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Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1.

30th January 2009.  
Our ref: 43612-08/JN/PW

**RE: Application Reference Number – 04.PA0010  
Indaver Ireland, Applicant  
Application for Incinerators and Hazardous Waste Store at Ringaskiddy County Cork**

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Dear Sir/Madam,

We act on behalf of Mary O’Leary and others known as CHASE c/o Benreoch, Spy Hill, Cobh, County Cork.

Our clients wish to object to the above application. We enclose the statutory fee of €50 (marked “NLCC1”) and would be obliged if you would acknowledge safe receipt.

**Background**

Our clients are drawn from communities all around Cork Harbour. These include Ringaskiddy, Cobh, Carrigaline, Midleton, Passage West, Rushbrooke, Monkstown, Cuskinny, Aghada, Whitegate and surrounding areas. Our clients have participated over many years in promoting appropriate development in the Cork Harbour area. They include people who have established their own industrial concerns or commercial operations in the Harbour area as well those who work in existing harbour industries and residents of the area.

Our clients have participated actively in the development of planning policy in the area and indeed up to the national level. Their contributions to the local, regional as well as national policies have been considered, painstaking and well researched. They have participated as active citizens in the formulation of plans and policy documents which are intended to guide wise planning decisions.

It is important to note that a number of the industries around Cork Harbour have EPA-licensed on-site incineration facilities. Our clients are well familiar with the operation of these facilities and with the role they play in appropriate settings.

It is important to note that the people of Ringaskiddy in particular, have contributed at least as much and probably more than any other comparable community in the country to the development of a modern

industrial base in the State. Per capita their village has almost certainly contributed a greater share to the national GDP than any other part of the country. They have facilitated large scale industrialisation by making considerable sacrifices in respect of their own community amenities. This development is however a step too far. They welcome the recognition which appears for the first time in the draft County Development Plan that any further development in Ringaskiddy must be compatible with their community and its amenities. This development fails that test. We ask the Board to pay particular regard to this issue.

It is a common misperception outside the Cork region that Ringaskiddy generates a large quantity of hazardous waste which is not being managed currently. In fact the opposite is true. IPPC licensed incinerators installed in the Ringaskiddy area within existing pharmachem plants deal with the bulk of the waste from those plants which is suitable for incineration. This point is critical. There is no logical reason in locational terms why this development should be built in Ringaskiddy. On the contrary there are many reasons why (assuming for the moment it were needed, which is not accepted) it should not be built there. These reasons are addressed below.

Analysing the proposed development in terms of its constituent parts is of assistance in addressing its overall merit. The hazardous waste incineration capacity is far greater than could in any sense be warranted by reference to demand. Existence of surplus capacity will have a number of undesirable consequences.

1. It will tend to dis-incentivise further progress on the primary objective of the National Hazardous Waste Management Plan, namely reduction of hazardous waste arisings. Availability of surplus incineration capacity will tend to create an easy disposal route for hazardous waste producers and will therefore undermine the national effort to inhibit avoidable hazardous waste generation.
2. If this incinerator is built, the Basel Convention, to which Ireland is a signatory, will render it unlawful for a hazardous waste producer to export the waste for disposal overseas. Thus the developer will be in the position of monopoly incinerator of hazardous waste in Ireland. That is a danger to Irish commercial and industrial interests as they will be unable to source the most economic outlet for their waste. It will remove the element of choice which they currently enjoy. Creation of a monopoly over what is regarded as a strategic development is contrary to government policy and to best practice. Concerns which generate hazardous waste requiring disposal should be free to seek an outlet for that waste among competing service providers in order to maintain their own commercial viability.
3. The availability of excess capacity will tend to act as a magnet to attract hazardous waste from outside Ireland. The EIS hints at the developer holding ambitions to import waste from Northern Ireland and possibly Britain. That will be a commercial attraction for the operator but will be in conflict with the proximity principle and with the National Hazardous Waste Management Plan. The plan provides that it would be a desirable policy to move towards national self sufficiency. Ireland is already doing so. Ireland successfully deals with the majority of its hazardous waste within the country. Establishing massive over capacity is inappropriate and contrary to proper planning and development principles.

