Community Law & Mediation & Environmental Justice Network Ireland

Joint Submission to Ireland's National Air Pollution Control Program Consultation

Introduction & Background[1]

- Community Law & Mediation

Community Law & Mediation ("**CLM**") is an independent community law centre and charity which provides free legal advice, advocacy, mediationand education services in communities experiencing disadvantage. CLM (previously known as Coolock Community Law Centre) was established in Coolock in 1975 and opened a second law centre in Limerick in 2012. Today, it assists more than 4,000 people annually. In 2021, CLM established the Centre for Environmental Justice which works to ensure climate change and other environmental harms do not disproportionately affect those who have contributed least to the problem, and that the State's response to environmental addresses inequality and protects the rights of present and future generations. For more information, visit https://communitylawandmediation.ie/centre-for-environmental-justice/ or contact info@communitylawandmediation.ie

- Environmental Justice Network Ireland

The Environmental Justice Network Ireland (EJNI) is a community of practice connecting interdisciplinary academic researchers, NGOs, regulatory staff, environmental lawyers, representatives from industry and government with community activists and the 'barefoot lawyers and planners' who have emerged over the last decade on the island of Ireland in response to serious environmental governance failures. EJNI's aim is to support communities and individuals that are engaged in both promoting environmental justice and challenging environmental injustice through enhancing knowledge about complex environmental and legal issues that exist on the island of Ireland. For more information, visit https://ejni.net/ or contact admin@ejni.net

[1] Sincere thanks to Kate Fagan for providing valuable research to this submission.

- Air Pollution & Health

The Environmental Protection Agency ("**EPA**") notes in its *State of the Environment Report* that "air pollution is the single largest environmental health risk in Europe."[2] 2,600 premature deaths are associated with fine particulate air pollution across the island of Ireland.[3] Ireland has the third-highest death rate from lung disease in Europe, and the fourth highest rate of asthma in the world – the Asthma Society's figures show over 380,000 asthma sufferers in Ireland. Many people living on the island of Ireland are exposed to air pollution levels well in excess of World Health Organisation ("**WHO**") air quality guideline levels. Air pollution is closely linked to respiratory illnesses, exacerbating conditions such as asthma, chronic obstructive pulmonary disease (COPD), and respiratory infections. Particulate matter (PM), nitrogen dioxide (NO2), sulfur dioxide (SO2), and ozone (O3) are among the key pollutants known to cause or worsen respiratory symptoms and impair lung function.[4] In Ireland, urban areas with high traffic volumes and industrial zones often experience elevated levels of these pollutants, posing a significant risk to vulnerable populations, including children, the elderly, and individuals with pre-existing respiratory conditions. Current air pollution currently generates an additional 190m in costs to NI's health service, and €56m within ROI.[5]

- Air Pollution & Human Rights

Air pollution is an issue which has presented to Community Law and Mediation's free legal advice clinics. CLM and EJNI are also alert to the unequal distributional impacts of air pollution. Certain groups are more exposed to air pollution than others because of where they live, where they can afford to live, the level and quality of healthcare they have access to, or because of existing respiratory problems. The right to a clean, healthy and sustainable environment was recognised by the United Nations in 2022. Ireland consistently supported the recognition of a right to a clean and healthy environment at the multilateral level, and should therefore take proactive steps to ensure this right is upheld within its own borders. The United Nations Special Rapporteur on Human Rights and the Environment in his 2019 report on clean air and human rights found that "*poor air quality has implications for a wide range of human rights, including the rights to life, health, water, food, housing and an adequate standard of living*." The report further found that States have procedural and substantive obligations in relation to the right to breathe clean air.[6]

- Air Pollution & Environmental Protection

Ireland became the first country in 2019 to declare a joint climate and biodiversity emergency, and the Citizens' Assembly on Biodiversity Loss emphasised that the State must take "*prompt, decisive*

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[2] Environmental Protection Agency. 2020. 'EPA: State of the Environment Report.' Available at : https://www.epa.ie/our-services/monitoring--assessment/assessment/irelands-environment/state-of-environment-report-/

