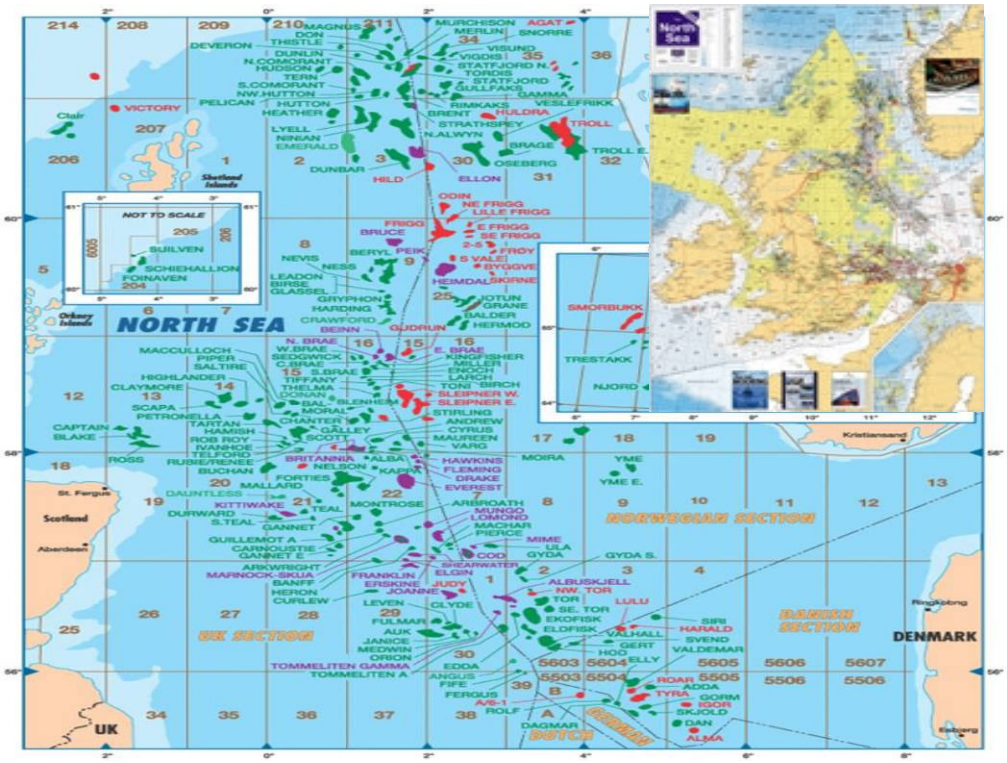
# 1. THE CORRIB DEBACLE – WHY IRELAND IS COMPLETELY OFF LIMITS FOR INVESTMENT

## 1.1 The background to the debacle

Natural gas generates over 60% of the electricity in Ireland and fuels homes and industry. While the Kinsale Field was discovered and developed in the early seventies, gas from the European network is currently pumped into the reservoir there over the summer and drawn out over the winter months. Very little is drawn any more from the field itself. Indeed a single gas pipeline from the European grid goes to a compressor station in South Western Scotland and then is routed under the Irish Sea to North of Dublin. The country is hanging off that pipe!

Ireland has not had a good innings with petroleum exploration. About 150 exploration wells have been drilled in the Irish Sector, outside of Kinsale Field we had to wait until 1996 until Enterprise Energy Ireland finally hit pay dirt with the Corrib Natural Gas Field. Note: Shell Exploration and Production Ireland Ltd (SEPIL) acquired Enterprise Energy Ireland in 2002. A pretty poor run from exploration in Irish waters, in particular given that a drilling rig costs about €0.6 million per day and the success ratio in the North Sea sector is about one producing field for every four exploration wells drilled.



***Bit of a difference in petroleum finds in North Sea and Irish waters. However, many Irish are insistent that the same exploration terms should apply in both jurisdictions.***

The Corrib field is marginal by international standards; the well head is 80 km off the exposed North Western Coast and at a depth of 300 m. It will only supply 60% of Ireland's needs at peak supply and with four million residents in Ireland we wouldn't even feature on the list of big European cities if we all lived in the same urban area.

The issue with Corrib is not technical; it is simply the current front line in the battle between reason and outright and violent Green populism. When one contemplates what has been lost in the process of bringing this gas onto the Irish grid and considers if there have been any positives from the whole sorry affair, all one as an Irish person can do is hang one's head in total shame. Talking to some of the engineering staff on the project during the height of one of the tense periods when the violence frequently erupting against the security staff at the perimeter of their workplace, I explained that this wasn't an issue of their project but a failure of Irish society that had its roots more than twenty years ago.

In the previous book available on the website of the Oireachtas[1] I highlighted the dreadfully uneasy relationship the Irish psyche had with industry. I am not proud of my people. Too many times both Irish and foreign investors have initiated industrial projects in this country, met every requirement and acted with the highest standards and yet have been treated with abuse and disrespect. While there are certain elements of Irish society that have behaved in a violent and undemocratic manner in this regard, most falling under the banner of Green populism, what has been even worse has been the repeated failures of the Irish Administration to act responsibly within the legislation. Access to Justice is an enormous problem and a complete disincentive to even contemplating a project in Ireland. As I highlighted in my previous book with regard to the High Court in 1988 awarding the dairy farmer John Hanrahan approximately €1 million in compensation from the pharmaceutical company Merck Sharpe and Dohme, scientific fact just didn't enter it. A few odour episodes and Merck Sharpe and Dohme were blamed for all the woes of the world and hundreds of cattle deaths. Unfortunately as I highlighted in the previous book and it will be raised again, scientific fact doesn't count in the Irish regulatory process anymore, it dances to the political tune.

[1] http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate_Change/Submissions/document1.htm

As I have mentioned already populism has played upon one public emotion above all - anger. This anger has typically been directed at a diffuse enemy at the top - the monopolies, the interests, or elites of various kinds. What better rallying call to the barricades then the appearance of a petroleum multinational on the scene called Shell. However, who the hell is Shell? Well they are owned by shareholders, the majority being pension funds, our pension funds. It's not a perfect world, but from personal experience I can vouch for the fact that multinationals pay their bills, look after their staff (you won't find any grumbling in the Corrib canteen) and take regulatory compliance seriously. As regards Shell's operation in Nigeria all I can point out is that this company is in fact majority owned by the Nigerian State. Nigeria is an utterly corrupt country through and through where a culture exists that has little or no respect for others. It is racked by inter-tribal conflicts and feuds. Indeed oil pipelines are deliberately sabotaged and pollution episodes generated in order that 'show trials' against the 'multinational' can be used to make financial awards for damages to villages 30 km or more from the resulting oil spillage. Imagine trying to keep a business functioning in that kind of environment; not easy. However, one always got the true story from the Irish media.

One could easily write a whole book on the Corrib affair, without doubt somebody will, but I don't intend to do it here. I will point out that what was a project started over eleven years ago with a budget of $1 billion and a five year timescale will reach a point in mid 2010 when everything except 9 km of interconnecting pipe will be completed at a cost of about $2 billion. There has to be a serious possibility that the system will then be mothballed and lie idle until some sense comes to the people of Ireland and their Administration. The financial arrangement for the exploration licence was that 25% of the revenue remaining after payment of development and operational costs (i.e. profit) went directly to the Irish exchequer. So the Irish taxpayer has lost €200 million in revenue straight up, the bill for policing on the site to keep the violent minority under some form of control has amounted to at least €15 million and the reputation of the country has been completely ruined for any further industrial investment.

For those readers not already familiar with the project one can access further details at the below and many other sites:

- http://www.shell.ie/home/content/irl/aboutshell/shell_businesses/e_and_p/corrib/
- http://www.galwayindependent.com/business/business/why-the-opposition-to-the-corrib-gas-project?/

## 1.2 The media – abusive exploitation of the situation in which the voice of Reason and Moderation was not heard

After sex the next best thing for selling printed paper, TV advertisements and radio spots is controversy. So why bother telling the truth about something when one can entice the titillated public back for more 'will he or won't he', 'should he or shouldn't he' the next day? God knows the worst thing one would ever want to report on is how something is being sensibly managed and that there is absolutely no reason for anybody to get excited. Particularly if one has a lovely medium of TV in which beautiful action shots of violence can be beamed around the place. After all, violence sells; just look at what Hollywood produces.

However, in theory there are laws against this. In practice in Ireland it would take years to bring a case against the media and the costs would be massive, plus the risk of losing the case and being left to carry the costs. Back to the same issue – Access to Justice. So the Government established two 'Quangos' to serve the public in these matters instead of allowing the public access to their proper rights; The Broadcasting Complaints Commission and the Press Council of Ireland (with associated Press Ombudsman). All good stuff in theory but when one documents clearly how false information is being printed and broadcasted they just completely fail to take the necessary enforcement action – in my experience they are corrupt. In late 2008 I prepared a file on this issue. I received letters back from the Head of Cabinet of the Vice President of the EU Commission and DG Environment thanking me for my efforts, but pointing out they had no authority to interfere in media complaints of a Member State. See the previous book for more details, which is a serious eye opener on how the media works in Ireland.

The usual witch hunt was whipped up over the Corrib project, the fact that five residents (Rossport Five) had to be jailed for their contempt of the democratic process (the High Court) was just 'manna from heaven'. The media simply did not care to acknowledge the details as to whether there was actual safety or environmental impacts of any significance. They ruthlessly exploited and inflamed the situation for their own personal gratification.

As I wrote to the Head of State and the Head of Shell E&P Ireland Ltd on the 16th October 2008:

*"This project meets all EU and National Legislation and Codes of Best Practice yet is subject to bullying and intimidation by Irish Citizens, who operate with impunity outside the law, fuelled by a 'Trial by Media in the Court of Public Opinion' in which the basic parameters of the regulatory aspects of the project have not been conveyed to the general public. In this regard both State owned and non-State owned media in Ireland have failed to explain the criteria on which the project was approved by the regulatory authorities, instead seeking to promote the protest groups and undermine the decision making process and independence of the Planning Authorities and the Environmental Protection Agency.*

*The basic fact that under EU and National Safety Legislation in place since 1989 Shell has to identify risk, combat risks at source and adapt to technical progress means that it is illegal for Shell to even consider an off-shore option for the project. Indeed if an accident were to happen on an offshore production platform when an on-shore option was viable the Directors of Shell E&P would be facing a prison sentence under the terms of such legislation. When I explain this to members of the Irish public who are not Engineering and Safety Specialists they are dumfounded, they never heard it in the media, just incessant 'Shell to Sea[(2)]' coverage!*

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[2] Shell to Sea, the main opposition group who forcefully campaigned with support of senior political figures that the gas processing terminal to remove the water from the high quality raw gas should be built on an off-shore platform. There have been more than a 100 deaths on off-shore helicopter transfers in Northern European waters. EU legislation is clear, risk must be combated at source and there must be adaptation to technical progress. The technology has moved on such that the gas can now be brought on-shore for the removal of the entrained water from the well.

*Unfortunately Ireland has been characterised by the highly unethical conduct of many senior politicians and a general approach in which everything, such as the economy itself, can be sacrificed on the altar of short term popularity. There is no proper leadership! Shell E&P has received no support for this vital and fully compliant project from the leadership in the State, indeed we now have the undignified situation of the relevant two senior Ministers cavorting with the 'Shell to Sea Groups', which raises serious ethical questions about them failing to support, i.e. undermine, the State Agencies directly responsible for planning and environmental protection".*

I called the kettle black stating that the State was clearly negligent, concluding in my words to Terry Nolan the head of SEPIL:

- "If you chose to seek to recover some of the massive costs that have been unnecessarily incurred on this project from the State, then feel free to use this documentation, I would even be more than happy to testify on your behalf for free on this issue".

Rather than focusing on the whole sorry mess that has been left behind for others to pick up, not least those of us who earn a living in industrial development in Ireland and have essentially no future work here, it is important to focus on the role of the media and the manner in which the State was negligent in ensuring the correct environmental details were conveyed to the public.

