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Cc: Minister for Marine, Minister for Environment???

16 June 2016

RE. COMPLAINTS WITH REGARDS DUMPING AT SEA PERMIT REG. NO. S0004-01

Dear Sir/Madam,

We would like to formally put on record the following list of complaints regarding Dumping at Sea (DAS) Permit Reg. No. S0004-01, issued by the Environmental Protection Agency (EPA, or the Agency) on 28 July 2011.

According to the EPA website, the Agency is “the front line of environmental protection and policing. We ensure that Ireland's environment is protected, and we monitor changes in environmental trends to detect early warning signs of neglect or deterioration.” The EPA value regulation “in a fair, proportionate and transparent manner and target those who don't comply.”

The following list of complaints clearly indicate the complete failing of the EPA to uphold their values and responsibilities in relation to Dumping at Sea (DAS) Permit Reg. No. S0004-01.

We are currently seeking legal advice both within Ireland and the EU in regards to this. We have been reliably informed that following the European Court of Justice ruling regarding Case C-226/08, *Stadt Papenburg v Bundesrepublik Deutschland*, (details contained in below complaints) that the EPA have a case to answer in relation to the complaints listed below.

Each complaint is clearly detailed in the appendices indicated.

List of Complaints

1) Appropriate Assessment of Permit Reg. No. S0004-01 missing, unavailable or requirement misinterpreted by EPA

- a. There is no Appropriate Assessment of DAS Permit Reg. No. S0004-01 with respect to the Rockabill to Dalkey Island SAC.
- b. It is not clear that there was ever any Appropriate Assessment of Permit Reg. No. S0004-01
- c. Appropriate Assessment is a requirement for every dredging campaign, not a single AA for a DAS permit that covers multiple dredging campaigns

2) Ineffective public consultation

- a. Ineffective public consultation due to incorrect dates of dredging operations being notified to the public
- b. Dumping of contaminated material under DAS Permit Reg. No. S0004-01 without public consultation

- c. Failure to prosecute the permit applicant for providing misleading information in a DAS permit application
- d. Failure of the EPA to respond appropriately to a complaint relating to public participation in DAS Permit Reg. No. S0004-01
- 3) Ineffective / non-existent monitoring or control by the EPA of DAS Permit Reg. No. S0004-01**
 - a. DAS Permit Reg. No. S0004-01 is an open-ended permit where the regulatory authority has no control over the active dates
 - b. Failure to control dumping of material outside the defined dump site and failure to raise these occurrences as official incidents
 - c. DAS Permit S0004-01 does not make direct reference to disposal of contaminated material
 - d. Non-compliance with Condition 3.10(ii) of DAS Permit Reg. No. S0004-01
 - e. Non-compliance with Condition 3.10(iii) and 3.10(vii) of DAS Permit Reg. No. S0004-01
- 4) Inability of EPA to provide verified evidence of compliance of DAS Permit Reg. No. S0004-01**
 - a. Compliance with Condition 3.4 of DAS Permit Reg. No. S0004-01 cannot be verified
 - b. Compliance with Condition 3.5 of DAS Permit Reg. No. S0004-01 cannot be verified
 - c. Compliance with Condition 3.7 of DAS Permit Reg. No. S0004-01 cannot be verified
 - d. Compliance with Condition 3.8 of DAS Permit Reg. No. S0004-01 cannot be verified
 - e. Compliance with Condition 3.9 of DAS Permit Reg. No. S0004-01 cannot be verified
- 5) Ineffective monitoring by the EPA of DAS Permit Reg. No. S0004-01 in relation to misleading information provided by Dublin Port Company**
 - a. Factual error in AER with regards reporting vessel logs
 - b. Spurious locations in register of loading and dumping at sea activities, and failure to record tonnage of material dumped
 - c. Return to port times not recorded
 - d. Failure to take dump site monitoring samples on time
 - e. Late submission of Aftercare Management Report
 - f. Aftercare Management Plan not fit for purpose
 - g. Ineffective audit procedure at the EPA
 - h. Failure to comply with Condition 7.1 of DAS Permit Reg. No. S0004-01
 - i. Failure to comply with Condition 7.4 of DAS Permit Reg. No. S0004-01
 - j. Failure to comply with Condition 2.2 of DAS Permit Reg. No. S0004-01
 - k. Failure to comply with Condition 7.8 of DAS Permit Reg. No. S0004-01
 - l. Failure to comply with Condition 8.3.1 of DAS Permit Reg. No. S0004-01
 - m. Monitoring at dump site methods developed with no public participation
- 6) Total disregard to the monitoring of previously dumped contaminated spoil on the designated dump site using the Cap Method**
 - a. No effective monitoring of cap depth and cap maintenance
 - b. Monitoring of cap chemistry is ineffective for control purposes
 - c. Condition 3.9 of DAS Permit Reg. No. S0004-01 is unworkable
 - d. No monitoring of contaminants in biological samples
- 7) Misleading and inaccurate information regarding document control**
- 8) Ineffective management of freedom of information and EPA not acting as source of information re DAS Permit Reg. No. S0004-01**
 - a. EPA not acting as source of information re DAS Permit Reg. No. S0004-01
 - b. EPA treat queries as complaints, and vice versa
 - c. Procedure for complaints and incidents arising from information released in the AER

Details of these complaints are listed below. Copies of correspondence between the Irish Underwater Council (IUC) and the EPA Office of Environmental Sustainability are attached as Appendix 1. A copy of the emails between the IUC and the EPA Office of Environmental Enforcement are attached as Appendix 5.

The EPA state that they “target those who don't comply”. The IUC understands that where a permit holder breaches the conditions of a permit, then the EPA must revoke that permit and prosecute the permit holder. The evidence provided by the permit holder (predominantly within the 2012 Annual Environmental Report) and highlighted in this complaint indicates multiple, systematic failures by the permit holder to comply with the conditions of DAS Permit Reg. No S0004-01. We formally request that Permit Reg. No. S0004-01 be suspended pending investigation into these complaints, and that a full and detailed response to each complaint be sent to the Irish Underwater Council forthwith. We would also request that the EPA consider revoking this permit if the evidence contained within the appendices is verified by the EPA's own investigation.

The simple fact that Dublin Port Company's own data shows that 35% of all dump loads from the 2012 maintenance dredging campaign were dumped either partially or entirely outside the designated dump site greatly undermines confidence in the ability of DPC to operate DAS permits within the conditions specified by those permits. However, the fact that 35% of loads were dumped outside the dumpsite does not appear to have been detected by the EPA also greatly undermines confidence in the Agency as the regulatory authority for dumping at sea activities. Therefore, the IUC also requests that the issuing of new DAS permits be suspended pending a full review.

Yours faithfully,

Mike Orth
President
Irish Underwater Council

1) Appropriate Assessment of Permit Reg. No. S0004-01 missing, unavailable or requirement misinterpreted by EPA

a. There is no Appropriate Assessment of DAS Permit Reg. No. S0004-01 with respect to the Rockabill to Dalkey Island SAC

DAS Permit Reg. No. S0004-01 was issued prior to the designation of the Rockabill to Dalkey Island Special Area of Conservation (SAC), designated in 2012 as a requirement of the EU Habitats Directive. The dump site for DAS Permit Reg. No. S0004-01 lies entirely within the boundary of the new SAC. Section 46 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), relating to review of existing plans, indicates that screening for Appropriate Assessment is required where a plan or project was given authorisation prior to the designation and where that plan or project is to continue after designation, as is the case with DAS Permit Reg. No. S0004-01. The European Court of Justice (ECJ) has previously ruled on a very similar case (Case C-226/08 *Stadt Papenburg v Bundesrepublik Deutschland*). In 1994, the town authority of Papenburg was granted an essentially indefinite permit to dredge the River Ems to allow navigation. In 2006, the River Ems was proposed as an SAC. The town authority was concerned that the designation would prevent future dredging of the river channel and the case went to the European Court. The European Court ruled that dredging, although “*definitively authorised under national law*”, was not precluded from being subject to the requirement for Appropriate Assessment.

Dr Creed, in response to this point as raised by the IUC, stated that dumping at sea is a ‘project’ and that Regulation 46 of S.I. No. 477 of 2011 only relates to ‘plans’. Dr Creed did not support her opinion with any factual evidence, such as previous High Court or ECJ rulings on the issue. She provided no definition of either a ‘project’ or a ‘plan’. It is unacceptable that a professional scientist is unable to properly explain the regulations that they are supposed to be enforcing. In terms of dealing with a serious complaint, with possible ramifications for the Irish State if the matter was to go to court, this response amounts to being told that “I’m right and you’re wrong, so go away”. It is a stated value of the EPA that the Agency makes “*objective decisions based on the best available scientific evidence and information*”. The Agency should not, therefore, be basing policy on unsubstantiated personal opinion. Furthermore, the 2016 High Court ruling in the case of *Balz & Heubach v An Bord Pleanála* instructs that regulatory bodies must explain their actions with regards Appropriate Assessment.

As can be seen in Appendix 1E, the IUC provided evidence to support the consideration that dumping at sea constitutes a ‘plan’ and must be considered under Regulation 46 of S.I. No 477 of 2011. In fact, even the permit holder, Dublin Port Company, considers dumping at sea to be a plan. For example, the Annual Environmental Report (AER) 2012 for Dumping at Sea Permit No. S0004-01 is entitled ‘Dublin Port Company 6 Year Dredging Plan’. Dredging of the port channels, and subsequent disposal of the dredge spoil by dumping at sea, is an essential component of the Dublin Port Masterplan 2012-2040. Without dumping at sea there is no masterplan as ships would no longer be able to safely enter the port.