[3] Irish Heart Foundation. 2023. 'Air Pollution and Mortality On the Island of Ireland.' Available at: https://irishheart.ie/wp-content/uploads/2023/03/Air-Pollution-and-Mortality-on-the-Island-of-Ireland-Report.pdf

[4] Irish Thoracic Society. 2018. 'Air Pollution and Respiratory Health in Ireland.' Available at: https://irishthoracicsociety.com/wp-content/uploads/2019/04/Respiratory-Health-of-the-Nation-2018.pdf

[5] Nolan, A. (2023). The healthcare costs of poor air quality in Ireland: An analysis of hospital admission, ESRI Working Paper 769, Dublin: ESRI, https://www.esri.ie/publications/the-healthcare-costs-of-poor-air-quality-in-ireland-an-analysis-of-hospital-admission

[6] United Nations Human Rights Council. 2019. Report by Special Rapporteur Dr. David R. Boyd (8 January 2019) UN Doc A/HRC/40/55 Available at: https://www.ohchr.org/en/special-procedures/sr-environment/clean-air-and-human-rights

and urgent action to address biodiversity loss."[7] Air pollution adversely affects terrestrial and aquatic ecosystems, disrupting biodiversity, soil fertility, and water quality. Acid deposition, resulting from sulfur and nitrogen emissions, damages sensitive habitats, including forests, wetlands, and freshwater ecosystems.[8] Elevated nitrogen levels, primarily from agricultural sources, contribute to eutrophication, algal blooms, and biodiversity loss in Irish waterways, posing threats to aquatic life and ecosystem services.

The National Air Pollution Control Program (NAPCP) and the National Emission Ceilings (NEC) Directive

EU member states are required to produce a National Air Pollution Control Program ("**NAPCP**"), for submission to the European Commission, as part of their obligations under the National Emission Ceilings ("**NEC**") Directive. This directive sets mandatory emission reduction targets for certain pollutants, including sulfur dioxide (SO2), nitrogen oxides (NOx), non-methane volatile organic compounds (NMVOC), ammonia (NH3), and particulate matter (PM2.5). NAPCPs have to follow a common format specified in the Commission Implementing Decision (EU) 2018/1522. The first NAPCPs were due by 1 April 2019. Member States submit air pollutants emissions projections every two years, most recently in March 2021. According to Ireland's draft NAPCP, the NAPCP is to be submitted to the European Commission every fourth year.

The NEC Directive aims to progress the EU towards the Union's objective of aligning air quality with the World Health Organisation air quality guidelines, biodiversity and ecosystem objectives as set out within the 7th Environment Action Programme, and coherence between the Union's air quality policy and climate and energy policies. The NAPCP is intended to serve as a strategic roadmap in achieving the zero pollution ambition announced in the European Green Deal, which aims to protect citizens and ecosystems by better reporting, monitoring, reducing and remedying air pollution. The NAPCP is furthermore essential to the European Green Deal 2030 targets to reduce premature deaths caused by air pollution by 55% and the EU ecosystems where air pollution threatens biodiversity by 25%.[9] To achieve these targets, it is critical that EU Member States meet their emission reduction targets for 2020-2029 and from 2030 onwards.[10]

Ireland's NAPCP

The NEC Directive was transposed into Irish Law by S.I. No. 232/2018 - European Union (National Emission Ceilings) Regulations 2018 ("**NEC Regulations**"). Ireland is required to achieve the below reductions in air pollutant emissions by 2020 and 2030, relative to 2005 levels:[11]

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[7] Final Report of the Citizens' Assembly on Biodiversity Loss. 2023. https://citizensassembly.ie/report-of-the-citizens-assembly-on-biodiversity-loss-report-launches/

[8] European Environment Agency. 2023. 'Impacts of air pollution on ecosystems.' Available at: https://www.eea.europa.eu/publications/air-quality-in-europe-2022/impacts-of-air-pollution-on-ecosystems

[9] Relative to 2005 levels in both cases.

