

# NEWS

Following a Mary Raftery Journalism Fund-supported special environmental compliance investigation, **Dan Danaher** believes the Environmental Protection Agency's enforcement approach should change

## Change needed to tighten environmental controls

THE Minister for Communications, Climate Action and the Environment, Denis Naughten should, I believe, introduce a penalty points system for companies who are handling large quantities of hazardous waste and different types of chemicals, to provide increased protection for employees and the public.

This initiative is justified, judging by the response of the Environmental Protection Agency (EPA) to successive environmental breaches by some local companies such as Chemifloc, Saint-Gobain, Enva and Finsa.

The EPA does not accept that its enforcement of licensed facilities is inadequate, nor that there is an absence of a deterrent factor. The agency states it operates a risk-based approach to enforcement and actions are "escalated in accordance with our enforcement policy".

It has a range of sanctions available up to and including prosecution and suspension or revocation of a licence. It operates a system for ranking licensed sites based on compliance and enforcement data. According to the agency, this system has been "recognised in Europe as one of the best in class models for such evaluation".

It says the prioritisation of sites in this way allows the EPA to target enforcement at the most poorly

were featured in the investigation were initially granted Integrated Pollution and Prevention Control (IPPC) licences, apart from Enva and Clean Ireland Recycling Limited, who have waste licences.

The main function of these licences is to ensure that companies that are handling potentially toxic chemicals and waste, operate to the highest standards.

All 17 companies highlighted by *The Clare Champion* play a vital role in the local economy and it is essential that they continue to expand, so that fewer young highly-qualified graduates have to travel abroad for work.

However, I believe, it cannot be a case of providing jobs at any price. Clare people deserve to live and work in any town or village without being forced to endure foul odours.

One of the EPA's key functions is pollution prevention, which currently operates through a self-monitoring system, where companies are required by the licence to report any breach of Emission Limit Values (ELVs) or other environmental breaches to the agency.

The agency regularly completes site inspections, where an inspector examines the company's adherence to its licence under a number of headings. A written site visit report is completed and, in the event

incidents that result in pollution or threat to employees would have to attract much higher points.

Each company would also have to be assessed in terms of risk, with higher points for breaches in firms with a high-risk categorisation.

Minister Naughten should, as a matter of urgency, appoint an expert team to draw up a new template for an environmental penalty system. In my opinion, once any company reaches a fixed figure within a three-year period, they should have to suspend production for a specified period of time.

Minister Naughten could also incentivise environmental compliance by introducing a 10% rebate on industrial emissions fees, with the same rebate for companies who have a very good record and stay under a proposed environmental score within a three-year period.

In the case of reported illegal/backyard burning, a Clare County Council officer will investigate the complaint as a matter of urgency, in an attempt to identify the culprit and also to assess the scale and nature of the alleged offence. When investigating such an incident, an official will endeavour to speak with any persons who are present at the incident location.

The council has a scale of enforcement actions, which range from the

year period.

On March 19, 2014, the particulate emissions were more than 20 times the licence limit, before it halved the following month.

The company insists its manufacturing process produces particulate emissions in the form of an "inert, non-hazardous, odour-free, sand-like silica material".

The EPA has already turned down a company application to increase particulate levels. It believes the best way of resolving the appropriate limit for particulate emissions is as part of a full licence review.

A number of other companies also had licence breaches over a number of years.

Finsa Forest Products Limited in Scariff was the subject of non-compliance notices as far back as 1998.

In November 2003, the company was convicted of nine counts under the 1992 EPA Act. Four non-compliance notices were issued in 2003, two in 2004 and one in 2005, following further site visits. There were further breaches in 2008, 2009 and 2010 but no prosecutions were brought.

The EPA is unable to confirm that all outstanding environmental issues at the Finsa site have been fully addressed, more than six years after chipboard production ceased in December 2010.

This has prompted claims that the delay in fully addressing all environmental issues at the former chipboard factory is hindering efforts to secure a major alternative employer for East Clare.

The investigation revealed the EPA knew that 128 items of hazardous waste over six-months-old were being stored in Enva, Shannon

In a letter to the EPA on December 1, 2014, Enva outlined there were 28 inventory items of sodium and potassium borohydride, nine items of oleum waste and three items of gas cylinder waste over 12-months-old. The target completion date for disposal was March 31, 2016.

Enva management stated all waste is stored at the facility according to a segregation plan, to ensure incompatible classes of materials are not located together.

The failure to provide proper bunding to prevent pollution in the event of a spillage from a container holding dangerous chemicals featured regularly in site visit reports.

The agency has delivered 11 non-compliances in relation to the Element Six site in Shannon since 2013.