Furthermore, there are a number of ECJ rulings on the definition of the terms ‘plan’ and ‘project’ with respect to the EU Habitats Directive, all of which support the view that dumping at sea is a plan. It is unacceptable that a regulatory body should refuse to fulfil its statutory functions by quibbling over the definition of the word ‘plan’ when there is such a significant body of evidence to indicate that dumping at sea is both a ‘plan’ and ‘project’ as defined by the Habitats Directive. See Appendix 3 for synopsis of ECJ rulings on this issue, and other

supporting evidence to support the view that dumping at sea must be considered a 'plan' and/or 'project' for the purposes of implementing the Habitats Directive. Please be aware that ECJ rulings are considered as definitive interpretation of the relevant law.

The issue of Appropriate Assessment came before the High Court in February 2016 in the case of Balz & Heubach v An Bord Pleanála. Paragraphs 235 to 239 are pertinent to the refusal of the EPA to review DAS Permit Reg. No. S0004-01 and undertake screening for Appropriate Assessment. Of particular note is paragraph 238, which states *"it is not possible for the Court to determine whether the AA which the Board purported to carry out met the legal test required by the judgements of the CJEU and the decisions of this court. In the absence of the Inspector making and recording complete, definitive and precise findings and conclusions necessary to meet the standard required, which the Board would have been entitled to expressly accept, it was necessary and open to the Board to do so in its decision in a way which makes it plain that the obligations placed upon it in relation to the carrying out and completion of an AA were satisfied"*. With regards DAS Permit Reg. No. S0004-01, it would not be possible for a court to determine whether the Agency has carried out an AA that meets the legal tests required by the judgements of the CJEU because the requirement to screen for AA has, in effect, been ruled out by the EPA on the basis of unsubstantiated opinion of a member of staff of the Agency.

The complaint is that dumping at sea using DAS Permit Reg. No. S0004-01 cannot proceed without first screening for Appropriate Assessment, but that the EPA, despite providing no evidence to support their position, are not planning to review this permit.

b. It is not clear that there has been any Appropriate Assessment of Permit Reg. No. S0004-01

It is not clear that Permit Reg. No. S0004-01 was ever screened for Appropriate Assessment (AA) as required for compliance with the EU Habitats Directive. There appears to be no reference in the DPC application documentation to AA. The usual standard test is that a project or plan is screened in for AA where there are either Special Protection Areas (SPA) or SACs within 15 km of the proposed activity. At the time of application for DAS Permit Reg. No. S0004-01 in 2009, there were already a number of SAC and SPA within this 15 km zone. The EPA website, which should hold copies of all documentation relating to this permit, does not have copies of the Environmental Impact Statement, Natura Impact Statement, or Appropriate Assessment. If these documents exist, they should be uploaded to the EPA website with immediate effect.

The complaint in this case is either:

- AA has not been done (a breach of the EU Habitats Directive), or
- AA has been done but the documents are not publically accessible (a breach of Article 5 of the Aarhus Convention).

c. Appropriate Assessment is a requirement for every dredging campaign, not a single AA for a DAS permit that covers multiple dredging campaigns

Notwithstanding the question regarding AA documentation as per Complaint 1b, it is assumed for the purposes of Complaint 1c that DAS Permit Reg. No. S0004-01 underwent Appropriate

Assessment by the EPA prior to the permit being issued. The permit was used for a dredging campaign in 2012. DPC have indicated that they now propose to use the same the same permit for a new dredging campaign in 2016, and again in summer 2017.

The ECJ ruling on Case C-226/08 (*Stadt Papenburg v Bundesrepublik Deutschland*) also determined that with respect to dredging operations, that “*each intervention in the navigable channel*” is a “*distinct project for the purposes of the Habitats Directive*”. This means that each intervention (i.e. dredging campaign) is a separate project (or ‘plan’) and requires a separate Appropriate Assessment. This means that even if Permit Reg. No. S0004-01 underwent Appropriate Assessment prior to the date of issue in July 2011, that a separate, new Appropriate Assessment is required for every new campaign. Therefore, Appropriate Assessment is required before the permit is used for dredging and dumping at sea in 2016. The Appropriate Assessment procedure will also need to be repeated if it is to be used for another dredging campaign in 2017.

ECJ rulings are considered to be definitive interpretations of the relevant law. It is therefore extremely unlikely that, were the situation with regards dumping at sea permits in Ireland be taken to the European Court, that the outcome would be any different. It is imperative that the EPA obtain legal advice on this matter as it has impact on every DAS permit in the country where AA is a requirement (i.e. the planned activity is within 15 km of an SAC or SPA). The normal procedure in Ireland has been to undertake one AA per permit, rather than one AA for each campaign (there may be a number of campaigns on a multi-year permit). There are implications for DPCs Alexandra Basin Redevelopment project, for example, where a single Appropriate Assessment is being put forward for six separate winter dredging campaigns.

The complaint in this case is that the very system under which DAS permits are issued and regulated is flawed and does not comply with the requirements of the EU Habitats Directive in those situations where the dumping at sea plan is likely to have a significant impact on the qualifying interests of SACs and SPAs.

2) Ineffective public consultation

a. Ineffective public consultation due to incorrect dates of dredging operations being notified to the public

It is a requirement of the application procedure for a Dumping at Sea Permit that the applicant submits the application form to the EPA and then, within 21 days, publishes a public notice in an appropriate newspaper.

On 29 September 2009, Dublin Port Company (DPC) submitted an application for a Dumping at Sea permit to the Department of Communications, Marine and Natural Resources under the Dumping at Sea Acts 1996 and 2004. This permit application was subsequently allocated the Permit Reg. No. S0004-01. This permit was sought for the disposal of dredge spoil arising from maintenance dredging of the port. The total volume for disposal was stated to be 4 million tons of “*silty sand and sandy silt*”. The date on which it was proposed to commence dumping was November 2009. The date on which it was proposed to complete dumping was “*6 years from commencement of dumping under this permit*”.

On 15 October 2009, DPC published a public notice in the Irish Times newspaper in respect of permit application S0004-01 in which the DPC stated that *"It is proposed that the disposal operation will take place between November 2009 and October 2015"*, and that the dredge material consisted *"of a mixture of sediments predominantly silt and sand mix"* (copy available on EPA website). A public notice of this type is a requirement of the application procedure and provides the essential information upon which members of the public, or other third parties, decide whether to make a submission or observation on the proposed activity. If the information provided is inaccurate, then members of the public and other third parties who might have had observations on the proposed activity if properly informed of the nature of the activity, are excluded from making those observations. The dates for the commencement and completion of the dredging activity in the public notice do not coincide with the commencement and completion dates in the application form.

Although the initial permit application was lodged with the Department of Communications, Marine and Natural Resources, it was the Irish Environmental Protection Agency (EPA) that issued Permit Reg. No. S0004-01 on 28 July 2011. With respect to the commencement and completion dates for dumping activity, this permit states that *"Loading and dumping activities must be completed within six years of the date of commencement of activities"*. This is a different date range to both the original application and the public notice.

DAS Permit Reg. No. S0004-01 was first used on 23 April 2012 (i.e. date of commencement of activities), meaning it is 'valid' until 22 April 2018.

DPC intends to undertake maintenance dredging in spring/summer 2016 and spring/summer 2017, with the dredge spoil to be disposed of at sea using Permit Reg. No. S0004-01.

Use of DAS Permit Reg. No. S0004-01 in 2016 and 2017 would mean that the permit would be in use beyond the end of the completion date of October 2015 that appeared in the public notice. Therefore, the use of this permit beyond October 2015 has not been subject to proper and full public participation. In other words, anyone who might have made a submission regarding dumping in 2016, 2017 and/or 2018 would not have made a submission because they were informed that dumping would finish in 2015.

This issue has been raised by the Irish Underwater Council directly with the EPA (Appendix 1). The EPA responded by stating that *"Public participation in the Dumping at Sea permit application process was afforded in accordance with the Dumping at Sea Act 1996 as amended"*. Whilst it is not contested that the permit underwent public participation, it is apparent that the information upon which this participation took place was misleading and thus the public participation procedure was flawed.

Therefore, the complaint in this instance is that the EPA failed to fully and properly implement public consultation with respect to the operational dates of Dumping at Sea permit Reg. No. S0004-01, thereby facilitating a dumping at sea plan for which no public consultation has taken place. This represents a failure to comply with the requirements of Article 6(2)(a) of the Aarhus Convention under which the public has a right to participate in decision-making in environmental matters.

b. Dumping of contaminated material under DAS Permit Reg. No. S0004-01 without public consultation

In October 2014, An Bord Pleanála held an oral hearing with regards the Dublin Port Company application for planning permission for the Alexandra Basin Redevelopment (ABR) project (case reference number PL29N.PA0034). The oral hearing included a witness statement from Adrian Bell, who provided details of coastal processes and flooding on behalf of the DPC. In this witness statement, Mr Bell provided a written response to a question raised by Peadar Farrell in relation to the proposed dumping of contaminated material as a component of the ABR project (Section 5.4.3(ii)). Mr Bell stated *"The slight/moderately contaminated silts deposited at the dump site will be overlaid (capped) with the dredged gravels. The dumping of the silt will be undertaken at slack tide to ensure that the partially contaminated silt will be deposited on the bed in the dump site area and immediately covered by the gravel which will be stable even in storm conditions. **This process has already been successfully carried out during the last maintenance dredging campaign**"* [emphasis added]. DPC therefore confirm that they have dumped contaminated sediments in Dublin Bay. Furthermore, with this statement being dated October 2014, this dumping of contaminated material therefore took place in 2012 (the last maintenance dredging campaign in Dublin Port prior to the quoted statement above), using Dumping at Sea permit Reg. No. S0004-01. The possibly misleading use of the word *"successfully"* will be examined in Complaints 5d, 5m, 6a, 6b, 6c and 6d.

