



**Roinn Cumarsáide, Gníomhaithe
ar son na hAeráide & Comhshaoil**

Department of Communications,
Climate Action & Environment

UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE

Ms. Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
Palais des Nations, Room 429-4
CH-1211 GENEVA 10
Switzerland

5th May 2017

Your ref: ACCC/C/2016/139

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Ireland with the provisions of the Convention on public participation in decision-making in relation to dumping at sea activities (ACCC/C/2016/139)

Dear Ms Marshall

We refer to your letter dated 6th December 2016. Please find enclosed Ireland's response:

Introduction

The Communication relates to Dumping at Sea Permit Reg. No. S0004-01, issued by the Environmental Protection Agency in July 2011 arising from an application lodged on the 29th of September 2009 by Dublin Port Company (hereinafter 'DPC').

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The Communication from the Irish Underwater Council alleges non-compliance by Ireland with Articles 6(2)(a), 5(1) and 5(2) of the Convention on Access to Information, Public Participation in Decision Making and access to Justice in Environmental Matters as signed at Aarhus, Denmark, 24th June 1998 (hereinafter 'the Convention').

The nature of the alleged non-compliance by Ireland with the Convention includes both generalised complaints as to the operation of the Dumping at Sea Permitting regime and specific complaints in respect of Dumping at Sea Permit Reg. No. S0004-01. These complaints may be summarised as follows:-

- An allegation that dumping at sea permits are issued without fixed start and end dates.
- An alleged failure of the Environmental Protection Agency to make all documentation relating to dumping at sea permits fully accessible to the public which in turn has compromised effective public participation in the dumping at sea permit application process.
- An alleged failure to comply with the Habitats Directive in issuing dumping at sea permit Reg. No. S0004-01.
- Alleged non-disclosure and non-participation in respect of the disposal of contaminated material arising from the issue of dumping at sea permit Reg. No. S0004-01.

Prior to addressing these complains in detail it is necessary to set out the legal and regulatory framework governing the issue of Dumping at Sea Permits in Ireland and outline in general terms the procedures

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governing public participation in the dumping at sea permitting process.

Legal and Regulatory Framework Governing Dumping at Sea Permits in Ireland.

The law governing the issuing of Dumping at Sea Permits in Ireland is set out in the Dumping at Sea Act 1996 (hereinafter 'DAS Act'). This legislation prescribes the procedures governing the making of applications for Dumping at Sea Permits, including public participation in the application process and the procedures relating to the issue of permits.

Prior to the 15th of February 2010, Dumping at Sea Permits were issued by the Department of Agriculture, Fisheries and Food but as of that date this function was transferred to the Environmental Protection Agency ('EPA'). The EPA now has responsibility for processing all applications for Dumping at Sea Permits, the grant of such permits and enforcement of the terms and conditions in any permits issued. The EPA grants approximately 4 to 5 Dumping at Sea Permits per annum.

As previously highlighted responsibility for issuing Dumping at Sea Permits was transferred to the EPA in February 2010. Advertisements were placed in the National Newspapers (Irish Independent, The Irish Times and the Irish Examiner) to inform the public and stakeholders of the transfer of dumping at sea functions from the Department of Agriculture, Fisheries and Food to the EPA. A link was placed on the EPA website (www.epa.ie) providing information of the transfer of responsibilities. In addition, a letter issued to stakeholders such as Harbour and Port Authorities and Local Authorities informing them of

Fáiltítear roimh comhfhreagras i nGaeilge

the transfer of functions. A letter to all applicants and permit holders was also issued informing them of the transfer of functions.

A total of seven applications (including the application for Permit Reg. No. S0004-01) were transferred from the Department of Agriculture, Fisheries and Food to EPA. The applications were at various stages of processing. A consequence of this transfer of functions it is acknowledged there was a delay in the processing of extant permit applications (including Permit Reg. No. S0004-01).

Proposed reforms of Dumping at Sea Act

Ireland wishes to bring to the attention of the Compliance Committee that proposals to amend the DAS Act is underway. Legislation to amend the DAS Act is being prepared by the Marine, Planning and Foreshore unit of the Department of Housing, Planning, Community and Local Government. The amending legislation will streamline and improve the dumping at sea permitting process and make the existing enforcement provisions of the DAS Act more effective.

It is currently proposed that the amending legislation will be included into the Maritime Area and Foreshore (Amendment) Bill which will streamline the development consent process for the foreshore including the integration of certain parts of the foreshore consent process (under the Foreshore Act 1933) with the existing on-land planning system. Alternatively, amending legislation will be introduced through another appropriate legislative vehicle or through publication of a separate new marine Environmental Bill. The intention is that the legislation amending the 1996 Act is enacted in 2017. However, certain emerging technical and resource difficulties may delay enactment until 2018.