#### Further specific grounds of objection Planning Issues

1. The development is inconsistent with the Cork County Development Plan.

The County Development Plan specifically opposes the location of contract incineration at this location. This plan is a contract incinerator plant. The distinction drawn by the County

Development Plan between this type of incineration and the dedicated in-house incineration plants (of which there are five operating around Cork Harbour) is logical and reasonable. We ask the Board to uphold this provision of the Plan.

2. The application would undermine the objectives of the Cork County Waste Management Plan and is premature.

Cork County Waste Management Plan does not incineration currently require reliance on incineration of waste. The applicant requests permission to develop capacity to burn both hazardous and non-hazardous industrial and commercial waste, and domestic waste. Disposal of domestic waste is more than adequately provided for in the Cork region already by the large modern landfill at Bottlehill. That facility, with a capacity of five million tonnes and a design life of 20 years is about to come into operation. It has been developed at a cost of tens of millions of euro to the public purse. That level of public expenditure must be permitted to generate an economic return. Should a large scale domestic incineration facility be permitted to operate, in circumstances where such a facility is not provided for under the statutory Waste Management Plan for the area, it will compete with and tend to undermine the economic viability of the publicly funded facility at Bottlehill. That is contrary to proper planning and sustainable development principles. The existing properly considered and democratically adopted Waste Management Strategy should not be pre-empted in this way.

3. The site is unsuitable in planning and environmental terms and the applicant has not demonstrated that any rational or coherent site selection process was adhered to. There are a number of issues arising under this heading: -
  - a) National and international best practice advises against locating hazardous operations in vulnerable coastal locations. This is such a location. The site is vulnerable by virtue of its low elevation and location next to a crumbling coastline. It is vulnerable to flooding even under present day sea level conditions. That fact was demonstrated in October 2004 when adverse weather conditions led to flooding on site. The increased awareness of the risks posed by sea level rise (as acknowledged in Government policy) underlines the importance of this issue as one which the Board must consider in making a planning decision. Please refer to the enclosed letter (marked "NLCC2") from Professor John Sweeney, the leading national expert on this topic. The EIS acknowledges that the report does not in any way deal with the consequences of increased storminess is likely to accompany climate change. This is a fatal omission.
  - b) The second physical feature of the site of note is the coastal erosion to which it is already evidently subject. This poses a risk to the integrity of the site independently of sea level rise and on its own is a ground for a refusal. The development is intended to operate for upwards of 20 years and will be, at best, reliant on extensive engineering works in an attempt to hold back the continuing process of coastal erosion. The necessity for such works itself demonstrates the unsuitability of this location for this development.
  - c) The reality is that the developer acquired the site and has attempted retrospectively to justify its use for this purpose. In fact the location makes no sense on the strategic level or otherwise.
4. The development will increase the number of vehicles and the level of traffic hazard on an already inadequate road network. Please see the enclosed report (marked "NLCC3") from ILTP Traffic Consultants attached. It is noted that the application seeks planning permission with an extended life span of 10 years.

It is undesirable in principle to grant planning permission for such an abnormally long period. The effect of doing so is to cast doubt over future development in the area. This will be inimical to further more appropriate development. The long lifespan requested may be an acknowledgement that the development could not proceed until the road network is upgraded. There is no sign that that is likely to happen in the near or medium term. This issue was extensively canvassed before the Board at its oral hearing in relation to the Port of Cork development reference 04.PA0003. Please refer to the Inspector's Report in that matter which summarised the evidence of NRA witnesses who attended at the oral hearing. They confirmed that the NRA has no budget to upgrade the road at Ringaskiddy at present and it is not possible to predict what funds may be available in the foreseeable future. Since that evidence was given the international economic downturn has rendered the situation even more uncertain. The Board refused the Port of Cork application by reason of the inadequacy of the road network and while traffic volumes associated with this present development are lower than those anticipated by the Port development, the existing inadequacy of the road network remains a decisive planning consideration. (The fact that this development is intended to deal with large quantities of hazardous waste materials is significant in this context.)