The public notice published in the Irish Times on 15 October 2009 (as per Complaint 2a) describes the dredge material as *"a mixture of sediments predominantly silt and sand mix"*. It does not mention the presence of contaminants at levels above those permitted for unrestricted disposal at sea. This fact is also not mentioned in the body of the permit application form. It is only if one starts to read the large number of appendices to the application form does it become apparent that there are contaminated sediments present in the area of the proposed dredging and that permission is being sought to dump these sediments at sea.

As mentioned already in Complaint 2a, the public notice is the opportunity for the applicant to accurately inform the public and other third parties of the nature of the proposed activity. It is unreasonable to expect members of the public to read the entire application form plus, in this case, sixteen appendices in order to obtain the essential information related to the proposed plan. If the information is inaccurate or misleading, then this will necessarily exclude comment from some members of the public and other third parties. It is not unreasonable to assume that had the public notice been more accurate in the information, that there may have been more submissions from members of the public or other third parties raising concerns regarding the dumping of contaminated material at sea.

This issue has not yet been raised with the EPA. However, as with Complaint 2a, it is not contested that the permit underwent public participation, but that it is apparent that the information upon which this participation took place was misleading and thus the public participation procedure was flawed. Much of the correspondence between the EPA and the applicant that relates to the disposal of contaminated material was uploaded to the EPA website after the end of the public consultation period.

Therefore, the complaint in this instance is that the EPA failed to fully and properly implement public consultation with respect to the presence of contaminated materials in the sediments proposed for dumping under Dumping at Sea Permit Reg. No. S0004-01, thereby facilitating a dumping at sea plan for which no public consultation has taken place. This represents a failure to comply with the requirements of Article 6(2)(a) of the Aarhus Convention under which the public has a right to participate in decision-making in environmental matters. It also

represents a failure by the EPA to adhere to its own value statement that the Agency works “with others to build trust, networks and partnerships to deliver effective outcomes”.

c. Failure to prosecute the permit applicant for providing misleading information in a DAS permit application

The Dumping at Sea Act 1996 states in Regulation 5(7) that “A person who, in relation to an application for a permit under this section, makes a statement to the Minister that is false or misleading in a material respect shall be guilty of an offence unless it is shown that the person concerned did not, and could not reasonably have been expected to, know that the statement was false or misleading in a material respect.”

As already indicated in Complaints 2a and 2b, the public notice published in the Irish Times on 15 October 2009 contains information that is misleading in a material respect with regards the dates of the proposed dumping at sea activity, and the nature of the material to be disposed of at sea.

It is noted that the EPA Dumping at Sea Permit Application Guidance Note, Section A4, states that the newspaper notice “must contain the following information:

- a sketch map showing the location of the proposed site or sites and the approximate distance therefrom to a specified place on the mainland, and
- brief details of the commencement and duration of the proposed activity, and
- characteristics, composition and the approximate amounts of any substance or material involved and the method of the proposed loading as the case may be” [emphasis added]

Provision of these details in the DAS Permit Application Form would ensure compliance with Article 6(2)(a) of the Aarhus Convention. It would also ensure compliance with Regulation 5(1)a of the Dumping at Sea Act 1996, which states that “The Minister may... grant... a permit to a person who applies to the Minister for a permit authorising the dumping of a specified ... quantity of a specified substance or material in a specified place within a specified period of time” [emphasis added].

Complaint 2c is that the EPA failed to prosecute the applicant for providing information to the public that was, at the very least, misleading. Whilst it may be considered that prosecution would have been excessive, nevertheless the regulatory authority has an onus of responsibility to ensure that the public are well informed on environmental issues. If prosecution was considered not proportionate, then at a very minimum the EPA should have instructed the applicant to re-publish the public notice with the correct information.

d. Failure of the EPA to respond appropriately to a complaint relating to public participation in DAS Permit Reg. No. S0004-01

The issues outlined in Complaint 2a were raised by the Irish Underwater Council in a previous email (Appendix 1). Dr Karen Creed responded by stating that “Public participation in the Dumping at Sea permit application process was afforded in accordance with the Dumping at Sea Act 1996 as amended. Pursuant to the requirements of the Dumping at Sea Act 1996 as amended, Dublin Port Company placed a newspaper advertisement [i.e. public notice] in the Irish Times of the 15th October 2009. No submissions from members of the public were

received in relation to the application. Eleven submissions were received from statutory and notified consultees. A permit (Reg. No. S0004-01) was granted to Dublin Port Company on the 28th July 2011 and the permit was available to view on the EPA website from that date. No applications for leave to take a judicial review were made on the permit" (also Appendix 1).

As previously stated, it is not disputed that the DAS Permit Reg. No. S0004-01 did undergo public participation as required by the Dumping at Sea Act 1996 as amended. However, the public participation procedure was flawed due to the inaccurate information provided by DPC to the public with respect to the dates and the presence of contaminated sediments, and failure by the EPA to ensure that the information provided to the public in the newspaper notice was accurate and the same as the information in the Dumping at Sea permit application form.

In the response, the EPA appear to imply that because there were no submissions from the public with respect to dumping activity in the period November 2009 to October 2015, then there would be no submissions relating to dumping activity after October 2015. Whilst it cannot be proved either way, it seems reasonable to suggest that, had the public newspaper notice informed the public that contaminated sediments were to be dumped, then this would also have resulted in submissions from the public and other third parties. Were this permit application to undergo public participation now, it is likely that there would be a significant number of submissions from the public. DPC applied for a new Dumping at Sea permit in 2015 and the EPA received over 800 submissions from members of the public, elected representatives, local businesses, fishermen's organisations, etc. (see 'View Third Party Documents' section at <http://www.epa.ie/terminalfour/DaS/DaS-view.jsp?regno=S0024-01>).

It is also concerning that the absence of judicial review was taken as meaning that the public consultation was successful. The EPA is a body in which the public has a high degree of confidence. Indeed, the EPA considers itself to be a *"trusted, independent and authoritative advocate for the environment"*. Therefore, when the EPA issue a licence or permit of any type, the public will, in general, assume that procedures have been properly followed and that the proposal has undergone rigorous scientific assessment with regards possible impacts on the environment. In this case, why would anyone who saw the public notice have any reason to question the outcome? They were expecting the dumping of uncontaminated sediments, and for the procedure to be complete by October 2015. It is only now, almost 5 years after the permit was issued, that proposed dumping in 2016, under a permit that only underwent public consultation to 2015, is being challenged. Meanwhile, information relating to the dumping of contaminated material is so poorly documented that the EPA themselves do not know whether the material has been dumped or not (Appendix 5). The Agency is reminded of its own Mission Statement – *"To protect and improve the environment as a valuable asset for the people of Ireland. To protect our people and the environment from harmful effects of radiation and pollution"*. The EPA's mission is to protect the environment for the benefit of all of the people of Ireland; it is not an Agency that should facilitate exploitation of precious shared natural resources by one interest ahead of the wider public interest.

Therefore, Complaint 2d is that the EPA are standing over a flawed public consultation procedure based on the premise that no submissions had been received, but where the flaws in the consultation due to the misinformation presented in the public notice of themselves precluded submissions.

- 3) Ineffective / non-existent monitoring or control by the EPA of DAS Permit Reg. No. S0004-01**
 - a. DAS Permit Reg. No. S0004-01 is an open-ended permit where the regulatory authority has no control over the active dates**

Regulation 5(1)a of the Dumping at Sea Act 1996 states that *“The Minister may... grant... a permit to a person who applies to the Minister for a permit authorising the dumping of a specified ... quantity of a specified substance or material in a specified place within a specified period of time”* [emphasis added].

The EPA issued DAS Permit Reg. No. S0004-01 in July 2011. Condition 3.1 states *“Loading and dumping activities must be completed within six years of the date of commencement of activities”*. This is a specified duration. But it is not a specified period of time, which is a period of time between two fixed dates. This wording is used for the majority of DAS permits issued by the EPA.

In this case Permit Reg. No. S0004-01 was first used on 23 April 2012 (commencement date, obtained from record of voyage logs in Appendix 1 of the Annual Environmental Report for 2012 for Permit Reg. No. S0004-01), meaning it is valid until 22 April 2018.

This wording of the permit means that the permit holder has complete control over the dates of operation, and not the regulatory authority. Furthermore, in the case of Permit Reg. No. S0004-01, this wording facilitates the use of the permit many years beyond the end of the public consultation period (which was to the end of October 2015 – Complaint 2a).

Complaint 3a is that the wording relating to the time period for Permit Reg. No. S0004-01 does not meet the requirements of the Dumping at Sea Act which requires a specific period of time.

b. Failure to control dumping of material outside the defined dump site and failure to raise these occurrences as official incidents

The Glossary of Terms in DAS Permit Reg. No. S0004-01 defines an ‘incident’ as *“any loading or dumping at sea activity which does not comply with the requirements of this permit”*.

Condition 1.4 of DAS Permit Reg. No. S0004-01 states *“For the purposes of this permit, the location of the dumping site authorised by this permit is in that part of the sea specified in Schedule A: Limitations of this permit. Any reference in this permit to “dumping site” shall mean the area thus outlined. The permitted dumping activity shall be carried out only within the area outlined.”* [emphasis added]

Condition 1.6 of DAS Permit Reg. No. S0004-01 states *“Loading and dumping at sea shall be controlled and operated as set out in this permit. All programmes required to be carried out under the terms of this permit become part of this permit.”*

Therefore, based on the above, any dumping activity taking place outside the specified dump site constitutes an ‘incident’.