Fáiltítear roimh comhfhreagras i nGaeilge

There has been significant consultation with stakeholders in respect of the proposed amending legislation. In particular, there is close ongoing consultation between the Department of Housing, Planning, Community and Local Government and the EPA on the drafting of the proposed legislation.

Public Participation in the Dumping at Sea permitting process

The DAS Act makes extensive provision for public participation in the permitting process and for the provision on environmental information to the public in respect of an application for a dumping at sea permit.

(a) Requirement for public notification of application

In the first instance, pursuant to s.5A(1) of the DAS Act all applicants for a permit are required within 21 days of the application to publish a notice of the application in a newspaper circulating in the area adjacent to the site of the proposed dumping. If no newspaper is circulating in those areas, then the notice must be placed in a newspaper circulating nationally or such other newspaper as in the opinion of the EPA is likely to bring the proposal to the attention of persons who may be affected in the areas. The notice must contain a brief 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, the characteristics, composition and the approximate amounts of any substance or material involved. It must also contain brief details of the method of the proposed dredging or dumping as the case may be, and indicate where any relevant documentation in relation to the proposal may be inspected or a copy thereof may be obtained at a reasonable cost.

Fáiltítear roimh comhfhreagras i nGaeilge

The purpose of the notice is to make the public aware of the fact that an application for a permit has been made, provide brief details of the proposal, and inform the public where the relevant documentation in relation to the proposal may be inspected and copied. Copies of the public notice are also published on the EPA's website and may be accessed and downloaded by any member of the public.

(b) Requirement for all application documentation to be published electronically

Section 5A(7) of the DAS Act imposes a statutory obligation on the EPA to publish by electronic means all applications received for permits together with a copy of the public notice, all submissions or observations received in respect of such applications together with any comments of the applicants thereon. The EPA must also publish electronically all decisions made on or after 1 January 2004 on applications for permits or application to amend or revoke a permit

In accordance with this statutory obligation as a matter of practice all documentation relating to an application for a dumping at sea permit including third-party correspondence and EPA correspondence is placed on the dumping at sea section of the EPA Website where it may be accessed and downloaded by any member of the public. There were almost 830,000 visits to the EPA website in 2016, up from approximately 790,000 visits in 2015. This is indicative of a widespread use by the public of the EPA website for accessing environmental information including information relating to dumping at sea permits.

An application for a dumping at sea permit is made using a prescribed application form which sets out the salient details of the application. The completed application form in respect of each application once lodged with the EPA and validated is placed on the EPA's website where it may be accessed and downloaded by any member of the

Fáiltítear roimh comhfhreagras i nGaeilge

public. The application form in respect of any application permit is also available for inspection to members the public.

All applications for a dumping at sea permit are assessed by an EPA technical inspector and further information requested, if required. Any request for further information and subsequent responses are uploaded to the EPA website

(c) Right of public to make submissions or observations

Pursuant to s.5A(3) of the DAS Act members of the public are conferred with a statutory right to make submissions or observations to the EPA in respect of an application for a permit. Pursuant to s.5(1)(b)(iii) of the DAS Act in deciding whether to grant or refuse an application for a permit the EPA must consider any submissions or observations made by members of the public. Furthermore, s.5A(7) prohibits the EPA from considering an application for a permit until after the time for the making of submissions or observations by members of the public has expired.

There are no limitations as to which members of the public may make a submission or observation, or as to the length of such submissions or observations. There is also no fee for making a submission. The DAS Act imposes no restrictions on the nature of submissions or observations apart from s.5A(4) of the act which merely requires that they state the name and address of the person making the submission or observations, state the grounds for the submission or observations and any considerations and arguments on which it or they are based, and are accompanied by such documents, particulars or other information the person considers are necessary or appropriate for the consideration by the EPA of the application.

Fáiltítear roimh comhfhreagras i nGaeilge

The only other limitation imposed on submissions or observations is that they must be made within either 21 days or 1 month of the public notice of the application depending on the nature of the application. The only limited exception to this general right of the public to make submissions in respect of an application for a dumping at sea permit relates to applications for dredging urgently required for navigational safety.

