



Executive Manager
Engineering Department
Floor 4, Block 1
Civic Offices, Wood Quay
Dublin 8

Date 16th March 2007

Re: Waste Collection Permit Review

Dear Sir/Madam,

I am writing to you on behalf of the Irish Waste Management Association (IWMA) in relation to Dublin City Councils recent notice of its intention to carry out a review of waste collection permits in the Dublin region.

The IWMA is the recognised representative organisation for the private waste management industry in Ireland. The Association is affiliated to both IBEC and FEAD (www.fead.be). The industry has given IWMA an overwhelming mandate in relation to this submission.

Please find attached comments from our Association for consideration in the review. This review process has been clearly flagged to us as raising very significant issues of concern for our members businesses. For the process to be meaningful and the consultation effective, we submit that a meeting between IWMA, and the Council and its consultants, is necessary. We confirm that such a meeting can be attended at short notice by a small number of key IWMA officials and we await hearing from you with a date for such a meeting.

Regards

Erik O'Donovan

Secretary
IWMA



Submission on Dublin Waste Collection Permit Review

Date 16th March 2007

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1. Background

The waste management industry has undergone dramatic change since the introduction of the Waste Management Act 1996. Local authorities are no longer the sole providers of waste management services and infrastructure in the State. The last decade has seen the rise of a professional consolidated private waste industry. National waste policy¹ now recognises the significant role that the private sector plays in both investment and the provision of waste management infrastructure and services.

The private sector currently manages 60% of municipal waste arisings in Ireland and the majority of commercial and industrial waste arisings. Approximately 48% of household waste is collected by the private sector². Up to 2005, an estimated €250 million had been invested in waste management infrastructure, most of which has been private investment³.

The Dublin Authority's review of its waste collection permit regime offers an opportunity to improve and build on successes achieved by both the private and public sector in waste management in the region. However we question the timing of the review process. Under the current Waste Management (Collection Permit) Regulations, a local authority shall review a permit granted by it at least once in each period of two years after the date on which it has been granted or last reviewed. Whilst this has not happened in this instance, the timing of the review appears premature given the DoEHLG ongoing review of the Waste Management (Collection Permit) Regulations and Waste Regulation.

Our understanding is that this initial submission opportunity will be succeeded by a specific submission opportunity for individual permit holders. Our comments are made in that context and address high level issues only as a result. We hope these initial comments prove constructive to the overall review process.

¹ The Department's Circular WIR 06/04 (Review of Waste Management Plans) and Section 4.6 of its policy statement, *'Taking Stock and Moving Forward'* (2004)

² National Waste Report 2005 – Data Update, EPA (Published January 2006) Page 18

³ Waste Management Benchmarking Study, Forfas (June 2006)

2. Control of Waste Flows

Our understanding is that the permit review process will be used to implement proposals relative to the direction of waste. The Waste Management Plan for the Dublin Region 2005 – 2010⁴, provides for the possible direction of waste by means of the waste collection permit system to meet the plan objectives i.e.

18.15 DIRECTING WASTE TO MEET PLAN OBJECTIVES

This Waste Management Plan follows the principle of the EU Waste Hierarchy, and therefore sets ambitious targets for recycling and recovery of waste, and aims to dramatically reduce landfilling. To enable this to happen, an expansion of capacity to recycle dry recyclables and organic waste and capacity to recover energy from residual waste is underway. The Local Authorities need to ensure that the Plan objectives are met and that waste when privately collected is delivered to the form of treatment intended in this Plan.

- The Dublin Local Authorities will if necessary and/or appropriate for environmental reasons, direct that certain waste streams must be delivered to a certain tier in the waste hierarchy (e.g. reuse, recycling, biological treatment, energy recovery). This will be achieved by means of the Waste Collection Permit system or other appropriate regulatory or enforcement measures.

