

The Consultation “Problem”

by

Mary O’Leary

Chairperson, C.H.A.S.E.

Paper delivered at the National Planning Conference 2005

Maryborough House,

Cork

C H A S E



The Consultation ‘Problem’

"I would like to have the power of the Mayor [of Shanghai] . . . I would just like that we can get through the consultation problem as quick as possible".

(An Taoiseach, Bertie Ahern, 20th Jan 2005, China)

I have called my paper “The Consultation ‘Problem’” after hearing our Taoiseach on an interview from China earlier this year. It struck me at the time as interesting that he thought of consultation as a ‘problem’ rather than as a ‘process’ that we are all entitled to engage in!

Copyright © CHASE 2005

Overview

The Consultation ‘Problem’	2
About CHASE.....	4
Who Is Chase?	4
What Are Chases' Aims?	4
Why Is Chase Concerned?	4
Our Participation In The Planning Process	5
The Planning Process	5
The Participants In The Process	6
The Applicant.....	6
Cork County Council	6
Health And Safety Authority.....	7
An Bord Pleanála.....	7
Environmental Protection Agency	8
What Have We Leant?	9
Appendix 1 - Additional Information	10
The Waste Debate.....	10
National And International Policies.....	11
Appendix 2 - References	12

Who are CHASE?

- C.H.A.S.E. (Cork Harbour Alliance for a Safe Environment) is an alliance of groups dedicated to protecting the health of their communities and safeguarding the Cork Harbour environment for future generations.
- CHASE was formed in October 2001. We are an umbrella group composed of communities from Carrigaline, Cobh, Cork, Crosshaven, Douglas, Kinsale, Midleton, Monkstown/Passage/Glenbrook, Ringaskiddy and Youghal.

What are CHASEs' aims?

- Prevent toxic waste incinerator in Cork Harbour
- Promote awareness of alternative solutions
- Increase national/local knowledge on mass incineration
- Actively promote non-burn solutions.

Why is CHASE concerned?

Our main campaign relates to the proposed construction of a Hazardous Waste Incinerator at Ringaskiddy in Cork Harbour. Our concerns about the development include:

- International guidelines (World Health Organisation) indicate that the site in Ringaskiddy is unsuitable. (Ref. Appendix 1).
- Health studies suggest that the dioxin, heavy metals, and particulate matter emitted from incinerators are harmful to our health. (Ref. Appendix 11)
- International and national waste management policies envisage incineration as a last resort, to be used only when all other options have been exhausted. (Ref. Appendix 1).

Despite these facts, An Bord Pleanála granted permission for the development, against the detailed advice of their own Senior Planning Inspector, and despite the objections of over 30,000 people and the refusal of planning permission by Cork County Council.

Our Participation in the Planning Process

Following the application to Cork County Council for the construction of a 100,00 hazardous and non-hazardous waste incinerator in November 2001, CHASE was formed.

CHASE examined the application in detail, drawing on the expertise of the many members of the umbrella groups including engineers, chemical engineers, doctors, environmental scientists, solicitors, social scientists, and many others.

We also fully participated in the drafting of the New County Development Plan 2003 and the Cork County Waste Management Plan as we felt we had a democratic role to play at a local level.

The proposed application was contrary to:

- The County Development Plan (CDP), which excludes contract incineration from this site.
- The Cork Waste Management Plan (CWMP), which does not consider incineration as an option in waste management.
- The Cork Area Strategic Plan (CASP), which is the blue print for the Cork Area for the next 20 years and, ultimately, the National Spatial Strategy which recognises the importance of the success of C.A.S.P.

The Planning Process

2002	Approx. 30,000 people objected to the application (unprecedented in planning history).
May 2003	The County Councillors refused to materially contravene the CDP.
May 2003	The CDP excludes contract incineration specifically from this site.
May 2003	Cork County Council refused planning permission.
June 2003	Applicant appeals to An Bord Pleanála.
June 2003	CHASE and over 20 other parties lodge counter appeals to An Bord Pleanála to uphold the planning refusal. CHASE demands an oral hearing to involve the public and highlight the issue.
August 2003	An Bord Pleanála grants an Oral Hearing to CHASE.
September 2003	An Bord Pleanála sets date for Oral Hearing in Neptune Stadium, Gurrabraher, Cork.
September 22nd to October 9th	A long and detailed Oral Hearing takes place, presided over by a Senior Planning Inspector of An Bord Pleanála.

