



CHIEF STATE SOLICITOR'S OFFICE  
OIFIG AN PHRÍOMH-ATURNAE STÁIT

7<sup>th</sup> August 2009

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**BY POST AND EMAIL**

RECEIVED  
18 AUG 2009

Re: Haulbowline Island

Dear Mesdames,

We refer to the above matter and your correspondence to the Minister for the Environment, Heritage and Local Government and the Minister for Finance dated the 9<sup>th</sup> July 2009 and the 14<sup>th</sup> July 2009 respectively.

We reply as follows to the matters raised therein:

**1. The first issue raised by your clients relates to holding, disposing or recovering of waste at the site:**

Steelworks have operated on Haulbowline since 1939 and at a time when such industrial activities were poorly regulated. Inevitably, the nature of the activity generated large quantities of process wastes which were then deposited on site, predominately in the area which became known as the 'East Tip'.

Having been in difficulty for some time Irish Ispat went into liquidation in June 2001, initially, the liquidator took over the company's lease on lands and foreshore at Haulbowline Island, Cobh, Co Cork. In February 2003, he exercised a break clause in the lease, and gave three months' notice. He was constrained to remain on site until June 2003 by way of injunction.

During this period, a Memorandum was brought to Government seeking a clear mandate for managing and securing the site. The mandate required the Department of the Environment, Heritage & Local Government to coordinate the legal actions which the State initiated against the liquidator under Sections 57 & 58 of the Waste

Management Act 1996 and to cover issues such as ongoing site security, ongoing maintenance, removal of deteriorating materials, other issues arising once the site was vacated by the liquidator and also to enable a site investigation to be carried out to determine the best option, economically and environmentally for site redevelopment/remediation.

In the context of the introduction of the licensing system provided for in the Environmental Protection Agency Act, 1992 the Irish Ispat facility applied for, and was granted by the EPA, an Integrated Pollution Control (IPC) Licence. Such licences encompass the full range of environmental impacts of an activity, including in respect of the management of wastes arising as a result of the activity. However, as noted above, the company went into liquidation before the conditions in the licence could be met and the liquidator was successful in his application to the High Court seeking to disclaim the IPC licence. In the Minister for the Environment and Local Government, Minister for Defence, Minister for Communications, Marine and Natural Resources – v- Irish ISPAT Limited (In Voluntary Liquidation) and Ray Jackson, Liquidator on 29 July 2004, it was found as a matter of fact that the IPC licence was granted after the company had ceased production of steel and that the conditions of the licence could not be applied retrospectively. A lacuna thus arose as regards the regulatory status of the facility. Necessarily, the resolution of this must involve a determination as to the future use of the site and thus the appropriate regulatory arrangements, which should apply to it.

**2. The second issue raised by your clients relates to waste currently being held at the site is causing and is likely to continue to cause environmental pollution:**

In light of the concerns raised by the Department of the Environment, Heritage & Local Government during the aforementioned court proceedings, namely, *“that there is serious environmental pollution at the site in Haulbowline as a result of holding, recovering or disposing of waste”* the State since 2004, in dealing with the legacy issue of waste at the site, has been properly engaged in the management of the site in a manner consistent with best practice and minimisation of risk to human health and the environment.

In this context, the State has been particularly mindful of the responsibility placed on it by virtue of the Waste Framework Directive (Council Directive 75/442/EEC as amended) and in particular Article 4 which requires Member States to take necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment.

Accordingly, the Department of the Environment, Heritage & Local Government arranged for the decontamination and demolition of the buildings on site and post-demolition arranged for the procurement of a contractor for site surface clearance, back filling of voids and the disposal of the remaining surface wastes to be undertaken. The State has expended some €50 million to date on investigations, site works, disposal of waste material, testing and sampling, analysis, topographical and foreshore ecological surveys, project management, professional fees and security.

The clearance of the site was also essential in respect of facilitating the extensive site investigation to determine the extent of environmental damage and to guide a further Government decision on the future development/use of the site. This investigation found that there were no identified risks to the residential inhabitants of Cork Harbour associated with the presence of waste materials at the East Tip on Haulbowline Island.

Environmental monitoring is also currently ongoing at established monitoring points (boreholes made during the site investigation and a number of dust monitoring stations) in order to provide continuous baseline monitoring data for the purposes of any Environmental Impact Statements or Strategic Environmental Assessments to be carried out preliminary to either remediation or redevelopment processes.

Following a series of extensive unauthorised works in early 2008 the Department of the Environment, Heritage and Local Government re-engaged consultants, White Young Green, to carry out a rigorous assessment of site conditions following the extensive unauthorised works. This assessment involved the assessment of surface water, marine sediment and mussel bivalves in the vicinity; assessment of any health or environmental risks posed by the unauthorised works; and ambient air monitoring.

The consultants had the full benefit of the advice of the EPA, the Marine Institute and the Health and Safety Authority and concluded that there are no identified risks to the inhabitants of the Cork Harbour area associated with the presence of waste materials at the East Tip. A number of recommendations for further works and monitoring arising out of the findings of the site assessment were made including the reinstatement and back filling of the unauthorised excavations.

An environmental geotechnical assessment report and engineering specification has been prepared for the safe backfilling of the sea breach area and the unauthorised excavations and this work will be undertaken as soon as practicable once the working group has had an opportunity to examine the report and specifications.

**3. Your client raises an issue in respect of waste being held on, in and over the ground comprising Haulbowline Island and is not being held in properly engineered landfill cells or otherwise properly contained.**

As noted above the Steelworks have operated on Haulbowline since 1939 and at a time when such industrial activities were less rigorously regulated. Accordingly the East Tip where the waste material was deposited does not compare to new modern landfill sites which are now designed and engineered according to the highest EU environmental standards. A detailed risk assessment of the entire site will be necessary once the Government has decided on the proposed future use of the site and appropriate containment measures and/or removal of material will be a key issue to be addressed following on from that decision.

It is important to note that there is no activity taking place on site and that both the 2005 Geotechnical site assessment report and the 2008 site assessment concluded that there was no immediate threat posed by the undisturbed waste materials on site.

**4. The fourth issue relates to the licence.**

The Government decided on 23 June 2009 that the Office of Public Works, whose expertise is in property management, architectural and engineering services, heritage services, project management and procurement services, will chair a working group bringing together all the key stakeholders to develop plans for the further management and development of the site. Cork County Council will continue to discharge the daily management functions on an agency basis. There is a range of complex interrelated issues that have to be dealt with, including the requirement for various works and further monitoring recommended by the environmental consultants, development issues (particularly technical constraints), site boundary issues and zoning issues. Lengthy and detailed consultation processes are in any case likely to be required in order to determine an appropriate planning and development framework, whether under the next County Development Plan, under a material contravention procedure, or any other mechanism.

Yours faithfully,

  
**DAVID J. O'HAGAN,**  
**CHIEF STATE SOLICITOR.**