶ Data from EPA Annual Reports and from the EPA website: <http://www.epa.ie/whatwedo/enforce/prosecute/>

information, as discussed in Chapter 4 (Environmental Research and Information). This must be considered a highly effective interface.

One of the prime channels of communication between the EPA and the public is through the media (television, radio, newspapers, etc.) and the Internet; the Review Group have noted that there has been much more interaction between the EPA and the media in recent years, especially since the Agency developed its own in-house media relations resource. The increased support for relevant television documentaries and other media engagements is a positive move and the Review Group recommends continuing this trend, as resources allow.

5.7 International Relationships

The submission from the Environmental Pillar drew the Review Group's attention to the lack of participation by the EPA at United Nations Environment Programme Governing Council meetings, and the need to address the appropriate expectations of international stakeholders. The Review Group is aware that the EPA attends a large number of international meetings, such as meetings of the European Environment Agency, and a multitude of EU engagements (mainly in the area of expert groups and competent authority meetings), and that it also supports the DECLG in respect of its engagement at international fora. The Review Group is satisfied that the EPA is playing an appropriate role in this area, taking particular account that it is the DECLG which has the lead role in representing the State on EU/international environmental matters.

Chapter 6 – Legislative Framework

6.1 Coherence, quality and accessibility of legislative framework

A major practical difficulty with the current legislative framework governing the EPA is its disjointed nature, a point which surfaced persistently in submissions to the Review Group. Both the 1992 Act and the Waste Management Act 1996 have been the subject of substantial amendment over the years, in particular pursuant to the Protection of the Environment Act 2003. The associated sets of licensing regulations have also been amended on numerous occasions. This state of affairs means that extensive and time consuming cross-referencing is required in order to identify the current legal rules. A similar critique may be levelled at water-related legislation and nature protection law. The piecemeal nature of the current legislative framework, and in particular the proliferation of regulations, means that the law is not readily accessible. The opacity of the law generates unnecessary complexity and uncertainty for all concerned and makes effective public participation in environmental matters more difficult than it should be. The Review Group endorses the OECD recommendation that environmental legislation should be consolidated into, “a coherent framework with the aim of simplifying and clarifying requirements and promoting better compliance” (OECD 2010: 17). There is a particularly urgent need to consolidate the IPPC and waste licensing regulations.

The obligation under EU law to transpose the Industrial Emissions Directive (Directive 2010/75/EU) by 7 January 2013 will require amendments to the current legislative framework governing IPPC and waste licensing. The Industrial Emissions Directive therefore provides an opportunity - and a firm time line - within which to review and revise this area of national law to make it more coherent and user-friendly.

At a more general level, environmental protection legislation should be kept under review to ensure that any problems arising in practice are identified and addressed at an early stage.

6.2 Functions of the EPA

The EPA's core functions are set down in general terms in section 52(1) of the 1992 Act; this provision has not been revised since its enactment. Given the wide range of new responsibilities assigned to the EPA since its establishment in 1993, section 52(1) no longer provides an accurate picture of the current range of EPA functions including, for example, its role in relation to SEA, water protection, contributing to the preservation of biodiversity and Ireland's response to climate change. The Review Group concluded that section 52(1)

should be revised and updated in light of the EPA's expanded remit; in particular, express references to water protection, climate change and contributing to the conservation of biodiversity and to environmental sustainability would be desirable.

Section 52(2), which sets out the general framework by reference to which the EPA is to carry out its functions, is also in need of revision to reflect developments in international and EU environmental law and the principles underlying contemporary environmental regulation. The Review Group concluded that section 52(2) should be revised in light of these developments and, in particular, that a more explicit reference to environmental sustainability should be included. In this context, the Group noted that the preparation of a new National Sustainable Development Strategy is currently underway.

6.3 Immunity from suit

The EPA currently enjoys an absolute immunity from suit in respect of the failure to discharge its statutory functions. Section 15 of the EPA Act provides:

“No action or other proceedings shall lie or be maintainable against the Agency ... for the recovery of damages in respect of any injury to persons, damage to property or other loss alleged to have been caused or contributed to by a failure to perform or to comply with any of the functions conferred on the said Agency ...”.

A similar provision is found in section 67(1) of the Waste Management Act 1996. The Review Group noted that doubts have been expressed about the constitutionality of this immunity and whether it is compatible with obligations arising under the European Convention on Human Rights.³⁷ The Review Group concluded that the absolute nature of the EPA's immunity was difficult to justify in a modern legislative scheme and that it should be revised, as appropriate, when the opportunity arises.

6.4 Oversight by Ombudsman

The Office of the Ombudsman may investigate any action taken by specified public bodies “in the performance of administrative functions” where some person is “adversely affected” by the action (Ombudsman Act 1980, as amended by Ombudsman (Amendment) Act 1984). At present, the EPA is not subject to the Ombudsman's jurisdiction and a number of

³⁷ Scannell, Y. (2006), *Environmental and Land Use Law*, paras. 8.326 and 13.89. Dublin: Round Hall. On the constitutional law point, see further Hogan, G. and Morgan, D.G. (2010), *Administrative Law in Ireland* (4th ed) paras 18.33-18.41. Dublin: Round Hall and Hogan, G.W. and Whyte, G.F. (2003), *J M Kelly: The Irish Constitution* (4th ed) para 8.2.64. Dublin: Tottel Publishing.

submissions to the Review Group suggested that the EPA should be subject to this oversight. The Group noted that the Ombudsman has considerable experience in dealing with complaints concerning alleged maladministration by local authorities in the context of planning administration and enforcement functions and has proven to be an accessible and effective avenue of redress in this context. The Group noted with interest a report published by the Ombudsman in July 2010 which found that a local authority had failed to deal effectively with a complaint concerning unauthorised development.³⁸ The Ombudsman made a number of recommendations in this case, including the payment of compensation to the complainants, “arising from the adverse effect suffered ... as a result of the Council’s failure to take appropriate action in relation to the unauthorised shed beside their home.” She also recommended specific improvements in the planning authority’s administrative procedures in the area of enforcement.