In the case of DAS permit Reg No S0024-01 (Dublin Port Company) the EPA published a notice in a national newspaper the Irish Independent of the 22/02/2016 inviting people to make submissions/ observations on the significant further information received by the Agency

(d) Publication of decision on application for dumping at sea permit

The Board of the EPA makes a decision on an application for a dumping at sea permit having regard to the application documentation, the submissions and observations and a report from the inspector appointed by it to assess the application. Once the EPA reaches a decision on an application for a dumping at sea permit that decision must be published electronically by the EPA. Accordingly, the decision on the application, the permit if granted, the report of the inspector are all uploaded to the EPA's website and may be accessed and downloaded by any member of the public.

Furthermore, section 5A(8) of the DAS Act requires that a decision on an application for a permit must include:-

- (a) a statement that a person may question the validity of any decision by the Agency by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986), and

Fáiltítear roimh comhfhreagras i nGaeilge

- (b) a statement describing where practical information on the review mechanism can be found.

Thus every decision of the EPA to grant a permit is accompanied by a notice highlighting that any challenge to the validity of the decision must be taken by way of judicial review. Further information on judicial review is available on the EPA's website.

(e) Dumping at Sea Register

Section 5(9) of the DAS Act obliges the EPA to keep a register of all permits issued under the Act. The Dumping at Sea Register must be open to inspection by the public free of charge at all reasonable times and published by electronic means. The EPA maintains the Dumping at Sea Register on its website which can be accessed and downloaded by any member of the public. The EPA after the end of each year, is also required to publish in *Iris Oifigiúil*, (the Irish State Gazette) particulars of all permits granted under the DAS Act in that year.

Once a permit has issued it is included on the Dumping at Sea Register which is uploaded to the EPA website and may be accessed and downloaded by any member of the public. A copy of the permit is up uploaded to the EPA website and may be accessed and downloaded by any member of the public.

Furthermore, in the event a dumping at sea permit is granted it will be subject to a condition requiring the filing of an Annual Environmental Report ('AER'). Each AER in respect of all permits is uploaded to the EPA's website and may be accessed and downloaded by any member of the public. The AER's in respect of Permit Reg. No. S0004-01 are accessible on the website.

Fáiltítear roimh comhfhreagras i nGaeilge

(f) Statutory obligation on EPA to consult in respect of an application for a dumping at sea permit

Section 5(1) of the DAS Act imposes a statutory obligation on the EPA to consult with the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, the Department of Housing, Planning, Community and Local Government, the Department of Agriculture, Food and Marine, the Department of Jobs, Enterprise and Innovation and such other Minister of the Government as the EPA considers appropriate. In addition to this statutory requirement as a matter of practice the EPA also consults with Inland Fisheries Ireland, the Petroleum Affairs Division of the Department of Communications, Climate Action and Environment, The Marine Survey Office and An Taisce – The National Trust for Ireland. In cases where the proposed activity might have transboundary implications the EPA notifies the marine Division of the Department of Environment and the Loughs Agency in Northern Ireland.

(g) EPA Dumping at Sea Advisory Committee

In 2010 the Dumping at Sea Advisory Committee was established in accordance with section 41 of the Environmental Protection Agency Act 1992 to provide advice, comments, guidance and expertise to the EPA. It is comprised of representatives from government bodies, industry and the Environmental Pillar (which is comprised of 28 national non-governmental organisations). The first meeting of the Advisory Committee was 4th May 2010 and a total of three committees have been established to date the composition of which is set out in **Appendix A**. The advisory committee is advised of all applications for dumping at sea permits and notified of all decisions on applications, and furnished with a copy of any permit issued.

Fáiltítear roimh comhfhreagras i nGaeilge

(h) Other measures designed to ensure public participation in the issue of dumping at sea permits

As a matter of practice it is a condition of dumping at sea permits issued by the EPA that a public awareness and communication programme be established and maintained by the permit holder to ensure members of the public can obtain information relevant to the permitted activity. The EPA in conducting inspections of permitted activities ensures that permits holders comply with this requirement. In the case of Permit Reg. No. S0004-01 which is the subject of the Complaint condition 2.7 requires DPC to establish a public awareness and communication programme. Pursuant to this condition DPC maintains a page on its website where information on the activities permitted by Permit Reg. No. S0004-01 can be accessed by any member of the public.

(i) Conclusion

In all the circumstances Ireland submits that the public participation provisions of the regime governing the issuing of dumping at sea permits is compliant with the Convention.

In accordance with the requirements of Article 5(1) of the Convention the mandatory provisions of the DAS Act ensure the EPA and other relevant public authorities provide and are provided with environmental information on the impact of dumping at sea permits on the environment. The provisions of the DAS Act, and the requirement that all key information on an application for a permit are published by the EPA electronically ensure that environmental information on the dumping at sea permitting process is effectively accessible. These provisions are complemented by the publication of the Dumping at Sea Register coupled with the practices adopted by the EPA which ensure that environmental information relating to permits is available to the public relating in a transparent manner in accordance with the requirements of Article 5(2) of the Convention.