I sent my file and a covering letter in to the Department of the Taoiseach. I got a reply on the 9th December:

*"The Taoiseach, Mr Brian Cowen T.D., has asked me to acknowledge receipt of your letter of 4 December, 2008, which has been referred to the office of the Minister for Communications, Energy and Natural Resources, Mr. Eamonn Ryan T.D., for attention and direct reply to you.*

*Yours sincerely*

*Paul Mooney*

*Taoiseach's Private Office"*

Surprise, surprise I never heard a 'dicky bird' from Mr. Eamonn Ryan, as I pointed out the cover letter in my Submission to the Oireachtas in June 2009:


***Eamon Ryan TD and currently Minister for Communications, Energy and Natural Resources campaigning with 'Shell to Sea'. This organisation, which operates outside the democratic process and is a frequent user of violence and intimidation, is campaigning to have a developer endanger its workforce and break the law. 18 TDs, 3 Senators and 6 Irish Political Parties are listed as providing support on its website.***

All I can say is if you want more information on this issue you could ring Paul Mooney at the Taoiseach's Private Office at 01-6194020. .

A further insight on how the media works in Ireland is revealed by what happened on the 16th May when the Irish Independent columnist Bruce Arnold wrote an offensive and false article on the Corrib project. In it he criticised among others his fellow columnist Kevin Meyers, who in the previous edition had called the 'kettle black' about what a God-awful carry on was taking place [(3)]. So I wrote to the Irish Independent the following that day and in fairness they published it in the letters page.

*"Bruce Arnold clearly states (16th May) with regard to the Corrib Project "the hugely negative environmental impact of much that was being steamrolled through in Mayo". I would like to point out that if Bruce Arnold or those he supports have an issue with the regulatory approval of this project they have access to justice and can seek a judicial review of the decisions.*

*Instead of people putting their money where their mouths are we have in Ireland persistent "Trials by Media in the Court of Public Opinion". In which journalists make claims without providing any supporting facts.*

*I therefore expect Bruce Arnold to do the honourable thing and in his next article outline the bullet points to justify the claims of hugely negative environmental impacts and a steamrolling regulatory process. This will give myself and others who make our livelihood in the design and regulatory approval of such industrial projects in Ireland and around Europe the opportunity to comment as to their validity".*

Bruce never did reply to this, but I got a strange response from him to the above letter, which I had sent to his e-mail at the Irish Independent at the same time as it went to the editor there. To this had been attached the letter from Anne Maher at DG Environment, which I had referred to previously, which had praised me for highlighting misrepresentation of EU policy in the Irish media.

*"Thank you for sending me a copy of your letter to the paper.*

*I am replying privately, since I do not write 'bullet points' and I do not intend to give a lengthy summary of the many and complicated environmental issues, to which, of course, other legal, constitutional and social issues append.*

*I do not know what you mean by 'those he supports' in reference to my article and I do not think you know either. Many of those I spoke with could not afford to seek a judicial review nor do I think it the proper course.*

*The most interesting part of your letter was the following: 'This will give myself and others who make our livelihood in the design and regulatory approval of such industrial projects in Ireland and around Europe the opportunity to comment as to their validity.' Would you like to tell me whether you are involved in any aspect of the Corrib Gas operation? And can you explain the letter from Anne Maher you sent me? What kind of media watchdog are you? And what did you do to attract such gratitude?*

*Yours,*

*Bruce Arnold, Rosney House, Albert Road, Glenageary, County Dublin"*

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[3] Article at: http://www.independent.ie/opinion/columnists/kevin-myers/george-you-need-to-sort-out-this-nonsense-at-shells-corrib-gas-site-1739780.html

So no facts! I do however accept that there are problems with Access to Justice and that is the fault of the Administration, but it is unacceptable for individuals to step outside the democratic process without offering a single fact or figure. So I replied to himself and his editor:

*"It's very simple Mr Arnold, go to the website of the Press Ombudsman and read the Code of Practice.*

- *Principle 1: Truth and Accuracy.*
- *Principle 2: Distinguishing fact and comment.*

*Either you have the facts to support what you wrote with regard to the accusations of improper provisions for Health and Safety and Environmental Protection or you don't.*

*If the appropriate facts are not published to support your claims by the end of next week I will take this matter to the Press Ombudsman".*

Strange reply from Bruce Arnold:

*"The Press Ombudsman's website won't answer the questions I asked in my email to you. Perhaps you might have another run at answering them.*

*I do have the facts.*

*I will await the Press Ombudsman's response to you".*

So the facts never got printed and the Press Ombudsman refused to process the complaint stating:

- *"The column about which you complain was quite clearly an opinion piece, published on a page with the heading "Opinion". As such, it enjoys a wide measure of protection under the Preamble to the Code of Practice, which states":*
- *"The freedom to publish is vital to the right of the people to be informed. This freedom includes the right of a newspaper to publish what it considers to be news, without fear or favour, and the right to comment on it."*

So ladies and gentlemen what you read in the newspapers in Ireland, its whatever the newspapers considers to be news, if the reality is that the facts are completely false then that is your problem and not theirs.

In 2003, the legal advisory group on defamation - established by the Minister for Justice - recommended in its report that the defamation laws be reformed and a statutory press council established. The present Industry based Press Ombudsman is clearly a farce which doesn't even follow published procedures. There is therefore no realistic defence against a 'Trial by Media in the Court of Public Opinion'. Of course a statutory press council is required with an appeal process to the Government appointed Ombudsman.

So it went on month after month, abusive and false information in the media, which was deliberately used to exploit the situation and inflame it. However, I was getting to know my legislation and getting ideas. What was really annoying me was the role of the regulatory agencies. The project for instance has full approval from the EPA to the Integrated Pollution Prevention and Control Directive. The purpose of the Directive is to lay "*down measures designed to prevent or, where that is not practicable, to reduce emissions in the air, water and land from the above mentioned activities, including measures concerning waste, in order to achieve* ***a high level of protection of the environment taken as a whole****"*. However, the media, including the state owned broadcasters were continuously beaming reports on the environmental problems with the project into every home in Ireland.

Let's go to Pillar 1 of the Aarhus Convention on Access to Information. Directive 2003/4/EC is well worth a read. As well as Access to Information on the Environment, it requires dissemination. Under Article 7 public bodies have obligations relating to dissemination of environmental information. The following phrases can be highlighted:

- Active and systematic dissemination to the public.
- Information to be made available and disseminated shall include Community, national, regional or local legislation, authorisations, environmental impact assessments and risk assessments, etc.
- Member States shall take the necessary measures to ensure that public authorities organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunications and / or electronic technology, where available.

With regard to Pillar 2 of the Aarhus Convention, Public Participation in Decision-making is enacted by Directive 2003/35/EC. The European Court of Justice (C-427-07) has found against the Irish State in a case taken by the European Commission over the implementation of this Directive. In fact they made it very clear:

*"The Court pointed out that one of the underlying principles of Directive 2003/35 was to promote access to justice in environmental matters, along the lines of the Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters. Therefore, the obligation to make available to the public practical information on access to administrative and judicial review procedures laid down in the sixth paragraph of Art. 10a of the EIA Directive and Art. 15a of the IPPC Directive, amounted to an obligation to obtain a precise result which the Member States must ensure was achieved.*

*The Court held that, in the absence of any specific statutory or regulatory provision concerning information on the rights thus offered to the public, the mere availability, through publications or on the internet, of rules concerning access to administrative and judicial review procedures and the possibility of access to court decisions could not be regarded as ensuring, in a sufficiently clear and precise manner, that the public concerned was in a position to be aware of its rights on access to justice in environmental matters".*

This was great stuff, what our regulatory agencies were doing was putting the documents on their websites, running as fast as they could for cover, and leaving us high and dry to face the abuse from the media. Including the state owned broadcasters, who were then reporting on the environmental and safety controversy when there was no legal basis in the documentation to support it – lovely! We even had the situation where not only was it completely illegal for SEPIL to build offshore, their Directors would be facing potential jail sentences, but RTE and TG4 were conducting opinion polls on whether it should be built onshore or offshore. However, RTE the State Broadcaster and Irish Language State Broadcaster TG4, are public bodies. Environmental information was being generated for them by other public bodies. Their function as a Public Body and State Broadcaster is of course to disseminate information, the correct information, on the environment, not tell lies to the public.

However, this misinformation was exactly what was happening week in and week out. It even got to the stage in October 2009 that the religious programme 'Would you believe' on RTE television had an episode devoted to the beliefs of one of the Rossport Five, who had been jailed for his contempt of the High Court. It didn't matter that at the same time his fellow activists were in and out of Court for violent public order offences which finally resulted in jail sentences for them. The judge stating in no uncertain terms that they were nothing but common thugs. So I sent in an Access for Information on the Environment request under S.I. No. 133 of 2007 on the 26th October asking:

1. The criteria RTÉ use with regard to assessment of environmental impact, environmental pollution, acceptable risk, unacceptable hazard

2. The qualifications of RTÉ personnel who are reporting on matters of industrial development and implementation of the Environment Acquis with regard to objectivity and accuracy

3. The names and qualifications of all RTÉ researchers who in the last 3 years have been responsible for editing and producing programmes related to the Corrib Development in North West Mayo

4. RTÉ policy regard to its obligation under the Aarhus legislation for dissemination of environmental information.

I got a reply (RTÉ Reference: FOI 2009/098) on the 27th October from Peter Feeney, Freedom of Information Officer RTÉ. Essentially the questions weren't answered, i.e. I was told to get lost. So I went to an internal review and received a reply on the 29th October from Adrian Moynes, Group Secretary, RTÉ. Again a refusal to answer the questions so I paid my €150 and lodged my appeal to the Commissioner for Environmental Information and case CEI/09/0015 was established. As I clarified to the Commissioner:

*"RTE is a public body which is regulated by the Broadcasting Acts. It is the main media outlet and source of information for the overwhelming percentage of the Irish Public. Page 12 of its Guidelines (attached) relate to "Objectivity and Accuracy". In particular these highlight that "the majority of the public looks to RTE radio, television and web services to provide them with much of the information they need as citizens of the State to participate in the democratic process. Accuracy in the facts RTE present is important to maintain this function". Additional sections relate to checking and rechecking facts, corroborative confirmation, rumours or speculation must not be reported as facts, the natural ambition to broadcast news first cannot come before the obligation to be accurate, journalists must ensure their personal opinions and value judgements are avoided in their reporting, etc.*

*Indeed this type of broadcasting is a direct breech of the RTE published guidelines and if RTE had been actively following their own guidelines a reply to my request for information would have been automatic. Finally it is abundantly clear in the text of the Directive that a public body is not exempt from the requirements simply because it claims 'journalistic' functions and states that the Directive solely relates to access to information in the keeping of other administrative bodies".*

If we consider the other State Broadcaster TG4, this is a minority channel, using the medium of the Irish language. While the Irish language has a strong cultural value it is also very closely connected to Irish nationalism and history has shown us how time and time again people connected with the Irish language movement have stepped outside the democratic process, using the cultural identity to justify this position. In Ireland unfortunately it is the cause and not the facts that count.

The Corrib situation was no different, one of the major 'abuses' that was considered by the violent anti-development minority to have happened in the early stages of the project was that English signs had been placed in the area, which was classified as a Gaeltacht (Irish speaking area) and that they had been 'invaded' by people with English accents. The programme on TG4 on the 16th November was therefore completely unacceptable. In it the retired Muinteoir, who had been jailed for contempt of Court, was repeating in Irish about the injustices and how the law had been changed several times to facilitate the project. While this was completely false it was only serving two purposes (a) to titillate the public and (b) to fan the flames of what was already a delicate situation in which the voice of reason and moderation had not been heard.

So I sent in my file relating to the case with RTE (CEI/09/0015) [4] and requested the same information. The e-mail went to info@tg4.ie and that of Pol O'Gallchoir, the head of TG4. They choose not to respond to this request.

While it is unfortunate that the Corrib controversy developed the way it did, and let me repeat there were no winners, the fact is that it was deliberately inflamed by the actions of the Irish media. Furthermore there was a complete failure by the State in that:

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[4] A decision was issued by the Commissioner for Environmental Information on this AIE request in late May 2010. RTE's journalistic function does not exempt them from the Directive and no information related to the four questions asked in the AIE request was available. http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/

- Access to Justice was not provided such that inaccurate reporting would be dealt with through a legal process.
- The State appointed bodies for media complaints, the Broadcasting Complaints Commission and the Press Council of Ireland have failed to meet the standards prescribed.
- The State Broadcasters have failed to comply with their duties relating to dissemination of information on the environment and instead broadcasted false information to heighten the controversy.