[10] European Environment Agency. 2022. 'National Emission reduction Commitments Directive reporting status 2022.' Available at : https://www.eea.europa.eu/publications/national-emission-reduction-commitments-directive-2022

[11] Environmental Protection Agency. 2023. 'Ireland's Air Pollutant Emissions.' Available at : https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/Ireland's-Air-Pollutant-Report-Final_May2023.pdf

	2020	2030
• Sulphur Dioxide (SO_2)	-65%	-85%
• Nitrogen Oxides (NO_x)	-49%	-69%
• Ammonia (NH_3)	-1%	-5%
• Non-Methane Volatile Organic Compounds (NMVOCs)	-25%	-32%
• Particulate Matter < 2.5 µm ($PM_{2.5}$)	-18%	-41%

The Environmental Protection Agency ("**EPA**") reported in May 2023 that Ireland did not meet the NEC Regulation requirements :[12]

- Ireland did not comply with its emission reduction commitments for NH3 (ammonia) and NMVOC for 2021.
- While we acknowledge that the exceedance of the reduction requirement for NMVOCs is permitted under the flexibility provision in the NEC Directive and therefore not technically a breach, we would urge the government to adopt additional measures in the NAPCP to meet the targets set in the NEC Regulations. It is concerning that emissions of NMVOC reduced by only 8.8% compared to the required 25% emission reduction requirement.
- Emissions of NH3 increased by almost 4% compared to the required 1% emission reduction requirement.[13]

The European Commission subsequently issued a reasoned opinion to Ireland on the 16 November 2023, concluding that Ireland is continuing to fail to meet its ammonia emission reduction commitments. It is not clear that Ireland's draft NAPCP has adequately addressed exceedances in emission compliance limits, projections of further emission increases, or the transboundary impacts of air pollution with Northern Ireland. CLM and EJNI provide the below comment in response to these items.

Exceeding the Legal Threshold for Ammonia (NH3)

In January 2023, the EU Commission issued a letter of formal notice to Ireland to respect its emission reduction commitments as required by Directive 2016/2284. The Commission analysed the national emission inventories of pollutants submitted by Member States in 2022, which reflected 2020 and 2021 emissions. The Environmental Protection Agency noted that this letter of formal notice concerned the exceedance of the emission reduction commitments for **ammonia**. The Commission then issued a reasoned opinion to Ireland on the 16 November 2023, concluding that Ireland is continuing to fail to meet its emission reduction commitments.[14]

It is not clear that the revised NAPCP will reduce ammonia emissions sufficiently to meet the NEC Regulations requirements within either the short-term or long-term. The NAPCP notes that "*compliance is on a tight margin and forecast to exceed the 2030 period ceilings for PM2.5* [particulate matter], *NH3* [ammonia] *and NMVOC* [non-methane volatile organic compound]." The EPA has repeatedly warned that Ireland is on a continued trend of non-compliance for ammonia

[12] Ibid
[13] Ibid
[14] European Commission. 2023. 'November infringement package: key decisions.' Available at: https://ec.europa.eu/commission/presscorner/detail/EN/inf_23_5380

emissions, exceeding compliance limits for 9 of the past 10 years.[15] The effects of excessive ammonia pollution have been widely reported to negatively impact human respiratory health, soil, water quality and sensitive habitats/ biodiversity.[16]

In Ireland, agriculture is responsible for 99% of all ammonia emissions.[17] This is acknowledged within the NAPCP, which attributes increasing ammonia emissions to the removal of the milk quotas in 2015.[18] The EPA note that Ireland's ammonia emissions are a consequence of higher livestock numbers (a 3% increase in 2021) and fertiliser use.[19] The NAPCP must be revised to ensure compliance with ammonia limits within the NEC Regulations from 2020-2029 and from 2030 onwards. In addition, the establishment of the promised (and delayed) Just Transition Commission must be expedited. The National Economic and Social Council ("**NESC**") in its Just Transition in Agriculture and Land Use report[20] note that "*participatory processes of dialogue*" which provide the "*active participation and engagement of farmers in innovating and changing practice across a diversity of contexts is critical.*" This is particularly important considering that agriculture is the most unequal sector in the Irish economy, in terms of income distribution.[21] The Irish Human Rights and Equality Commission note that:

> *"The overall average family farm income is considerably lower than the median household income for Ireland.[22] Farmers are also often heavily reliant on direct payments.[23] Further, family farming and related seasonal work is heavily reliant on the unpaid and paid work of women, with incomes often supporting loss-making farms. The loss of this seasonal work may have an added impact on women that merits further consideration."*[24]

In accordance with NESC's recommendations for "socially and farmer inclusive processes", an Implementation Group for Climate Transition in Agriculture must also be established, in accordance

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[15] Environmental Protection Agency. 2023. 'Growth in agricultural activity driving increased ammonia emissions in Ireland in 2021.' Available at: https://www.epa.ie/news-releases/news-releases-2023/growth-in-agricultural-activity-driving-increased-ammonia-emissions-in-ireland-in-2021.php

[16] Ciara Brennan, Laura Neal, James Orr and Ekaterina Gladkova, 'Ammonia Pollution in Northern Ireland: Legal and Policy Considerations' (2020) EJNI Briefing Paper Series, No.4 Available at: https://ejni.net/wp-content/uploads/2021/01/EJNI-Briefing-4-Ammonia.pdf

[17] Teagasc. 2023. 'Ammonia.' Available at: https://www.teagasc.ie/environment/climate-change--air-quality/ammonia/#:~:text=Although%20not%20a%20greenhouse%20gas,potent%20greenhouse%20gas%2C%20nitrous%20oxide.

[18] Government of Ireland. 2023. Draft National Air Pollution Control Program. Available at :https://www.gov.ie/pdf/?file=https://assets.gov.ie/278634/32c4af58-bd7a-4f86-863b-906c6fa5a607.pdf#page=null

[19] Environmental Protection Agency. 2023. 'Ireland's Air Pollutant Emissions.' Available at : https://www.epa.ie/publications/monitoring--assessment/climate-change/air-emissions/Ireland's-Air-Pollutant-Report-Final_May2023.pdf

[20] National Economic & Social Council. 2023. 'Just Transition in Agriculture and Land Use.' Available at : https://www.nesc.ie/app/uploads/2023/06/162_just_transition_in_ag_land_use-1.pdf

[21] TASC. 2021. 'The State We Are In: Inequality in Ireland Today.' Available at : https://www.tasc.ie/assets/files/pdf/18457_inequality_in_irelandinnerv2.pdf

[22] The average family farm in 2021 was just over €34,300. The median household income for 2021 was €46,471. See: Teagasc, Farm Incomes up in 2021 due to higher output prices, (2022). See: Government of Ireland, Understanding Life in Ireland: The Well-being Dashboard 2022, (2022).

[23] Central Bank of Ireland, Economic Letter: New Risks and Old Problems: The Uncertain Outlook for Irish Agriculture, (2019)

[24] Irish Human Rights and Equality Commission. 2023. 'Policy Statement on a Just Transition.' Available at : https://www.ihrec.ie/national-just-transition-commission-must-be-established-as-a-matter-of-priority/

with the Climate Action Plan 2023.[25] CLM and EJNI finally note that a Transition can only be Just if it is timely enough to protect human health and biodiversity. Compliance with the NEC Regulations must not be delayed, but farmers should be able to benefit from the opportunities of transition. The recommendations of the NESC report should be implemented in full in order for this to be achieved.

Fossil Fuels & Air Quality

Combustion in the electricity, industry, transport, waste, and livestock sectors, in addition to the use of solid fuels for heating, can create detrimental health and environmental impacts, while also heating our atmosphere. However, as outlined by the United Nations Special Rapporteur on Human Rights and the Environment, the overlap between air pollution and climate change presents an opportunity to address both issues in tandem.[26] The EPA reported in 2023 that:

> "*The use of coal and fuel oil in power generation trebled in 2021 which led to increases in emissions of NOx, PM2.5 and SO2 illustrating the direct link between fossil fuel use and air pollutant emissions. Emissions of NOx increased by 3 per cent overall driven by increased fossil fuel use in power generation*."[27]