Fáiltítear roimh comhfhreagras i nGaeilge

The provisions of the DAS Act coupled with the practices adopted by the EPA in respect of the issue of DAS permits ensure that the public concerned are informed by public notice, early in the environmental decision making process and in an adequate timely and effective manner of the proposed application for a dumping at sea permit. This accords with the requirements of Article 6(1)(a) of the Convention.

Ireland would highlight that the foregoing public participation provisions were and are available to the Complainant in respect of the application for dumping at sea permit Reg. No. S0004-01 which is the subject of the Complaint. However, the Complainant failed to exercise its statutory right to make submissions or observations in respect of the application wherein it could have raised many of the matters of which it now complains. However, the Complainant has offered no adequate explanation of its failure to exercise its statutory right of public participation in the application process for dumping at sea permit Reg. No. S0004-01.

Allegation that dumping at sea permits are issued without fixed start and end dates

The Complainant alleges a situation exists whereby dumping at sea permits are issued without fixed start and end dates. The Complainant asserts that permits are issued with a condition which states that activities must be completed within a specified number of years from the commencement of activities. This it is contended enables permits to be used beyond the period notified to the public in the public (newspaper) notice. Therefore, it is alleged that by not fixing a completion date for dumping operations, “the procedure for the issuing

Fáiltítear roimh comhfhreagras i nGaeilge

of dumping at sea permits in Ireland is flawed in terms of compliance with the Aarhus Convention”.

Ireland submits this aspect of the communication is misconceived. In the first instance, it is incorrect to suggest that all dumping at sea permits contain a condition which states that activities must be completed within a specified number of years from the commencement of activities. Whilst the majority do contain a clause of this nature, a significant number of permits issued by the EPA specify that activities must be completed within a specified number of years from the date of the grant of the permit. All permits issued by the EPA from 2016 have required that all activities must be complete by a specified date. This is clear from the summary of all the dumping at sea permits issued from 2010 to 2016 attached at **Appendix B**.

It is important to note that s.5(1)(a) of the DAS Act specifies that a permit may only authorise dumping “in a specified place and within a specified period of time”. Accordingly, the EPA is prohibited from issuing a dumping at sea permit with an ‘open ended’ timeframe. All dumping at sea permits contain a clause requiring prior notification to the EPA of commencement of activities and it is unlawful to commence activities without such prior notification. In the case of dumping at sea permit Reg. No. S0004-01 which is the subject of the Complaint clause 2.4 of the permit requires DPC to notify the EPA at least two weeks prior to the commencement of the loading and dumping activities. Furthermore, condition 3.1 of the permit requires all loading and dumping activities must be completed within six years of the date of commencement of activities.

In these circumstances, it is incorrect to suggest that permits which contain a condition requiring that activities must be completed within a

Fáiltítear roimh comhfhreagras i nGaeilge

specified number of years from the commencement of activities (such as permit Reg. No. S0004-01) are not for a fixed period. The duration of such period runs from the date of notification of commencement of activities until the end of the period specified by each particular permit. This is clearly a fixed period and it does not permit or enable dumping at sea to proceed on an opened-ended basis.

The allegation by the complainant that the current system of issuing dumping at sea permits is flawed in terms of compliance with the Convention because it results in a situation where dumping is permitted within a period specified outside that indicated in the public notice is misconceived. This aspect of the Communication is based on a misunderstanding of the purpose of the public notice which is merely to bring to the public attention for the purposes of public participation the *proposal* for which an application for a dumping at sea permit is sought. The EPA may grant or refuse a permit and, if granting a permit, may do so on terms or subject to conditions other than those proposed by the applicant for the permit. To restrict the EPA to granting a permit in precisely the terms in which it is sought would deprive the public consultation process of meaningful effect since it would significantly restrict the scope of the EPA's powers. Thus it is not and cannot be the purpose of the public notice to definitively set out the time-frame of the proposed permit. This would be impracticable. It is clear that during the course of an application either arising from the submissions or observations lodged or its own assessment the EPA must be in a position to amend the proposed period of the permit. The DAS Act and the current permitting regime permit this but in so doing do not restrict public participation in a manner which is contrary to the Convention.