5. Visual Impact

Cork Harbour is an amenity of extraordinary value. The development entails construction of such massive bulk, height and scale that the structure will be a dominant feature in the landscape. The effect is illustrated by comparison with the dimensions of an iconic feature in Cork Harbour, Cobh Cathedral. The chimney stack is approximately the same height as the spire of the Cathedral. The incinerator building length of 190 metres is three times the length of the Cathedral. The width of the incinerator building is four times the width of the cathedral. Due to the prominent location of the site at the end of the Ringaskiddy Peninsula in a low lying coastal setting, it will be impossible meaningfully to camouflage or mitigate the overwhelming visual impact. While it is accepted that the site is zoned for industrial use and that therefore some level of industrial development is anticipated, that fact is not sufficient to justify development of this height scale and bulk on the site. In addition to its impact on residents in the area including those overlooking it from Cobh and recreational users of Cork Harbour, it will be a discordant feature visible from designated Scenic Routes.

6. Breach of WHO Site Selection Guidelines for Hazardous Waste Management Facilities

There are no National guidelines for siting hazardous waste plants. The World Health Organisation has however published guidelines for the selection of sites suitable for hazardous waste management facilities. It is appropriate to have regard to those guidelines. The applicants did not comply with them. In fact they failed at the very first step as they did not follow the procedures laid out in relation to screening out unsuitable sites by reference to exclusionary factors before proceeding to assess potentially suitable candidate sites. Had they done so, this site could not have been regarded as a suitable candidate site. The WHO criteria and methods are well known, reasonable, and appropriate. They are also necessary for the protection of the public. (See "NLCC4")

7. The application contravenes development objection I-22 of the County Development Plan. It is an objective to safeguard lands in the vicinity of ports and harbours against inappropriate uses that could compromise the long term potential of the port and harbour. The present development is not port related and hence is an inappropriate use which would be inconsistent with the Council's policy of promoting Ringaskiddy as the appropriate location for the future development and expansion of the Port of Cork and uses that are complementary to that purpose.

8. The development will be unacceptably harmful to residential amenity. By reason of its nature and function, its location in close proximity to high density housing development at Ringaskiddy and to the residential quarters located at the Naval Service at Haulbowline, and by reason of the noise and disturbance arising from construction, the development would be seriously injurious to residential amenity and would be likely to depreciate the value of residential property. It would be therefore be contrary to the proper planning and development of the area.
9. The site is across the road from the National Maritime College. This third level college is attended by approximately 700 staff and students. The development of the college is an example of desirable and sustainable development within the harbour area consistent with the County Development Plan and national policies. Installing Seveso-scale hazardous waste storage facilities immediately across the road from the College would be perverse and irrational in planning terms. These are incompatible uses which do not belong side by side.
10. The development is served by a single substandard road and is located at the eastern end of the Ringaskiddy Peninsula. It is adjacent to a public beach, Gobby Strand. It is across the road from the National Maritime College as stated. It is also necessary to pass the intended site if one is leaving the headquarters of the Naval Service at Haulbowline and similarly it is necessary to pass the site in order to leave the crematorium on Rocky Island. We submit that the Board could not be satisfied that the proposed development would not pose significant risks to public safety in the event of a major accident in these circumstances. Application of the precautionary approach mandated under the Seveso II Directive requires a refusal on this basis.
11. The development would lead to gross over capacity in view of already authorised waste incineration capacity elsewhere. Planning permission exists for an incinerator at Poolbeg with capacity to burn 600,000 tonnes of waste per annum. Construction is underway for a facility at Carranstown, County Meath which has a permitted capacity of 230,000 tonnes per annum. There is available capacity at existing cement kilns also. The Minister for the Environment, Heritage and Local Government is on record as stating that his Department's policy preference is for disposal of residual waste (which cannot otherwise be prevented or recycled) by way of mechanical or biological treatment (MBT). The Department has stated that in its view the quantity nationwide that would remain which would then require disposal by other means, *possibly* including some form of thermal treatment, would be 400,000 tonnes per annum. The country already has over 800,000 waste incineration capacity permitted or under construction. In planning terms it is clear therefore that there is no need to add a further 240,000 tonne incineration capacity. In strategic terms, permitting further surplus capacity is unsustainable and counter-productive.
12. The need for this development has not been demonstrated, and as described above it is clearly superfluous to the need assessed at national level by the Department of the Environment, Heritage and Local Government. In addition, it is important to note that the development promoted here is hazardous by nature. This is so both because of the storage of large quantities of hazardous materials in the hazardous storage tanks on site (and the associated transportation risks) and also because of the hazard posed by the incineration process itself which entails mixing potentially incompatible wastes. The plant poses a risk of major accident hazard under the Seveso II Directive. Taken together with the other planning dis-benefits identified above, we submit that any initial presumption in favour of development must on balance yield to the overriding necessity to abide by the principles of proper planning and sustainable development, consistent with the necessity to protect people and the environment.
13. The development should not be approved having regard to the mandatory requirements of the Environmental Impact Assessment Directive. The European Commission is instituting

