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## **Review of the respective regulatory and enforcement roles of the EPA and local authorities**

Dear Niall

The Irish Waste Management Association (IWMA) welcomes this opportunity to comment on the above referenced review of regulatory and enforcement roles in Ireland.

The IWMA is the voice of the private waste management industry in Ireland. Our members are active in every county in Ireland and contribute to the management of waste at each level of the waste hierarchy.

IWMA members were instrumental in exposing illegal dumping in Wicklow and other counties 10 to 15 years ago. During the same period, we were also instrumental in exposing illegal transportation of waste to Northern Ireland. That waste was disposed in both regulated landfills (after alleged sham recovery) and illegal dumps. As you are well aware, the Irish authorities are now paying for the repatriation of that waste. It is important to note that our members had to compete against the criminals that engaged in both of these illegal activities during that period. In addition, our industry was greatly tarnished by the media reports that surrounded these events, so it was a double-hit for the IWMA and our members.

The IWMA has consistently called for better enforcement of the waste sector for many years and we have become somewhat frustrated by the reaction to our calls, which has often resulted in further enforcement of EPA Licensed sites and little visible change to enforcement at local authority permitted sites and at unauthorised sites or activities. We believe that the enforcement gap between licensed and non-licensed sites is widening and waste is moving from highly regulated businesses to less regulated businesses and in some cases to unregulated illegal sites.

I outline below some examples of difficulties the current system:

## Access to Annual Returns

Annual Environmental Reports submitted by licensees to the EPA are published on the EPA website and contain a wide range of information on the environmental performance of each licensed facility as well as details on the type, source and destination of all wastes managed at the facility. The equivalent data for waste facilities that are regulated by local authority waste permits are generally kept confidential by the local authority and are certainly not available to the public on a website. This is clearly unfair to licensed operators from a commercial perspective as well as from an enforcement perspective.

Waste companies are wise to illegal activity and access to annual returns allows the compliant companies to keep an eye on competitors to ensure that they do not engage in illegal activities. This is a significant deterrent as waste companies can spot illegal activity more readily than most enforcement officers. For example, waste companies will easily recognise false claims with regard to destinations of waste, particularly where these false claims relate to the waste companies own sites.

It is therefore imperative that annual returns from waste permitted sites are made available for viewing on a website without further delay. Alternatively, we will have no choice but to request that the licensed AERs are kept equally confidential in the spirit of fair competition and equal enforcement. This will not assist enforcement, but we respectfully suggest that licensed operators are entitled to equal treatment by the regulators.

## Equal Enforcement

In our experience, permitted sites are often subjected to light-touch enforcement in comparison with EPA licensed sites. There needs to be consistency with enforcement of licensed and permitted sites as each can pose significant risks to the environment. The following areas are considered unequal:

- ***EWC Codes*** – recycled aggregate, which is primarily derived from C&D wastes, can often be given a 17 code at permitted sites, whereas the EPA generally insist on the use of a 19 code at licensed sites. This impinges upon the range of outlets for this material as most quarry backfill operations cannot accept 19 code material, but do accept 17 code material. This can give a permitted site a commercial advantage over a licensed one.
- ***Financial Provisions*** – The EPA insist on a high level of financial provision at licensed sites. Some local authorities are consistent with the EPA in this regard, but some are not. This requires consistency at all facilities.
- ***Frequency and Nature of Inspections*** – Some permitted sites are inspected annually or even more frequent, but some are not inspected for several years. Consistency is needed here and in some cases, where rogue activity is suspected, we recommend that local authority enforcement officers are assisted by an experienced EPA inspector to give the local authority the benefit of that experience.

## Local Authority Inadequacies

The EPA, the NTFSO and the NWCPO are national bodies and do not appear to be overly influenced by local issues or local politics. In our experience, we suspect that there have been

many cases of local influence on local authority enforcement. This can work for or against the permitted site or can have an influence over prosecution of illegal operations or other criminal activity.

The IWMA and our members have direct experience of poor enforcement by local authorities of a number of illegal sites and illegal operations. In some cases, the local authorities themselves have engaged in unauthorised disposal or recovery of wastes, perhaps unwittingly.

We also have direct experience of an illegal metal waste facility being ‘tipped off’ in advance of a local authority inspection. The inspection found nothing at the site, but the activity was reactivated after the inspection. Our persistence led to the operation finally being closed down, but the local authority took no interest in pursuing the persons involved in operating the illegal waste site or investigating any potential pollution caused by the unregulated and unauthorised activity. The local authority, for some reason, declined to acknowledge the presence of the illegal activity in the report that followed the incident.

The cost and human resources needed for a prosecution can be off-putting for a local authority, whereas National authorities are less influenced by these constraints. We recommend that waste enforcement should be carried out by a National Agency and local influence removed from the decision making process.

Given that there has already been a significant upturn in the levels of activity in the construction sector with this expected to continue to grow over the coming years there seems to be little or no enforcement on the management of waste including soil arising from works on brownfield and contaminated land. This light-touch or complete lack of enforcement has left those in the construction sector to essentially self regulate their waste activities. I am aware of occasions when soil arising from contaminated sites is or has been disposed of at local authority permitted sites having been rejected by EPA licensed sites due to the material not complying with their acceptance criteria. There is no clear guidance from either the Agency or the local authorities on the sources and nature of the material that can be accepted at local authority permitted sites. Local authority permitted “tips” are frequently operated by personnel with no environmental training or understanding of the potential issues and legislation surrounding waste management and can inadvertently accept material that should be disposed of at such a facility.

### **Waste Classification**

With the exception of licensed sites, there appears to be poor enforcement in the manner in which waste is being classified. Some waste producers and non-licensed facility operators appear to view waste acceptance criteria testing as a system of waste classification and pay little or no heed to the requirements of the waste framework directive to assess if the waste exhibits any hazardous properties prior to undertaking WAC assessment. The EPA have clear guidance on this. However, despite the guidance being clear on the correct procedures for classification of waste there is inadequate enforcement in this regard, with the licensed facility operators having to act as de-facto enforcers.

We consider that the levels of enforcement of this issue outside of licensed sites is low, leaving the door open for unscrupulous operators to operate carte blanche. Enforcement effort appears to be predominantly directed at those who already fall under the licensing regime with little or no enforcement on the waste producers or those who chose to operate outside of the legislation.

## Range of Illegal Activities

The IWMA suggests that the following areas of illegal/unauthorised activity should be the focus of current enforcement:

- Illegal dumping of C&D fines
- Illegal WEEE collections
- Unauthorised 'Man in the Van' municipal waste collections
- Metal theft
- Food waste regulations (failure to provide household brown bins in certain areas and commercial brown bins to certain commercial premises)
- Backyard burning
- Fly-tipping – sometimes at a commercial scale
- New household waste regulations (when issued in July 2015)

The large scale illegal dumping of waste and illegal export of waste appears to be under control apart from some isolated incidents. However, there appears to be small scale transport of waste over the border to Northern Ireland to avail of free waste collection at civic amenity sites or other waste collection facilities, so we ask that the authorities also consider this issue. It particularly impacts on our members in border areas.

I hope that this submission is helpful in your current work and we look forward to further engagement on the subject.

Yours sincerely,



**Conor Walsh**

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