Fáiltítear roimh comhfhreagras i nGaeilge

Alleged failure of EPA to make all documentation relating to dumping at sea permits fully accessible to the public

The Communication alleges there has been a general failure on the part of the EPA to make all documentation relating to dumping at sea permits fully accessible to the public. More specifically complaint is made regarding the failure of the EPA to make correspondence between it and the Irish Underwater Council regarding the enforcement of Permit Reg. No. S0004-01 available on the its website. It is suggested this is contrary to the EPA's guidance document "Dumping at Sea EPA Enforcement and Permitting Booklet" and the statement contained therein that *"All permit application documents, correspondence, submissions etc are available on the EPA website"*.

As previously outlined the DAS Act imposes an obligation on the EPA to publish electronically all salient information relating to an application for a dumping at sea permit. The EPA complies with this requirement by way of publication on its website. This obligation under the DAS act does not extend to documentation relating to the subsequent enforcement of a dumping at sea permit. Nor does Article 5 or 6 of the Convention impose a requirement on the EPA to make such information available on its website as the Complainant alleges. Despite this fact the EPA has taken the view that it should conduct all of its business in a fully open and transparent manner which meets the requirement of the Convention that information on the environment is made "effectively accessible".

Accordingly, up until November 2016 all material relating to enforcement of dumping at sea permits was available to the public on hardcopy file at the Cork EPA Regional Inspectorate where all enforcement relating to dumping at sea permits is co-ordinated, or

Fáiltítear roimh comhfhreagras i nGaeilge

alternatively at any other EPA office on request. Since November 2016 all correspondence relating to dumping at sea permits is available electronically. All permit enforcement correspondence is available at a computer in four EPA offices regionally located across Ireland (Dublin, Cork, Wexford and Castlebar). To ensure availability of the relevant files at the time of visit, a prior appointment should be made with the regional office. A Personal Computer is available at each regional office on which the public may browse and print information from this website. Photocopiers are available for copying items at a specific cost rate per page.

The EPA also provides access online via its website to a range of enforcement documentation that collectively provide substantive information on the enforcement status of dumping at sea permits. Enforcement documents which may be accessed online include the Annual Environmental Report, Final Environmental Report, EPA Site Visit Reports, EPA monitoring reports, permit-holder public response to site visit report, permit holder monitoring reports and Loading and dumping commencement notices.

The Communicant complains that the EPA is in breach of its of its own guidance document "Dumping at Sea EPA Enforcement and Permitting Booklet" and the statement contained therein that *"All permit application documents, correspondence, submissions etc are available on the EPA website"* is clearly misconceived in circumstances where the statement in question obviously refers only to documents and correspondence relating to the applications for dumping at sea permits. As previously highlighted above as a matter of fact much of the documentation relating to the enforcement of dumping at sea permits is in fact available on the EPA's website.

Fáiltítear roimh comhfhreagras i nGaeilge

Alleged failure to comply with Habitats Directive in issuing dumping at sea permit Reg. No. S0004-01

Ireland restates its objection that the Convention Compliance Committee is not the appropriate forum for examining allegations of non-compliance with the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive').

The Complaint alleges a failure to conduct screening for Appropriate Assessment in accordance with the requirements of Article 6 of the Habitats Directive in respect of Permit Reg. No. S0004-01 in circumstances where the dumping at sea permitted lies within the Rockabill to Dalkey Island Special Area of Conservation ('SAC').¹ The obligation imposed by Article 6 of the Habitats Directive is to conduct a screening for Appropriate Assessment or Appropriate Assessment *prior* to the grant of a consent for a plan or project.² Permit Reg. No. S0004-01 was granted prior to the proposed designation of Rockabill to Dalkey Island as an SAC and therefore could not be relevant in the context of screening for Appropriate Assessment.

It should first be noted that the dumping at sea permitting regime operates in parallel with other development consent regimes. Thus, a

¹ A Special Area of Conservation means a site designated by the Minister as a special area of conservation pursuant to Article 4, paragraph 4 of the Habitats Directive.

² Article 6(3) of the Habitats Directive requires that: "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subjected to an appropriate assessment of its implications for the site in view of the site's conservation objectives. In light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the public concerned."

project which requires dumping at sea will typically require planning permission under the Planning and Development Act, 2000 (as amended) and/or a Foreshore Licence under the Foreshore Acts 1933 - 2014.

Screening for Appropriate Assessment is required in respect of an application for planning permission or a foreshore licence. Thus, both planning permission and a foreshore licence in addition to a dumping at sea permit are typically required before any dumping at sea is permitted and any proposed dumping will have been screened for Appropriate Assessment as part of that process.