In his report, the inspector gives 14 major planning reasons why planning permission should be refused. So convinced was he that planning should not be granted, that he set no conditions for the development to go ahead.

The Participants in the process

- The Applicant
- Cork County Council (C.C.C.)
- Health and Safety Authority (H.S.A.)
- An Bord Pleanála (A.B.P.)
- Environmental Protection Agency (E.P.A.)
- The Community

The Applicant

- Provided inadequate information
“the EIS submitted with the application is inadequate and fails to comply with the mandatory requirements” (Ref. Inspector’s Report 2003)
- Was “not aware of the WHO Guidelines for Site Selection for hazardous waste incinerators” (Ref. Inspector’s Report 2003)
- Only did flora and Fauna study on the construction phase of the development not on the operation of the development as legally required (Ref Inspector’s Report 2003 and EPA Oral Hearing 2005)
- Did not do a risk assessment on human health.

“This section of the EIS seems to me to be deficient. I would not regard this as an adequate or a useful contribution to an assessment of the human health impacts of the development proposed here. There is no description of the process used to produce it, but I do not see any obvious indication that any formal process for human health assessment was used.”

(Dr. Anthony Staines, co-author Health Research Bureau Report 2003, at EPA Oral Hearing 2005)

Cork County Council

- Did not inform the public that this was a Seveso 11 site, by way of public meeting, to inform them of the explosive potential of the development.
- Ignored the dangers the development posed to the Maritime College despite information provided by the applicants own consultants:
 - "In the case of a pool fire ... the resulting heat radiation would be sufficient to cause 2nd degree burns after 40 seconds exposure [at the Naval College]."
 - " A Vapour Cloud Explosion ... could result in windows being broken at the proposed Naval College ..."

(Ref. Byrne and O’Celiig, Hazard Identification and Evaluation Report.)

Health and Safety Authority

- The HSA did not know the application was for a Hazardous Waste Incinerator.
- They did not know what chemicals were going to be burnt or stored on site.
- Did not know that fires ignite regularly in the Hammond Lane site which is located in the middle of the proposed development.
- Did not know a mains gas pipeline runs through the site.
- Did not consider the fact that the people of Cobh (population 14,000 approx.) have only one escape route over a humpback bridge and a car ferry in the event of a major fire.
- Did not consider that a fire would block off the escape route of the staff and personnel from the Naval base and the Maritime College.
- Were not aware of the WHO guidelines on Site selection.
- Relied solely on the information provided by the applicant and sought no additional information from any other source. (Inspectors Report 2003)

An Bord Pleanála

An Bord Pleanála (ABP) granted an Oral Hearing.

Twenty-four appellants gave three weeks of their time voluntarily, many depending on the good will of their friends and family to look after their children. Many others took unpaid time off work to attend the oral hearing, such was their commitment to engaging in the democratic process and their belief in the integrity of the decision making process.

- As the Bord's own expert at the hearing, the Planning Inspector gave fourteen reasons why this development should not be allowed and attached no conditions to his final recommendation, so convinced was he that this development should not proceed:
- He could not guarantee it did not pose a risk to public safety.
- It failed 13 of the 14 criteria in the Guidelines laid down by the W.H.O. for proper site selection. These guidelines are there to ensure such facilities are located as far away from populations as possible and to reduce the impact on the environment.
- This site suffers from flooding, coastal erosion and inversions.

The inspector indicated in his report that the Bord had two options open to it - either:

- Reject the first party appeal or
- Invite further submissions from the applicants.

The Bord did neither and granted permission.

It is a principle of Irish law that the State's institutions cannot act arbitrarily and must only act reasonably and in the interest of fairness and justice. An experienced inspector prepared a comprehensive and detailed report from which the Bord (10 Political Appointees) should not depart unless they had good and reasonable grounds for doing so. They did neither and therefore the decision of nine members of the Bord, to reject

the Inspector's considered opinion was unreasonable and against the principles of planning and the democratic process which the oral hearing is meant to represent.

This decision is now the subject of a judicial review application, leave to seek such a review having been granted by the High Court earlier this year.

Environmental Protection Agency

The final player in the process is the E.P.A. who issue waste licences to industry.

The EPA granted an oral hearing on the incinerator's waste licence application. CHASE again participated fully in this process over two and a half weeks.

Three undeniable truths emerge from the hearing:

1. The operation at this site will release harmful pollutants.
2. It would be wise to assess the extent of the harm those pollutants would cause to people's health before deciding to grant a licence.
3. This assessment has not been carried out.

We now await the EPA's decision in late July.