proceedings before the European Court of Justice against Ireland for its inadequate transposition of the EIA Directive, particularly in relation to its system for approval of incineration plants. Please see the copy statement issued by the European Commission in October 2007 herewith marked "NLCC5". The EPA granted a waste licence to the applicant in 2005. That licence was granted in circumstances where the EPA was told that there was a valid planning permission in existence at the time pursuant to the Board's 2004 decision on the initial application. That planning permission (whose validity we do not accept for reasons set out below) has since lapsed. Nevertheless its existence at the time of the 2005 EPA licence decision can reasonably be believed to have been a factor in the mind of the EPA when coming to its decision. The EPA, it can reasonably be inferred, would have felt itself entitled to rely on the planning permission as an indication that the Board had deemed the site to be suitable in planning terms. The EPA accordingly licensed the operation without independently assessing the suitability of the site. This, taken together with the other consequences of the divided responsibility between the Board and the Agency, illustrates the incoherent system in place under domestic legislation for plants of this kind. We submit that it is necessary for the Board to disregard the existence of an EPA licence when considering the present application. Rather it must approach the application without any regard to the EPA licence.

14. The Board should also disregard the previous planning permission. That permission issued on foot of a restricted consideration by the Board, made while it was statutorily prohibited from considering impact on human health or the environment. The invalidity of that restraint has since (to some extent) been acknowledged by subsequent legislation. That invalidity taints the initial decision to an extent that renders it an inappropriate factor to consider for present purposes.
15. Even under normal operations this development will be harmful to human health and the environment. That harm will be intensified in the event of accidental or abnormal operations. The National Cancer Registry has found that the incidence of cancers in Cobh, located 1700 metres north of the site and downwind from the site in terms of the prevailing winds, is 43% in excess of the national average. These excess cancer rates are at present unexplained. We refer to the enclosed material in relation to the health effects of particulate matter marked "NLCC6". We also refer to the WHO Factsheet in relation to particulate matters marked "NLCC7". We note the operation of the plant is going to be a significant source of particulate matter. Even taking their case at its highest, and assuming *perfect* compliance with all applicable licensed conditions in the future, the inescapable fact is that this plant will pose a new and additional burden which will worsen existing air quality in the vicinity. The local health status population has been found to be under serious stress and it is singularly inappropriate and unjustifiable to impose any additional stressors in the circumstances.

#### Legal Issues bearing on Planning Process and Outcome

A number of legal issues bear directly on the planning process and constrain the outcome of the process. We are aware that the Board has a policy of refraining from giving its conclusion on any legal submissions (almost without exception) but rather leaves it to parties raising legal points to litigate those points through the courts by way of judicial review. For the record, we ask the Board to reconsider that policy in this case and to address its mind to the following legal issues at the earliest opportunity so that the parties may be aware of the Board's considered view on them before the process comes to a conclusion.