The EPA in issuing and enforcing dumping at sea permits is aware of the need to avoid the deterioration of natural habitats and the disturbance of species for which an area is designated under the Habitats Directive. For the duration of 2016 activities authorised by the permit (between 20th June and 31st of July 2016) DPC has employed a marine mammal observer for the purposes of monitoring the Harbour Porpoise (*Phocoena phocoena*) (a qualifying interest in the Rockabill to Dalkey SAC).

The Complainant has not advanced any argument or evidence of deterioration of natural habitats or disturbance of species damage to Rockabill to Dalkey SAC arising from the dumping at sea permitted by Permit Reg. No. S0004-01. In fact on the 21st of September 2016 DPC submitted to the EPA a report prepared by the Irish Whale and Dolphin Group ('IWDG') on its behalf entitled "*Project: Maintenance Dredging, Dublin Port Marine Mammal Observers Report for Dredging and Dumping Activity June -July 2016*". The report states that in the opinion of IWDG it is highly unlikely that the dredging and dumping activities conducted

Fáiltítear roimh comhfhreagras i nGaeilge

by DPC had any significant impact on marine mammals in the area and at worst may have caused temporary displacement of some individuals.

Alleged non-disclosure and non-participation in respect of the disposal of contaminated material arising from the issue of dumping at sea permit Reg. No. S0004-01

The Complaint alleges that the use of Permit Reg. No. S0004-01 for the disposal of contaminated material at sea received no public participation whatsoever. It is further alleged there was not full and open disclosure of information relating to the levels of contamination in the port sediments that the DPC sought to dispose at sea. It is contended this constitutes non-compliance with Article 6(2) of the Convention. Information on the material and composition of the material to be disposed was available in the application documentation lodged by DPC during the application for Permit Reg. No. S0004-01.

The application form clearly indicated that the chemical analysis of the material proposed to be dumped accompanied the application. The accompanying data contained a chemical analysis of the material indicating the levels of contamination in the materials proposed to be dumped. Thus, the application documentation clearly indicated and referred to the contaminated nature of the materials proposed to be dumped by DPC. There are no less than 41 references in the application documentation to the contaminated nature of the materials proposed for dumping, including references to the level of contamination and analysis of the materials.

Furthermore, additional information on the nature of the materials proposed to be dumped was submitted by DPC arising from submission received in the course of the application. Finally, the report

Fáiltítear roimh comhfhreagras i nGaeilge

of the Inspector outlined in detail the composition of the material and indicated that some of the material proposed to be dumped was contaminated. Contrary, to what is alleged by the Complainant the information accompanying the application on the levels of contamination in the materials proposed to be dumped was not in the form of raw data (although such data was included) but also comprised information which clearly indicated the level of contamination.

It is important to note all of the foregoing information and data was uploaded to the EPA's website and freely available throughout the course of the application for Permit Reg. No. S0004-01. Accordingly, all relevant data relating to the disposal of contaminated material arising from the application for Permit Reg. No. S0004-01 was at all times accessible to members of the public who were free to participate in the application process and lodge submissions and observations if they wished. The EPA responded to all requests from the Complainant in respect of the availability of enforcement documentation and clarified to it the manner in which such documentation could be accessed.

In these circumstances, it is submitted that there is no basis for the allegation that there was not full and open disclosure of information relating to the levels of contamination in the port sediments that the DPC sought to dispose at sea. Furthermore, it is simply incorrect to suggest as the complainant does, that the use of permit Reg. No. S0004-01 for the disposal of contaminated material at sea received no public participation whatsoever. All environmental information (including that to the levels of contamination in the port sediments that the DPC sought to dispose at sea) was available to the public in a transparent manner in accordance with the requirements of Article 5(2) of the Convention.

Fáiltítear roimh comhfhreagras i nGaeilge

Admissibility and failure to exhaust domestic remedies

Ireland restates its objections to the admissibility of the Complaint in circumstances where the application process for dumping at sea permit Reg. No. S0004-01 with which the communication is concerned commenced on the 15th of October 2009 and concluded with the grant of a permit on the 28th of July 2011 prior to the ratification and the entering into force in Ireland of the Convention in 2012. For this reason, Ireland contends that the communication is inadmissible.

Extensive opportunities were available to members of the public to make submissions or observations in respect of the application process for dumping at sea permit Reg. No. S0004-01. However, the Communicant did not make any submissions or observations in respect of the application process for dumping at sea permit Reg. No. S0004-01 nor did it seek to challenge the decision of the EPA to grant the permit by way of judicial review proceedings. No adequate reason has been given by the Communicant for its failure to exhaust the domestic remedies available to it.