Beyond planning matters, the Ombudsman also holds the Office of Commissioner for Environmental Information under the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007). The Commissioner for Environmental Information decides on appeals against decisions of public authorities (including, but not limited to, Government Departments, local authorities, An Bord Pleanála and the EPA) on requests for access to environmental information. As a result of her parallel role as Commissioner for Environmental Information, the Ombudsman has acquired valuable experience and expertise in environmental matters.

The Group concluded that the EPA should be subject to the Ombudsman’s jurisdiction. This development would provide a free, independent complaint mechanism in the case of alleged maladministration by the EPA. The availability of such an avenue of redress would serve to increase accountability and transparency and underpin public confidence in the EPA. It is notable that the Group’s conclusion is consistent with the commitment in the Programme for Government to expand the Ombudsman’s remit to cover “all statutory bodies” (Programme for Government: 20). If the Ombudsman’s remit is extended along these lines, then appropriate resources must be made available to enable the Office to deal effectively and efficiently with any significant increase in its workload that may arise.

³⁸ Office of the Ombudsman, *Investigation Report on a complaint made against Meath County Council*, July 2010 – text available at <http://www.ombudsman.ie>.

6.5 Independent administrative appeal

As explained in Chapter 2 (Governance, Internal Structures and Resources), the EPA has procedures in place to ensure that any objections to a proposed licence are considered by a technical committee comprising staff other than those who were involved in the preparation of the draft licence. However, where the EPA takes a decision on an application for a licence (e.g. an IPPC licence, waste licence or waste water discharge authorisation), the statutory framework does not provide for an independent (external), administrative appeal. EPA licensing decisions may be challenged by way of judicial review in the High Court. Put simply, judicial review involves a review of the *legality* of the contested decision, as opposed to a fresh inquiry into its *merits*. A number of submissions to the Review Group suggested that provision should be made for an independent administrative appeal from EPA licensing decisions - along the lines of the right to appeal to An Bord Pleanála in the planning law context.

The Group noted that there are a number of other statutory consent procedures which make no provision for an independent administrative appeal. No such appeal is available, for example, in the case of strategic infrastructure development where An Bord Pleanála is the decision-maker in the first instance and its decision may only be challenged by way of judicial review. The legislation governing the EPA is therefore not unique in this regard. As explained in Chapter 2 (Governance, Internal Structure and Resources), the Review Group concluded that a new appellate body was not justified. This conclusion was based on a number of factors: apart from the EPA, no other existing body in the State has the necessary breadth and depth of environmental expertise required to discharge the function of hearing appeals from EPA licensing decisions; any such body would have to comply with robust governance structures and arrangements; plus, there has been a relatively low number of third party objections to proposed licences in recent years. Beyond these specific points, the Review Group was convinced that the best way to address any concerns about the quality of EPA decision-making is to improve decision-making procedures at first instance. To this end, the Group made specific recommendations in Chapter 3 (Licensing, Assessment and Monitoring) concerning health impact assessment. Concerns expressed in submissions to the Group regarding potential gaps in the EIA process as a result of the “split” decision-making arrangements between planning authorities/An Bord Pleanála and the EPA are considered below.

6.6 Judicial review

The Review Group was alert to concerns expressed in submissions made to it about the adequacy of judicial review as a means to challenge EPA decisions. The Group noted that under Article 10a of the EIA Directive (Directive 85/337/EEC) and Article 16 of the IPPC Directive (Codified version) (Directive 2008/1/EC), Member States are obliged to provide access to a review procedure to challenge “the substantive or procedural legality of decisions, acts or omissions” falling within the scope of these Directives. The review procedure must be “fair, equitable, timely and not prohibitively expensive.” The access to justice provisions in the EIA and IPPC Directives are based on obligations set down in Article 9(2) and (4) of the Aarhus Convention. In the context of licensing decisions taken by the EPA, the question arises as to whether or not the availability of judicial review before the Irish courts meets the access to justice obligation arising under EU law. This question has not been answered definitively to date either by the Irish courts or by the Court of Justice. The case law so far concerns Article 10a of the EIA Directive, but, as noted above, equivalent access to justice provisions are found in Article 16 of the IPPC Directive. In Case C-427/07 *Commission v Ireland* [2009] ECR I-6799, the Court of Justice was concerned only with alleged failure to transpose Article 10a of the EIA Directive into national law, as opposed to whether Irish transposition was adequate. It therefore concluded that it could not examine the Commission’s arguments concerning “the extent of the review actually carried out [by the Irish courts] in the context of judicial review” (para. 89). The issue of whether the standard of review applied by the Irish courts in the context of judicial review of planning and environmental decision-making is compatible with EU law therefore remains unsettled to date.

There are somewhat cautious indications in the contemporary Irish EIA jurisprudence that the standard of review may need to be modified to take account of the requirements of Article 10a of the EIA Directive, but that a merits review as such is not required.³⁹ Specifically, Article 10a – and, arguing by analogy, Article 16 of the IPPC Directive – may demand a more searching form of review than the traditionally narrow approach to judicial review articulated by the Supreme Court in *O’Keeffe v An Bord Pleanála*.⁴⁰ While the Courts’ reluctance to engage with the substance of decisions taken by expert bodies such as planning authorities, An Bord Pleanála and the EPA is understandable, the problem lies in identifying the intensity of review required under EU law (Article 10a of the EIA Directive and Article 16 of the IPPC Directive).

³⁹ *Sweetman v An Bord Pleanála* [2007] IEHC 153; *Klohn v An Bord Pleanála* [2008] IEHC 111; *Cairde Chill an Disirt Teo v An Bord Pleanála* [2009] IEHC 76; *Usk and District Residents Association Ltd v An Bord Pleanála* [2009] IEHC 346; and *Hands Across the Corrib Ltd v An Bord Pleanála* [2009] IEHC 600.