### 1.3 How the Planning Appeals Authority, An Bord Pleanala, acted outside the legislative basis to suit political considerations

As I have mentioned in the previous book there are serious questions that have to be answered as to how this Planning Appeals Authority is allowed to systematically make decisions outside legislation. Unfortunately to seek a review of their decisions one has to initiate a judicial review in the High Court, so we are back now to the same old question of Access to Justice.

Right from the first stage of the Corrib project, complete unprofessionalism was encountered with An Bord Pleanala. A planning application for the gas terminal was made to Mayo County Council in April 2001, and subsequently appealed to An Bord Pleanála by objectors. An Bord Pleanala refused planning permission on the issue of peat storage. In December 2003, a new planning application was made for the same site, together with a peat deposition site owned and operated by Bord na Móna at Srahmore, some 11 km away. This was subject to an appeal to An Bord Pleanála who granted permission in October 2004 attaching 42 conditions.

So it took over three years to get a simple decision. However, when myself and my colleagues have trained regulators on the EU Technical Aid projects in Central and Eastern Europe the message is drilled in; they must clearly understand what they can ask for under the legislation and what they cannot. For instance the Directive on Integrated Pollution Prevention and Control is clear in that targets, such as emission limit values can be specified, but the techniques to reach them are solely a matter for the operator to decide. The operator knows his plant best and the goal of the EU is to ensure adaptation to technical progress, not have regulators with limited knowledge of the industry obstructing progress. To prepare the site for the Corrib gas terminal in Mayo, 15 m of peat had to be removed to enable the rock to be reached. The original plan was to build up a repository at one side of the site. An Bord Pleanala refused to accept this design stating that their ‘expert’ had demonstrated that it could not be done. So the whole thing had to go back into planning and at enormous cost the peat then transported by truck to a bog 11 km away.

***The peat that had to be removed to a depth of 15 m and transported by truck 11 km to the nearby bog as the An Bord Pleanala inspector 'demonstrated' that it couldn't be stored in a repository at the side of the site. As taxpayers we funded 25% of that cost due to lost revenue.***

One can only be desperately uneasy when time and time again one sees the unlimited powers of An Bord Pleanala. Their inspectors are allowed behave like loose cannons, they continuously make statements that inflame a situation and in which there is no basis in fact. For instance in 2002 the inspector stated in his report "*from the perspective of sustainable development, this is the wrong site".* That old term again, it just so happened that he didn't demonstrate a breach of a single Directive of the Environmental Acquis, which are the legal implementation of sustainable development.

In May 2005, following the granting of a court injunction, five local residents, the Rossport Five, were held in contempt of the High Court for refusing to allow SEPIL entry onto their land to construct the onshore pipeline and they were then committed to jail. In response to safety concerns expressed by members of the local community, the Irish Government appointed international consultants, Advantica, to conduct an independent safety review of the onshore pipeline. This report was then published in May 2006. In their report, Advantica concluded, "proper consideration was given to safety issues in the selection process for the preferred design option and the locations of the landfall, pipeline and terminal". SEPIL accepted all of the Advantica recommendations and agreed to limit pressure in the onshore section of the pipeline to 144 times atmospheric pressure or below.

For over a year work had been suspended by Shell on the on-site terminal while negotiations and mediations were being completed with the local community. Shell also agreed to reroute the on-shore pipeline not because there were technical or legislative reasons but out of political goodwill. The new route was identified in April 2008 following a 14-route selection process involving 11 months of public consultation. The modified route doubles the distance from occupied housing and the pipeline's design pressure is now less than half of the original design pressure. Applications associated with these route modifications were lodged with the relevant statutory bodies in February 2009.

An Bord Pleanala then conducted a 19 day oral hearing on the project in May 2009. On 10th August it was announced in the Irish Times that the decision on the pipeline routing had been deferred by An Bord Pleanala until late September "due to the complex nature of the case". I went in to the An Bord Pleanala website several times to access the reason for this. It was never posted. This has become a frequent occurrence, decisions to defer planning decisions or statements as to what planning decisions are to be made are announced to the press but no official documentation of them ever appears on the regulator's website.

This was a minor irregularity compared to what followed. On the 2nd November 2009 An Bord Pleanala issued a letter stating:

- "The design documentation for the pipeline and the quantified risk analysis (QRA) provided with the application does not present a complete, transparent and adequate demonstration that the pipeline does not pose an unacceptable risk to the public".

There were other sections in the letter, just like the Report of the Joint Oireachtas Committee on Climate Change on the results of the Submissions; which if a first year university student had written it he / she would not have been allowed into second year. This obviously needs to be explained.

With regard to the safety issues relevant to the Corrib Project, neither EU nor National Legislation is based on zero risk. It is recognised in legislation that an element of 'residual risk' remains even after applying 'all necessary measures' to protect man and the environment. For instance Article 5 of the Directive on Control of Major Accident Hazards involving Dangerous Substances (96/82/EC as amended) clearly states that:

- Member States shall ensure that the operator is obliged to take all necessary measures to prevent major accidents and to limit their consequences for man and the environment.
- Member States shall ensure that the operator is required to prove to the competent authority that he has taken all measures necessary as specified in this Directive.

The EU has issued Guidance on preparing Safety Reports. Safety Reports are required for operators of establishments that fall under the 'top tier' requirements of the Directive on Control of Major Accident Hazards involving Dangerous Substances, which is available from the EU Major Accidents Hazard Bureau. As the EU Guidance on Safety Reports states; "although '**necessary measures**' are taken there will be some element of residual risk. The decision as to whether a residual risk is acceptable depends on national approaches and practices. Nevertheless there are some widely accepted supporting principles for this decision:

- The efficiency and effectiveness of the measures should be proportionate to the risk reduction target (i.e. higher risk require higher risk reduction and, in turn, more stringent measures).
- The current state of technical knowledge should be followed. Validated innovative technology might also be used. Relevant national safety requirements must be respected.
- There should be a clear link between the adopted measures and the accident scenarios for which they are designed.

- Inherent safety should be considered first, when feasible (i.e. hazards should always be removed or reduced at source).

It is also critical to fully understand and differentiate between the two parameters hazard and risk. The Directive on Control of Major Accident Hazards defines them as:

- "Hazard is the intrinsic property of a dangerous substance or physical situation with a potential to create damage".
- "Risk shall mean the likelihood of a specific effect occurring within a specified period or in a specified circumstances"

Risk is therefore a combination of the **likelihood** of occurrence of a defined hazard and the severity of the **consequences** of the occurrence. The established methodology is therefore based on identification of the possible hazards. These are then subject to a risk assessment in which the components relating to likelihood and consequences are assessed using a combination of qualitative and quantitative approaches. For risks which are deemed to be significant it is necessary to identify the necessary measures to prevent, control and limit the risks, this is the risk mitigation step. If the risk is deemed to be acceptable then no further measures need to be taken. Alternatively if the risk is deemed as unacceptable then further control measures need to be identified and assessed. A hazard is therefore only a 'stepping stone' for determination of risk and the legislation is clear in that a level of residual risk remains after all measures necessary have been applied.

Furthermore the EU Commission's Non-binding Guide to Good Practice for Implementing of Directive 1999/92/EC (Explosive Atmospheres) is clear in that assessment of explosion risks initially focuses on:

- The likelihood that an explosive atmosphere will occur; and subsequently on:
- The likelihood that sources of ignition will be present and become effective.

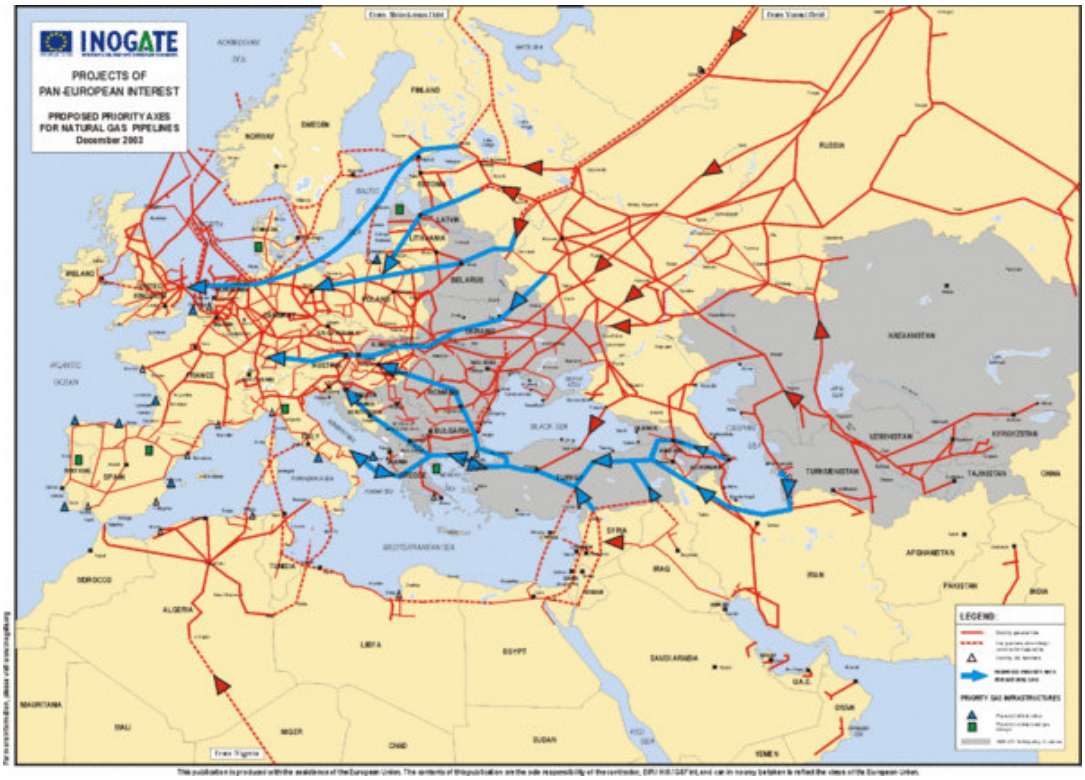
Consideration of effects is of secondary importance in the assessment process, since explosions can always be expected to do a great deal of harm, ranging from major material damage to injury and death. Quantitative approaches to risk in explosion protection are secondary to the avoidance of hazardous atmospheres.

An Bord Pleanala in their letter of 2nd November interchanged hazard and risk, statements such as:

- "Adopt a standard for the Corrib Corrib upstream untreated gas pipeline that the routing distance for proximity to a dwelling shall not be less than the appropriate hazard distance for the pipeline in the event of a pipeline failure. The appropriate hazard distance shall be calculated for the specified pipeline proposed such that a person at that distance from the pipeline would be safe in the event of a failure of the pipeline".

These were the standards to which the pipeline would be assessed. Switching to layman's analogy, we all have planes flying over our heads, so we are all in the hazard distance in the event of a plane crash. Are we safe? Should we ban planes from Irish airspace, particularly as most of them are only transiting it going to and from other countries? Let's go back to the legislation, it is about risk. So long as planes fly overhead it will never be a zero risk, but we benefit from air travel so let's not ground all the planes. So the legislation requires us to implement the necessary measures to maintain this risk as low as practicable. Good quality design, good operating and maintenance procedures, checks by the regulatory authorities. Makes sense doesn't it!

The Corrib pipeline is effectively a gun barrel; it is 500 mm in diameter and 27 mm (1 inch) thick. It can easily hold a pressure of 500 times atmospheric pressure, more than three times its maximum operating pressure. Note: Most of all the red pipelines below are of 9 mm thickness.




***Hundreds of thousands of kilometres of high pressure natural gas pipelines criss-cross Europe. Indeed the one in blue under construction in the Baltic will operate an one and a half times the pressure in the Corrib pipeline. Does An Bord Pleanala know something the others don't?***

The reality is that once the pipeline is designed, operated and maintained properly nobody will even know it is there. A simple trench is dug, the pipe dropped in and the grass will have grown back in less than six months – standard practice. In fact the higher the pressure in the pipe the thicker the pipe is and the more difficult it is to damage it. It is not rocket science, gas leaks occur from the low pressure pipes that get dug up by accident, such as from construction activities, which is not surprising given that low pressure pipes are relatively light walled and get punctured. You don't dig up major high pressure gas pipelines and even if you did the digger would probably break first!