1. The Irish decision making process in relation to planning and approval of incineration type development is invalid under EU and therefore under national law.

The Board is well aware of the long running controversy in relation to the division of responsibilities between, among others, An Bord Pleanála and the EPA (though not limited to

those two bodies) arising under domestic legislation governing the approval of incineration type developments. While this matter has been raised in the past, the Board has declined so far to restrain itself from adjudicating on planning applications for incinerators. However, we should bring to the Board's attention that the European Commission, in its capacity as defender of the Treaties and assessor of the performance of Member States of their duties under the Treaties and legislation adopted within the European Union/European Community, has unanimously concluded that the Irish domestic legislation fails to meet the requirements of EU Directive 85/337/EC as amended. This follows a lengthy and painstaking process of dialogue between the Commission and Ireland on the matter. The Commission, having carefully considered Ireland's various responses, concluded that these responses were legally unsatisfactory. It has therefore formally resolved to initiate legal proceedings against Ireland before the Court of Justice on the issues. An Bord Pleanála, in its capacity as the statutory body with exclusive jurisdiction in deciding on planning applications of the nature presently under consideration, is bound as a matter of EU, and therefore National Law, to take cognisance of the Commission's finding. It is similarly bound in law to show respect to the Commission in its institutional capacity as guardian of the Treaties and of EC law in this field, one within the competence of the EU/EC. The Board is bound to respect the principle of supremacy of EC Law in this context. These obligations mandate the Board to withhold further consideration of this application pending the outcome of the Commission's proceedings.

2. No proper provision is made to assist participants who wish to have their views made known to the Board on the application, contrary to the provisions of the Aarhus Convention and the provisions of the implementing EC Directive and contrary to the provisions of the European Convention on Human Rights, Article 6 and Article 8 in particular.

The European Convention of Human Rights provides that any civil authority (such as An Bord Pleanála) which is adjudicating on matters which affect the rights of individuals must ensure that those individuals have the benefit of fair procedures throughout that adjudication process. An ingredient of the fair procedures which must be observed is the availability of "equality of arms" between parties in the process. That ingredient is missing at present from this process. The application has been filed by a multi million euro transnational corporation. The applicant is likely to have spend millions of euro in preparation of the application. The communities whom we represent are private citizens of limited means. In order to have any prospect of parity in presenting their case to the Board it is essential that they have the financial resources available to them in order to retain appropriate independent expertise and advice for that purpose. We call on the Board to confirm that those resources will be made available to our clients forthwith. In default, we ask the Board to confirm that the process will not continue further until such resources are provided by whatever means the Board sees fit. If that is not done, our clients cannot participate on a fair footing in the process despite their best efforts. We are aware from experience that the Board has recently adopted a practice, at its discretion, of making some reimbursement of costs incurred by third party appellants in these circumstances. However, the Board has specifically declined to confirm in advance in any case to date of which we are aware whether it will take this step. Further, in any case of which we are aware, such reimbursement has been extremely limited in scope, being only a fractional indemnity in respect of the costs and expenses actually and necessarily incurred. For these reasons this process does not meet the test laid down in the Convention, nor does it comply with the requirements of the EC's implementing Directive.

3. There is under domestic law no system of appeal from the Board's decision. The only possibility of judicial review exists in the context of very restrictive grounds as laid down in the decision of the Supreme Court in *O'Keeffe .v. An Bord Pleanála*. Therefore there is in fact no system of substantive or procedural review of the Board's decision such as is required by EC Law. As an

emanation of the State, the Board is bound to do all within its power to ensure that the mandatory requirements of the said EC law is respected. The Board should therefore refrain from further consideration of the present application until the defects cited are resolved.