⁴⁰ *O’Keeffe v An Bord Pleanála* [1993] IR 39.

The Review Group noted the view expressed recently by the Aarhus Convention Compliance Committee to the effect that it was “not convinced” that the United Kingdom met the standard for review articulated in the Convention in the context of review of “substantive legality”.⁴¹ It is important to note, however, that based on the information before it in the case at issue, the Compliance Committee did not find that the UK had failed to comply with this aspect of the Convention. Nevertheless, its comment on the standard of review is of interest as it suggests that the threshold for review in the UK may be set too high.

This is an area of law that is evolving at international, EU and national level. In light of access to justice obligations under the Aarhus Convention and EU environmental law, the Review Group concluded that judicial review may, in time, become a more robust remedy in the planning and environmental law context than is currently the case in Ireland.

As regards the high costs usually associated with judicial review proceedings in the planning and environmental law context, the Group noted that new costs rules have been introduced recently in the form of section 50B of the Planning and Development Act 2000 (as amended). The new rules apply to certain types of proceedings, including judicial review proceedings involving the EIA Directive, the IPPC Directive and the SEA Directive. In summary, the general rule under section 50B is that each party will be responsible for its own costs. However, the Court retains discretion to make costs orders in certain specified circumstances. At the time of writing, in the absence of case law, it is difficult to gauge the likely impact of the new rules on access to environmental justice in practice with any degree of accuracy. The Review Group recommends that the new rules governing costs in environmental matters should be kept under review.

Having considered the issue in detail, the Group concluded that persistent concerns over access to environmental justice would be best addressed in a wider context, beyond the particular case of the EPA. More specifically, access to environmental justice should be a core theme in the review of environmental governance recommended by the Review Group in Chapter 1 (Introduction).

⁴¹ Findings and recommendations with regard to communication ACCC/C/2008/33 concerning compliance by the United Kingdom of Great Britain and Northern Ireland, adopted by the Compliance Committee on 24 September 2010 – text available at: <http://www.unece.org/env/pp/compliance/Compliance%20Committee/33TableUK.htm>.

6.7 Inter-relationship between planning and pollution control

Where a project requires both planning permission and a licence from the EPA, the current legislative scheme provides for a “split” decision-making system: the planning authority / An Bord Pleanála is responsible for granting planning consent and the EPA is responsible for environmental licensing. This “split” decision-making arrangement has generated considerable controversy over the years. Problems arise in practice as a result of ambiguities in the legislative framework where the responsibilities of the different competent authorities are not always clearly defined. A particular point of contention is whether the statutory division of jurisdiction between the planning authority / An Bord Pleanála and the EPA facilitates a comprehensive and holistic approach to EIA. The long running doubts as to whether Ireland has transposed the EIA Directive correctly in this regard (and in particular the assessment obligation in Article 3 of the Directive) culminated in a recent judgment from the Court of Justice. In Case C-50/09 *Commission v Ireland*, judgment of the Court of Justice, 3 March 2011, the Court confirmed that Member States may decide to entrust the task of granting development consent to more than one competent authority (paras. 72 and 77). However, that discretion:

“[I]s subject to those authorities’ respective powers and the rules governing their implementation ensuring that an environmental impact assessment is carried out fully and in good time, that is to say before the giving of consent, within the meaning of [the EIA] Directive (para. 77).”

Having considered the relevant Irish measures purporting to transpose the EIA Directive, the Court of Justice found that there were gaps in Irish transposition which left open the possibility of non-compliance with Articles 2 to 4 of the EIA Directive (paras. 80-85). In particular, although the EPA may notify a planning authority of a licence application, it is not obliged to do so and the authority which has received such notification is not required to reply to it. The Court therefore concluded that it was “not inconceivable” that the EPA could make its decision on a licence application without an EIA being carried out in accordance with the requirements of the Directive (para. 81)

The Court of Justice ruling will require careful consideration by the national authorities. At this particular point in time, the Review Group believes that any firm recommendations on this issue would be premature given that the implications of the Court of Justice ruling remain to be teased out fully. The Group is aware, however, that the interface between planning and pollution control has been examined by a joint An Bord Pleanála / EPA Working Group. That group produced a draft report which sets out the key issues and

problems and proposes a number of options for amendments to the legislative framework and it seems best placed, in conjunction with the DECLG and the Office of the Attorney General, to examine the issues arising from the Court of Justice ruling.

On balance, the Review Group is of the view that any legislative amendments in this area could involve the planning authority / An Bord Pleanála as the lead authority for the purposes of compliance with EIA obligations. The current statutory prohibition, whereby the planning authority / An Bord Pleanála may not impose conditions aimed at controlling environmental pollution, should remain in place. This expertise lies squarely with the EPA. However, express provision should be made for mandatory consultation procedures between the planning authority / An Bord Pleanála and the EPA in the course of the EIA process. The Group believes that depending on the steps taken to respond to the Court of Justice ruling, there may be opportunities for further integration of the planning and pollution control systems including, for example, joint oral hearings and joint engagement of consultants.

6.8 Protection for whistleblowers

Transparency International has adopted the following definition of “whistleblowing”:

“The disclosure of information about a perceived wrongdoing in an organisation, or the risk thereof, to individuals or entities believed to be able to effect action.”⁴²

Irish environmental legislation does not generally provide a mechanism for whistleblowing or for any whistleblower protections (one notable exception is the Chemicals Act 2008, sections 25 and 26). The Review Group noted that in a report published in January 2010, Transparency International identified “very significant gaps” in protection for whistleblowers in Ireland (p6). The report criticised the piecemeal, sectoral approach to whistleblower protection to date and recommended that Ireland adopt “a generic whistleblower protection law covering whistleblowers in the public, private and non-profit sectors” (p7). It suggested the UK Public Interest Disclosure Act 1998 (as amended) as a potential blueprint for Irish legislation in this area. The Review Group also noted that in the Annual Report for 2009, the Standards in Public Office Commission (SiPOC) endorsed the Transparency International recommendation “that a comprehensive public interest disclosure and whistleblower

⁴² Transparency International, *An Alternative to Silence: Whistleblower Protection in Ireland* (January 2010) p.3 – text available at <http://www.transparency.ie>

protection law be introduced as a matter of urgency” (Standards in Public Office Commission 2010).