One can identify hazards and calculate consequences for umpteen scenarios but is it relevant if it simply doesn't happen? If one goes looking for failure data for larger diameter high pressure pipes, guess what? It essentially isn't there! Why? Because such pipelines don't fail, after all, the digger would probably break first. Furthermore, as an engineer familiar with basic risk analysis will tell you, the pressure in the pipeline is not really that significant. It is the size of the hole and the likelihood that a hole will occur. Simple - the higher the pressure the thicker the wall of the pipe and the more difficult it is to create a hole. However, An Bord Pleanala lives in its old world of the first year student, who will never get into second year. SEPIL had to go back to An Bord Pleanala to get them to specify exactly what they were talking about rather than the 'mumbo jumbo' of the letter of the 2nd November.

A concerned colleague requested of An Bord Pleanala the correspondence related to the above and they replied "the Board does not make available submissions or correspondence received by it in relation to any application". However, they then sent him a copy of their letter by pdf. Strange, what happened to Directive 2003/4/EC on Access to Information on the Environment? More about this coming soon! This clarification letter from An Bord Pleanala of the 29th January 2010 was clear in that a "full bore rupture" of the pipeline had to be assessed at maximum pressure and that persons standing beside the dwellings should not receive a dangerous dose of thermal radiation. Not to mention that this risk should be less than one in a million (individual risk of $10^{-6}$).

***The Corrib onshore pipeline, 27 mm (1") thick and 500 mm in diameter, a real gun barrel. What would split this in two? Godzilla coming in from the Atlantic?***

So what scenario could split a pipe built like a gun barrel completely into two sections? This is the realm of fantasy and not reality. For small pipelines, such as 25 mm (1 inch) diameter, of course this could happen with a digger on a construction site, but not a pipe of the 500 mm size at Corrib. We all know this as engineers, Advantica confirmed it in their report for the Irish Government, but An Bord Pleanala simply refused to accept sense, they live in the world of the first year University student, who shouldn't have been allowed into University in the first place because he knows it all, particularly that what he is being educated on is all wrong.

Furthermore engineering data highlighting these issues is readily available; after all it was presented to them in the Advantica report. A guidance document on Quantified Risk Assessment for major accident scenarios was issued by the Province of Sachsen in August 2009 summarising the technical knowledge for this subject (http://www.smul.sachsen.de/lfulg/13916.htm ). With regard to rupture of pipelines this can occur due to maintenance activities, but surprise, surprise is less likely to occur with larger diameter pipelines. Furthermore earth covered pipelines and pipelines outside a potential impact area of falling objects are assumed to have no pipeline rupture. Even if the 9 km pipeline which had been refused permission had been installed over ground in a possible impact zone the equation that would have applied for failure frequency leading to a pipeline rupture is:

$$\lambda = \frac{1{,}1 * 10^{-5}}{DN^{2}} \text{ [1/a*m]; } \qquad DN > 15$$

Which is equivalent to 0.4 x $10^{-6}$, which is less than one in a million and as such it is not even significant. One must remember that with an underground pipeline, such as at Corrib, the risk is considerably lower. In fact in Europe the chances of an aircraft you are travelling on crashing are about 2.5 x $10^{-5}$ (one in two hundred and fifty thousand), do we ban air travel? However, in the Corrib case An Bord Pleanala just refused to accept the facts, as political considerations without doubt applied, such as not upsetting the Green Party who had to stay in Government in order for the €60 billion bank bailout (NAMA) to be approved.

## 1.4 An Board Pleanala refusing to comply with legislation on Access to Information on the Environment

As somebody who was highly qualified in the area of major accident hazards I found myself looking at increasing horror at what was going on with An Bord Pleanala. They effectively have brought industrial development in this country to a complete halt. I make no bones out of it, I earn my livelihood out of this sector, as do thousands of others, not to mention the people who work in and are associated with the industrial facilities we develop and construct. On the 22nd September 2009 I sent in an Access for Information on the Environment request, nothing too fancy just:

- The legislative basis for the recent Oral Hearing of circa 19 days on the Corrib pipeline rerouting.
- The procedures for conducting an Oral Hearing to this legislative basis, such as choice of staff, training of staff, specific areas of legislation to be addressed, areas outside of the legislation that should not be addressed, recommended time frame for oral hearing, relationship to competent authorities for Environmental, Safety, etc.

- The specific approach of the Board to moving from a previous system of decision making based on Patronage to one which implements the Environmental Acquis.

I even reminded them a month later when it was due. I got no reply. Raising this issue of non-compliance with the Head of Government didn't make any difference, the Government couldn't care less about non-compliance, after all they are neck deep in it themselves. I was getting fed up with all of this so I sent in a new request for information of 13th December 2009 relating to:

- The recent decision of the Bord to refuse permission for a 25 mm thick steel gas pipeline of 500 mm diameter clearly did not follow accepted engineering practices for risk associated with thick walled large diameter pipelines, such as is established in the attached risk methodologies of the Dutch Authorities (RIVM). Furthermore if one considers that there were eight accidents involving fatalities with the wind energy industry in 2008 alone and established risk contours for the population in the vicinity of these turbines have been established, see summary of Dutch (Novem) guidance attached, then why are the Planning Guidelines for Wind Turbines developed in conjunction with An Bord Pleanala saying in Section 5.7 and other sections the very opposite? Furthermore it is clear, such as in Dundalk, that turbines have been erected in Ireland in close proximity to populated areas. There is therefore no consistent approach taken by the Board to the considerations of costs, benefits and alternatives in relation to risk and land use planning and decisions are clearly been made on what suits political considerations. I am therefore requesting the parameters the Board applies to assessing risk and determining acceptance criteria.

This also included my original request and was copied to the Minister for the Environment, Local Government and Natural Heritage. The issue about wind energy needs some explaining, turbine blades can disintegrate or lumps of ice build up on them. These projectiles can be flung several hundred meters, with resulting damage to anybody who is in the way. Guidelines on the Environmental Risk of Wind Turbines in the Netherlands were issued in 2002 by Novem.

| **Scenario** | **Expected value** | **Recommended value [1/yr]** |
|---|---|---|
| Loss of entire blade | $6.3 \cdot 10^{-4}$ | **$8.4 \cdot 10^{-4}$** |
| *Loss at rated speed* | | ***$4.2 \cdot 10^{-4}$*** |
| *Loss at 1.25*rated speed* | | ***$4.2 \cdot 10^{-4}$*** |
| *Loss at 2*rated speed* | | ***$5.0 \cdot 10^{-5}$*** |
| Loss of blade tip | $1.2 \cdot 10^{-4}$ | **$2.6 \cdot 10^{-4}$** |
| Collapse of entire turbine at tower foot | $2.0 \cdot 10^{-4}$ | **$3.2 \cdot 10^{-4}$** |
| Collapse of rotor and/or nacelle | $5.8 \cdot 10^{-5}$ | **$1.3 \cdot 10^{-4}$** |
| Falling down of small parts from nacelle and hub | $1.2 \cdot 10^{-3}$ | **$1.7 \cdot 10^{-3}$** |

***Frequency of occurrence of scenarios of wind turbine failure relevant for risk analysis from Dutch Guidance.***

| Type of turbine | | | | |
|---|---|---|---|---|
| Rated power [kW] | 500 | 1000 | 1500 | 2000 |
| IR = $10^{-6}$ contour [m] | 111 | 124 | 134 | 144 |
| IR = $10^{-5}$ contour [m] | 20 | 28 | 37 | 39 |

***Individual Risk (the probability of a person will die from an accident if he is permanently at the place without protection) as a function of distance from the turbine.***

So if one is located within 144 meters of a common 2 MW onshore wind turbine there is the magic one in a million risk of a fatality. On the other hand one can pick up the Department of the Environment, Local Government and Natural Resources planning guidelines on wind energy development, which were updated with the help of non other than An Bord Pleanala in June 2006 and read:

- "There are no specific safety considerations in relation to the operation of wind turbines. Fencing or other restrictions are not necessary for safety considerations. People or animals can safely walk up to the base of the turbines. There is a very remote possibility of injury to people or animals from flying fragments of ice or from a damaged blade".

So clearly one rule is applied to those who are 'friends' of the political process and another rule is applied to those who are not, i.e. no restrictions on locating wind turbines only gas pipelines of lesser risk!

What happened after the submission of this request was the usual farce. On the 17th December I got a reply (REP7726/JG/09) from Eddie Kiernan, Private Secretary stating:

*"I have been asked by Mr. John Gormley, T.D., Minister for the Environment, Heritage and Local Government to acknowledge receipt of your recent email in connection with Aarhus Request relating to Risk Assessment and Acceptance Criteria in Planning".*

On January 14th over a month after I had sent in my request I finally got a reply from Richard Kennedy, Facilities and Environmental Management, An Bord Pleanala that my request was receiving attention and pointing out it was only forwarded to his section that day. By the 16th January I had not received my reply so I let my displeasure be known highlighting that it was three months since I had sent in the original request. On 19th January I got an e-mail from Patrick Cosgrave, the Access to Environmental Information co-ordinator within An Bord Pleanala. He was also stating that he had only received my application on the 14th January and wanted me to call him to discuss this matter further and to clarify the details of my request. I was getting fed up with this. I had already requested an internal review based on the previous reply, so given that I was abroad in Azerbaijan or somewhere I e-mailed and stated if he had problems with it, it should have been addressed to me in writing several weeks ago and if he wasn't technically qualified to deal with it he should get somebody in his organisation who was to deal with it.

I then got a formal reply on the 20th January (AIE Request - GA0004) from a Pierce Dillon, Senior Executive Officer, Facilities and Environmental management. The answer to my first question of the 22nd September was the Planning and Development Acts: http://www.irishstatutebook.ie/2000/en/act/pub/0030/index.html .

The answer to the second question was the link to An Bord Pleanala Procedures for conducting an oral hearing: http://www.pleanala.ie/publications/2005/oral_hearing.htm .

For the third question relating to moving to a system of decision making which implements the Environmental Acquis I got the following reply:

- "Article 9 (2) of the regulations clarifies that a public authority may refuse to make information available if the request is considered unreasonable due to the range of material sought, if the request is too general or if the material requested is not yet completed. In this regard, this element of your request is deemed to general. If you wish to resubmit your request, I suggest that you be more specific in your request. It would also help the Board if your request could make reference to some factual information".

If you think that was snotty wait until you read what I got for the final request relating to the risk and land use planning.

- "Article 9 (2) of the regulations clarifies that a public authority may refuse to make information available if the request is considered unreasonable due to the range of material sought, if the request is too general or if the material requested is not yet completed. In this regard, the Board was unable to establish what "recent decision of the Board" that you are enquiring about. My colleague Patrick Cosgrave attempted to clarify this issue with you and asked that you contact the Board to discuss this matter further, however you declined this request. It should be noted that the Board is always willing to offer assistance to members of the public by helping them reformulate requests. If you intend to resubmit this request, I suggest that you contact my colleague Patrick Cosgrave. We will then, hopefully, be able to assist you in making a properly refined request".

Amazing since half the information request sent to him was clearly concerning the Corrib development, there was no indication in the other half that it was anything other than Corrib. Let's be serious how many recent refusal decisions had the Board made about 500 mm diameter pipelines?

So I lodged my €150 to the Commissioner for Environmental Information and they accepted my appeal (CEI/10/0002). As I clarified to the Commissioner in late February and early March - when Oral Hearings, which are often called public debates, are held in other Member States their purpose is to act as a clarification exercise to the public. The authorities there are competent in the relevant subject matter, the requirements of the legislation and their duties in disseminating this information to the public. After all this is what is specified in the legislation, namely Directives 2003/4/EC and 2003/45/EC, in which environmental information has to be actively and systematically disseminated to the public to achieve the widest possible systematic availability. In particular with regard to projects involving an Environmental Impact Assessment procedure the main reports and advice issued to the competent authority have to be made available to the public.

On a personal level and as a German speaker I have had a number of German technical personnel, who have had to attend oral hearings in this jurisdiction, comment to me the astonishment they had in the disjointed manner these proceedings were conducted in which they seemed to be a public debate on how the relevant legislation, which would regulate the project, would be interpreted or developed to suit the occasion.