This underscores the direct correlation between fossil fuels and air pollution. Over 2,600 deaths across the island of Ireland are attributed to particulate matter. If Ireland were to implement World Health Organisation guidelines on particulate matter, it would save 1,000 lives per year across the island of Ireland.[28] Solid fuel burning is the primary source of particulate matter in Ireland.[29] However, some 29% of the Irish population were reported to experience energy poverty in 2022, the highest recorded rate.[30] While many households burn solid fuels as a secondary source of heating, where it is not required,[31] we focus on homes experiencing energy poverty, as it has presented to CLM's free legal advice clinics. Energy poverty and air pollution are closely connected. In CLM's experience, those living in energy poverty, or at risk of falling into energy poverty, are more likely to burn solid fuels (or toxic waste) due to a lack of readily available and affordable clean energy alternatives. A report published by Friends of the Earth Ireland in 2022 found that measures provided by Ireland's National Retrofit program are not adequately tailored to certain cohorts,

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[25] NESC. 2023. 'Just Transition in Agriculture and Land Use.' Available at : https://www.nesc.ie/publications/exploring-a-just-transition-in-agriculture-and-land-use/#:~:text=This%20NESC%20report%20argues%20that,agree%20to%20work%20collectively%20towards.

[26] Report of the Special Rapporteur on Human Rights and the Environment. 2021. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/002/54/PDF/G1900254.pdf?OpenElement

[27] Environmental Protection Agency. 2023. 'Growth in agricultural activity driving increased ammonia emissions in Ireland in 2021.' Available at: https://www.epa.ie/news-releases/news-releases-2023/growth-in-agricultural-activity-driving-increased-ammonia-emissions-in-ireland-in-2021.php

[28] Irish Heart Foundation. 2023. 'Air Pollution and Mortality On the Island of Ireland.' Available at: https://irishheart.ie/wp-content/uploads/2023/03/Air-Pollution-and-Mortality-on-the-Island-of-Ireland-Report.pdf

[29] Eakins, J., Power, B., Dunphy, N., Sirr, G. 2022. 'Residential Solid Fuel Use in Ireland and the Transition Away from Solid Fuels.' *Environmental Protection Agency*, Available at: https://www.epa.ie/publications/research/air/Research_Report_407.pdf

[30] Economic & Social Research Institute. 2022. 'Energy poverty at highest recorded rate.' Available at: https://www.esri.ie/news/energy-poverty-at-highest-recorded-rate

[31] Sustainable Energy Authority of Ireland. 2022. 'Heating and Cooling in Ireland Today.' Available at : https://www.seai.ie/publications/Heating-and-Cooling-in-Ireland-Today.pdf

including the Traveller community, low-income households, and tenants in the private rental sector.[32]

The European Green Deal aims to achieve climate neutrality by 2050, and a reduction in greenhouse gas emissions of 55% by 2030, in parallel to its zero pollution ambition. It is essential therefore that Ireland demonstrates consistency between its NAPCP and its National Energy and Climate Plan ("**NECP**") – due to be submitted before the European Commission in June 2024. Drafting both policies at the same time provides Ireland with the opportunity to address air pollution and energy poverty in tandem. Ireland's NECP must include "national objectives with regard to energy poverty, including a timeframe for when the objectives are to be met." Such measures must address the gaps identified in Ireland's National Retrofit Program,[33] and must go beyond the crisis response provided by the Energy Poverty Action Plan, which contained primarily one-off, short-term measures. Instead, the NECP must deliver structural measures to address the root causes of energy poverty, as recommended by the European Commission in October 2023.[34] This could reduce emissions of both air pollutants and greenhouse gases across the energy, industrial, transport and agriculture sectors. This would work to protect public health while delivering on Ireland's binding greenhouse gas reduction commitments.[35]

Addressing Transboundary Air Pollution

Northern Ireland's first ever clean air strategy was launched in 2020, which detailed a range of potential policies that would improve air quality across NI. However, in the absence of a functioning government, progress has stalled in the implementation of these policies. Northern Ireland has the worst ammonia pollution in Britain and Ireland, accounting for 12% of total UK emissions despite having just 6% of the land area and 3% of the population – it is estimated that 98% of NI's ammonia emissions come from agriculture.[36] Importantly, investigations found serious cross-border pollution concerning ammonia emissions and that emissions from cross-border movements of livestock manure are not accounted for by either UK or Irish Authorities, impacting the environment and threatening the health of the population in both jurisdictions.[37]