The Review Group concluded that whistleblower protections should be introduced to provide protection for persons reporting breaches of environmental law. However, following the views of Transparency International and the SiPOC, the Group would strongly favour the introduction of generic (as opposed to sectoral) whistleblower protections. In this context, the Group noted the commitment in the Programme for Government to introduce whistleblower legislation (Government for National Recovery 2011–2016, p20) and recent comments by An Taoiseach.⁴³

6.9 Personal liability of directors for environmental clean-up costs

The issue of personal liability of company directors where a company is responsible for environmental pollution, but does not have the resources to fund the remediation costs, was considered in a recent High Court ruling. In *Environmental Protection Agency v Neiphin Trading Ltd et al* [2011] IEHC 67, Edwards J was required to determine (as a preliminary issue) whether section 57 of the Waste Management Act 1996 (as amended) empowered the court to make so-called “fall-back” orders against individual directors of a company. The High Court ruled that the court did not have this jurisdiction. In reaching this conclusion, Edwards J disagreed with the interpretation of section 57 put forward in an earlier High Court judgment - *Wicklow County Council v Fenton et al (No. 2)* [2002] 4 IR 44. In *Fenton (No 2)*, O’Sullivan J concluded that the court could lift the corporate veil and hold the directors liable for acts of a company that unlawfully dumped hazardous waste causing environmental pollution. It is notable that *Fenton (No. 2)* was followed and applied in three subsequent High Court decisions.⁴⁴ The recent decision of Edwards J highlights a problem with the drafting of section 57 in that it does not provide expressly for the lifting of the corporate veil so as to impose civil liability on directors. This is in sharp contrast to section 9 of the 1996 Act where express provision is made for the corporate veil to be lifted in the context of criminal liability. The High Court’s interpretation of section 57 raises a serious issue in terms of a regulator’s power to recover the costs of remediating contaminated sites from individual directors where a company is not in a position to fund these costs, but it is clear that the specifics of each case may impact on the outcome of legal proceedings.

⁴³ Speech by An Taoiseach for the National Newspapers of Ireland dinner, Dublin Castle, 7 April 2011 – text available at <http://taoiseach.ie/eng/>

⁴⁴ *Cork County Council v O’Regan et al* [2005] IEHC 208; *Laois County Council v Scully et al* [2006] IEHC 2 and *Wicklow County Council v O’Reilly et al* [2006] IEHC 273.

A broader issue of significant concern is the compliance of licensees with licence conditions relating to financial provision for aftercare of facilities and the continuing enforcement of such conditions. The potential for default in respect of aftercare is of particular importance when considered in the context of the remediation costs incurred by the State for legacy waste facilities. The Review Group recommends that robust systems be put in place to monitor and enforce the financial requirements of licences on an ongoing basis.

6.10 Contaminated land

There are currently no formal institutional arrangements in place for the management of contaminated land in Ireland. Dealing with contaminated sites poses considerable challenges, particularly in the case of so-called “orphan” sites. The EPA submission to the Review Group highlighted the need to develop a governance and legal framework for contaminated land. The Review Group recommends that current legislation relating to contaminated land should be reviewed to develop a coherent, dedicated legal regime to address the various challenges that arise in this context, including guaranteeing that site operators make provision to meet any liabilities arising from their activities. Regulatory bodies should also ensure that sufficient controls are in place to avoid and militate against such situations arising. Any proposed legislative responses should be kept under review as EU legislation on the issue is developed.

6.11 Licence review

Section 90 of the 1992 Act (as amended) provides for review of IPPC licences. The procedure governing a licence review is similar to that which applies in the case of an application for an IPPC licence. Section 96 governs amendments to an IPPC licence of a clerical or technical nature and it sets down a relatively informal procedure in this regard. Broadly similar provisions apply in the context of a review of a waste licence. A number of submissions to the Review Group argued that the licence review procedure is onerous for licensees and that a so-called “third option” (i.e. apart from a “full” licence review and clerical or technical amendments) would provide welcome flexibility and promote innovation (e.g. minor amendments to licences and where a change in abatement technology would result in improved environmental performance). The Review Group concluded that consideration should be given to introducing a “third option”, subject to EU law requirements and, in particular, public participation obligations.

6.12 Air Pollution Appeals

An Bord Pleanála currently deals with relatively few appeals in relation to air pollution licences under section 34 of the Air Pollution Act 1987. It received three such appeals in 2009.⁴⁵ The reason for the low number of appeals is due to the fact that a significant number of the activities which previously required a licence under the 1987 Act now require an IPPC licence. In its submission to the Review Group, An Bord Pleanála explained that a strong argument could be made for including the remaining activities in the IPPC licensing system or, in the alternative, providing for appeals under the 1987 Act to be made to the EPA as opposed to the Board.

The Review Group concluded that, given the EPA's expertise in environmental pollution matters, consideration should be given to providing for appeals in relation to air pollution licences to be made to the Agency rather than An Bord Pleanála.

