



Ms. Isobel Walsh,  
Office of Environmental Enforcement,  
Environmental Protection Agency  
PO Box 3000  
Johnstown Castle Estate  
County Wexford

(e-mail: [j.walsh@epa.ie](mailto:j.walsh@epa.ie))

6<sup>th</sup> November 2014

**Re: IWMA Submission on Draft Guidance on Financial Provision 2014**

Dear Isobel,

The Irish Waste Management Association (IWMA) is made up of more than 30 waste management companies that operate 53 waste management facilities that are licensed by the EPA and 21 waste management facilities that are permitted by the local authorities, as detailed in Table 1 below and further details on [www.iwma.ie](http://www.iwma.ie).

**Table 1: Summary of IWMA Members' Facilities**

Type of Facility	Number	Capacity (t)	2013 Throughput (t)
Licensed Non Hazardous Mechanical Treatment / Transfer Facilities	39	4,108,930	2,249,446
Permitted Mechanical Treatment / Transfer Facilities	21	763,900	467,583
Licensed Biological Treatment Facilities	2	65,000	50,317
Licensed EfW Facilities	1	220,000	220,748
Licensed Landfills	1	360,000	310,900
Hazardous Licensed Mechanical Treatment / Transfer Facilities	10	508,257	225,203
<b>Total:</b>	<b>74</b>	<b>6,026,087</b>	<b>3,524,197</b>

Our members have had a wide range of experiences in addressing matters of Financial Provision for their facilities, so we welcome any clarity or consistency that the new Guidance can bring to the subject. The type and nature of licensed facilities operated by our members are variable, as are the organisational structures that their businesses employ, so the issues raised by our members in response to this consultation are also varied. I trust that companies (licensees) will bring individual concerns to your attention, so this submission addresses broad issues rather than specifics.

These broad issues cover the following matters:

- Licensed sites versus permitted sites
- Landfills versus non-landfill sites
- Costs to business versus risks to the State
- Consistency with other EU Member States
- EPA powers
- Interference with Insurance Policies

### ***Licensed versus Permitted Sites***

The IWMA consistently calls for equal enforcement of licensed and permitted sites. Some local authorities provide a high level of enforcement and require adequate financial provisions, whilst other local authorities are more relaxed in their attitude to such matters. The EPA's guidance should apply equally to permitted and licensed facilities regardless of county boundaries and regardless of whether the site is licensed or permitted.

In our experience, permitted construction and demolition waste processing facilities and backfill operations have more potential to leave an environmental legacy than licensed MSW transfer stations or materials recovery facilities.

### ***Landfills versus non Landfill Sites***

The Irish State has been financially exposed to the sudden closure of a number of landfill facilities and we agree that the EPA must endeavour to protect the State against such environmental and financial risk. It is right therefore that each landfill sets aside adequate financial provision to cover environmental liabilities, closure, restoration and aftercare management. However, we are unaware of cases where the Irish State has been exposed to significant financial costs in remediating Materials Recovery Facilities (MRFs) or Transfer Stations (TS). We respectfully suggest that landfills and other high risk sites should be viewed very differently from TSs and MRFs in EPA Guidance on Financial Provision.

### ***Costs to business versus risks to the State***

Any environmental liabilities caused by licensees must be resolved within the conditions of each licence under threat of criminal conviction, so in the normal course of events these liabilities are addressed by the licensee with or without the help of insurance companies.

It is only in very exceptional circumstances that environmental or closure liabilities from non-hazardous TSs and MRFs can be left with the Irish State.

We therefore suggest that the EPA could consider discussion with the waste industry around the possibility of a small annual supplementary fee to be applied to all licence and permit fees for each non-hazardous TS and MRF in the country to cover the State's financial exposure over a period of time. The EPA could build up an adequate fund (perhaps €1million) over several years and then waive the supplementary fee until such time as the fund is called upon and is in need of replenishment. The risk to the State is low from these facilities and the number of facilities is relatively high, so this sort of scheme could prove

attractive to the industry and the EPA alike. Many waste companies have had fires at their facilities and a number of waste companies have become insolvent, but in every case, the State was not left with the financial liability. So the risk of a liability at these facilities should not be confused with the risk of that liability being left in State hands.

Further engagement with the waste industry is recommended to develop this concept. An opt-out option could be available for those that wish to cover their own environmental liabilities individually.

Under the current proposals, the EPA is seeking to cover every eventuality, no matter how unlikely, including the eventuality of every licensed facility in the country causing serious pollution and the operators becoming insolvent at the same time. We suggest that this ties up resources unnecessarily as the outcome that is covered cannot reasonably be expected to occur.

### ***Consistency with other EU Member States***

We understand that Financial Provisions are required for licensed landfills, mines and large industrial sites in most EU Member States, but MRFs and TSs are not generally required to put in place the sort of Financial Provision required by the EPA in Ireland. We ask the EPA review practices by equivalent Agencies in other EU Member States prior to finalising the Guidance and seek to find consistency.

### ***EPA Powers***

It appears to us that the Financial Provisions guidance document seeks to pass all risks and all costs from the EPA to the licensees. We are concerned that the Guidance could appear to give the EPA too much authority over the licensee's finances in a rather ambiguous manner. We feel that this is an unnecessary burden on business that could be avoided by more specific rules of engagement that are fair and transparent.

For example, we consider that the circumstances within which a financial provision will be relied upon as a breach of the bond are too broad. The insolvency provision defines insolvency too widely for example as one where merely a petition has been made for the winding up of a company and this could occur at any stage to any company. Therefore, if a petition has been made the bond is triggered.

### ***Interference with Insurance Policies***

The following bullet points in Section 4.5 (Environmental Liability Insurance) are considered problematic to licensees.

*(iii) provides for retroactive cover in respect of the operation of the licensed facility;*

*(vii) includes a restriction on cancellation save with the prior consent of the EPA (including for non-payment of premia).*

These requirements are likely to be cost prohibitive if even available. Point (vii) requires that an insurance company must still pay out in the event of an environmental incident even if the waste company stopped paying its premiums 12 months before the incident. It is likely that the only way an insurance company would agree to that is if there is upfront payment for the entire life of the policy which would be very expensive.

Yours sincerely

A handwritten signature in black ink that reads "Conor Walsh". The signature is written in a cursive, flowing style.

Conor Walsh  
IWMA Secretary

c/o SLR Consulting,  
7 Dundrum Business Park  
Windy Arbour  
Dublin 14.

[cwalsh@slrconsulting.com](mailto:cwalsh@slrconsulting.com)

Tel: 01-2964667