Mapping undertaken as part of the Air Pollution Trends Report 2023: Critical Load and Critical Level exceedances in the UK. demonstrates critical levels of ammonia concentrations in proximity to the border on the island of Ireland.[38] The report assessing air pollution and mortality on the island of

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[32] O'Connor, C. 2022. 'An Examination of Blockages to Retrofitting and Heat-pump Installation in Ireland.' *Friends of the Earth Ireland*, Available at: https://www.friendsoftheearth.ie/publications/blockages-to-retrofitting-and-heat-pump-installation-in-irel/

[33] Ibid

[34] Commission Recommendation (EU) 2023/2407 of 20 October 2023 on energy poverty, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202302407

[35] European Environment Agency. 2022. 'National Emission reduction Commitments Directive reporting status 2022.' Available at : https://www.eea.europa.eu/publications/national-emission-reduction-commitments-directive-2022

[36] Greene, T. 2023. 'Ammonia strategy would only save fraction of Northern Ireland's conservation areas.' *The Detail*, Available at: https://www.thedetail.tv/articles/ammonia-strategy-would-only-save-fraction-of-north-s-conservation-areas

[37] McSweeney, Ella. 2023. 'Northern Ireland turning Republic into a 'toilet' for excess manure pollution.' *The Guardian*, Available at: https://www.theguardian.com/environment/2022/jul/06/northern-ireland-turning-republic-into-a-toilet-for-excess-manure-pollution

[38] Rowe EC, Sawicka K, Hina NS, Carnell E, Martín Hernandez C, Vieno M, Tomlinson S, & Jones L (2023) Air Pollution Trends Report 2023: Critical load and critical level exceedances in the UK. Report to Defra under

Ireland is the first of such estimates to cover both NI and ROI at local level and for the year 2019.[39] The report suggests that although average pollution exposures in all ROI counties and all NI Local Government Districts met the relevant legal limits, they everywhere exceeded the most recent 2021 WHO AQG level of PM2.5. It concluded that if both NI and ROI committed to reducing PM2.5 levels to the current WHO requirements it has the potential to save almost 1000 lives per year. In addition, at current rates, the report indicates that it won't be until 2035 that ROI reaches this level and 2040 for NI.

Ultimately, air pollution does not respect borders, thus governments should be encouraged to work together with co-ordinated policy interventions. A lack of policy coordination may make some interventions introduced in one jurisdiction less effective. For example, ROI extended its smoky coal bans nationally and targets specifically the supply of smoky fuels. This contrasts with the Smoke Control Area approach used in NI where smoky fuels can still be bought even though their use was restricted. Therefore, if smoky coal is still available to purchase in NI, then the recent extension to the smoky coal ban in the ROI may fall short of its potential impacts on PM2.5 pollution, particularly in border counties. All opportunities should be used, including Irelands NACAP, to implement effective policies on an island with two separate policy regimes but shared air pollution issues. As a single biogeographic unit and considering the transboundary nature of environmental issues concerning air it is imperative that Irelands NACAP addresses potential transboundary air pollution with Northern Ireland.[40] Therefore, we propose that a transboundary consultation should be conducted according to recital 26 of the NEC Directive and the ESPOO convention.

Contract AQ0849, UKCEH project 07617. Available at : https://uk-air.defra.gov.uk/assets/documents/reports/cat09/2401111009_Air_Pollution_Trends_Report_2023.pdf

[39] Irish Heart Foundation. 2023. 'Air Pollution and Mortality On the Island of Ireland.' Available at: https://irishheart.ie/wp-content/uploads/2023/03/Air-Pollution-and-Mortality-on-the-Island-of-Ireland-Report.pdf

[40] Ciara Brennan, Finbarr Brereton, Mary Dobbs, Viviane Gravey, Hannah Gould, Alison Hough & Lisa Whitten (2023) 'Linking the Irish Environment: Final Report' Environmental Justice Network Ireland Research Report, June 2023. Available at : https://ejni.net/wp-content/uploads/2023/06/Linking-the-Irish-Environment-Final-Report-24-May-2023.pdf