After completing a site visit report in March 25, 2015, the agency expressed dissatisfaction with waste storage, pipeline testing, bunding, air monitoring sampling and "poor housekeeping".

A company spokesman stated the firm was praised by an EPA inspector for the improvement in environmental management last February.

After a site inspection of Eirtech Aviation Services Limited in Shannon on January 29, 2014 an EPA inspector stated, "environmental management has not improved since the last inspection in May 2012".

The company says its dedicated environmental management team and policies help ensure it "implements gold standard environmental practices".

The investigation also revealed that Chemifloc Limited in Shannon had only completed two out of nine proposed corrective actions one month after eight workers were admitted to University Hospital Limerick with respiratory problems on December

20, 2012, when 20 nearby premises were evacuated.

It also emerged it took Chemifloc Limited until August 23, 2013 to install a chlorine alarm, despite the fact the EPA set an implementation date of June 30, 2013.

There is no evidence of the EPA issuing a follow-up warning or enforcement notice, following an examination of environmental documents.

Chemifloc stated it takes its responsibility to "its 50 or more employees, local community in Shannon and the environment very seriously".

Minister Naughten has to decide if it is acceptable for any firm to repeatedly breach its licence conditions over successive years without any financial penalty.

The investigation also discovered a number of anomalies, which will require that new environmental legislation is introduced.

This includes the revelation that damage estimated at €470,000 has been caused to the Smithstown Industrial Estate sewer network.

It also emerged that there is no legislative provision for the recovery of money to address the actual damage caused to the Smithstown sewer in the event any person or company is prosecuted.

Irish Water has confirmed that any person or company who is found guilty of damaging a sewer is liable, on conviction, to a fine not exceeding €5,000 or three months imprisonment.

For some companies, I feel this is not enough of a deterrent. The taxpayer should not have to pick up the tab for damage to a sewer network. The Government needs to close off this loophole as quickly as possible.

The investigation confirmed there is no statutory provision for public consultation concerning the proposed closure of Roche Ireland in Clarecastle, which is one of the largest pharmaceutical companies in the country.

This is despite the fact the closure will involve the safe disposal of an estimated 817 tonnes of hazardous waste and 4,182 tonnes of non-hazardous waste.

A person can make a submission to a public planning file if a company is building a new warehouse but has no input into the closure plan at Roche.

The EPA's response that any person can contact the agency in relation to activity at the facility is, in my view, not acceptable.

Minister Naughten should introduce legislation to ensure all Seveso companies and large chemical plants have to submit their closure plan to a local authority planning or environmental file to facilitate public inspection and submissions.

The investigation also revealed there is no legislative requirement to carry out a public consultation process on technical amendment applications. This means that any company with an IPPC licence can apply for permission to increase its emissions, without any right of public participation or, more importantly, an appeal process.

This is in sharp contrast to the planning process, where a party can at least make a submission to the local authority on a development that could adversely affect them. This needs to be urgently addressed.

Last year, local companies paid €220,000 in fees to the EPA. In addition to the 17 Clare companies, there are 40 firms in Limerick, 45 in Tipperary and 29 in Galway with an industrial emissions licence.

The need for a new regional office in the Shannon region, which could cover Clare, Limerick, Tipperary and Galway was first raised at a meeting between the agency and Clare County Council on May 27, 2013.

Given the large number of chemical and pharmaceutical companies in the Mid-West and all the accruing fees, Minister Naughten should request the EPA to provide a new, properly-manned office in the region.

The minister does not have to initiate an investigation to establish whether or not the current self-monitoring system for industrial emissions is working.

In my opinion, all he has to do is examine the evidence presented in *The Clare Champion* Special Investigation and make the necessary legislative changes in the interests of the environment and the public.

"It shouldn't be too hard to devise a system where, for example, an observation carries one environmental penalty point and a non-compliance results in three points."

compliant operators. However, I believe the anomalies and environmental breaches highlighted during *The Clare Champion's* special investigation, which examined the environmental compliance of 17 local companies, has shown that the EPA's enforcement policy is not operating effectively.

The response by Minister Naughten to the main findings of the investigation has, to my mind, been very disappointing.

This week, a spokesman for the minister stated, "The EPA is an independent statutory body with responsibility in this area as per the Environmental Protection Agency Act 1992 and the minister has no role or function in this regard. However, the department notes that the issues raised have been addressed by the EPA in letter dated [to *The Clare Champion*] on April 11".

Fifteen of the companies who

of licence breaches, the company is required to implement a series of corrective actions, which is often tracked through a compliance investigation.