Furthermore consideration of chapter 6 of my Submission to the Joint Oireachtas Committee on Climate Change and Energy Security http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-Climate_Change/Submissions/document1.htm clearly highlights a number of examples of the completely unsatisfactory manner in which An Bord Pleanala is conducting oral hearings and making decisions outside the relevant legislation and its proper implementation.

When I reviewed what I received as a reply from An Bord Pleanala to the first two requests I was shocked. Not only was there no proper training and selection requirements for inspectors demonstrated, but there is no mention of the requirement of the Authorities to actively and systematically disseminate the specific environmental information, such as is specified in Article 2 of Directive 2003/4/EC. This includes administrative measures, policies, legislation, plans, programmes, environmental agreements, measures or activities designed to protect environmental elements. In addition there was no mention of the requirement under Directive 2003/35/EC that the main reports and advice issued to the competent authority have to be made available to the public, rather an arbitrary statement about documentation submitted to the Board, in which there is no clarification as to what are the main reports and advice under which the decision is being made. Note the Guidelines on Procedures on Oral Hearings as provided as a reply to item 2 were last modified on the 12th December 2007.

Therefore I can only conclude unless additional information is presented by the Office of the Commissioner for Environmental Information related to the planning legislation and An Bord Pleanala procedures for Oral Hearings, that there are serious non-compliances with the Environmental Acquis in relation to the conduct of these Oral Hearings.

Unfortunately the reports of those who attended the Corrib Oral Hearing, such as the Submission from Pro Gas Mayo (to follow), clearly show how no attempt was made during the Oral Hearing to clarify or even adhere to the legislative basis described in the previous Section.

*"Report from Brendan Cafferty, Secretary of Pro Gas Mayo group in connection Onshore upstream gas pipeline relating to the Corrib Gas Field Project, Co. Mayo*

*I am secretary of the Pro Gas Mayo group, an unpaid voluntary organization of ordinary citizens acting totally independently of Shell, Government or other statutory body. We support this project for the benefit of the area, the country and country at large. WE feel it is a major infrastructural development. WE made submissions to An Bord Pleanala and were there as a consequence*

*There was a 19 oral hearing into the onshore pipeline. Of those 19 days 5 days were spent cross-examining on the topic of Design, Safety & Stability. The Board's assistant safety inspector showed a video of a gas explosion early on in his questioning. The video was of an experimental explosion. At no time did the Board refer to the regulations and legislation under which risk and safety would be measured in Ireland.*

*At one point in the proceedings the assistant safety inspector asked one of Shell's consultants to draw contours on a map of the consequences of a full-bore rupture. Under duress Shell agreed but these contours came to be known as the kill-zone. The inspector ignored the risk by ignoring the probability of failure (very small, order of 0.0000000001 chance per year) and focusing on what would happen if it failed. Obviously this was incredibly damaging.*

*No clear definition of risk or what the board considers to be an appropriate hazard distance was given. In fact this is evident from the recent correspondence between Shell (RPS) and the board and the fact that they ask An Bord Pleanala to clarify the hazard distance as referred to in the November letter.*

*The difference between hazard and risk was not laid clearly before us. In the nature of things and the fact that there are local protests about this project, much scope was given to local objections and this was understandable, even though many of the contributions were not relevant.*

*In a letter dated 2nd. November 2009 to all interested parties, An Bord Pleanala inform RPS on behalf of Shell that it considers the onshore pipeline to be unsafe, yet they ask for some questions to be clarified. This seems to be confusing. They also indicated in the same letter that they would be disposed to approve the pipeline going up through Sruwaddacon Bay. This in our view will present many environmental and logistical problems.*

*Originally there was approval for another onshore pipeline which was about 70 metres from the nearest house. An independent professional group of consultants, Advantica, were appointed by the Minister in 2005 to examine this route. They reported that it was safe. However, in the interests of harmony I think, Shell indicated a new route which was 140 metres distant from nearest house, and it is this which is before An Bord Pleanala under the Panning and Development (Strategic Infrastructure) Act 2006. This all seems very incongruous to us. Already 1.5 billion euros has been built for the Terminal nearby and for which permission was given by An Bord Pleanala, and the Environmental Protection Agency".*

With regard to the third Request for Information dated 22nd September 2009:

- The specific approach of the Board to moving from a previous system of decision making based on Patronage to one which implements the Environmental Acquis.

Member States which are compliant with EU legislation regulate development according to the Environmental Acquis. A statement to this effect should be available on documentation produced by An Bord Peanala.

With regard to the final request relating to risk and land use planning - Directive 2003/35/EC is perfectly clear in that with regard to projects involving an Environmental Impact Assessment procedure the main reports and advice issued to the competent authority have to be made available to the public. This information on risk and land use planning should by law have been made available to all parties before the Corrib Oral Hearing. The fact that no such parameters are publicly available with active and systematic dissemination is a clear breach of the relevant EU Directives.

Unfortunately this conduct of disjointed oral hearings in which things are made up to suit the occasion goes on over and over again. If we take the position of Special Areas of Protection and Special Areas of Conservation under the Natura 2000 regulations, one would think given what is reported in the Media for Corrib and other projects, is that these areas are like the Sistine Chapel. Over 40% of the Croatia will fall under Natura 2000 legislation, as did the biogeographic region of Macaronesia in 2002 comprising 34% of the total land area of the Canary Islands, Azores and Madeira. It is not the purpose of this legislation to sterilise large tracts of land from human development but rather to ensure its conservation status.

EU Habitats Directive 92/43/EEC (as amended) is clear in Article 4 (4) that once a site is designated, the Member State shall as soon as possible and within six years at most, establish priorities in the light of the importance of the sites for maintenance and restoration, at a favourable conservation status of the a natural habitat or a species for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed. Article 6 (1) further states that for special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types and the species present on the sites.

Article 6 (3) of the Habitats Directive says:

- “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 subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the 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 general public“.

An appropriate assessment is what the developer does in an environmental impact assessment procedure. The term integrity is not defined in the Directive but is understood as the maintenance of the ecological structure and function(s) of the site related to the qualifying features (equal to the species and habitat types for which the given site has been designated / classified, i.e. the conservation objectives). If the appropriate assessment has not revealed any significant adverse effect on any of the qualifying features of the any of the sites, there is no legal reason under the Habitats Directive to refuse to grant a permit.

Does Ireland establish these plans required under EU Legislation for these designated sites and present them at Oral Hearings? In reality precious few of these plans have been developed (http://www.npws.ie/en/PublicationsLiterature/ConservationManagementPlans/FullCPs/ ). So once again total confusion is generated in the interests of a decision on sustainable development! Broadhaven Bay, where the 9 km pipeline was proposed to skirt, is a Special Area of Conservation (SAC 000472), documented with a site synopsis on the website of the National Parks and Wildlife Service with a date of September 2001. Yet there is no published management plan for this Special Area of Conservation.

## 1.5 The EPA – how they broke the legislation with regard to Corrib

While the EPA does maintain a very good record of its licensing process on its website (www.epa.ie) simply maintaining a website is not active and systematic dissemination as is required by EU legislation. It is particularly disturbing that over the several years of controversy on the Corrib project the EPA never made any public comment on the issue. While their regulatory process clearly demonstrated environmental compliance, the media continuously pumped out the message of environmental problems and the saga of the heroes and martyrs to the environmental cause.

However, when the Irish Academy of Engineering presented a report to the public demonstrating the huge technical and economic problems with the Administration's wind energy programme, Dr Mary Kelly the Director General of the EPA immediately stepped outside her legislative remit to support this programme. It's just like the days of the feudal lords, if you have friends in high places they look after you!

Industrial and agricultural activities with a significant pollution potential are regulated in the EU by Directive 2008/1/EC on Industrial Pollution Prevention and Control (IPPC). The activities that are required to have an IPPC permit are defined in Annex I of the Directive and are based either on a certain type of industrial sector, such as oil refining, or a specified threshold above which the legislation applies, such as the number of pigs or poultry on a farm.

The IPPC process has been successful throughout the EU, but it is a very detailed process requiring significant input from the regulator and industry. Because of the complexity and cost involved in this permitting process, it is the EU's approach that only industrial sectors with a significant polluting potential should come under the IPPC process. In general throughout the EU smaller industrial facilities with less significant environmental impacts are regulated at the municipality level using traditional permitting arrangements, such as individual conditions set for air, water and noise under previous national legislation.

The industrial facilities that are listed in Annex I of the IPPC Directive include:

- Energy Industries: 1.2 Mineral oil and gas refineries.

Furthermore there is an EU IPPC Guidance Document (BREF) issued for mineral oil and gas refineries. Typical gas installations in Europe in the North Sea consist of a number of central platforms with satellite platforms. The gas is delivered to the central platform where it is dried (removal of water). Condensates are partially removed, but these are re-injected into the produced gas. Chemicals, mainly methanol, which is sometimes called wood alcohol, are added to the gas stream either at the well head or prior to transmission, to prevent solid hydrate formation and limit corrosion in the underwater pipeline. Offshore platforms are not included in the scope of the

BREF and in most Member State, including Ireland, are not subject to IPPC licensing.

Many natural gas sources world wide are 'sour', in that they contain traces of hydrogen sulphide, a very odorous and toxic gas. This has to be removed in a gas treatment plant. However, natural gas sources in Ireland do not contain hydrogen sulphide and simple treatment only is required comprising of slug catching, dehydration and condensate separation, i.e. purification is not required.

The Corrib facility is built onshore to comply with the Framework Safety Directive 89/391/EC, given that the hazards involved with offshore work are now avoidable due to 'adaptation to technical progress'. The decision was taken to license it to IPPC even though similar simple gas treatment plants operating offshore do not fall under IPPC.

Formation water arises from the well head, essentially entrained droplets carried over with the gas stream. It is impossible to predict exactly how much water will be carried over from a well head, as initially the pressure in the well head is high and slugs of water get carried over, while as the gas is withdrawn the pressure decreases and the water carryover reduces considerably. A figure of 4 $m^3$/day would be typical for Corrib. The World Health Organisation estimate a volume of 137 litres of waste water per person per day, so 1 $m^3$/d is equivalent to the waste water load of 7 people.

Is the aqueous discharge from the Corrib production process significant? Significance can be assessed by the quantity of the emission, the harmful components in the emission and the sensitivity of the receptor. Clearly in terms of quantity the volume of emissions is no different from that of a standard small hotel. Furthermore the gas quality in the well head is very pure, so the level of contamination in the produced water is very small and it undergoes treatment and monitoring before discharge. There is no reason why this discharge point could have been local to the facility into the bay, but the design of the facility went way above minimum requirements and the outfall location was chosen 12.7 km offshore. As was to be expected the IPPC licensing process showed no impact from this discharge. However, as a gesture of 'goodwill' in order to achieve the financial settlement with the local fishermen, the outfall was agreed to be relocated 80 km offshore into even deeper and more remote water. SEPIL then applied for a technical amendment to their IPPC license.

The problems then started. Seemingly 'optics' were involved and instead of a simple technical amendment to the licence, the whole process had to be reopened and a new licence applied for, a time consuming and expensive process. Further details on this can be found on the article I wrote for Inshore Ireland on this subject (Attachment 1) entitled "Is the environmental licensing procedure open to political interference?"

There are undoubtedly elements in the media and the 'Shell to Sea' groups, who are junkies to all of this. However, there is a legislative process that has to be followed and whatever gig is playing in the Parish is completely irrelevant. From the above it is clear that the emission of the produced water was neither significant nor new, it was simply being relocated to an area of even less sensitivity, as a gesture of 'goodwill' to enable a compromise be achieved with local community interests.

The Irish EPA has clarified that a technical amendment can be used for:

- Making another change to a wording of a condition, which will have no significant effect on the environment.

As clarified above the existing aqueous emission does not have a significant effect on the environment, neither will it at its new location. If we look at the Directive, then Article 2 (11) defines a 'substantial change' as a change in operation which, in the opinion of the competent authority, may have significant negative effects on human beings or the environment. Article 12 (2) is clear, in that Members States shall take the necessary measures to ensure that no substantial change planned by the operator is made without a permit issued in accordance with this Directive. Sensible isn't it, the change has to be substantial, i.e. significant negative effects on human beings or the environment, before a new permit has to be issued.