Condition 5 of DAS Permit Reg. No. S0004-01 relates to Incident Prevention and Emergency Response. It states:

5.1 Incidents. In the event of an incident the permit holder shall immediately:

- I. identify the date, time and place of the incident;*
- II. as soon as practicable notify the Agency, in a format prescribed, and other relevant authorities;*
- III. carry out an investigation to identify the nature, source and cause of the incident and any impact arising therefrom;*
- IV. isolate the source of any such impact;*
- V. evaluate the environmental pollution, if any, caused by the incident;*

VI. identify and execute measures to minimise the impact and the effects thereof.

5.2 The permit holder shall provide a report of the investigation into the incident to the Agency for its agreement within one month of the incident occurring or as otherwise agreed by the Agency. The report shall include a proposal to:

- I. identify and put in place measures to avoid recurrence of the incident;*
- II. and identify and put in place any other appropriate remedial actions.*

Schedule A.3 of DAS Permit Reg. No. S0004-01 details the latitude and longitude of the boundaries of the dump site. Dublin Port Company 6 Year Dredge Plan Dumping at Sea Permit No. S0004-01 Annual Environmental Report 2012 (AER) contains, as Appendix 1, a register of loading and dumping at sea activities. The latitude and longitude of the start and finish position for the dumping of every load is recorded in this register. According to this register, there were 333 loads of dredge spoil dumped between 23 April 2012 and 22 June 2012. Of the 333 loads, it appears that 119 were dumped either entirely or partially outside the specified dump site. These loads are identified in the register as trip numbers 1, 4, 33, 49, 52, 57, 69, 78, 83, 84, 85, 101, 108, 109, 130, 137, 139, 141, 144, 145, 146, 147, 150, 152, 157, 158, 159, 163, 168, 169, 170, 171, 172, 173, 175, 176, 177, 179, 180, 182, 183, 185, 186, 187, 188, 190, 192, 198, 199, 203, 204, 206, 209, 211, 215, 216, 218, 222, 227, 228, 234, 235, 242, 249, 250, 251, 252, 259, 260, 266, 267, 269, 270, 272, 273, 275, 276, 277, 278, 279, 282, 286, 287, 288, 289, 291, 293, 294, 296, 297, 298, 299, 300, 301, 302, 303, 306, 307, 309, 311, 312, 313, 314, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 327, 328, 329, 330, 331, and 332).

Since dumping outside the specified area constitutes an 'incident', each of the dump trips listed above represents a separate incident. There are therefore 119 incidents of failing to comply with the conditions of the DAS permit.

Dublin Port Company 6 Year Dredge Plan Dumping at Sea Permit No. S0004-01 Annual Environmental Report 2012, Section 5 Reported Incidents Summary states "*The permit holder is required to keep a record of any incident including details of the nature, extent, and impact of, and circumstances giving rise to the incident. There were no recorded incidents in 2012 in relation to the works carried out under Permit No. S0004-01.*"

The EPA is the regulatory authority for dumping at sea activities. It should not be possible for 35% of dump trips to dump outside the specified area. Yet, not a single one of these occurrences has been raised as an incident.

The environmental impact assessment of the dumping activity is based on the material actually being dumped within the boundaries of the dump site. The impacts of dumping outside the dump site are not known. Therefore, each occasion of dumping outside the boundary of the specified dump site also constitutes a separate incident based on "*any indication that environmental pollution has, or may have, taken place*" (as defined in the Glossary of Terms for DAS Permit Reg. No. S0004-01).

Complaint 3b is that the EPA has failed to properly regulate dumping at sea activity related to DAS Permit Reg. No. S0004-01. The EPA has also failed to seek initiation of the incidents procedure as set out in DAS Permit Reg. No. S0004-01. Please note that whilst this is one complaint, there should be 119 separate incident reports.

- c. DAS Permit S0004-01 does not make direct reference to disposal of contaminated material**

As already stated in Complaint 2b, neither the public notice nor the permit application form for DAS Permit Reg. No. S0004-01 made reference to the disposal of contaminated materials. However, review of the many appendices to the permit application form and correspondence uploaded on the EPA website after the end of the public consultation period make it apparent that permission was sought for the disposal of contaminated materials.

The Introduction to DAS Permit Reg. No. S0004-01 states *“Under this permit, a maximum of 4,000,000 tonnes of dredged material shall be loaded and dumped at sea over a six year period. The permit holder is required to manage the permitted activities to ensure the protection of the marine environment. Sediment from contaminated areas shall be dumped at slack water and then capped with clean sediment dredged from uncontaminated areas. The permit includes mitigation measures to minimise the release of contaminated sediment into the surrounding waters and monitoring requirements to evaluate the impact of the works and the stability of the cap. There are provisions for remedial action in the event of a non-compliance with any conditions of the permit. The permit holder is required to submit reports on the loading and dumping activities and monitoring results to the Agency”*. However, the permit also states that the *“introduction is not part of the permit and does not purport to be a legal interpretation of the permit”*.

The permit makes no further direct reference to the disposal of contaminated materials. In other words, the information on contamination is in the Introduction, which is not part of the permit. The permit itself avoids making any reference to the presence of contaminants. Conditions 3.8 and 3.9 of the permit describe a capping procedure required for some sediments, but does not state that this is a containment procedure for disposal of contaminated material. Schedule B.2 of the permit relates to monitoring procedures at the dump site, but again does not state that this is for monitoring of dumped contaminated material.

Complaint 3c is that it is wholly inappropriate that the regulatory authority for dumping at sea (EPA) is acting with such a lack of transparency and open-ness with regards an important environmental issue. If the dumping of contaminated material poses no risk, then why is the operation being hidden from public view? If the dumping of contaminated material does pose a risk, then this should be open to public participation (indeed, this operation should have undergone a public participation process anyway as indicated in Complaint 2b). This complaint also represents a failure by the EPA to observe its own stated value of regulating *“in a fair, proportionate and transparent manner and target those who don't comply”*.

d. Non-compliance with Condition 3.10(ii) of DAS Permit Reg. No. S0004-01

Condition 3.10 of DAS Permit No. S0004-01 relates to information regarding loading and dumping activities that must be automatically recorded during each dumping voyage. Condition 3.10(ii) requires details of *“the source of the substance or material (latitude and longitude coordinates in degrees and decimal minutes)”*.

Appendix 1 of DPC DAS Permit No. S0004-01 AER 2012 is a register of loading and dumping at sea activities. This should contain details of the source of the substance or material (latitude and longitude coordinates in degrees and decimal minutes). However, these details are not present for any dumping voyage. Each voyage where this information has not been recorded represents an incident as defined within the permit (see Complaint 3b). As there were 333 voyages in the dredging campaign of 2012, this represents 333 separate occasions where the applicant failed to comply with the requirements of the permit. This is 333 separate incidents

for which no incident was raised, with no report raised by the applicant, and no report requested by the regulatory authority.

The complaint is therefore failure of the EPA to properly enforce the terms of DAS Permit No. S0004-01, including failure to request incident reports.

e. Non-compliance with Condition 3.10(iii) and 3.10(vii) of DAS Permit Reg. No. S0004-01

Condition 3.10 of DAS Permit No. S0004-01 relates to information regarding loading and dumping activities that must be automatically recorded during each dumping voyage. Condition 3.10(iii) requires that details be recorded of *“The date, time, location and position (latitude and longitude coordinates in degrees and decimal minutes) at which the voyage for the purposes of dumping began”*. Condition 3.10 (vii) requires that details be recorded of *“The date, time and position (latitude and longitude coordinates in degrees and decimal minutes) at which the vessel completed the voyage for the purpose of dumping”*.

Appendix 1 of DPC DAS Permit No. S0004-01 AER 2012 is a register of loading and dumping at sea activities. This should contain details of the date, time, location and position (latitude and longitude coordinates in degrees and decimal minutes) at which each voyage for the purposes of dumping began and was completed. However, these location and position data are not present for any dumping voyage, outward or return. Each voyage where this information has not been recorded represents an incident as defined within the permit (see Complaint 3b). As there were 333 voyages, with two non-compliances on each voyage, in the dredging campaign of 2012, this represents 666 separate occasions where the applicant failed to comply with the requirements of the permit. This is 666 separate incidents for which no incident was raised, with no report raised by the applicant, and no report requested by the regulatory authority.

The complaint is therefore failure of the EPA to properly enforce the terms of DAS Permit No. S0004-01, including failure to request incident reports.

4) Inability of EPA to provide verified evidence of compliance of DAS Permit Reg. No. S0004-01

a. Compliance with Condition 3.4 of DAS Permit Reg. No. S0004-01 cannot be verified

Condition 3.4 of DAS Permit Reg. No. S0004-01 relates to the loading sequence for each campaign, with the sequence being based on the ability to identify different areas within the port that are scheduled for dredging. Each area is identified in terms of latitude and longitude of the boundaries of each area, as specified in detail in Schedule A.2 of the permit.

The ability to identify where a load of dredged material has originated from within the port is important as the level of contamination varies between the different areas. In order for the proposed capping method for containment of contamination to work, it is important that the contaminated material is dumped first with cleaner material then dumped on top.

In order to determine whether the different areas were loaded and dumped in the correct order, it is necessary to know where every load of dredge material originated. Hence the requirement of the permit at Condition 3.10(ii) which instructs that the *“the source of the substance or material (latitude and longitude coordinates in degrees and decimal minutes)”*. As stated in Complaint 3d, this information was not recorded and is not reported in the register of loading and dumping at sea activities (Appendix 1 of DPC DAS Permit No. S0004-01

AER 2012). Without knowing the origin of every load, it is impossible to verify that the order of loading and dumping was adhered to by the permit holder.

Complaint 4a is that, due to shortcomings in the required reporting for DAS Permit Reg. No. S0004-01 associated with Condition 3.10, the EPA (i.e. the regulatory authority) is not able to verify that the correct loading order was followed. However, this issue does not appear to have been raised by the EPA.

b. Compliance with Condition 3.5 of DAS Permit Reg. No. S0004-01 cannot be verified

Condition 3.5 of DAS Permit Reg. No. S0004-01 states that *"Material from the North Quay Extension (B006) shall be loaded on an incoming tide."* Without the information that should have been recorded as a requirement of Condition 3.10(ii) (i.e. latitude and longitude of the source of the material dredged) it is not possible to identify which loads were obtained from within the boundary of the area specified as North Quay Extension (B006). The states of tides are not recorded (they were not requested by the EPA). It is therefore impossible to verify from the reported data that there was compliance with Condition 3.5.