4. The applicant has not complied with the requirements of the EIA Directive and/or the National Implementing Legislation. As illustrations:
  - a) The extent to which rock breaking will be required on site is not stated, rendering it impossible to assess noise and vibration impacts to a satisfactory degree. This section of the EIS leaves open the possibility of having to construct coastal protection works in the future with consequent but undisclosed impacts on erosion or accretion along the nearby coastline. (This in reality is an indication of project splitting, due to the obvious vulnerability of the site to coastal erosion).
  - b) The interaction of impacts is considered a cursory fashion, which does not comply with the requirements of the Directive.
  - c) The discussion of the impact of the development in terms of greenhouse gasses and related matters is incomplete, based on mistaken assumptions, and misleading. It does not constitute a reliable basis for assessment.
  - d) The flora and fauna surveys are incomplete. The fauna surveys have been of short duration and seasonally limited. They do not provide a sufficient basis to assess the impacts of the development. Despite that, the site appears to provide a habitat for a number of protected species including badgers, bats, and potentially otters. It is also acknowledged in the EIS that all the protected species including hedgehog, Irish Hare and stoat may also be found on site. Mitigation measures, insofar as they are described at all, are of a general nature and their effectiveness cannot be objectively assessed.
  - e) The gaseous emissions from the plant are incompletely described and inadequately characterised. There is no information on which to assess the impact of fugitive emissions. These deficiencies make it impossible to undertake an objective assessment of health impacts. No assessment is possible in relation to emissions due to abnormal operations or in the event of accidents on site. This is particularly significant due to the unknown nature of the waste proposed for incineration. Without adequate characterisation, it is impossible to derive meaningful conclusions as to human health impact. The limited discussion on human health impact discloses an explicit and unrealistic assumption which invalidates these conclusions. Namely that it rests on the assumption that the plant will at all times operate perfectly. The associated assumption on which this portion of the EIS rests is that the prevailing standards are of themselves adequate to protect human health. The assertion is made, wrongly, that the Health Research Board study on the health effects of landfill and incineration “did not draw any conclusions”.
  - f) The description of the site with regard to its susceptibility to coastal erosion is vague and incomplete. The assessment in relation to flood risk is by way of desk study and the data are not adequately disclosed.
  - g) The EIS does not provide data or visual representation of the visual impact particularly in hours of darkness.
  - h) The traffic assessment in the EIS is flawed and unreliable. For further details see the attached report by ILTP Consulting.



5. The Board does not have any proper advice from the NAOSH or elsewhere in relation to appropriate land use policies and health and safety issues that are required under the Seveso Directive and/or the implementing Regulations.
6. It is not open to the Board to grant permission in circumstances where such permission will contravene the rights of our clients to life and bodily integrity pursuant to Article 2 of the ECHR and/or pursuant to the rights to life and bodily integrity under the constitution of Ireland, their rights to respect for their private and family life and homes to go into Article 8 of the ECHR and Article 41 of the Constitution of Ireland which rights have been infringed by the inadequate implementation of the EIA Directive into Irish Law.

The material submitted to An Bord Pleanála on 28th November is the product of numerous consultants covering a wide range of disciplines. The material was made available for the public in early December. The Board has imposed a deadline for public comment of February 2nd. This is entirely unrealistic and unreasonable having regard to the entitlement of the public concerned to examine the material, obtain advice on it, and prepare their considered response. This submission is made to the Board with that express caveat and reserving our clients' position in the circumstances. For comparison, we note that the Board took from February 2008 to mid-September 2008 to decide whether or not the application constituted strategic infrastructure.

We ask the Board to refuse this application. If the Board is not minded to do so on the basis of the material before it, we request an oral hearing so that the matter can be further considered.

Yours faithfully,

**Joe Noonan,**  
**NOONAN LINEHAN CARROLL COFFEY**  
**Encl.**

- NLCC1 – Cheque in the sum of €50
- NLCC2 – Letter from Professor John Sweeney.
- NLCC3 – Report from ILTP Traffic Consultants
- NLCC4 – WHO Site Selection Guidelines for Hazardous Waste Management Facilities
- NLCC5 - Statement of European Commission, October 2007
- NLCC6 – Material in relation to the health effects of particulate matter
- NLCC7 – WHO Factsheet in relation to particulate matters