The problem in Ireland is that we don't apply EU legislation correctly. When we first started licensing industrial facilities in Ireland to the Air Pollution Act of 1987, powers were granted to review a license if there was a 'material change' in the nature or extent of emissions. When the EPA Act of 1992 came in the same terminology was used again. However, nowhere is a 'material change' defined in the legislation. So if one was to put extra toilets in an administration building connected to a licensed industrial facility, then this could be interpreted, as needs be, by the licensing authority as a 'material change' to generate a requirement to reopen the licensing process. Fortunately things moved on and in 2003 the EPA Act was updated by the Protection of the Environment Act, to comply with conditions of the original 1996 Directive on Integrated Pollution Prevention and Control. The Section related to IPPC licensing was updated to include Section 90 4(b) relating to review of licenses:

- A license may be reviewed by the Agency if there is a proposal to make a substantial change to the nature or extent of an emission.

Nowhere is a 'material change' mentioned anymore with regard to IPPC licensing. Indeed the article in Attachment 4, clearly shows how the Agency is acting outside its powers (Ultra Vires) with regard to the Corrib project, as it was justifying its stance based on a 'material change', clearly applying considerations in a legal process that are based purely on 'optics'. One could even point out that even the EPA Act of 1992 is clear in Section 52 (2e); that in carrying out its functions the Agency shall ensure, in so far as is practicable, that a proper balance is achieved between the need to protect the environment (and the cost of such protection) and the need for infrastructural, economic and social progress and development. This clearly is not happening.

Unfortunately this is not the only such circumstance where these issues are occurring. The IPPC Directive (consolidated version 2008/1/EC), states in Article 9 (4,) as is stated in Section 86 (3) (C) of the Protection of the Environment Act, 2003:

- "The emissions limit values and equivalent parameters shall be based on Best Available Techniques (BAT), without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions. In all circumstances, the conditions of the permit shall contain provisions on the minimisation of long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole".

The operator clearly knows his process best and the legislation recognises that he should be left to optimise it, at the most economical conditions to meet the targets set in the license. In Ireland the principles of integrated pollution control were established prior to the introduction of the IPPC Directive in 1992, when the EPA Act entered force. It is worth noting that under Section 84 of this EPA Act that the powers of the Agency are extremely comprehensive with regard to specifying how a facility is designed, operated and maintained. The Protection of the Environment Act of 2003 updated this legislation to include the additional requirements of the IPPC Directive above, but maintained in Section 86 the same powers with regard to specifying details relating to a facility. For example the EPA can specify the method of treatment of an emission, including the provision, operation, maintenance and supervision of plant and other facilities and the use of specified procedures and codes of practice, i.e. the EU legislation is not properly transposed.

The reality of this in Ireland is that regulators are constantly interfering in the optimal design and operation of facilities, with resulting significant additional costs that have to be incurred by the operator for no tangible gain to the environment. Industry knows only too well now that the costs of operating here and the time involved in getting licences approved or modified are far, far worse than other Member States.

Is there any tangible benefit to this increased expenditure and timeframe? No. However, the reality of the world, especially in Ireland where the media is out of control, is that:

- Somehow the news media sense and publicise issues that will attract the public's concern and attention (creating customer readership and therefore advertising), and this concern appears to feed upon itself and attract more publicity. In turn, these arouse public concerns and capture the attention of politicians and aspiring politicians.

Regulators then feel under extreme pressure, having to deal with angry members of the public and interference from political masters. They naturally wish that the 'project' will go away, sometimes as a result seizing opportunities to aid the project to 'go away'. The net result is huge delays and cost overruns occur, even worse is the huge degree of uncertainty that results at the critical inception phase of the project. Projects can and do get 'lost' under these circumstances. It's as clear as daylight in Ireland now, 'optics' is the name of the game and who's next? Time to – **Go Elsewhere!**

### 1.6 How the State Administration treated the Irish technical resources which delivered the project

In my letter of the 16th October 2008 to SEPIL which was copied to the Head of State, I made it very clear:

*"The Corrib project is not just a Shell project; it has had a large input from Irish Engineering and Technical Resources in the Regulatory Approval, Design and Construction, it is as much a product of Irish technical input as the nominal name plate of the developer on the Gate. This abusive campaign against the project, fuelled by unfair media reporting is without doubt causing emotional stress to those involved on the project, but is also impacting on the longer term financial prospects for future repeat work in the engineering of industrial projects in Ireland".*

Unfortunately the controversy and violence that occurred at Corrib site, not to mention an explosive device left in front of the SEPIL office in Dublin, which had to be disarmed, was directly fuelled not only by the action of thugs in Irish

society, but also clearly by the behaviour of elected and non-elected officials in State employment. There were many examples of this; indeed it is also clear in that taxpayers' money was used to fuel this controversy and resulting abusive behaviour.

There are four Local Authorities in the Dublin Region and the area in which I grew up in belongs to Dun Laoghaire Rathdown (DLR) County Council. In the final weekend of August each year, a Festival of World Cultures is run by DLR. A bit of music, etc, but there is also an Environmental Awareness Exhibition run in the Town Hall. In 2007 I dropped by this exhibition, it was clearly a political rally for the Green Party. As an exhibition, it clearly had no basis in the Environmental Acquis and also contained a 'Shell to Sea' stand, an organisation that was also leafleting outside the Council Building. Given the anti-democratic and abusive behaviour of this organisation, which in layman's terms could be described as radical eco-warriors, I formally contacted the council requesting clarification and received the following reply:

*"Dear Mr Swords,*

*I refer to your letter dated the 25 / 8 / 08, as attached. The details of which I do not dispute.*

*Cool Earth was project managed on behalf of Dún Laoghaire-Rathdown County Council by Cultivate Sustainable Living and Learning Centre. Unfortunately due to human error it was not brought to our attention that Shell to Sea were exhibiting at Cool Earth until very late in the arrangement. At that stage we took a decision to allow them to exhibit.*

*In our defence I would like to point out that Cool Earth is an environmental awareness exhibition and the aim of the event is to raise awareness of all areas of the environment, including environmental campaigning and for the public to form their own opinions from what they learn on the day. Shell to Sea was one of 50 exhibitions. However should the event run again, I assure you that Shell to Sea, nor any similar group, will not be invited to exhibit.*

*Do not hesitate to contact me if I can be of further assistance to you in this regard.*

*Marie Grant BA M. Sc.*

*Environmental Awareness Officer*

*Dún Laoghaire-Rathdown County Council*

*County Hall*

Personally I wasn't happy that taxpayers' money was been spent on 'environmental campaigning', certainly there was nothing being presented, which was informing the public about their rights under Aarhus legislation or any other aspects of the Environmental Acquis. I then replied that:

*"Thank you for your reply on this matter and I am pleased to see that DLR has concerns over the presence of such organisations at its Cool Earth project. However, I would like to point out that despite the involvement of Cultivate Sustainable Living in organising this event, it was promoted as a DLR event and hence as I pointed out, there is a connection between DLR and the forum provided to the Shell to Sea campaign. I my opinion therefore instead of the acknowledgement and clarification to me below, that this acknowledgement be made officially in the environmental section of the DLR newsletter we receive on a regular basis".*

No such public clarification was to my knowledge ever made, in fact, such as in December 2009, the DLR newsletter is delivered to the houses with a similar one from the Green Party. Coincidence? I don't happen to believe in the fairies! In summer 2008 I was very busy working on an EU technical aid project in Croatia, but in summer 2009 I went in to check the website about the forthcoming environmental awareness exhibition and discovered it was just another rally for the Green Party, again called 'Cool Earth'. Not only was any connection to the implementation of the legislation in the Environmental Acquis extremely tenuous, but the main speaker, Junior Minister Trevor Sargent of the Green Party, is a populist politician who has a history of anti-democratic and abusive behaviour to those of us who work in the scientific and technical community. In fact he actively supported the 'Shell to Sea' campaign and in early 2010 had to resign his position as a Minister, as he had sought in writing to influence a criminal investigation.

So I had about four weeks of correspondence from mid July 2009 on, in which DLR refused to answer me some simple questions relating to what environmental legislation the exhibition was connected to, what were the criteria for choosing the speakers, what was the budget, etc. In my work on the EU technical aid projects I have had on occasions, Study Tours of senior regulators from Central and Eastern Europe visit Ireland. As one such group stayed in Dun Laoghaire, I was checking out 'youtube' for clips to show then in advance of their visit, and came across one of the 'Shell to Sea' campaign leafleting outside their stand at the DLR 'environmental awareness' exhibition: http://www.youtube.com/watch?v=DcrgBdfXGJ8

Most of the issues I have had to deal with in this book are not pleasant, but the email below I got from Kate Hynes in DLR on the 10th August was priceless:

*"FW: Let me know if you are happy to send this*

*Dear Mr. Swords,*

*Thank you for your email dated 27th July to Marie Grant. Marie is no longer working in the Council, therefore I did not receive this email until now. Also thank you for your email dated 3rd August to the environment dept expressing concern over the Cool Earth fair and the other environmental issues.*

*Cool Earth fair is an environmental awareness exhibition to raise awareness about all areas of the environment such as composting, green technologies (solar panels, mini wind turbines), water conservation devices, greener transport options, etc. The website www.coolearth.ie lists exhibitors, activities and the schedule for the weekend.*

*When the Cool Earth fair commenced it was managed for the Council by Cultivate Sustainable Living. As Marie Grant already explained to you post the event in 2007 the Council only became aware of the inclusion of the Shell to Sea stand when it was too late in the event. Marie also gave you an assurance that they would not be included in future. Since 2007 Dun Laoghaire-Rathdown County Council ran this exhibition in house and Shell to Sea were not included last year. This year Dun Laoghaire Rathdown County Council are running the exhibition in-house again and I can assure you that Shell to Sea will not be exhibiting in Cool Earth this year or in the years to come. We are currently in the process of working with our IT department to remove the Youtube clip. As Cool Earth is run in house in conjunction with the Festival of World Cultures, the time, efforts and resources that go into the planning and delivery of the event is not quantified separately.*

*If you require any further information, please do not hesitate to contact me.*

*Kind Regards,*

*Kate Hynes - Environmental Awareness Officer BSC MSc CIWM*

*Dun Laoghaire-Rathdown County Council*

*Environment and Culture Department, Level 3"*

Her boss(es) clearly didn't believe I should have the information I had requested. However, I was insisting on my rights under Aarhus and sent in the correspondence I was having with DG Environment over non-compliances in Ireland. The door then started to open; I got a letter from Lynda Fox, Communications Officer, Corporate Services, who was responsible for the Access to Information on the Environment Regulations. Strangely her colleagues in 'Environmental Awareness' knew nothing about these Regulations, not to mentioned completely failed to inform the public about them, as is their legal obligation to do so.

So I sent in my Aarhus request to her pointing out among others:

*"It is clear then that there is a huge potential in the scientific and technical community within DLR for implementing measures to meet the targets of the Environmental Aquis. Yet the scientific and technical resources that are available are not represented at the exhibition and indeed the red carpet has been rolled out for those who have a strong track record in abusing them!"*

With regard to the funding arrangements I wrote in my request what I thought was jest:

*"What were the funding arrangements and responsible persons? One would hope that Minister Gormley [(5)] simply did not send round a check and ask for a 'gig' to be held for his 'ideological friends'. There must be budgeting arrangements, a criteria for each budget, a process by which money can be drawn down from those budgets and the names and responsibilities of those that approved the distribution of the funds".*

When I did get my reply I found out that:

- "The exhibition was not linked to any particular legislation. The Council selected Environmental National Government Organisations, businesses and charities that work towards alleviating the effects of climate change".
- "Due to the restrictions on the space available at the exhibition a limited number were invited to exhibit. The selection criteria for the guest speakers was individuals who have a background or interest in environmental issues".
- "The funding was provided for in the Council budget for the year. The Director of Environment and Culture is Richard Shakespeare. Expenditure on Cool Earth is approved by the Senior Executive Officer, Mr John Guckian".

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[5] John Gormley TD, Leader of the Green Party and Minister for Environment, Heritage and Local Government.