Uncertainty exists around the scope and extent of the power to direct waste flows through regulation. IWMA has concerns around the competitive implications of the possible direction of waste flows through command and control measures. These concerns were raised during the consultation process on the region's current waste plan and were reflected in the Draft Plan Consultation Report⁵ i.e.

Directing Waste

Issue 18V

"Every waste permit issued by the Local Authorities should be used to direct waste to the appropriate tier in the waste management hierarchy."

"Would like clarification on the statement that 'Local Authorities will be able to direct waste to a certain tier in the waste hierarchy'."

"Section 18.15 provides the Local Authorities with a very strong tool that could interfere with fair and open competition. We agree with the principle of directing waste to a higher tier in the waste hierarchy, but we fear that this could be open to abuse in an anti-competitive manner if applied inappropriately. We respectfully suggest that competition can be maintained in two ways. Firstly, the waste should be directed to a particular tier with the option to use a higher tier if possible. Secondly directing waste to a higher tier should not be confined to the Dublin Region" (example provided in submission)"

"Section 18.15 could have major implications in terms of future infrastructure planning and a greater discussion on the subject is required. It is unclear whether the Authority plans to extend the direction of waste to incorporate landfills."

⁴ Waste Management Plan for the Dublin Region 2005 – 2010 (Published 11 November 2005), Part 4, Section 18.15, Page 147

⁵ Review of Dublin Waste Management Plan 2005 – 2010: Draft Plan Consultation Report (RPS Consultants *et al.* November 2005) Section 4.14, Chapter 18, Issue 18 V and Recommendation 18V, Pages 117 and 118. This report was prepared in response to consultation on the Draft Dublin Waste Management Plan 2005 – 2010 (Published, April 2005)

In response the plan's consultants recommended:

Response:

The principle of directing waste to a certain tier in the waste hierarchy seems in general to be accepted in the submissions. The rationale for this is to ensure the Plan targets of recycling and energy recovery are met, and that a decision of what to do with waste is made on environmental considerations as opposed to purely commercial considerations.

It is not intended to use this power to introduce any uncompetitive forces into the market. For example if waste is directed to energy recovery, this could be achieved by sending the waste to a WTE facility in Dublin or another region, or to another form of energy recovery facility (but not landfill) in Ireland or another country. (In this regard, an amendment to the text of Section 18.15 will be made.)

The suggestion of directing to a particular tier '*or a higher tier if possible*' seems reasonable, but such detail would be included in the text of any direction issued.

While in theory the Local Authorities could direct waste to landfill this is unlikely given that disposal is the lowest option on the hierarchy, whether or not the landfill is recovering energy.

Recommendation 18V:

The following amendment will be made to the bullet point in Section 18.15:

The Dublin Local Authorities will if necessary and/or appropriate for environmental ~~or other~~ reasons, direct that certain waste streams must be delivered to a certain tier in the waste hierarchy (e.g. reuse, recycling, biological treatment, energy recovery facility). This will be achieved by means of the Waste Collection Permit system or other appropriate regulatory or enforcement measures.

This recommendation was accepted and the recommended wording inserted in the final Plan.

Section 18.15 of the current waste plan is an important issue. The IWMA has a continuing policy concern around the issue of local authorities as both regulator and service provider and the potential for conflict of interest issues to arise as a result. IWMA considers that to avoid this potential, local authorities should have one of these two functions solely as pertains in the UK. While we can understand the principle of incentivising the sending of waste to an appropriate tier in the waste management hierarchy, we are concerned that a command and control approach could be abused by local authorities, resulting in foreclosure of the market to the detriment of competitors and competition generally. Should the direction of waste flows become an issue in this review process, IWMA require an assurance from the regional authority that it will **not** attempt to:

- (a) direct waste to named facilities
- (b) at any tier in the hierarchy, direct the flow of waste only to infrastructure within the region

(c) direct waste for 'other reasons' (i.e. other than environmental) in line with its own consultant's recommendations above.