Complaint 4b is that the EPA, the authority with responsibility for regulating dumping at sea activity, is unable to verify that the permit holder observed the requirements of Condition 3.5 of DAS Permit Reg. No. S0004-01 and does not appear to have requested clarification.

c. Compliance with Condition 3.7 of DAS Permit Reg. No. S0004-01 cannot be verified

Condition 3.7 of DAS Permit Reg. No. S0004-01 states that *"Dumping of material from the North Quay Extension (B006) and River Area A (B007) shall be carried within 30 minutes either side of slack water."* Without the information that should have been recorded as a requirement of Condition 3.10(ii) (i.e. latitude and longitude of the source of the material dredged) it is not possible to identify which loads were obtained from within the boundary of the areas specified as North Quay Extension (B006) and River Area A (B007). The states of tides are not recorded (they were not requested by the EPA). It is therefore impossible to verify from the reported data that there was compliance with Condition 3.7.

Complaint 4c is that the EPA, the authority with responsibility for regulating dumping at sea activity, is unable to verify that the permit holder observed the requirements of Condition 3.7 of DAS Permit Reg. No. S0004-01 and does not appear to have requested clarification.

d. Compliance with Condition 3.8 of DAS Permit Reg. No. S0004-01 cannot be verified

Condition 3.8 of DAS Permit Reg. No. S0004-01 states that *"Material from the North Quay Extension (B006) and River Area A (B007) shall be dumped in a line formation no greater than 100 m long with dumping commencing at the south end of the dumping site."* Without the information that should have been recorded as a requirement of Condition 3.10(ii) (i.e. latitude and longitude of the source of the material dredged) it is not possible to identify which loads were obtained from within the boundary of the areas specified as North Quay Extension (B006) and River Area A (B007). It is therefore impossible to verify from the reported data that there was compliance with Condition 3.8. This is of particular importance as the material

from these two areas is the contaminated material for which permission to dispose of sea was sought without public consultation.

Complaint 4d is that the EPA, the authority with responsibility for regulating dumping at sea activity, is unable to verify that the permit holder observed the requirements of Condition 3.8 of DAS Permit Reg. No. S0004-01 and does not appear to have requested clarification.

e. Compliance with Condition 3.9 of DAS Permit Reg. No. S0004-01 cannot be verified

Condition 3.9 of DAS Permit Reg. No. S0004-01 states that *"During each campaign, material dumped in accordance with Condition 3.8 shall be capped without undue delay with a capping layer of clean coarse material from River Area B (B011). A sufficient quantity of material from River Area B (B011) shall be dumped to provide and maintain, at a minimum, an cap thickness of 0.5 m over a 150 m x 250 m area."* Without the information that should have been recorded as a requirement of Condition 3.10(ii) (i.e. latitude and longitude of the source of the material dredged) it is not possible to identify which loads were obtained from within the boundary of the area specified as River Area B (B011). This is of particular importance as the material dumped in accordance with Condition 3.8 contained elevated levels of contamination making it unsafe for unrestricted disposal at sea. It needed to be capped without undue delay to prevent potential mobilisation of the contaminants in the environment, including potentially entering the human food chain. It is therefore very important that the contaminated material can be identified and that disposal was followed as described in the conditions of the permit.

It is impossible to verify from the reported data that there was compliance with Condition 3.9 – i.e. that contaminated material was dumped in a line formation and that it was capped *"without undue delay"* by clean material.

Complaint 4e is that the EPA, the authority with responsibility for regulating dumping at sea activity, is unable to verify that the permit holder observed the requirements of Condition 3.9 of DAS Permit Reg. No. S0004-01 and does not appear to have requested clarification.

5) Ineffective monitoring by the EPA of DAS Permit Reg. No. S0004-01 in relation to misleading information provided by Dublin Port Company

a. Factual error in AER with regards reporting vessel logs

With regards the information that should have been recorded as a requirement of Condition 3.10(ii) (i.e. latitude and longitude of the source of the material dredged), Section 4.1.1 of the DPC DAS Permit No. S0004-01 AER 2012 states *"The marine positional log, the record of the locations of the vessel during the loading and dumping activities is included in Appendix 1"*. This statement is factually incorrect as the location of the vessel during loading activities is not included in Appendix 1. The AER must be amended to reflect the actual information that is recorded in Appendix 1.

Complaint 5a is that incorrect information relating to the records of vessel locations was not challenged by the EPA and rectified.

b. Spurious locations in register of loading and dumping at sea activities, and failure to record tonnage of material dumped

Condition 3.10(iv) requires that details be recorded of *“The date, time, and position (latitude and longitude coordinates in degrees and decimal minutes) at which dumping began”*. Condition 3.10(v) requires that details be recorded of *“The date, time and position (latitude and longitude coordinates in degrees and decimal minutes) at which dumping ended”*. This information is recorded in Appendix 1 of DPC DAS Permit No. S0004-01 AER 2012, register of loading and dumping at sea activities. However, there are four instances where location information for dumping activity is spurious (trips 142, 174, 202, and 258).

Condition 3.10(vi) of DAS Permit Reg. No. S0004-01 states that a record must be maintained of *“the quantity, stated in metric tonnes, of the substance or material dumped”*. However, there are six trips where this information was not recorded and there are blank spaces in the register of loading and dumping at sea activities. These are trips number 56, 61, 76, 81, 275 and 276.

Complaint 5b is that the EPA did not identify these spurious positional readings and blank data entry points and seek clarification from the permit holder as to the actual position of the dumping activity and quantity of material dumped, respectively.

c. Return to port times not recorded

Condition 3.10(vii) requires that details be recorded of *“The date, time, and position (latitude and longitude coordinates in degrees and decimal minutes) at which the vessel completed the voyage for the purpose of dumping”*. As already raised in Complaint 3e, all of the location and positional data is missing (as recorded in Appendix 1 of DPC DAS Permit No. S0004-01 AER 2012, register of loading and dumping at sea activities). However, there are also five instances where time of arrival back to port has not been recorded (trips 1, 37, 60, 255 and 300). Each failure to comply with the requirements of the conditions of the permit represents an incident, yet no incidents have been raised.

Complaint 5c is that the EPA did not identify these missing data entries and seek clarification from the permit holder as to the actual time of arrival at port, and that incident reports have not been generated.

d. Failure to take dump site monitoring samples on time

Condition 4.1 of DAS Permit Reg. No. S0004-01 states that *“The permit holder shall carry out such sampling, analyses, measurements, examinations, maintenance and calibrations as set out below and in accordance with Schedule B: Monitoring of this permit”*.

With regards the bathymetry surveys required, Schedule B.2 Monitoring at Dumping Site states that surveys must be made:

- Within 10 days after completion of each campaign, and
- 1 month after completion of each campaign

The dredging campaign finished on 22 June 2012. Therefore, the first survey should have been undertaken between 22 June 2012 and Monday 2 July 2012. The second survey should have been undertaken on 22 July 2012. The Dublin Port Company ‘6 Year Dredging Plan Dumping at Sea – Aftercare Management Plan’ states, at paragraph 2.3.1, that *“due to poor weather*

conditions only one Bathymetric survey had been carried out by August 2012. Subsequent to the site inspection, a second Bathymetric survey was carried out in September 2012”.

However, review of Met Éireann data for the period 22 June 2012 to 2 July 2012 (i.e. the 10 days after completion of the campaign) shows the following information relating to winds (national reports, Appendix 4):

- Friday 22 June – winds were generally moderate, increasing to strong in Ulster and Leinster during the afternoon; north to northwesterly.
- Saturday 23 June – winds were strong; westerly in direction
- Sunday 24 June – winds were light; west to northwesterly
- Monday 25 June – winds were light; southeasterly
- Tuesday 26 June – winds were light; southwesterly in direction
- Wednesday 27 June – winds were light; southerly
- Thursday 28 June – winds were light; variable in direction
- Friday 29 June – winds were light; southeasterly
- Saturday 30 June – winds were moderate; west to northwesterly
- Sunday 1 July – winds were fresh to strong, northwesterly
- Monday 2 July – winds were light, easterly

Review of Met Éireann data for the period 20 July 2012 to 28 July 2012 (i.e. one month after completion of the campaign, plus a few days either side to allow for any poor weather) shows the following information relating to winds (national reports, Appendix 4):

- Friday 20 July – winds were light, northerly
- Saturday 21 July – winds were light, variable in direction
- Sunday 22 July – winds were strong, southerly
- Monday 23 July – winds were light to moderate, variable
- Tuesday 24 July – winds were light, variable in direction
- Wednesday 25 July – winds were light, northwesterly
- Thursday 26 July – winds were light, northerly in direction
- Friday 27 July – winds were light, northwesterly
- Saturday 28 July – winds light to moderate, with gale gusts along northern coasts, west to northwesterly in direction

The Met Éireann data does not indicate any *“poor weather conditions”* that would have adversely impacted the timing of the bathymetric surveys. It would appear that the EPA did not question the information given to them by the permit holder.

With regards the frequency of granulometry and chemical analysis of sediment samples from the dump site, the instruction in Schedule B.2 Monitoring at Dumping Site is that samples must be collected *“1 month after completion of each campaign”*. The dredging campaign finished on 22 June 2012. Therefore, the permit contains clear instructions that the samples should have been collected on 22 July 2012. They were actually collected on 4 September 2012.

The Dublin Port Company ‘6 Year Dredging Plan Dumping at Sea – Aftercare Management Plan’ states, at paragraph 2.3.2, that the delay was *“due to poor weather conditions”*. However, review of Met Éireann data for 20 July 2012 to 28 July 2012 (i.e. one month after completion of the campaign, plus a few days either side to allow for any poor weather), as shown above, does not indicate any *“poor weather conditions”* that would have adversely

impacted collection of the sediment samples on time. It would appear that the EPA did not question the information given to them by the permit holder.