A Communicant cannot avoid the obligation to exhaust domestic remedies in circumstances where he has neither evidenced nor even claimed any cause of action which would entitle it to avail of domestic remedies.³

In the circumstances, Ireland submits that the Committee should find the communication inadmissible on the basis of paragraph 21 of the annex to decision I/7.

³ See also Paragraph 6(b) of Decision V/9 on general issues of compliance: “*the Committee should ensure that, where domestic remedies have not been utilized and exhausted, it takes account of such remedies*”.³

Observation by Environmental Pillar

By letter dated the 13th of September 2016 an observation in respect of Communication (ACCC/C/2016/139) was submitted by the Environmental Pillar. The observation expressly stated it was *“not specifically targeted as an observation on any particular communication”*. Attached to the observation was a document entitled *“Briefing Note on Certain Access to Justice Issues in Ireland for the Compliance Committee of the Aarhus Convention 2016 Rev. Ver. 2 September 2016”*. This ‘briefing note’ makes various submissions and observations on the legal provisions and case law governing legal costs in certain environmental cases in Ireland.

Ireland submits that this observation by the Environmental Pillar is not in any manner related to the issues raised by Communication (ACCC/C/2016/139). The issues raised in the within communication do not engage or relate to the issue of legal costs. In these circumstances Ireland respectfully submits the Observation and accompanying ‘briefing note’ are clearly of no relevance in the context of Communication (ACCC/C/2016/139) and should be disregarded by the Compliance Committee.

Without prejudice to the foregoing Ireland does not accept either the factual accuracy or legal analysis of the submissions and observations on the legal provisions and case law governing legal costs in certain environmental cases in Ireland as set out in the observation and accompanying ‘briefing note’. In this regard Ireland refers the Compliance Committee to its submissions on the matter of legal costs in environmental cases as set out in its Responses to Communication ACCC/C/2013/107 (Kieran Cummins) and Communication

Fáiltítear roimh comhfhreagras i nGaeilge

ACCC/C/2014/113 (Kieran Fitzpatrick) previously submitted to the Compliance Committee and exhibited for ease of reference at **Appendix C**.

Conclusions

In summary, Ireland contends that the dumping at sea permitting regime in Ireland provides full and transparent access to environmental information and enables full public participation in the permitting process in accordance with the requirements of Article 5 and 6 of the Convention. There has been full participation and transparent access to environmental information relating to the grant of Dumping at Sea Permit Reg. No. S0004-01 which is the subject of this Communication.

The substantive matters which are the subject of the Communication all predate Ireland's ratification of the Convention and consequently the Communication is inadmissible. Furthermore, the Communicant has also failed to exhaust its domestic remedies and offered no reason for its failure. The observation by the Environmental Pillar is not in any manner related to the issues raised by Communication and is of no relevance.

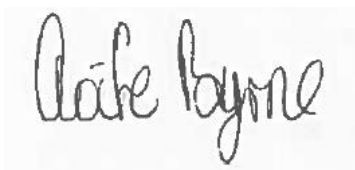
In all the circumstances it is submitted there has been no failure by Ireland to comply with Articles 6(2)(a), 5(1) and 5(2) of the Convention.

For the reasons above, we respectfully request that the communication as referenced above is dismissed.

Please do not hesitate to contact the undersigned if you require any further information.

Fáiltítear roimh comhfhreagras i nGaeilge

Yours sincerely,

A handwritten signature in black ink that reads "Aoife Byrne". The signature is written in a cursive style with a large 'A' and 'B'.

Aoife Byrne

National Focal Point - Aarhus

Fáiltítear roimh comhfhreagras i nGaeilge

APPENDIX A

Composition of Dumping at Sea Advisory Committee was set up in
from 2010

1st Advisory Committee 2010-2013	2nd Advisory Committee 2013-2016	3rd Advisory Committee 2016-2019
Dublin Port Company)	Irish Ports Association (Dublin Port Company)	Irish Ports Association (Dublin Port Company)
Central Fisheries Board	Central Fisheries Board	Inland Fisheries Ireland
Marine Institute (x3)	Marine Institute (x3)	Marine Institute (x2)
Sea Fisheries Protection Authority	Sea Fisheries Protection Authority	Sea Fisheries Protection Authority
Irish Environmental Network (Environmental Pillar)	Irish Environmental Network (Environmental Pillar)	Irish Environmental Network (Environmental Pillar)
School of Building and Civil Engineering, Cork Institute of Technology	School of Building and Civil Engineering, Cork Institute of Technology	School of Building and Civil Engineering, Cork Institute of Technology
		National Parks and Wildlife Service

Fáiltítear roimh comhfhreagras i nGaeilge

APPENDIX B

Dumping at Sea permits issued 2010 to 2016

2010

Permit Register Number	Permit Holder	Date of Issue	Period of Validity
S0005-01	Department of Defence	14/10/2010	Loading and dumping activities must be completed within one year of the date of commencement of activities.