(d) restrict or prevent the type and quantity of waste collected by the private sector in the region, including domestic waste.

Failure to adhere to these principles will render the review process in breach of the Waste Plan and *ultra vires* the regional authority.

EU Competition law will render unlawful any attempt by the local authority, directly or indirectly, to channel waste to its own facilities or to otherwise take control over waste and thus distort competition in the market in a manner disproportionate to EU Environmental objectives.

Furthermore in terms of regional self-reliance⁶ and inter-regional movement⁷ of waste flows, any incentivisation of waste flows higher up the waste management hierarchy must not interfere with national and European policy objectives on environmental protection, economic development and level competition.

The review process must be in line with the Section 60 policy direction from the DEHLG on the inter-regional movement of waste (3rd May 2005). The inter-regional movement of waste is necessary for effective waste management in the Dublin region and the Greater Dublin Area and it is important that this is recognised in a review process such as this.

3. Other Technical Issues of Concern Surrounding Waste Collection Permits

In general the IWMA would like to see a simplified waste collection permit regime in line with the principles of better regulation.

- The level of detail of information required in an application is excessive and unnecessary. Some conditions ask for information covered by other legislation e.g. Road Traffic Act. On a related administrative point it is our understanding that you cannot tax a vehicle without a registration certificate. We understand that the Dublin region has refused to add vehicles to some permits as they said the scanned quality of the registration certificates was not of good quality. The authority wanted copies of the original certificates even though the registrations were legible on the copies of the tax discs submitted by the operators.

- There is a disparity in conditions and requirements between each of the 10 different permitting regions. There needs to be a level playing field in relation to the timescales, standard and requirements involved with waste collection permits issued by the different local authorities. The IWMA

⁶ Waste Management Plan for the Dublin Region 2005 – 2010 (Published 11 November 2005), Part 4, Section 18.10, Page 145

⁷ Waste Management Plan for the Dublin Region 2005 – 2010 (Published 11 November 2005), Part 4, Section 18.11, Page 145

feels that one standard permit should be co-ordinated by one regulatory body on a nationwide basis. At the very least the Dublin review should take cognisance of the other regions and their permitting regimes.

- When new information needs to be added to a WCP, i.e. additional waste type, new vehicle, new waste destination, an operator sends a letter to the relevant authority to add on this new information, the authority responds and posts out a new appendix/notification for the collection permit with the waste type etc. added and the operator removes the old appendix and attaches the new appendix. Customers request up to date collection permits to ensure operators are covered to collect their waste types etc. It is our understanding that this practice may not always happen with the Dublin permits. DCC adds new information to the operators permit file but in some cases new appendices validating the permit change are not always sent to the operator. This can mean that a permit may appear out of date to a customer. In addition, the use of this condition may work for a very small operator but for large operators with large fleets such a condition would mean they need someone full time updating Appendices in all their fleet which of course may operate out of several different sites. It is an unrealistic condition.
- Updated information regarding new vehicles and disposal/recovery sites is rarely acknowledged and the actual section of the permit (carried in the truck) with the fleet and sites listed is never reissued even though it is the only portion of any interest to those reading the permit at checkpoints or weigh-bridges.
- Some authorities are sending out letters of receipt regarding the addition of a new EWC code/vehicle to a collection permit, and requesting that this letter be stored on the vehicle in question. The requirement to carry significant volumes of paperwork in the cab of a bin lorry/skip truck is impractical especially if you have ten permits to each vehicle. Is it realistic to expect operators to have 10 permit details (& logos) on each vehicle, some with a requirement for large letters others want them visible on the windscreen? The credit card version of the collection permits as issued by some local authorities is far more satisfactory.
- Some local authorities are now requesting that a W plate is displayed on trucks carrying waste. This condition should only ever apply to artic trucks and containers where you cannot see if waste is being carried. In a skip business any enforcement officer can clearly see if a skip contains waste. It is only causing more unnecessary administration for operators' drivers
- When introducing or replacing a new vehicle, ten notifications and ten permit revisions are necessary. The disparity in the response time can be very significant. The same bureaucratic situation occurs when adding in

additional EWC codes, additional approved outlets or other simple amendments for short term needs e.g. hire a vehicle or specialist equipment for a short-term defined period during high demand or where a vehicle has crashed/being repaired.