Regardless of whether weather conditions were a contributing factor to the delay in surveying and sampling, the fact that the work was undertaken on the wrong date represents a failure to comply with the requirements of DAS Permit Reg. No. S0004-01 and is therefore an incident as already defined. The comments from the Aftercare Management Plan quoted above indicates that the permit holder clearly appreciated that there was a delay in undertaking this monitoring work. Clearly, this meant that the requirements of the permit had not been met. Therefore, the permit holder should have initiated the incident procedure (Condition 5) and submitted a report of same to the EPA.

Complaint 5d is that the permit holder failed to comply with Condition 4.1 of DAS Permit Reg. No. S0004-01, constituting an incident as defined in the permit. The EPA did not seek incident reports from the permit holder with regards failure to obtain dump site monitoring data on the correct dates.

e. Late submission of Aftercare Management Report

Condition 6.1.1 of DAS Permit Reg. No. S0004-01 states that *“The permit holder shall prepare, to the satisfaction of the Agency, a fully detailed and costed plan for the aftercare management of the dumping site. This plan shall be submitted to the Agency for agreement within twelve months of the date of grant of the permit”*. DAS Permit Reg. No. S0004-01 was granted on 28 July 2011, so the Aftercare Management Plan should have been submitted by 27 July 2012. It was submitted in February 2013, at least 6 months late.

The Dublin Port Company ‘6 Year Dredging Plan Dumping at Sea – Aftercare Management Plan’ states, at paragraph 1.1.5, that *“The EPA conducted an audit in relation to DPC’s DaS Permit on the 27th September 2012. Condition No 6 of this permit requires the permit holder (DPC) to prepare an Aftercare Management Plan (AMP) for the aftercare management of the Dumpsite (the Burford Bank). The Site inspection Report (inspection reference SI01PC) issued by the EPA on the 11th October 2012 identified that this information from DPC had still to be provided to the EPA”*. Whilst it is

Complaint 5e is that the neither the EPA nor, apparently, the permit holder had identified this significant failure to comply with the requirements of DAS Permit Reg. No. S0004-01 prior to the audit of 27 September 2012. Furthermore, although eventually identified as a non-compliance, this issue was not raised as an ‘incident’ as defined within DAS Permit Reg. No. S0004-01. No incident report was submitted by the permit holder or, seemingly, requested by the regulatory authority, even though both parties must have been aware that this situation constituted an ‘incident’. This complaint represents another failure by the EPA to adhere to its own value statement and to *“target those who don't comply”*.

f. Aftercare Management Plan not fit for purpose

As stated in Complaint 5e, the Aftercare Management Plan must contain *“a fully detailed and costed plan for the aftercare management of the dumping site”*. It is not possible to define what constitutes a *“fully detailed plan”* – the plan just needs to seem appropriate. However,

a “costed plan” requires the inclusion of costs. The Dublin Port Company ‘6 Year Dredging Plan Dumping at Sea – Aftercare Management Plan’ contains no costings at all, of anything.

Complaint 5f is that an Aftercare Management Plan for which costing information was the only deliverable required but where costing information is not present, is considered to be prepared “to the satisfaction of the Agency”.

g. Ineffective audit procedure at the EPA

As stated in Complaint 5e, the EPA undertook an audit of DPC’s DAS Permit Reg. No. S0004-01 on 27 September 2012. The audit pre-dates the release of the AER for this permit by at least 5 months. The bathymetry surveys were not complete, and the chemical analysis of the sediment samples from the dump site were not available (as the samples were collected many weeks late – see Complaint 5d). Bearing in mind the very large number of complaints contained within this correspondence, the vast majority of which should have been detected during an audit, this undoubtedly raises a number of questions regarding the adequacy of the audit procedure.

- Was an audit date so close to the end of the dredging and dumping campaign appropriate bearing in mind that some critical documentation might not be available?
- Were the voyage logs available for inspection during the audit? It is assumed that these logs were available in order for the permit holder to comply with Condition 7.8 of DAS Permit Reg. No. S0004-01, in which case how could an audit team fail to notice the very large number of trips where data records are either absent, spurious, or indicate a failure to comply with the conditions of the permit?
- Has a subsequent audit taken place with all of the documentation available?

Complaint 5g is that the EPA review the audit procedure for DAS permits.

h. Failure to comply with Condition 7.1 of DAS Permit Reg. No. S0004-01

Condition 7.1 of DAS Permit Reg. No. S0004-01 states that “*The permit holder shall notify the Agency by both telephone and either email or webform, to the Agency's headquarters in Wexford, or to such other Agency office as may be specified by the Agency, as soon as practicable after the occurrence of any incident (as defined in this permit). The permit holder shall include as part of the notification, the date and time of the incident, summary details of the occurrence, and where available, the steps taken to minimise any impacts*”.

Despite the very large number of incidents included in this complain, the permit holder did not notify the Agency of a single incident.

Complaint 5h is that the EPA failed to enforce Condition 7.1 of DAS Permit Reg. No. S0004-01.

i. Failure to comply with Condition 7.4 of DAS Permit Reg. No. S0004-01

Condition 7.4 of DAS Permit Reg. No. S0004-01 states that “*The permit holder shall make a record of any incident. This record shall include details of the nature, extent, and impact of, and circumstances giving rise to, the incident. The record shall include all corrective actions taken to manage the incident, and the effect on the marine environment, and avoid*

recurrence. The permit holder shall, as soon as practicable following incident notification, submit to the Agency the incident record.”.

Despite the every large number of incidents included in this complain, the permit holder did not notify the Agency of a single incident.

Complaint 5i is that the EPA failed to enforce Condition 7.4 of DAS Permit Reg. No. S0004-01.

j. Failure to comply with Condition 2.2 of DAS Permit Reg. No. S0004-01

Condition 2.2 of DAS Permit Reg. No. S0004-01 states that *“The permit holder shall ensure that personnel performing specifically assigned tasks shall be qualified on the basis of appropriate education, training and experience as required and shall be aware of the requirements of this permit”.*

The Dublin Port Company ‘6 Year Dredge Plan, Dumping at Sea Permit S0004-01 – Annual Environmental Report 2012’ contains 17 pages of voyage logs for dredge dump trips. As stated in Complaint 3b, it seems that 119 loads (out of a total of 333 loads) were dumped either partially or entirely outside the specified boundary of the dump site. Every page contains at least one load dumped outside the specified boundary. Every page is signed off by the ‘Master’.

It is a requirement of DAS Permit Reg. No. S0004-01 that all loads are dumped within the specified boundary of the dump site. It would appear that the crew of the dump vessel were not aware of the requirements of the permit. And it would appear that the ‘Master’ was not aware of the requirements of the permit.

Complaint 5j is that the EPA failed to ensure compliance with Condition 2.2, resulting in a very high number of dump loads being dumped outside the boundary of the specified dump site.

k. Failure to comply with Condition 7.8 of DAS Permit Reg. No. S0004-01

Condition 7.8 of DAS Permit Reg. No. S0004-01 states that *“A full record, which shall be open to inspection by authorised officer of the Agency at all times, shall be kept by the permit holder on matters relating to each load of the substance or material intended to be dumped, and put on board the vessel. This record shall be maintained continually and shall as a minimum contain those details specified in Condition 3.10 of this permit. This information shall be submitted as required by and as may be prescribed by the Agency as part of the annual environmental report and immediately on request by an authorised officer”.*

As already stated in Complaints 3d and 3e, details as specified in Conditions 3.10(ii), 3.10(iii) and 3.10(vii) are either not recorded or only partially recorded. It is therefore not possible for the permit holder to comply with Condition 7.8 because any records that do exist cannot *“as a minimum contain those details specified in Condition 3.10 of this permit”.*

Complaint 5k is that the EPA failed to ensure that the permit holder complied with Condition 7.8 of DAS Permit Reg. No. S0004-01.

l. Failure to comply with Condition 8.3.1 of DAS Permit Reg. No. S0004-01

Condition 8.3.1 of DAS Permit Reg. No. S0004-01 states that *“The permit holder shall as part of the AER [Annual Environmental Report], provide an annual statement as to the measures taken or adopted at the loading areas and the dumping site in relation to the prevention of environmental damage, and the financial provisions in place in relation to the underwriting of costs for remedial actions following anticipated events or accidents/incidents, as may be associated with loading and dumping at sea”*.

Section 7 of the Dublin Port Company ‘6 Year Dredge Plan, Dumping at Sea Permit S0004-01 – Annual Environmental Report 2012’ relates to Environmental Liability and Financial Provisions. This section provides no information on *“the financial provisions in place in relation to the underwriting of costs for remedial actions following anticipated events or accidents/incidents, as may be associated with loading and dumping at sea”*.

Complaint 5l is that the EPA failed to ensure that the permit holder complied with Condition 8.3.1 of DAS Permit Reg. No. S0004-01.

m. Monitoring at dump site methods developed with no public participation

Schedule B.2 of DAS Permit Reg. No. S0004-01 provides details of the monitoring required at the dump site in terms of bathymetric surveys, and analysis of sediment samples for granulometry and chemistry. The sample locations for this monitoring work relate to areas of dumping referred to in Condition 3.9, which is the capping material used to contain the contaminated sediments that were dumped on the dump site.

As indicated in Complaint 2b, a flawed public participation process was used with respect to DAS Permit Reg. No. S0004-01. This flawed procedure ensured that there was no public participation with regards the disposal of contaminated sediments under this permit. It follows that there was no public participation in the development of the dump site monitoring protocols required to ensure that there was no movement of dumped contaminated materials into the wider environment, including potentially the human food chain.