2011

Permit Register Number	Permit Holder	Date of Issue	Period of Validity
S0002-01	Arklow Harbour Commissioners	21/04/2011	Loading and dumping activities must be completed within twelve months of the date of commencement of activities.
S0006-01	Waterford City Council	21/04/2011	Loading and dumping activities shall be completed within five years of the date of commencement of activities.
S0008-01	Endesa Ireland Ltd	20/07/2011	Loading and dumping activities must be completed within six months of the date of commencement of activities.
S0004-01	Dublin Port Company	28/07/2011	Loading and dumping activities must be completed within six years of the date of commencement of activities.
S0010-01	Howth Yacht Club	29/08/2011	Loading and dumping activities must be completed within 1 year of the date of commencement of activities.
S0011-01	Donegal County Council – Buncrana Harbour	29/08/2011	Dumping activities must be completed within two years of the date of commencement of activities.

2012

Permit Register Number	Permit Holder	Date of Issue	Period of Validity
S0016-01	Iarnrod Éireann	30/03/2012	Loading and dumping activities must be completed within eight years of the date of commencement of activities.

2013

Permit Register Number	Permit Holder	Date of Issue	Period of Validity
S0009-02	Shannon Foynes Port Company	22/01/2013	Loading and dumping activities must be completed within six years of the date of commencement of the permitted activities.
S0015-02	Drogheda Port Company	11/02/2013	Loading and dumping activities must be completed within eight years of the date of commencement of activities.

Fáiltear roimh comhfhreagras i nGaeilge

S0017-01	Wickow Port Company	02/05/2013	Loading and dumping activities must be completed within 12 months of the date of commencement of activities.
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2014

Permit Register Number	Permit Holder	Date of Issue	Period of Validity
S0012-02	Waterford Port Company	08/05/2014	Loading and dumping activities must be completed within 8 years of the date of commencement of activities.
S0019-01	Shannon Foynes Port Company	13/05/2014	Loading and dumping activities must be completed within 1 year of the date of commencement of activities.
S0013-02	Port of Cork Company	11/07/2014	Loading and dumping activities must be completed within 7 years of the date of commencement of activities.
S0011-02	Donegal County Council	20/08/2014	The permitted dumping activity shall commence within one year of the date of grant of this permit. Dumping activities must be completed within three years of the date of commencement of activities.

2015

Permit Register Number	Permit Holder	Date of Issue	Period of Validity
S0022-01	Department of Agriculture, Food & the Marine	03/12/2015	Dumping shall commence within 1 year of the date of grant of this permit.
S0025-01	L&M Keating Limited	29/09/2015	Loading and dumping shall be completed within 1 year of the date of grant of this permit.
S0007-02	Kerry County Council	15/09/2015	Loading and dumping activities shall be completed within one year of the date of grant of this permit.
S0021-01	Port of Cork Company	22/07/2015	Loading and dumping of dredged material from Ringaskiddy East shall be completed by 31 st December 2018. Loading and dumping of dredged material from Ringaskiddy West shall be completed by 31 st December 2020.

Fáiltítear roimh comhfhreagras i nGaeilge

S0020-01	L&M Keating Limited	25/02/2015	Dumping shall commence within two years of the date of grant of this permit. Dumping activities must be completed within three months of the date of commencement of activities.
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2016

Permit Register Number	Permit Holder	Date of Issue	Period of Validity
S0026-01	Aughinish Alumina Limited	28/07/2016	Dumping activities must be completed by the 31 st August 2024.
S0024-01	Dublin Port	13/09/2016	All loading and dumping activities shall be completed by 31 st March 2021.

2017

Permit Register Number	Permit Holder	Date of Issue	Period of Validity
S0005-02	Department of Defence	26/01/2017	All loading and dumping activities shall not commence before 1 st February 2017. All loading and dumping activities shall be completed by 31 st July 2017.

APPENDIX C

Previous Submissions on the matter of legal costs in environmental cases as set out in its Responses to Communication ACCC/C/2013/107 (Kieran Cummins) and Communication ACCC/C/2014/113 (Kieran Fitzpatrick) previously submitted to the Compliance Committee.

Fáiltítear roimh comhfhreagras i nGaeilge