What have we learnt?

As an independent community organisation, properly and democratically involved in this planning process, CHASE finds itself in the position of having a unique overview.

There is a curious division between the various players who all seem to function as individual entities and operate as if in a vacuum. The Board, the Agency and the other “Competent Authorities” have not, to our knowledge, availed of the consultation option open to them under their respective statutes. They are not, it seems, on speaking terms. This frosty silence is not unique to this application but it is particularly dangerous here. This failure to consult can only increase the risk of misunderstanding between the bodies as CHASE has discovered. One of CHASE’s main concerns in relation to this development is the threat it poses to the health of the community at large.

Having engaged fully at all stages in the democratic process we now know that there is no one looking after the health of the population.

It is vital that communities are allowed to engage at all stages of the planning process, particularly in relation to major infrastructures which have long term implications for the community.

Communities are uniquely positioned to identify problems, as they are the main stakeholders. The value of this unique perspective cannot be understated in the planning process.

In the light of this we would have concerns about the capacity of the proposed National Infrastructure Boards’ ability to obtain a holistic perspective on planning applications, if it excludes participation at a local level.

Planning policy must be decided through debate and discussion both at a local and national level. It is vital that the public’s right to participate in the planning process be upheld and that it is a truly democratic process. It must however be a meaningful process (and not just lip service) whereby the findings of such a process must not be ignored but rather where the information is used in making sound decisions that are just and fair.

A Government report makes the point very well when it states:

“Public trust, whether it is placed in the regulators, in compliance with the regulations or in the information provided, will be fundamental in achieving even a modicum of consensus for any future developments in waste policy in Ireland”.

(HRB Report 2003)

I trust that this has given you all an insight into the issues that concern this community and that you will keep them in mind when on our trip around our magnificent harbour this afternoon.

Thank you for your attention.

Appendix 1 - Additional information

The Waste Debate

In relation to the issue of incineration, we as a nation are coming to the waste debate rather late, at a time when other countries are now looking at other technologies and enlightened ways of dealing with waste. We have a perfect opportunity to use up the spare incineration capacity in Europe, which exists, while we develop better and more innovative ways of treating and minimizing our waste.

The EU guidance is as follows:

“The Commission does not promote incineration. We do not consider that this technique is favourable to the environment or that it is necessary to ensure a stable supply of waste for combustion over the long term.”

Within the terms of the Basle Convention there are allowances made for small countries like Ireland not to necessarily have mass incinerators, if we do not have the critical mass. We as a nation have led the way in the plastic bag ban and the smoking ban and our Government must be applauded for same.

We are now in the situation where we could lead the way in waste management and join those enlightened countries that have not blindly followed the "lets burn as much as we can, out of sight, out of mind mentality" but take a more responsible attitude to waste management. (ref EPA Oral Hearing 2005)

We can also join those countries who have been committed to incineration for years when they did not realise the problems that stem long term from the process and who are now looking at newer safer technologies.

Hazardous Waste . . . the truth

At present much of Ireland's hazardous waste requiring incineration is already incinerated in Ireland. There are seven hazardous waste incinerators in the Cork area alone. The remainder is incinerated overseas.

There is currently an excess of incineration capacity in Europe and so at present our waste is readily acceptable at these facilities. We have therefore at present a choice of facilities and we also have a choice of exporters in the Irish market. This means that disposal costs are kept competitive for the benefit of Irish industry. The current excess capacity in Europe means that we still have time to continue with the implementation of all of the measures prioritised in the National Hazardous Waste Management Plan.

However, if the applicant gets their licence, all this will change abruptly. The Basel Convention, Article 4.9.a, provides that states may only import hazardous waste from states which do not themselves have adequate facilities within their own territories to dispose of it.

If the EPA licenses this hazardous waste incinerator, the much feared withdrawal of the existing outlets for our hazardous waste exports will be triggered immediately. Ireland will be the loser and the applicant the winner. They will become the monopoly operator in a key infra-structural sector. This would be a national scandal.

If this licence is issued it will result in the sacrificing of a strategic advantage of national importance - the ability of our industrial base to export some hazardous waste and to choose between a range of service providers for that purpose.

National and International Policies

Beyond the planning process there are numerous other areas where we feel we were not allowed due process in a decision that will affect our lives. We feel that this decision is contrary to and in breach of many national and International policies as outlined below.