⁴⁵ Figures available from An Bord Pleanála, *Annual Report 2009*, p.24, Fig. 13
<http://www.pleanala.ie/publications/2010/annualreport09.pdf>

Chapter 7 - Recommendations

7.1 Introduction

- 7.1.1 Consideration should be given to carrying out a wider review of environmental governance in Ireland so that issues of suggested fragmentation in structures and processes can be examined more fully. This exercise, which should take account of other review / reform programmes of relevance, including in relation to local government, could be particularly useful in supporting the effort to address infringements of EU environmental legislation where, although significant improvements have been achieved in recent years, considerable further work remains to be done, work which must continue to be accorded the highest possible priority.
- 7.1.2 General issues around enforcement should be examined as part of a wider review of environmental governance as they have resonance beyond the EPA, with MoU developed to manage the operational relationships between the EPA and other public authorities as necessary. All MoU to which the EPA is a party should be published on the Agency's website.
- 7.1.3 The proposed wider review of environmental governance would also be the most appropriate context in which to consider whether a specialist Environment Court / Tribunal and / or a system of administrative sanctions should be put in place (taking into account the experience of such systems recently introduced in England and Wales) and if so, what form such mechanisms and measures might take.
- 7.1.4 Immediate steps should be taken to complete the ratification of the Aarhus Convention by Ireland.
- 7.1.5 Environmental law is a rapidly developing and often highly technical area and tackling environmental crime effectively raises particular challenges. The Review Group recommends that the Committee for Judicial Studies (formerly the Judicial Studies Institute) considers putting in place regular information sessions for the judiciary on a range of issues relating to environmental governance and, in particular, civil and criminal liability for breach of environmental law. The possibility of exploiting available fora at EU level, such as the EU Forum of Judges for the Environment and the European Judicial Training Network, should also be examined.

7.2 Governance, Internal Structure and Resources

- 7.2.1 The process of making licence performance and enforcement information available on the Internet should be continued and progressively extended.
- 7.2.2 The EPA should be more answerable to the Oireachtas through, for example, the extension of the parliamentary questions process to State agencies, as is set out in the Programme for Government (2011).
- 7.2.3 The EPA should increase its role in driving the integration of environmental considerations into policy development across the State by engaging more broadly with sectors interacting with the environment. This engagement should have the objective of promoting integrated assessments of existing and emerging environmental challenges for each sector and should take place through the formation of a high level Environmental Governance Network involving key stakeholders.
- 7.2.4 The general features of the method of appointment of the Director General and other Directors are robust, conform to the criteria in the White Paper on Better Regulation and should remain in place. The composition of the selection committee should be reviewed.
- 7.2.5 Of greater value than giving observer status to the public at EPA Board meetings would be a periodic engagement by senior staff of the Agency with stakeholders and the public on key environmental challenges.
- 7.2.6 There should be increased emphasis on knowledge and experience of environmental protection in the appointment of members of the EPA Advisory Committee, including key public sector stakeholders, and an external Chairperson should be appointed.
- 7.2.7 An additional specialist Advisory Committee is needed to address the issue of the interface between the environment and human health.
- 7.2.8 The flexibility and change management shown by the EPA is a major strength and should not be limited by overly prescriptive statutory provisions governing the Agency's structure.
- 7.2.9 The regional structure of the EPA has strategic advantages which should be maintained, subject to cost efficiency requirements.
- 7.2.10 The issue of staffing levels should be urgently reviewed to ensure that, in making decisions in relation to the allocation of scarce staff resources across the public sector, adequate account is taken of the priority attaching to the Agency's role in meeting critical legislative requirements.
- 7.2.11 Top priority should be attached to securing overall funding for the EPA at a level that ensures its legal obligations can be met in the future.

7.3 Licensing, Assessment and Monitoring

- 7.3.1 The EPA, in deciding on the appropriate enforcement action in individual cases, should always take into account the strong deterrent effect of prosecutions and should pursue the prosecution route to optimum effect.
- 7.3.2 There is a strong case for the EPA's licensing process to include formal requirements in relation to Health Impact Assessment. The proposed Advisory Committee on the interface between the environment and human health (Recommendation 7.2.7) should, as a matter of priority, make urgent recommendations about the most appropriate way to address this issue. This Committee should also assess and make recommendations in respect of the inclusion of health factors in risk assessment for prioritising enforcement.
- 7.3.3 While due regard should be given to the interests of SMEs and smaller agricultural units, the level of EPA licence fees should be routinely reviewed and the Group notes that these are due for upward revision.
- 7.3.4 Currently, the EPA is restricted in its power to review part of an IPPC licence. Where this will not compromise environmental protection, and subject to appropriate public participation, the EPA should be given the power to undertake partial reviews of existing licences (see also Recommendation 7.6.10).
- 7.3.5 The EPA should be allowed greater access to the past records of licence applicants generally through a strengthening of relevant legislative provisions.
- 7.3.6 The EPA should continue to develop the role of the OEE in the future in particular to support and guide local authority enforcement activities.
- 7.3.7 The EPA should continue to contribute to the development of national waste policy through provision of data and analysis of Ireland's performance.
- 7.3.8 In order to facilitate greater public participation in licensing matters generally, the legislative framework should make provision for experts to give evidence via video-conferencing.
- 7.3.9 Guidance on both EIS and SEA should be updated to take greater account of human health issues and to reflect any changes since the existing guidance material was produced. Consideration should be given to assigning the EPA a wider statutory role to strengthen the practical implementation of SEA in a more uniform way.
- 7.3.10 Streamlining data collection (for example, water data) and monitoring requires greater coordination across public bodies. It is appropriate that the

EPA would take a lead role here in terms of guidance and quality assurance, utilising MoU where appropriate.

7.3.11 The EPA should continue to develop its high level support across the organisation in areas such as remote sensing and modelling to support environmental assessment and reporting.

7.3.12 An evidence-based and statistically driven review of monitoring networks and EPA laboratory services is needed. While this should lead to more cost effective monitoring and optimising of EPA expertise, it is critical that this does not lead to a diminution in the quality of data collection and analysis.

7.3.13 The EPA's role in biodiversity monitoring should be better co-ordinated with that of the NPWS.

7.4 Environmental Research and Information

7.4.1 Ongoing effective dialogue across Government Departments, agencies and local authorities should be strengthened with respect to monitoring, reporting and research coordination and it is important that the EPA is supported fully by other areas of Government in order to fulfil national objectives.