All the companies insist they take their environmental responsibilities very seriously.

However, in my view, in some cases, the response was reactive and a new penalty points system is required to encourage a more proactive approach.

Currently, companies are issued with an observation for what is deemed to be a relatively minor environmental breach and a non-compliance for a more serious one.

It shouldn't be too hard to devise a system where, for example, an observation carries one environmental penalty point and a non-compliance results in three points. Higher penalty points could apply for repeat offenders, while major

issuing of a warning letter to direct referral to legal proceedings. The council takes a strong enforcement stance on such matters and has secured successful convictions with large financial penalties for cases.

Because of the use of an electronic recording system for all pollution cases, the council is easily able to establish if incidents, such as burning complaints, are a regular occurrence at a specific location, which ensures that repeat offenders do not go undetected.

Contrast this approach with that of the EPA. In my view, there is a lack of serious enforcement in relation to serious instances of environmental pollution. The special investigation highlighted numerous examples in this respect.

Saint-Gobain Performance Plastics Limited in Kilrush breached its limit for particulates emissions on at least 24 occasions during a three-



in April 2013, eight months before out-of-date chemicals had to be removed in a joint army, garda and fire service operation in December 2013.

This hazardous material was taken to a quarry in Bunratty and detonated safely in a controlled explosion.

The investigation also found that the company was still storing hazardous waste over six-months-old a year after this emergency operation, which had prompted huge concern at the time.



## EPA insists licence enforcement is adequate

Dan Danaher

THE Environmental Protection Agency (EPA) has insisted its enforcement procedures, regarding companies with industrial emissions licences, are adequate.

Responding to the main findings of *The Clare Champion*/Mary Raftery Journalism Fund special investigation, the EPA does not accept there is an absence of a deterrent factor in terms of preventing environmental breaches of integrated pollution and prevention (IPPC) and waste licences.

In a statement to *The Clare Champion*, the agency outlined it operates a risk-based approach to enforcement and actions are escalated in accordance with its enforcement policy. Its range of sanctions include prosecution, suspension or revocation of a licence.

"The EPA continues to focus its enforcement efforts on those sites which have the poorest compliance record. A total of 16 prosecutions were concluded in 2016; eight cases have been heard in 2017 to date and a further 16 cases are before the courts," it stated.

An independent review of the EPA conducted in 2011 found that "demonstrable improvements in respect of the environment and the standards of operations of relevant facilities have resulted from the introduction of the EPA's licensing regimes".

In relation to the proposed introduction of an environmental penalty points system for companies with IPPC licences, the EPA stated that, while this query is also directed at Environment Minister Denis Naughten, it has a system for ranking licensed sites based on their compliance and enforcement data.

"This EPA system has been recognised in Europe as one of the best in class models for such evaluation. The prioritisation of sites in this way allows the EPA to target its enforcement at the most poorly compliant operators."

"The EPA operates an open and transparent licensing and enforcement system. All licence application documents are published online and any person can make a submission on any application."

"Any person can make a query or complaint to the EPA regarding a facility and this will be followed up and investigated. The EPA highly values the role that individuals and communities play in ensuring compliance and we view all communication from them as an integral part of our process," stated Office of Environmental Enforcement programme manager, Mary Gurrie.

Technical amendments to licences

are provided for under legislation to facilitate minor changes to a licence and their scope is restricted by the legislation.

The agency admitted the amendment process does not provide for public participation. Any significant changes to a licence can only be made through a licence review, which includes full public participation.

Asked about the damage to the Shannon sewer network estimated at €470,000, the agency stated the recovery of costs is a matter for Clare County Council.

It stated that where discharges to sewer from a licensed facility are found to be non-compliant, then the EPA will pursue this issue through relevant enforcement actions in accordance with its enforcement policy.

The EPA is not aware of any specific information as to how the sewer network in Smithstown Industrial Estate first became damaged, or indeed when this happened, it added.

Closure, Residual and Aftercare Management Plans (CRAMP) set out the measures required to bring a facility to a satisfactory state on closure or cessation of the activity, to ensure it does not pose a risk to the environment.

While the CRAMP reports submitted by licensees are not currently available on public file, as they contain detailed financial and or potentially sensitive commercial information, they are available on request, the EPA noted.

Asked about calls for the establishment of a new office in the Shannon region, the EPA stated its Office of Environmental Enforcement was established in 2003 and adopted a regional approach to licence enforcement, with inspectors based in offices in Wexford, Kilkenny, Cork, Dublin and Castlebar.

"The regional presence ensures the EPA can provide a prompt response to all complaints and incidents received in the region," Ms Gurrie outlined.