The monitoring and control procedures contained within DAS Permit Reg. No. S0004-01 are completely unfit for purpose. It would seem extremely unlikely that the procedures would have been accepted if subject to public and third party examination and comment. In 2015, DPC applied for a new DAS permit for disposal of dredge material associated with the capital dredging programme for the proposed Alexandra Basin Redevelopment (ABR) project. In this application, the requirement to dispose of contaminated material was handled more explicitly. The resulting higher level of public and third party scrutiny has resulted in a far higher level of control being proposed by the applicant with regards dumping of contaminated sediments.

Complaint 3b relates to the fact that 119 out of 333 loads of dredged material (over 35% of loads) were dumped outside of the specified dump site.

Complaint 3d relates to the fact that the source of each load of dredge material was not recorded (as was required by Condition 3.10(ii)). Without this information, it is not possible to identify which loads comprised contaminated sediments and which loads comprised clean capping material.

Complaint 5d has already brought attention to the failure of the permit holder to undertake any of the monitoring of the dump site on time, and failure of the EPA to enforce the conditions of the permit (specifically, Condition 4.1).

This is a situation that is completely out of control with no effective regulation in place. The permit holder appears to have repeatedly failed to adhere to the conditions of the permit, but no action has been taken by the regulator to ensure compliance. It is strongly argued that, had the EPA effected proper public consultation that this situation would be far less likely to have occurred.

Complaint 5m is that the EPA excluded the public and other third parties from the decision making process with regards dumping of contaminated materials at the Burford Bank dump site, and that there was therefore no public participation in the development of the monitoring procedures. It must be remembered at this point that the public were not made aware of the presence of contaminated materials (Complaint 2b). As previously mentioned, the EPA is an organisation which enjoys a great deal of public trust and confidence. Whilst the EPA might argue that the information was available if it had been looked for, this is not a satisfactory position for a regulatory authority that should be operating in an open and transparent manner.

6) Total disregard to the monitoring of previously dumped contaminated spoil on the designated dump site using the Cap Method

a. No effective monitoring of cap depth and cap maintenance

Condition 3.9 of DAS Permit Reg. No. S0004-01 states that *“During each campaign, material dumped in accordance with Condition 3.8 shall be capped without undue delay with a capping layer of clean coarse material from River Area B (B011). A sufficient quantity of material from River Area B (B011) shall be dumped to provide and maintain, at a minimum, an cap thickness of 0.5 m over a 150 m x 250 m area”*.

Schedule B.2 of DAS Permit Reg. No. S0004-01, Monitoring at Dumping Site, requires bathymetric surveys to be undertaken after dumping. This survey work provides depth measurements across the dump site and should be capable of showing that water depth was at least 50 cm shallower after dumping than before (due to the deposition on the sea bed of the contaminated dredge spoil and then a 50 cm cap of clean material).

Bathymetric surveys are presented in the Dublin Port Company ‘6 Year Dredge Plan, Dumping at Sea Permit S0004-01 – Annual Environmental Report 2012’. However, there is no methodology to accompany these survey charts. There should be details on GPS equipment used, bathymetric survey equipment used, the accuracy of this equipment, equipment calibration data, uncertainty of measurement, the date of the surveys, etc.

Schedule B.2 specifies vertical resolution of ≥ 20 cm. This is presumably an error in the permit and should read *“vertical resolution ≤ 20 cm”*.

The bathymetric surveys presented in the AER do not appear to indicate any locations within the dump site where there are significant areas which were at least 50 cm shallower after dumping than before. In other words, there is no evidence that the capping method has worked. This does not seem to have been challenged by the EPA, even though the failure of the capping method means that the contaminated sediments that were supposed to be contained within the cap were not successfully contained. Condition 3.9 indicates that these

capped areas should be around 150 m x 250 m in area, so should be easily visible on the charts if they were present.

It is noted that the 'Analysis Method/Technique' requested for the bathymetry survey requires the data to be presented as a "*contoured chart at 200 mm intervals*" (Schedule B.2 of DAS Permit Reg. No. S0004-01, Monitoring at Dumping Site). The bathymetry charts in the AER are contoured to 200 cm (or 2 metre) intervals, a factor of ten out from the prescribed method.

It is also noted that Condition 3.9 requires the use of "*a capping layer of clean coarse material from River Area B (B011)*". Drawings 32-1010-05/03 and 32-1010-05/04, which are included in the Dublin Port Company '6 Year Dredge Plan, Dumping at Sea Permit S0004-01 – Annual Environmental Report 2012', show the composition of the sediment at different locations within the port. These drawings clearly indicate that the sediments in the area marked as River Area B (B011) consists predominantly of "*very silty sand*". Therefore, there is no "*coarse material*" in this area of the port to act as capping material (notwithstanding that the term "*coarse*" is not defined, whereas terms such as 'silt' and 'sand' are well defined).

Complaint 6a is that the methodology for monitoring and maintaining the cap, a containment procedure for contaminated materials, is not rigorous enough to be effective. The bathymetry data presented in the AER strongly indicates that there is very little capping material left on the dump site (and certainly not 50 cm deep) and that the capping methodology has not been effective as a containment procedure for contaminated sediments.

b. Monitoring of cap chemistry is ineffective for control purposes

Schedule B.2 of DAS Permit Reg. No. S0004-01, Monitoring at Dumping Site, requires three representative samples to be taken "*1 month after completion of each [dredging and dumping] campaign*" and then "*annually following the final campaign*". These samples are to be analysed for granulometry and for a suite of chemical contaminants. The samples are to be taken from the area referred to in Condition 3.9. In other words, these should be samples of cap material. Of these three samples, one must be from the northern end, one from the middle, and one from the southern end. Although not explicitly explained in the permit, it is possible that these samples are intended to monitor for the release of contaminated materials in to the wider environment.

Complaint 5d relates to the fact that the permit holder did not take these samples at the specified time, a failure to comply with Condition 4.1.

The bathymetric charts provided in the Dublin Port Company '6 Year Dredge Plan, Dumping at Sea Permit S0004-01 – Annual Environmental Report 2012' also indicate the position from which the three samples were obtained. Since these samples should be taken from caps, the bathymetric charts should indicate that the sea bed at the sample point was 50 cm shallower at the time of sampling when compared to pre-dumping depths. The bathymetry for all three sample points indicates the sea bed is around 10 cm deeper in 2012 when compared to 2008. This indicates that the samples were not collected from the correct locations, or that there is no capping material left in situ (confirming Complaint 5a), or that the equipment was not properly calibrated.

Notwithstanding the numerous issues raised above, three sediment samples were taken from the dump site and were analysed for the contaminants as required. However, there is again

no assessment or feedback mechanism in place. The levels of contaminants are not compared against any standard or reference level that might activate an action.

Say, for example, a level of 8 mg/kg of arsenic was detected. What does this mean? Does it mean the sample is 'safe'? Or does it mean the sample is 'contaminated'? If this represents an unduly high level of contamination (i.e. the level exceeds an action point), what remedial action is to be taken? What would happen if there were 80 mg/kg of arsenic, or 800 mg/kg of arsenic?

The system in place bases success of the containment procedure on simply taking three samples of sediment and getting them tested. The Dublin Port Company '6 Year Dredge Plan, Dumping at Sea Permit S0004-01 – Annual Environmental Report 2012' provides no interpretation of the chemistry test results. As mentioned in Complaint 2b, based on the bathymetry, granulometry and chemistry data obtained from the post-dumping surveys, DPC consider the capping procedure to be 'successful' and are recommending the procedure for future dredging campaigns.

Complaint 6b is that the method of monitoring contamination from the dumping of contaminated material at sea is unfit for purpose.

c. Condition 3.9 of DAS Permit Reg. No. S0004-01 is unworkable

Condition 3.9 of DAS Permit Reg. No. S0004-01 states that *"During each campaign, material dumped in accordance with Condition 3.8 shall be capped without undue delay with a capping layer of clean coarse material from River Area B (B011). A sufficient quantity of material from River Area B (B011) shall be dumped to provide and maintain, at a minimum, an cap thickness of 0.5 m over a 150 m x 250 m area"*.

Condition 3.9 states that the permit holder is to maintain the cap, but does not actually provide any guidance on how the cap is to be maintained. There is no feedback process to instruct how the findings from the bathymetry surveys will be used to inform maintenance of the cap. It might be supposed that the Aftercare Management Plan would indicate how the permit holder intends to maintain the cap, but this is not the case. Section 3 of this Plan, Aftercare Management of the Dumpsite, just states the monitoring requirement as specified in the permit. There is no indication as to how monitoring data will feed in to a management plan for the site.

The bathymetry charts in the Dublin Port Company '6 Year Dredge Plan, Dumping at Sea Permit S0004-01 – Annual Environmental Report 2012', which were generated from data obtained from survey work undertaken in August 2012, just two months after the end of the dumping campaign, do not appear to show any capped areas (i.e. areas of 150 m x 250 m that are at least 50 cm shallower than they were when surveyed in the previous bathymetric survey). Therefore, after just two months the cap is gone and maintenance of the cap should have been initiated.

It is self-evident that if the cap needs to be maintained at least every two months by dumping new clean material it is an inherently unsustainable operation:

- The wording of Condition 3.9 means that only material from River Area B (B011) can be used to maintain the cap. There is only a finite quantity of material in River Area B (B011). If the permit holder dumps material from another area to maintain the cap,

this would constitute a failure to comply with the permit. Such a restriction is far from satisfactory.

- It is also unclear from Condition 3.9 for how long the requirement to maintain the cap will last. Is it an indefinite requirement?
- How often does maintenance need to be undertaken? The evidence provided to date from bathymetric surveys would suggest a maintenance period of less than two months.
- Maintenance of the cap requires dumping on the Burford Bank *ad infinitum*. This will require a succession of Dumping at Sea permits, just for cap maintenance.
- With reference to Complaint 1c, “each intervention in the navigable channel” is a “distinct project for the purposes of the Habitats Directive”. This means that each intervention (i.e. dredging campaign) is a separate project (or ‘plan’) and requires a separate Appropriate Assessment (since the dump site lies entirely within an EU designated site). Therefore, every dredging operation to obtain material from River Area B (B011) will require a fresh Appropriate Assessment, prepared to meet the full requirements of the EU Habitats Directive (as per Balz & Heubach v An Bord Pleanála).