7.4.2 The EPA should provide a clear process for reviewing research recommendations and effecting their inclusion into wider policy development, with further discussions as necessary with relevant researchers.

7.4.3 The EPA funded individual PhD scholarship programme should be maintained in order to provide for continued development of young researchers, and national research capacity outside the stricter constraints of the larger, more policy focussed, integrated research programmes.

7.4.4 Research funding (currently met by the Environment Fund) should be protected for the maintenance of the EPA research programme. Temptations to divert any environmental research funding to other areas of research, or its management to another agency, should be resisted. It is essential that Ireland maintains the strong and independent environmental research base it has built up over the last 15 years.

7.4.5 In order to more fully optimise and achieve greater international impact and overall recognition of the outcomes from its research investment, it would be informative for the EPA to evaluate any obstacles that Irish environmental researchers face in publishing research and recommend methods to overcome these.

- 7.4.6 It is important that research to meet the challenges of climate change continues to be designed in full consultation with other relevant bodies, including those charged with duties for flood management, agriculture and biodiversity.
- 7.4.7 A balance between climate change research supporting existing policies and mitigating pressures, and responsive to uncertain climatic effects is required. A significant challenge to the value of environmental research is that projects are usually short-term. Medium to long-term research programmes, that provide spatial data over extended temporal scales, provide an extremely valuable national resource in order to evaluate policies relating to e.g. land-use and climate change. Future climate change research funding should include medium to long-term research projects as appropriate.
- 7.4.8 Research reports from the EPA funded programme are available for download from the website. It is desirable that full and summary reports continue to be made available, while ensuring that this facility is supported by good data management and quality assurance protocols.
- 7.4.9 It is important that EPA monitoring data across all sectors is also put in the public domain in a timely manner, as both raw data and in readily accessible summary formats.
- 7.4.10 The EPA has a key role in dissemination of environmental information and environmental awareness-raising and education and should continue to development partnerships with the DECLG, the ENGO network, and other public bodies (including local authority Environmental Awareness Officers and Heritage Officers) to ensure that synergies are maximised and that overlaps of initiatives / activities are avoided.

7.5 Relationships with Stakeholders

- 7.5.1 The Agency should continue to place an emphasis on formal mechanisms for managing ongoing discussions with all relevant Government Departments. This will ensure that any complex technical issues can be dealt with effectively.
- 7.5.2 It is important that the relationship between water authorities and the Agency be appropriately defined, minimising overlap and duplication, particularly in the area of monitoring.
- 7.5.3 A MoU should be drawn up between the Agency and the NPWS, to ensure that a unity of purpose and sharing of information is maintained between

the two organisations, together with a good working relationship at local and regional level.

- 7.5.4 The EPA and SEAI should, as appropriate, explore opportunities for expanding their collaboration further in the future, particularly in support of the national climate change effort.
- 7.5.5 Exchange of information between the local authorities and the EPA appears to be working well. However, while the availability of the raw data from air quality monitoring sites is welcome, it is recommended that these data be further processed, as is done with noise data at the moment, to prepare regularly updated maps of estimated human exposure.
- 7.5.6 The EPA and local authorities should continue to work closely together to ensure that the inventories of contaminated land are complete and up-to-date and that local and regional development plans identify brownfield sites within their areas and promote the appropriate redevelopment of such sites.
- 7.5.7 The EPA should engage directly with ENGOs to review their structured arrangements for engagement, with a view to identifying ways in which outcomes might be improved in a resource efficient manner.
- 7.5.8 The increased support for relevant television documentaries and other media engagements is a positive move and the continuation of this trend is recommended, as resources allow.

7.6 **Legislative Framework**

- 7.6.1 The legislation governing the EPA, water-related legislation and nature protection legislation should be consolidated and should be subject to periodic review. The IPPC and waste licensing regulations should be consolidated at an early opportunity.
- 7.6.2 Sections 52(1) and (2) of the 1992 Act should be revised and updated in light of the EPA's expanded remit and the principles underlying contemporary environmental regulation and should include specific references to the EPA's responsibilities in respect of water protection, climate change and its contribution to the conservation of biodiversity and to environmental sustainability.
- 7.6.3 The EPA's absolute statutory immunity should be revised.
- 7.6.4 The EPA should be subject to the Ombudsman's jurisdiction in respect of alleged maladministration. Appropriate resources must be made available to the

Office of the Ombudsman to enable it to deal effectively with any significant increase in its workload that may arise.

- 7.6.5 The rules governing legal costs in certain environmental litigation (section 50B Planning and Development Act 2000, as amended) should be kept under review. Concerns about access to environmental justice should be examined in the context of a wider review of environmental governance.
- 7.6.6 The interaction between planning and pollution control should be addressed by the joint An Bord Pleanála / EPA Working Group in conjunction with the DECLG and the Office of the Attorney General.
- 7.6.7 A generic whistleblower protection law should be introduced.
- 7.6.8 Robust systems should be put in place to monitor and enforce the financial requirements of licences on an ongoing basis.
- 7.6.9 Current legislation relating to contaminated land should be reviewed to develop a coherent, dedicated legal regime to address the various challenges that arise in this context, including guaranteeing that site operators make provision to meet any liabilities arising from their activities. Regulatory bodies should also ensure that sufficient controls are in place to avoid and militate against such situations arising.
- 7.6.10 Consideration should be given to making provision for amendments to IPPC and waste licences in certain limited circumstances (beyond clerical and technical amendments) without the necessity for a full licence review.
- 7.6.11 Consideration should be given to providing for appeals in relation to air pollution licences to be made to the EPA rather than An Bord Pleanála.