Neither did I get my offer of an internal review. However, I'm not really interested in local politics, but it did show the totally arbitrary manner in which mine and other taxpayers' money is being spent. Unfortunately in a manner which is deliberately abusive to those of us who work in science and technology.

It wasn't the only such circumstances. On 12th August 2009, Lorna Siggins of the Irish Times, who has being running a crusade against the Corrib Project, wrote an article on "Monitors say 'no ecological impact' from Shell spillage".

*"THE SPILLAGE of a chemical additive and a small amount of oil during construction work at the Corrib gas landfall in Co Mayo have had "no ecological impact", according to monitoring consultants for Minister for Energy Eamon Ryan.*

*The spillage, estimated at 20 litres by the Minister's environmental consultant, EirEco, and at 15 litres by Shell, flushed into a fully enclosed trench where it mixed with rainwater.*

*Shell said an environmental response team pumped the liquid out of the trench into sealed containers, which were removed to a waste facility and that the liquid is biodegradable.*

*It said yesterday that all relevant statutory bodies had been informed and a full report was being completed. The chemical additive is used as part of "hydro-testing" of the 83 km offshore pipeline, which has now been laid in full from Glengad out to the manifold at the Corrib gas field".*

So a bucket of suds spilled over and had to be mopped up. However, why does the Minister have an environmental consultant called EirEco? Surely it is just a coincidence that the Green Party Minister and campaigner against the project over sees a Government Department (DCENR) that commissioned this company Eirco to:

- To carry out spot check monitoring on the construction activities of SEPIL for the landfall and pull in of the gas pipeline and with the aid of a telescope to carry out spot checks of the vessel activity. Weekly reports were to be submitted to DCENR and the spot checks should not take place on the same day each week.

Both myself and a colleague from the EU technical aid projects, Oisin O'Sullivan, were keen to know certain details, such as

- What legislation was the legislative basis for this monitoring with reference to the relative Directives in the Environmental Acquis?
- What was the justification? For example the costs incurred, the benefits foreseen and alternatives considered, for instance with regard to the alternatives there is always the 'do nothing' option or using the existing environmental compliance division of regulatory authorities, such as Mayo County Council.
- Who approved this financial expenditure?

Neither of us got a reply to our AIE requests, as we have seen from the previous Section 6.5, the DCENR doesn't believe in answering such requests.

There is also the manner in which the Oral Hearings were run by An Bord Pleanala, as I have already highlighted there is a total failure to comply with Directive 2003/35/EC, in which the main reports and advice issued to the competent authority have to be made available to the public before the Oral Hearing. If we consider Germany they have since the mid-seventies defined the 'Stand der Technik', i.e. the state of technology, for high pressure gas pipelines in a series of technical regulations (TRGL). These were reviewed in the last few years and combined with those for long distance pipelines carrying oil and other chemicals (TRFL). If one looks at what was submitted by SEPIL to An Bord Pleanala, it is clearly the same as is required by the TRFL. Why wouldn't it be, the EU Directives applicable, such as for Environmental Impact Assessment and Pressure Equipment, are identical. Indeed the European Standards relating to the technical details of design and construction of the pipe work are all the same, after all that is what everybody manufacturers to and they are harmonised to the Directives. The difference in Ireland being An Bord Pleanala would not accept the technical details submitted by SEPIL, and instead were abusive to the engineering specialists presenting it, such as for five days 'grandstanding' about the 'kill zone', which had no relevance to the implementation of the legislation governing the project [(6)].

Finally as I have already mentioned the behaviour of politicians, who are paid for by the State, and the manner in which they stepped outside the democratic process and engaged in abusive behaviour to those of us engaged on this project, was completely unacceptable. Michael D Higgins TD is President of the Labour Party, Ireland's third largest party, which is in opposition. He actively campaigned against the Corrib project, even travelling to Norway to protest against Statoil, who have a 20% share in the project. On the 10th November 2008 I was travelling back from Galway on the evening train and as Michael D Higgins was also sitting in the same carriage, I took the opportunity to sit down beside him and explain what I did for a living, i.e. I had spent twenty years in industrial development and ten years in Central and Eastern Europe, implementing the industrial pollution control and major accident hazards legislation on EU technical aid projects. He started to get a bit nervous, but then when I explained I that it was unacceptable what was occurring on the Shell Corrib project and how people were acting outside the democratic process, without establishing that there were any breaches of legislation, he turned completely abusive, stating that his only involvement was with 'petroleum licensing' issues and then yelling for the train conductor to be called, so that the train could be stopped and the police called to arrest me. I pointed out quietly to him the article in the Irish Times in which he was campaigning for the terminal to be halted, dismantled and re-erected at a location that suited his political objectives. He just yelled even more, so I left him be on the train and took the opportunity instead to e-mail him at his Oireachtas e-mail address the next morning.

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6 Engineering is not about absolutes. It is the practical application of science relying on quantification, experience and the application of judgement. If society wants to benefit from the advantages of modern technology, they have no rights to zero impact or zero risk. In other jurisdictions oral hearings are a clarification exercise. In Ireland they are deliberately arranged to be completely adversarial. No attempt is made to clarify the legislative basis, but rather to undermine and demean the developer so that power can remain with the regulator to refuse on the basis of a technicality.

As far as I was concerned, it was clear from the files of the regulatory agencies that he had never engaged in the democratic process concerning the regulation of the project. Furthermore he and his 'associates' had access to information and had access to a judicial review procedure. Even though he was a public representative, instead of respecting the democratic institutions, he had instead engaged in a 'Trial by Media in the Court of Public Opinion'. It was the same old story I have seen in twenty plus years of working in Ireland. Michael D Higgins and many others in the media and political scene do not believe they have to acknowledge democratic due process, and believe they can instead 'free load' onto any particular bandwagon, which is perceived to be popular at the time. Which begs the next question as to who decides what is popular and as to who ensures that the truth is reported accurately? Michael D Higgins and his 'associates' at no stage established that there were environmental or safety issues related to the project, and when I engaged him face to face on this issue he was immediately abusive.

***Michael D Higgins, President of the Labour Party and active campaigner against the Corrib process. When I asked him why didn't he work through the democratic process and what was the basis for the environmental and safety issues that justified his 'Trial by Media in the Court of Public Opinion', he just became completely abusive.***

As far as the correspondence, I made it clear that "in no other country would such a compliant and essential project for the nation's infrastructure be subject to such physical intimidation, disrespect for democratic structures and have the President of the third largest Political party actively engaging in a Trial by Media in the Court of Public Opinion'" According to Michael D Higgins he wasn't engaged in such a 'Trial by Media" and he considered the correspondence closed, which was a bit rich since all of his involvement was outside the proper appeals process for complaints / objections to the project. I then wrote to Eamonn Gilmore TD, head of the Labour Party and public representative for my constituency of Dun Laoghaire Rathdown. I pointed out:

- "Ireland can either consider itself a "Knowledge Based Society" in which respect for the for the democratic institutions and legislative structure occurs, or it can be a "Populist Free for All", in which the media decides what is appropriate policy and development for the country and the politicians dance to that tune. Unfortunately Ireland is rapidly falling in to the latter camp and is no longer considered a stable environment with regard to investment decisions".

I even went as far as to ask for a clarification with regard to the future direction of governance in Ireland and if the actions of Deputy Higgins to date with regard to the Corrib Development reflected the official position of the Labour Party, or did the Labour Party respect the decisions of the planning authorities and Environmental Protection Agency.

I got no reply. However, I did get my answer nearly a year later on the 27th September 2009, when on the Sunday before the second Lisbon Treaty referendum, I was walking by the People's Park in Dun Laoghaire and came across Eamonn Gilmore and Enda Kenny (the head of the second largest Irish Political party) campaigning for a yes vote. I explained what I did for a living, including ten years working on EU technical aid projects, highlighting the total hypocrisy of Irish Politics to European Legislation and the willingness of the Political Process to abuse the Irish technical and scientific resources, which deliver the necessary infrastructure of the State. Enda started interrupting and blathering away about how €5 million of taxpayers' money had been wasted. Amazing not only is he a sitting TD for Mayo, but he didn't know that the Garda bill alone was in excess of €15 million, that €200 million in lost revenue had occurred, and that the country was completely off limits for any further industrial development. Furthermore his fellow Fine Gael TD in Mayo, Michael Ring, was one of the biggest campaigners against the project and had never been censured by his Party for acting outside the democratic process.

All I can conclude with is Michael O' Leary of Ryanair, who time and time again speaks out about the complete and utter gobshites in Irish politics and senior positions in the administration. As the Irish people are his customers, he doesn't saying the obvious – what are the people who put these individuals in positions of almost unlimited power?

### 1.7 Corrib – Where will it end?

Shell is a commercial company, which delivers hydrocarbons to its customers. In Nigeria it has to operate with a corrupt administration and the presence of show trials. It is no different in Ireland. It is not Shell or any other company's objective to straighten out the corruption in a country, as that is the duty of its citizens. Instead Shell's aim is to bring the hydrocarbons to its customers, as quickly and as efficiently as it can.

If in a matter of a dispute there is Access to Justice available, Shell or any other company would take that option. Clearly in Ireland in the Corrib case, it would just develop into a show trial. Currently the available information (July 2010), is that SEPIL is considering running a 5 km tunnel under the Broadhaven Bay Special Area of Conservation, the European site which has no proper management plan established for it by the Irish Administration. This is going to cost an awful lot of money, not to mention yet another Oral Hearing, etc. In the meantime, the terminal infrastructure, etc, which was constructed for €1.5 billion will be simply mothballed. Yes folks, as taxpayers you will fund 25% of the costs associated with all of this.

Personally I despair at the stupidity, when I was working in the Ukraine between 2000 and 2003, my colleagues in the Kiev office were supervising the construction of a new gas pipeline running through the South of the Ukraine into Romania. It passed through the Danube delta, the most important biosphere wetlands in Europe, both an UNESCO and European protected site. Why not – it was a simple trench and the pipeline was dropped in and the grass and foliage was back to normal in a few months, there were no significant impacts that would have an adverse affect to the integrity of the site.

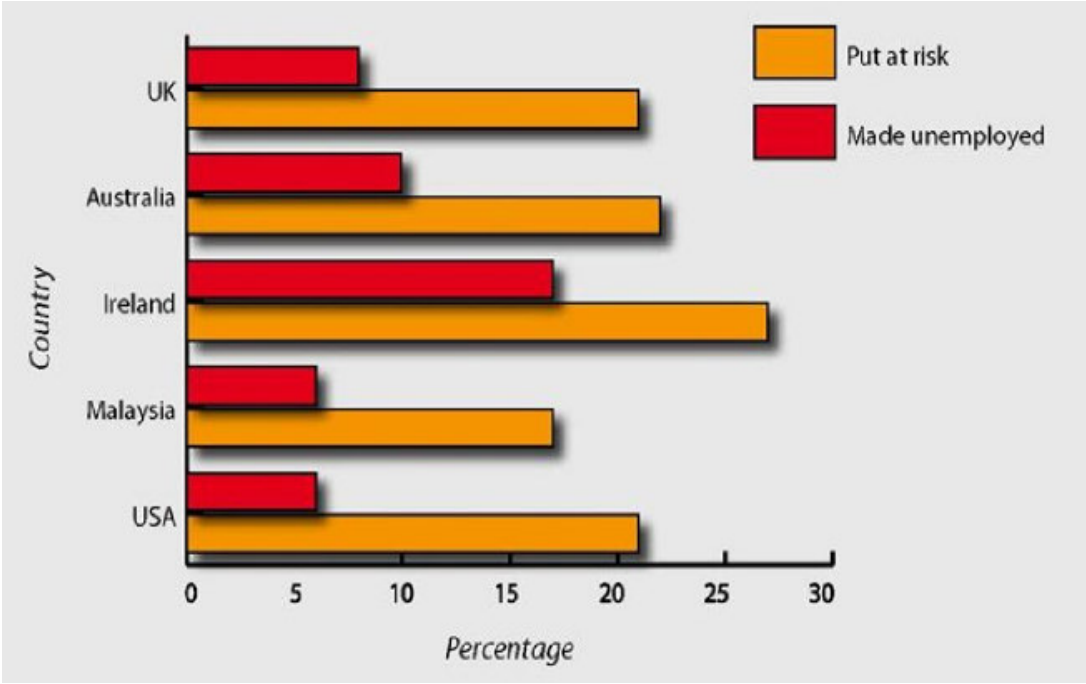

***Some of the Irish technical resources, who were responsible for delivering the Corrib project, twice completing one million hours of accident free construction work. It will be a small minority of them which will work in Ireland over the next decade.***

The biggest losers are of course those of us who make a livelihood in Ireland in the field of industrial development. As I stated already in Section 3.1; StatoilHydro, who have a share in the controversial Corrib project in County Mayo, stated to the Media in August 2009, even before An Bord Pleanala refused to give planning permission to the final 9 km of pipeline:

- "When we look at political risk with practical consequence to project progress then Ireland unfortunately stands out as an example".