Complaint 5e related to the apparent failure of the permit holder to provide “a fully detailed and costed plan for the aftercare management of the dumping site” within the Aftercare Management Plan (as per Condition 6.1.1 of DAS Permit Reg. No. S0004-01)

Complaint 5l related to the apparent failure of the permit holder to provide details of “financial provisions in place in relation to the underwriting of costs for remedial actions following anticipated events or accidents/incidents, as may be associated with loading and dumping at sea”, as required by Condition 8.3.1 of DAS Permit Reg. No. S0004-01.

It is perhaps unsurprising that the permit holder was not prepared to submit written details relating to costs and financial commitments. To fully implement Condition 3.9 would effectively break the bank.

Complaint 6c, therefore, is that the Condition 3.9 is wholly untenable for long term management of the cap. The cap is required to contain contaminated materials that are considered unsafe for unrestricted disposal at sea. If the cap cannot be maintained, then the contaminated materials are not contained and can be re-mobilised within the environment.

d. No monitoring of contaminants in biological samples

The sediments in Dublin Port have been shown to contain levels of certain contaminants that are above the level allowable for safe unrestricted disposal at sea. The EPA have proposed that this contaminated material be dumped at sea but that it be capped with clean sediment as a containment strategy. As outlined in Complaints 6a and 6b, the success of this procedure is questionable.

Whilst these contaminated sediments remain within the port, they are relatively harmless as the contaminants are buried and inaccessible. When these contaminated sediments are dredged up from the port, this allows the contaminants to become mobile and enter the wider environment. The reason that the contaminants are considered unsafe is due mostly to toxicological effects on living organisms. Once these contaminants enter the tissues of living organisms they can move up the food chain, with the potential worst outcome being that they enter the human food supply.

To assess this threat it is necessary to monitor levels of the target contaminants in the tissue of living organisms. This might include worms, molluscs, echinoderms, etc. that burrow in soft sediment and ingest sediment particles as they feed. It might also include flatfish, such as plaice, which eat these small invertebrates and are also fished commercially for human consumption. It is noteworthy that the sediments disposed of on the Burford Bank contained elevated levels of PCBs, toxic chemicals that are implicated in reproductive failure in marine mammals (see <http://www.nature.com/articles/srep18573>), where the dump site is in an SAC for the protection of marine mammals (specifically, harbour porpoise).

Complaint 6d is that the EPA did not impose monitoring of target contaminants in living organisms as a condition of DAS Permit Reg. No. S0004-01.

7) Misleading and inaccurate information regarding document control

The EPA has produced a booklet entitled 'Dumping at Sea Enforcement and Permitting Booklet', described as a *"guidance document for applying for a Dumping at Sea permit"*. On page 7 this booklet states *"All permit application documents, correspondence, submissions etc. are available on the EPA website"*. This statement is broadly in agreement with the statement on page 4 of the EPA 'Customer Charter' that says the EPA will *"continue to improve services for access to environmental information. All licensing files and Annual Environmental Reports (AER) for licences can be viewed either online or by appointment at one of our public offices"*. These statements of official EPA policy support the requirements of Article 5 of the Aarhus Convention as they relate to the provision of environmental information to the public.

In March/April 2016, the Irish Underwater Council (the IUC) was in correspondence with the EPA to raise concerns regarding DAS Permit Reg. No. S0004-01. On foot of this correspondence, it became apparent that the EPA had been in correspondence with DPC (Appendix 1B mentions that DPC had *"agreed to employ a Marine Mammal Observer"* - if there was an agreement, this must be based on a communication between the two parties). The IUC requested that the correspondence between IUC and EPA (Appendix 1A to 1E) be uploaded to the EPA website along with correspondence between EPA and DPC (see Appendix 2A and 2B).

The EPA response is Appendix 2C. As can be seen from this email, apparently *"The EPA's Office of Environmental Enforcement does not maintain correspondence relating to Dumping at Sea permits (other than the Annual Environmental Report) online"*. The email then recommends reading the 'Dumping at Sea Enforcement and Permitting Booklet', which specifically states that *"**All** permit application documents, correspondence, submissions etc. are available on the EPA website"* [emphasis added].

This represents a significant discrepancy between what the EPA says it does with regards making documentation relating to DAS permits available, and what the EPA actually does with regards making such documents available. The guidance booklet gives the impression that all information is freely available and that the EPA is operating in an open and transparent manner. But in reality, the EPA is selecting which documents are made available in a manner that is not open and transparent. Essentially, the EPA is not meeting its own standards for documentation control.

Other documentation with regards DAS Permit Reg. No. S0004-01 that has not been made publically available includes the report of the EPA audit of DPC Dumping at Sea Permit Reg. No. S0004-01, conducted on 27 September 2012 (referred to in section 1.1.5 of Dublin Port Company '6 Year Dredge Plan, Dumping at Sea – Aftercare Management Plan'). This is the only document that could allow the

public to assess the competency and performance of the EPA and DPC in terms of adherence to the conditions of the DAS Permit Reg. No. S0004-01. It is difficult to imagine any reason why this document would be withheld from third party scrutiny (excepting sections which might be commercially sensitive).

The issues raised within Complaint 7 relate predominantly to compliance with the Aarhus Convention. Specifically, Article 5(2) states that *“within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible”*.

The public expects environmental enforcement agencies to operate with total openness and transparency. Indeed, these values are implicit in the EPA statement of Mission, Vision and Values. Where an organisation states that they make all documents available to the public, but then do not adhere to this policy objective, it can give the appearance that that organisation may not be acting in the best interests of the public and potentially favouring the needs of the permit holder over the needs of the public and other stakeholders.

8) Ineffective management of freedom of information and EPA not acting as source of information re DAS Permit Reg. No. S0004-01

a. EPA not acting as source of information re DAS Permit Reg. No. S0004-01

The IUC emailed the EPA to ask whether DPC had contacted the EPA to notify the Agency of the permit holders intention to start dredging and dumping plans, as required by Condition 2.4 of DAS Permit Reg. No. S0004-01 (see Appendix 2B). The EPA responded that it is necessary to contact the DPC to obtain this information (see Appendix 2C).

It seems extraordinary that such basic information would not be made available to the public by the regulatory authority. In effect, correspondence from the permit holder to the regulatory authority relating to a basic operational issue (i.e. start date of a dredging campaign) is being withheld from the public by the EPA. A person or third party who might have a grievance relating to dredging and dumping activity should not have to contact the permit holder to obtain this information.

As already stated with respect to Complaint 7, the collection and dissemination of environmental information is a requirement of Article 5 of the Aarhus Convention. In particular, Article 5(2) states that *“within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible”*.

Complaint 8a is that the EPA should be acting as a central point of contact for issues arising from DAS permits. The Agency should not be delegating this function to the permit holder.

b. EPA treat queries as complaints, and vice versa

On 9 May 2016, the Irish Underwater Council (IUC) sent a simple email to the EPA asking whether the EPA could advise *“whether DaS permit Reg. No. S0004-01 has been used for the disposal of contaminated material”* (Appendix 5). It is evident from Complaint 2b that the EPA issued the permit with the intention of it being used for the disposal of contaminated material, and that DPC have confirmed that it was used for this purpose. The IUC merely sought

confirmation from the EPA that the permit had been used for this purpose (bearing in mind that it is not obvious from the Annual Environmental Report).

It was therefore unexpected that the EPA Office of Environmental Enforcement (OEE) responded by stating that *"In relation to your other query, the OEE is minded to treat this as a complaint and under established procedures OEE will forward this to the permit holder for a response before deciding, and in turn communicating to you, whether to (i) close the complaint or (ii) open a compliance investigation. This is not a routine query and, while we will respond as quickly as we can, it will likely take some time to respond to fully."*

It is not clear how requesting information that should have been easily available to the Agency would constitute a 'complaint' that would require the intervention of the permit holder.

On the other hand, the issues raised in the correspondence in Appendix 1 are undoubtedly complaints. However, in this case the complaints procedure was not initiated. The initiation of a compliance investigation would have been the correct manner in which to handle the very serious issues regarding implementation and enforcement of the EU Habitats Directive raised in the IUC correspondence in Appendix 1.

Complaint 8b is that the EPA appears to lack clear internal procedures for handling complaints and queries, with inconsistency shown between different staff and sections within the organisation.

c. Procedure for complaints and incidents arising from information released in the AER

Condition 7.7 of DAS Permit Reg. No. S0004-01 states that *"the permit holder shall submit electronically to the Agency, by the 31st March of each year, an AER covering the previous calendar year. This report shall include as a minimum the information specified in Schedule C: Annual Environmental Report of this permit"*. Schedule C requires that the AER include a summary of reported incidents and a summary of complaints.

It is apparent that complaints and incidents may arise only after the information released in the Annual Environmental Report is made available for third party examination. However, it is unclear how complaints and incidents that arise in this way are recorded. It is important that a record of all complaints and incidents is available for public review, and the usual forum for this is the AER. But if the AER is already issued, how would these complaint and incident records be maintained for public scrutiny? Would the AER be re-issued?

Complaint 8c is that the procedure for recording incidents and complaints which arise from the AER is not clear, where the AER is required to hold a record of all incidents and complaints.

Appendix 1 – Letters IUC to EPA and back

Appendix 2 – Emails from IUC to EPA re uploading of correspondence to EPA website

Appendix 3 – Evidence that dumping at sea is a plan (and project), including ECJ rulings

Appendix 4 – Met Éireann Weather Reports, July/August 2012

Appendix 5 – Correspondence between IUC and EPA re dumping of contaminated material