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Directive 96/61/EC concerning integrated pollution prevention and control (IPPC Directive) [1996] OJ L 257/26

Directive 96/62/EC on ambient air quality assessment and management (Air Framework Directive) [1996] OJ L 296/55

Directive 2000/60/EC establishing a framework for Community action in the field of water policy (Water Framework Directive) [2000] OJ L 327/1

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment (SEA) Directive) [2001] OJ L 197/30

Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC [2003] OJ L 156/17

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Wicklow County Council v Fenton et al (No. 2) [2002] 4 IR 44

Wicklow County Council v O'Reilly et al [2006] IEHC 273

Appendices

Appendix One: List of stakeholder meetings

Over fifty organisations involved in environmental protection were contacted by the Review Group, seeking their views on the performance of the Agency.

In response to the level of interest from these organisations the Review Group felt that additional in-depth engagement with certain stakeholders was necessary. The Review Group therefore invited certain organisations to attend a series of meetings.

The meetings were held between March 2010 and January 2011. The format involved the invited stakeholder making a presentation or opening remarks, followed by a detailed questions and answers session. Each meeting lasted a minimum of 90 minutes. The exception were meetings with the EPA Directors which generally lasted for a half or full day. This was due to the range and complexity of the issues discussed at the meetings.

The list of stakeholder meetings is as follows:

Date of Meeting	Stakeholders	Sector Represented
23 March 2010	EPA Board	EPA
26 July 2010	Environmental Pillar of Social Partnership European Environmental Bureau Irish Environmental Forum	Environmental Non-Governmental Organisations
26 July 2010	IBEC Industry Representatives: ESB, Lagan Cement and Galco Steel	Industry
24 September 2010	An Bord Pleanála	
24 September 2010	Irish Farmers Association	Agriculture
4 October 2010	EPA Board Members	EPA
12 October 2010	City & County Managers Association	Local Government

12 October 2010	Health Services Executive Department of Health & Children	Health
5 November 2010	Department of Agriculture, Fisheries and Food Teagasc	Agriculture
5 November 2010	Department of Environment, Heritage and Local Government (Water & Planning Division) Waterways Ireland Inland Fisheries Ireland	Water Management
19 November 2010	Professor Richard Macrory QC (University College London)	International Expert on Environmental Law
19 November 2010	Department of Environment, Heritage and Local Government Heritage Division (National Parks and Wildlife Service)	Biodiversity and Wildlife Protection
21 January 2011	EPA Board Members	EPA

Appendix Two: List of submissions received during public consultation

The Review Group decided at an early stage to hold a public consultation to ascertain the views of interested parties and the public about the performance of the Environmental Protection Agency and how it could address future environmental challenges.

The original closing date for the consultation was extended due to the level of interest. In total, the Review Group received 130 submissions from the public sector, groups involved in environmental protection or awareness raising and members of the public.

The Review Group decided, to ensure that its work was carried out in as transparent a manner as possible, that all submissions were to be made available to the public online. Copies of submissions placed online are available to download at <http://www.environ.ie/en/Environment/EPAReview/>

It should be noted that certain submissions have been redacted to protect the privacy of the people who have submitted comments to the Review Group. The redaction consists of the 'blacking out' of personal contact details such as email addresses, home addresses, telephone and mobile phone numbers and information which could be used to identify a particular individual. In the case of certain submissions there was also a need to redact certain statements which in the opinion of the Review Group were potentially defamatory in nature; were clearly factually inaccurate; or which may have referred to on-going legal cases.

The Review Group would like to thank the Communications Unit of the Department of Environment for their assistance in managing the on-line content of the EPA Review section of www.environ.ie.

The complete list of all submissions received by the Review Group is as follows:

Submission Number	Respondent Name	Online Title of Submission
1.	Yvonne Scannell	Dr. Yvonne Scannell Submission
2.	Donal Deering	Deering Submission
3.	DG ENVIRONMENT	DG Env Submission
4.	Ramelton Community Action Group	Ramelton Submission

5.	Pobal Chill Chomain	Pobal Chill Chomain Submission
6.	Dr. Patrick Kelly	Kelly Submission
7.	Anne-Marie Masterson	Masterson Submission
8.	Michael Ryan	M. Ryan Submission
9.	Donal Murphy	Murphy D. Submission
10.	Michael Conway	M. Conway Submission
11.	BirdWatch Ireland	Birdwatch Ireland Submission
12.	Mark Keenan	Keenan Submission
13.	Ann Rochford	EPA Submission
14.	Kathleen Cramer	Cramer Submission
15.	Cllr. Alan O'Kelly	Cllr. O'Kelly Submission
16.	Mary Gordon	Gordon Submission
17.	Food and Safety Authority of Ireland	FSAI Submission
18.	Kevin Leyden (NUI Galway)	Leyden NUIG Submission
19.	Phillis Nolan	Nolan Submission
20.	Mescal & Associates	Cork Submission
21.	DG ENVIRONMENT Wicks	DG Environment Wicks Submission
22.	Health Service Executive	HSE Submission
23.	Helen Riordan	Riordan Submission
24.	Emmet Stagg TD	Emmet Stagg T.D. Submission
25.	Sean Keane	Keane Submission
26.	Save Our Lough Ree	Duffy SOLR Submission
27.	Trinity College Dublin	TCD Submission
28.	St. John's Grove Residents Association	O'Keane St John's Grove Submission
29.	Rathcoole Against Incinerator Dioxins	McDermot RAID Submission
30.	Anne Wilde	Wilde Submission
31.	Irish Doctors Environmental Association	Cullen Irish Doctors Submission
32.	Cllr. Darren Scully	Cllr. Darren Scully Submission
33.	Clean Air Naas Campaign	Brian McGeever Submission
34.	Roseville Residents Association	Joe Friel Submission
35.	Courts Service	Courts Service Submission
36.	Pat O'Kelly	O'Kelly Submission