- It would hinder the Irish Governments own Hazardous Waste Management Plan, the cornerstone of which is ‘ prevention’. Sadly, by promoting incineration at this stage in our waste management strategy, this plan is being cherry-picked from and is neither being implemented sequentially or in parallel.
- It is contrary to the Proximity Principle - i.e. if this is to be a National Hazardous / Non-hazardous Waste Incinerator then Cork is not the place to locate it. Cork produces < 10 % of Irelands Hazardous / Non-Hazardous Waste (E.P.A. Waste Data Base 2001) which is the mixture of waste to be burnt in this incinerator.
- It is contrary to the E.U. Waste Management Policy, Fifth Action Programme 1995 that states;

“Avoidance and reduction of waste production is preferable, if at all possible, following this unavoidable wastes should be reused and recycled and only disposed of to landfill / incineration as a last resort. “

- It is contrary to the E.U. Waste Management Hierarchy and ignores the sequential nature of the hierarchy, thus making proper sustainable waste management unachievable.
- It is contrary to the advice given in the Basle convention on the preferred technology for the incineration of hazardous waste and therefore does not offer the Best Available Technology (B.A.T.), denying us the proper protection against the harmful effects of incineration.
- It is contrary to the W.H.O Guidelines on the Siting of Hazardous Waste Incinerators. These guidelines are drawn up to protect populations from the effects of incineration and to insure that incinerators are located to have the least possible effect on people and the environment.

It is evident that the applicant at the outset choose this site, as it was the only one they could buy and everything that followed was a justification for that decision

They were not aware of the W.H.O. guidelines until after the purchase of the site and have since that time tried to shoehorn in the development, despite the fact that this particular site fails on thirteen out of the fourteen guidelines laid down by the W.H.O. for site selection.

- No public consultation was engaged in as laid down in Seveso 11 - i.e. the plan was not advertised as a Seveso 11 plant by Cork County Council at any stage in the planning process and therefore the public was not made aware of the potential of explosions at the site due to the nature of the hazardous chemicals and wastes to be stored there. and the dangers these could pose to the population.
- This decision is contrary to the Basle Convention on site location.
- It is contrary to the Stockholm Convention of which Ireland is a signatory and totally undermines the principle of the convention, whose aim is to reduce and eliminate the production of persistent organic pollutants (POPS)

- Finally this development is contrary to the Precautionary Principle. The Health Research Bureau in 2003 (HRB) carried out an extensive literature review on the possible health effects of incineration. It established a link between respiratory illnesses, possible cancers and incineration and advised that the Government should be cautious as Ireland “has insufficient resources to carry out adequate risk assessments for proposed waste management facilities “

It further states “in addition there are serious data gaps in relation to the environmental effects of these technologies. These problems should be rectified... There is an urgent need to develop the skills and resources required to undertake health and environmental risk assessment in Ireland. This should be considered as an important development to build capacity in Ireland to protect public health in relation to potential environmental hazards”.

Indeed Dr. Mary Kelly, Dr. Director General of the Environmental Protection Agency, does not dispute any of the HRB Report findings. Her March 2003 letter to the Secretary-General of the Department of Health explicitly endorses the HRB findings about the lack of capacity to monitor the health of the population near incinerators. She claims the EPA is not responsible for meeting that need. She claims it is the responsibility of the Department of Health or the Health Boards.

In light of the above it is imperative to follow the Precautionary Principle. Yet the Bord of ABP by granting this decision, have ignored the advice of the H.R.B. and as a result our health has been put at risk.

Appendix 11 - References

Cork County Council (2003). County Development Plan

Cork County Council. Cork Area Strategic Plan 2001-2020.

Environmental Protection Agency (2001). National Hazardous Waste Management Plan

Health Research Bureau 2003. “Health and Environmental Effects of Landfill and Incineration - A literature Review.” Commissioned by the Department of the Environment and Local Government

World Health Organisation (1993). “Selection for New Hazardous Waste Management Facilities.” Prepared by W.M. Sloan. W.H.O. Regional Publications, European Series NO.46

Knox E.G. “Childhood cancers and atmospheric carcinogens.” J Epidemiol Community Health 205:59;101-5

Dr. C. V. Howard MB, ChB. PhD. FRC Path. “Health Impacts of Incineration with particular reference to the Toxicological Effects of Ultrafine Particulate Aerosols and Organo-Chlorines.”

Dr Gavin ten Tusscher, M.D., M.Sc. Ph.D., Department of Paediatrics and Neonatology, University of Amsterdam. “Dioxin Exposure and Effects on Children’s Health”, EPA Oral Hearing 2005.

#####