*The Clare Champion* also submitted a series of detailed questions to the Minister for the Environment, Denis Naughten, about the main findings of the investigation.

A spokesman for Minister Naughten issued the following reply, "The EPA is an independent statutory body with responsibility in this area as per the Environmental Protection Agency Act 1992 and the minister has no role or function in this regard. However, the department notes that the issues raised have been addressed by the EPA in letter to *The Clare Champion* dated April 11, 2017".



■ Making Shapes...Cormac Lynam making his own sport as a runner goes by at the Craic On The Track Marathon in aid of Clare Crusaders in Lees Road at the weekend. For more see section 2, page 15. Photograph by John Kelly

## Green light for Shannon park

Owen Ryan

PLANNING permission has been granted by Clare County Council's planning section for the local authority's redevelopment of Shannon Town Park.

The proposed works include the creation of a natural water feature, an adventure play area and a bandstand/performance area, the laying of footpaths, cycling track, seating and a pedestrian crossing on Bóthar Linne.

A submission on the development from SkyCourt shopping centre manager, Pat Kelly, stated, "Whilst in preparing this submission, our findings certainly indicate a range of benefits and opportunities in the development of a new flagship town park, however it is important that redevelopment connects to existing networks/facilities. Potential linkages to the balance of ease of traf-

fic movement, create convenience of locations and visual linkages should be developed and maintained. The development should connect and visually integrate with surrounding development and landforms.

"It is submitted that the town park must be seen as part of the wider development context for the town and not a standalone project.

"Investment in the town park offers an excellent opportunity to better integrate the park with the town centre, encouraging movement between the two and providing an integrated and connected town."

Councillor Gerry Flynn also made a submission in which he said a covered structure could contribute to anti-social behaviour, saying he would rather see the placing of seating in strategic locations.

The independent councillor added that the installation of a water feature would be "very

desirable".

He said he would like a management system to be in place and for the gardai to take an active role in it.

The planners report for the development recommended leaving out one element of the original design.

"The bandshell lightweight feature structure shall be omitted unless and until further studied design, passive surveillance and security options are provided. Prior to the introduction of such a feature, it must be agreed in writing with the planning authority."

It also stated that "any lighting provided within the site shall be designed to ensure there is no increase in ambient light levels beyond the perimeter of the site".

Furthermore it stated that "appropriate warning signs shall be provided on Bóthar Linne, to inform traffic of the presence of the park/toucan crossing".

## Walking routes proposal 'diluting' greenway focus

Jessica Quinn

CLARE County Council has stepped away from proposals to develop walking routes along the Western Relief Road and Ennis Bypass, saying it would result in a "diluting" of the focus on the West Clare Railway Greenway.

Councillor Mary Howard, at a meeting of the Ennis Municipal District, made the suggestion that the council consider the development of walkways along the access routes developed during the construction of the relief road and bypass.

"I see people walking on the roadway on the inside of the motorway, but their path is being impeded in parts, which I assume is a means of blocking cattle," she said.

Councillor Paul Murphy supported the proposal, saying it would "give people a chance to walk safely and get off the busier roads".

However, Tom Tiernan, acting director of services for physical infrastructure, replied, "There is already a good quality fully-lit pedestrian footpath along the N85 from Clareau to Clareabbey. From Clareabbey onwards, the off-carriageway access routes aren't continuous and it would be very difficult to establish connectivity between some sections. There are no funding streams available at present to review the routes, or to design upgrades and signage which might be required."

"Continuity and connectivity would be significant issues to overcome, with major cost implications. Our primary focus at present is in relation to achievement of the West Clare Railway Greenway objective and the likelihood of achieving this would not be helped by diluting our focus with initiatives such as this at present, notwithstanding what benefits the proposal in this notice of motion might bring."

## Warning signs for Doora approach

WARNING signs are to be installed on the approach to Doora village from the motorway, to alert drivers to a "dangerous situation", the council has confirmed.

At this month's meeting of the Ennis Municipal District, Councillor Clare Collieran Molloy made the call for the Doora exit off the motorway to have "appropriate warning signals installed to alert motorists of the high water levels on each side of the road".

Councillor Paul Murphy supported the call, saying, "it's not known as the bog road for no reason, it's bad land". He said works to alleviate it would "not be straight forward".

Eamon O'Dea, senior executive engineer, replied, "The municipal district will install soft verge warning signs (W135) on the L4114 between the M18 Killow Junction 12 and Doora village to caution drivers regarding the road edge. This is similar to signs used between Whitegate and Portumna. The L4114 will require road surface treatment in this section every five years due to the ground conditions, high water table and traffic loading."