37.	Olwyn Delaney	Delaney Submission
38.	Cork Environmental Alliance	Cork Environmental Alliance Submission
39.	Irish Environmental Forum	Irish Environmental Forum Submission
40.	University College Cork	University College Cork Submission
41.	David Lee	Lee Submission
42.	James Dowling	J. Dowling Submission
43.	Anne Fitzpatrick	Fitzpatrick Submission
44.	Roddy Mc Namee	McNamee Submission
45.	Morell Park Residents Association	Dympna Bergin Submission
46.	An Bord Pleánala	An Bord Pleanala Submission
47.	Aylmer Park Resident's Association	Tony Wickham Submission
48.	Monica Fitzpatrick	M. Fitzpatrick Submission
49.	John and Patrice Clancy	John & Patrice Clancy Submission
50.	Central Fisheries Board	Inland Fisheries Ireland Submission
51.	An Garda Siochana	Garda Siochana Submission
52.	Joe Moran	Moran Submission
53.	Pat Merrick	Merrick Submission
54.	Ronnie D'Arcy	D'Arcy Submission
55.	Friends of the Irish Environment	FIE Submission
56.	Neal Murphy	Neal Murphy Submission
57.	Dolores O'Regan	O'Reagan Submission
58.	Caroline Cullen	Cullen Submission
59.	Conor Moody	Moody Submission
60.	Repak	Martin – Repak Submission
61.	Department of Agriculture, Fisheries and Food	Department of Agriculture Fisheries and Food Submission
62.	Carol Susan Cooney	Not published at request of submitter
63.	Mary Flahavan	Flahavan Submission
64.	Vincent O'Rourke	Vincent O'Rourke Submission
65.	Luke Fitzgerald	Fitzgerald Submission
66.	John Hennessy	Hennessy Submission

67.	The Swans & the Snails Ltd.	Sweetman Submission
68.	Liam O'Farrell	O'Farrell Submission
69.	John McCarthy	McCarthy Submission
70.	Anthony Waters	Waters Submission
71.	Irish Peatland Conservation Council	IPPC Submission
72.	Peter North	North Submission
73.	Irish Expert Body on Fluorides & Health	Irish Expert Group on Fluorides & Health Submission
74.	Cllr. Anthony Lawlor	Cllr Lawlor Submission
75.	Ann Nolan	Nolan A. Submission
76.	Health & Safety Authority	Health & Safety Authority Submission
77.	Irish Creamery Milk Suppliers Association	Irish Creamery Milks Suppliers Submission
78.	Dublin Institute of Technology	Barnes Submission
79.	Radiological Protection Institute of Ireland	RPII Submission
80.	Irish Farmers Association	IFA Submission
81.	Enterprise Development Agencies	Joint Submission of the Enterprise Development Agencies
82.	Johnstown Community Association	Johnstown Community Association Submission
83.	Chambers Ireland	Chambers Ireland Submission
84.	Dineen Refractories	Procter Submission
85.	Irish Environmental Law Association	Irish Environmental Law Submission
86.	Maura Carey	Carey Submission
87.	Rob Rooney	Rooney Submission
88.	Irish Prison Service	Irish Prisons Service Submission
89.	Department of Energy, Communications and Natural Resources	DCENR Submission
90.	Environmental Pillar	Environmental Pillar Submission
91.	Michael Ewing	Michael Ewing Submission
92.	Irish Business Employers Confederation	IBEC Submission

93.	European Environmental Bureau	Hontelez Submission
94.	Tim Ryan	Tim Ryan Submission
95.	Linda Gaynor	Gaynor Submission
96.	Waterways Ireland	Waterways Ireland Submission
97.	Northern Ireland Environment Agency	Northern Ireland Environment Agency Submission
98.	Leaf Environmental Limited	Stringer Submission
99.	Martin McKeogh	McKeogh Submission
100.	Electricity Supply Board	ESB Submission
101.	Health Services Executive and Department of Health & Children	HSE & DOHC Submission
102.	Teagasc	Teagasc
103.	Anonymous	Anonymous Cork Submission (Unsigned submission forwarded by EPA upon receipt from a member of the public)
104.	County and City Managers Association	CCMA Submission
105.	Bar Council	The Bar Council of Ireland Submission
106.	Nora Dooley	Dooley Submission
107.	Brendan Leonard	Leonard Submission
108.	Mary Shanahan	Shanahan Submission
109.	Therese Hicks	Hicks Submission
110.	Margaret Mullen	Margaret Mullen Submission
111.	Department of Justice and Law Reform	Department of Justice and Law Reform Submission
112.	Joe Tyrrell	Tyrrell Submission
113.	Mary Foley	Foley Submission
114.	John Kennedy	Kennedy Submission
115.	Menapia Shipping	Adrian Martin Submission
116.	Law Reform Commission	Law Reform Commission Submission
117.	Padraig Greene	Greene Submission
118.	Edward O'Connor	Edward O'Connor Submission
119.	Michael Duffy	Duffy Submission
120.	EPA Advisory Committee	EPA Advisory Committee Submission

121.	Denis Costello	Costello Submission
122.	Association of County and City Councils	Association of County & City Councils Submission
123.	Presentation Ireland	Presentation Ireland Submission
124.	Ted Cook	Ted Cook Submission
125.	Noreen Glynn	Glynn Submission
126.	Cork Harbour Alliance for a Safe Environment	Cork Harbour Alliance Submission
127.	EPA Staff Partnership Committee	Meitheal EPA Partnership Committee Submission
128.	Department of Finance	Department of Finance Submission
129.	David Bollans	Bollans Submission
130.	Department of Enterprise, Trade and Innovation	Department of Enterprise, Trade and Innovation Submission

Summary of Public Consultation Submissions:

It should be noted that the submissions received were analysed for the information of the Review Group to assist them in their deliberations by Mr. Eoin McLoughlin of the Comhar Sustainable Development Council secretariat. The summary of the public consultation is available for download at <http://www.environ.ie/en/Environment/EPAReview/>. The Review Group wishes to record their appreciation of the hard work of Mr. McLoughlin and to commend Comhar for enabling Mr. McLoughlin to assist the Group in its work.

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