- Under the existing Regulations, changes in information by the operator must be furnished within 4 weeks. Some authorities have demanded shorter time periods i.e. 10 days. This is excessive, local authorities should stick to 4 week timeline.

- There is a creeping requirement from some authorities for companies to have ownership of all their vehicles. It should be clear that owner-drivers acting exclusively for a waste management company are adequately covered under the collection permit of that company. IWMA has raised this issue with local authorities on permits issued to date. However insurance for owner-drivers included in the fleet is still a bone of contention with some local authorities. It is not feasible for large waste management companies to have multiple collection permits. Owner drivers employed by a waste management company to collect waste, whereby they are insured by that company's public liability insurance, and their own vehicular insurance, should not pose an issue when they are included in that company's waste collection permit. Owner-drivers cannot afford to have permits in multiple regions and would certainly find it difficult to administer. Pushing for unnecessary permits for individual drivers is a revenue raising exercise without any environmental benefits. The new Regulations should address this issue. The IWMA suggest that owner drivers employed by a waste management company be allowed to collect waste, when they are included in that company's waste collection permit.

- In areas where authorities are in direct competition with the private sector. It is unreasonable to expect customer information under the collection permit, as this is commercially sensitive and confidential information.

- Each local authority waste collection permit issued refers to 'costs or charges' may be charged to cover the costs of ongoing monitoring of compliance with the collection permit. As you may be aware the IWMA supports better regulation and European waste policy. The need for the effective inclusive regulation of all operators, backed up by enforcement action where necessary, is self-evident and strongly supported by business. However we feel that the introduction of open ended fees for the maintenance of permits inadvertently penalises waste collectors who actually endeavour to be compliant. Irish firms in the regulated sector must compete with companies outside the current permit regime who do not face the same regulatory burden. By focusing additional charges exclusively on the regulated sector, such a requirement places a cost

burden on these companies without the corresponding and necessary environmental benefit as the companies have collectively and individually reduced their environmental risk. Such a requirement would mean that the more you attempt to comply the more you pay. IWMA would respectfully ask that the Council take a risk based approach to their permit regime in this review. Companies who actively comply with the permits should not be subject to costs versus non-compliant companies who either do not operate under a permit or refuse to comply with a permit issued. We feel that this approach would be more in keeping with the polluter pays principle.

- Condition 14(1) of the waste collection permit regulations requires that decisions be made on a waste collection permit within 12 weeks of an application/request for additional information. This is too long and still an issue as there are many waste collection permits that are still in a state of application. Like waste licenses and waste permits the industry is experiencing significant uncertainty and delays in obtaining collection permits. These delays are often unnecessary, not transparent and discourage investment in this sector. The regulations were designed to tackle illegal dumping and track waste movements but the delays in issuing permits offer an opportunity to illegal waste operators.

- There appear to be some regions proposing to restrict overnight transportation, or ensure that collections and deliveries occur on the same day. This is not practicable under our current infrastructure and makes outer counties harder to service and indeed penalises them economically. The logic being that in some cases wastes may overnight in unlicensed depots etc. However in Germany they allow 5 days or more. For example under TFS procedures wastes can be held at a port and may sit there for a day or two before shipping to the destination port and then may also sit there for a day or so before being forwarded on. None of these port facilities or transport depots require licensing, as it would be not be practicable. Any such move here would again introduce unworkable practices that make the system a farce. Flexibility in this area of the proposed Regulations will facilitate servicing of small waste producers in outlying counties where infrastructure is poor and the volume of specific niche waste streams too low.