The game is up in Ireland, one can't invest considerable time, money and resources in a country where the regulatory system is corrupt and acts outside the legislative basis, particularly when if it does go wrong, which it frequently does, there is no Access to Justice.

In August 2009 Matt Stalker, who is the Press and External Relations Officer of the Institute of Chemical Engineers, contacted me with regard to the results of a worldwide survey of the economic downturn, and the impacts it was having on Chemical Engineers. The results from Ireland had been pretty alarming, as the unemployment level was twice that of the wider global survey, and the numbers of members put at risk was also above average. Globally 50% of the members predicted a modest upturn in 2010 and only 17% predicted even more pain ahead. However, in Ireland 49% of the participants believed things would get worse in the coming year, outweighing the 30% who predicted an improvement.




***Institute of Chemical Engineers' survey in August 2009 measuring the impact of the global downturn. The results from Ireland were particularly alarming – no projects, no employment.***

In an e-mail to the EU Commission (DG Environment) and the Private Office of the Taoiseach on the 22nd October entitled "Officials of the Irish State acting outside the Legislative Basis and Failing to Respond to Aarhus Requests", I highlighted with regard to the job losses that were being documented by the Institute of Chemical Engineers:

*"As a technical specialist in industrial development and implementation of the Environmental Acquis, I am qualified as a professional Chemical Engineer (Fellow of the Institute of Chemical Engineers) and a Chartered Environmentalist (Member of the Institute of Environmental Impact and Assessment). Traditionally in Ireland chemical engineers would be seen as somewhat boring to a public brought up on a diet of the heroes of the revolution, GAA, cultural activities, etc.*

*Yet who designed the pharmaceutical, chemical, electronic, medical device, power generation, food and beverage, etc, plants around the country? Who twenty years ago successfully completed the small projects, then the medium sized ones and were then entrusted with serious investment sums for the €500 million plus projects? You would expect that as a country it would make a wee bit of sense to keep these guys going, especially since given the right climate they bring in investment, much of it significant, rather than suck subsidies from the taxpayer, such as circa. €130,000 per annum per wind energy job. Indeed for every hour of design work they complete, there are about 50 hours of construction related activity to follow, not to mention a few decades of operation in running the production facilities. We need to re-engineer energy delivery systems, waste technologies, etc, to meet the targets in the Environmental Acquis, not to mention develop the manufacturing expertise and facilities to generate the income to finance it – these guys are qualified with a track record!!!"*

Again I received an e-mail from Paul Mooney in the Taoiseach's Private Office:

*"I wish to acknowledge receipt of your email of 22 October, 2009 which will be brought to the Taoiseach's attention as soon as possible".*

In my case it is very simple, twenty years ago as a young engineer, who returned to Ireland, I experienced the stupidity associated with a violent campaign against a perfectly good pharmaceutical project in East Cork, which eventually caused the company Merril Dow to pull out of Ireland, see previous book for more details. One lived in hope; there was new European legislation and structures being put in place. With experience came the bitter reality, it didn't matter what standards were met or public presentations made, the witch hunts in the media and the political scene just got more abusive. With Corrib, we have now reached the stage where the legislation doesn't even count anymore, decisions are clearly being made outside the legislation for purposes of political patronage.

Elsewhere the scope and understanding of the Environmental Acquis has continued to develop. A developer of an industrial project clearly understands what standards he has to meet and which location is suitable or unsuitable for his development. In my case, if I was to prepare such a regulatory package in Ireland having met all the requirements, the chances are I would be obstructed by the regulator failing to complete his necessary assessments within the statutory timeframe. Then there would be the usual 'controversy' in the media and the failure to the regulator to comply with the legislation in place. The accusations would fly that "the project wasn't right or the documentation wasn't properly prepared". On the one side would be the perplexed developer, who has invested considerable time and money in a fully compliant project, on the other would be the considerable number of technical personnel, whose livelihood for the next few years depended on this project passing through the approval stage. In the middle – myself!

Believe me, I've seen it. What has happened in Corrib is not just a simple matter of disrespect, but what has passed well outside the minimum standards set by law into outright abuse. As I concluded in my previous book:

*"As a Principal Chemical Engineer and Environment Health and Safety Specialist, I have never experienced outside of Ireland anything that approaches the ignorance, intolerance and abusive behaviour that I have experienced directed at my professional colleagues, valued clients and friends in industry in Ireland over the last twenty years. The truth is I now prefer to go to the airport rather than continue to stomach it any longer; there is no financial or emotional future for me in Ireland under the circumstances that currently prevail. Others are / will also leave! Ireland is a democracy; a system of Government that millions in Europe in the 20th Century died to protect, it only works and has a future if the public take it seriously and respect it!"*

History repeats itself. Heinrich Böll was one of the great German post war novelists, who won the Nobel Prize for literature in 1972. One of his most famous novels, Irisches Tagesbuch (Irish Journal), recounts his time in Ireland in the early nineteen fifties, when he lived in Achill in Co. Mayo. Chapter 4 is entitled "Mayo – God Help us", which is followed by a section in which he visited a deserted village, which to him looked as if it was the bombed out remains of a settlement. In it he recounts, how he met an old woman, left behind in the ruins of the village, who had six children of which only two remained in Ireland. One daughter had married and had raised six children, of which two were in England and two in the United States. Personally I have discussed with an industrial developer, who knew the scene

in Ireland very well, the various regions of the country, which were gobshite zones. If you tried to build anything there, no matter what, there would be just howls of protest and anti-democratic behaviour, it simply wasn't worth it. Mayo is of course one of those zones, so too are Cork and Galway, and in comparison with other Member States Ireland is now a complete disaster.

# ATTACHMENT 1

## EPA AND CORRIB IPPC LICENSE – INSHORE IRELAND ARTICLE

# YOURVIEW



# Is the environmental licensing procedure open to political interference?

**Pat Swords**

In the July edition of *Inshore Ireland*, the Environmental Protection Agency (EPA) stated that they had received no notification from SEPIL (Shell Exploration & Production Ireland Limited) seeking an amendment to its existing Integrated Pollution and Prevention (IPPC) licence for a relocation of its outfall from 12.7 km offshore to more than 80 km offshore. The EPA website shows that the EPA had acknowledged receipt of this notification on April 3, 2009.

Only industrial and agricultural activities with a significant pollution potential are regulated in the EU by the IPPC Directive. This licensing process has been successful but it is a very detailed process requiring significant input from the regulator and industry. Mineral oil and gas refineries are included in the Directive. However, typical offshore installations in the EU include central platforms where gas is dried. Offshore platforms are not included in the scope of the EU IPPC Guidance and in most Member States, including Ireland, are not subject to IPPC licensing.

Natural gas sources in Ireland are very pure and only simple treatment is required comprising mainly dehydration, i.e. purification is not required. The Corrib facility is built onshore to comply with the EU and national safety legislation as the hazards involved with offshore work are now avoidable due to 'adaptation to technical progress'. The decision was taken to license the Corrib Termina. to IPPC even though similar simple gas treatment plants operating offshore do not fall under IPPC.

In terms of volume, the processed waste-water from the Corrib terminal is equivalent to that of a standard small hotel. Given the purity of the wellhead gas, the level of contamination in the produced water is very small; furthermore it undergoes treatment and monitoring before discharge.

As was to be expected, the IPPC licensing process showed no adverse impacts from this discharge. However, as a gesture of 'goodwill' in order to achieve the financial settlement with the local fishermen, the outfall was agreed to be relocated 80 km offshore at a depth of 300m.

As stated to *Inshore Ireland* in December 2009 by the EPA:

- A Technical Amendment procedure cannot be used to allow for the creation of a new emission point of a significant emission.

However, the emission of the produced water is neither significant nor new; it is simply being relocated to an area of even less sensitivity.

The Irish EPA also clarified that a technical amendment can be used for:

- Making another change to a wording of a condition, which will have no significant effect on the environment

As clarified above, the existing discharge does not have a significant effect on the environment; neither will it at its new location.

The function of the IPPC Directive is 'to achieve a high level of protection of the environment taken as a whole'. Reopening an already protracted licensing process for the above when a simple technical amendment suffices is clearly politically motivated; is not technically justified and does not provide any environmental benefits.

As StatoilHydro, who have a share in the project, stated to the media in August 2009:

'When we look at political risk with practical consequence to project progress then Ireland unfortunately stands out as an example.'

It is clear in Ireland that populism and political patronage are compromising regulatory procedures. Furthermore regulatory agencies are legally obliged (Aarhus Directive) to provide active and systematic dissemination of environmental information to achieve the widest possible systematic availability.

In reality, any company considering locating here has in addition to meeting the necessary standards, to undergo a licensing process that is longer, more costly and more open to political interference than in other Member States. They also have to carry the costs of a PR campaign to highlight what the actual environmental standards and requirements are. No wonder industrial investment in this Member State has essentially come to a halt.

Pat Swords is a Fellow of the Institute of Chemical Engineers and a Chartered Environmentalist. He has over 20 years experience in the design and regulatory approval of industrial projects and for the last 10 years has worked extensively in Central and Eastern Europe on EU Technical Aid projects implementing the IPPC and Control of Major Accident Hazards Directives.



## *Inshore Ireland* invited the EPA to respond to the following questions:

**Q: What is the basis under which a relocated emission of very low volume of waste water treated to a high standard can be judged to be a new emission point of a significant emission?**

**Q: What is the basis on which the relocated emission above will arise to a significant effect on the environment?**

*[Note: Pat Swords told Inshore Ireland that if these questions were not justified then clearly a technical amendment procedure provides a 'high level of protection to the environment taken as a whole' as is the stated aim of the IPPC Directive.*

*He added that additional expenditure on a protracted and drawn out re-licensing process provides no additional protection for the environment and is therefore not justified under the terms of the EU legislation.]*

### EPA responds:

IPPC licences aim to prevent or reduce emissions to air, water and land, reduce waste and use energy/ resources efficiently. An IPPC licence is a single integrated licence, which covers all emissions from the facility and its environmental management. All related operations that the licence holder carries on, in connection with the activity, are controlled by the licence.

The IPPC licensing system is designed and operated by the EPA to be open and transparent. The public has access to the application documentation in electronic format on the EPA website. In addition, the licensing process allows for written submissions and objections by anyone, as well as the provision of an oral hearing of objections.

The EPA completes a detailed scientific assessment of all licence applications. The EPA is prohibited under the law from granting a licence unless it is satisfied that emissions from the activity will not cause a significant adverse environmental impact. It is also worthwhile to note that it is an offence under Section 40 of the EPA Act for any person to attempt to influence improperly a decision of the Agency.

Once a licence is granted, changes to EPA licences can be accommodated either via technical amendment or licence review.

- technical amendments can be made for minor changes of a clerical or technical nature
- a licence review is required for other changes that relate to the operation of a facility.

A licence review allows for the full assessment of the proposed change to the operation, to ensure that the alteration will not have an adverse impact on the environment. The review process allows for public participation and any submissions will be assessed prior to a decision being made by the Board of the EPA.

SEPIL sought a Technical Amendment to their IPPC Licence (Register Number 738-01) on 2nd April 2009, in order to allow for the making of a new emission point at sea, for discharges of treated produced water. The Technical Amendment request was rejected on 23rd June 2009 and SEPIL were advised that if such a change were to be pursued, a full review of the IPPC licence would be required, as the proposal in its entirety is considered amaterial change that requires detailed assessment in the context of BAT, environmental impact and public participation.

A request for such a licence review has not been received by the EPA to date.