



Mr. Peter Cunningham
Manager, Environmental Enforcement Southwest
Office of Environmental Enforcement,
Environmental Protection Agency,
Regional Inspectorate,
Inniscarra,
Co. Cork.

(sent by email only)

25th September 2015

Re: Public Access to Enforcement Documentation

Dear Mr. Cunningham,

Further to our meeting with your colleagues Jim Moriarty and Dr. Michael Henry last week, the ***Irish Waste Management Association (IWMA)*** offers the following comments in relation to your proposal to publish additional enforcement documents on the EPA's website.

IWMA Background

The IWMA is made up of 35 waste management companies that operate 55 waste management facilities that are licensed by the EPA and 21 waste management facilities that are permitted by the local authorities. Further details of our association, including a list of our members is available at www.iwma.ie.

Public Information on Enforcement of Licensed Sites

The IWMA supports the Irish State's commitment to allow greater public access to environmental information under the Aarhus Convention and we recognise that the EPA has been very progressive in this regard. However, it needs to be recognised and acknowledged that there is a two tier system in regulating waste facilities and there is little or no information readily available to the public in relation to either the application process or the enforcement of waste facilities that are permitted by the local authorities.

The IWMA has been calling for openness with regard to waste facility permits for many years but we are continually frustrated by the fact that data relating to the enforcement of permitted sites remains opaque and secretive. We object strongly to the Irish State's development of a two tier system in this regard whereby the majority of authorised waste facilities effectively

operate under different rules when it comes to enforcement and transparency. Whilst this issue is not addressed in your briefing document, it is a serious issue for EPA Waste Licence holders and we ask the EPA to do all in its power to pressurise the local authority enforcement teams to make greater progress in complying with Ireland's commitments under the Aarhus Convention. It is a responsibility of the Agency to oversee local authority environmental regulatory performance and as such, there is an onus on the Agency to act. The EPA also works with local authorities to provide guidance and promote best practice in relation to their performance of their statutory functions relating to environmental protection.

The Annual Environmental Reports for licensed sites have been available on-line for a number of years now and despite many requests by the IWMA, the corresponding reports for permitted sites are still not available publicly, in paper form or in electronic format.

Local Authorities have also refused requests made under the Access to Information on the Environment legislation to reveal AERs for some permitted sites. This veil of secrecy is at the opposite end of the spectrum to the EPA's latest initiative, so we suggest that the Irish State is failing in its commitments to the Aarhus Convention. We are also concerned that there is a lack of peer pressure on permitted sites to perform to high environmental standards or to account for the appropriate management of the wastes that they receive.

We recognise the peer pressure that goes with public access to enforcement files and we respectfully suggest that putting that pressure on some sites (licensed sites) and not on others (permitted sites) leads to potential competitive advantages for sites that are under less public and peer-group scrutiny. For this reason, we ask that the EPA refrains from adding further imbalance to the system by making the enforcement of licensed sites even more transparent in advance of rectifying the transparency problem in the waste permitting system. The EPA's proposed action in this regard may be open to challenge on the grounds that it is anti-competitive unless applied equally to both licensed and permitted sites.

We also note the intention to publish waste inspection reports without the 'right to reply' being afforded to the licensee. There are cases where Inspectors determine incorrectly that there are non-compliances at a site. In these cases, the licensee invariably contests the determination, but we rarely, if ever, see revised site inspection reports. For this reason, it is imperative and reasonable to expect that the licensee's responses to site inspection reports are as publicly accessible as the EPA reports.

Ideally, we would like to see a system of appeals with regard to contested non-compliances before the site inspection reports are made publicly available. The reputation of our members could be unfairly tainted in circumstances where non-compliances are incorrectly determined and published without the right to a defence. We welcome the 30 day delay in this regard and hope that that period could be used to revise any errors in site inspection reports.

Priority Site Identification and Enforcement

The IWMA welcomes the systematic approach now being taken by the Agency to focus its resources on non-compliant sites. However, for the reasons outlined above, we do not support publication of the Priority List, unless that list also includes permitted sites. We are

concerned about the very poor performance of a small number of permitted sites that appear to be operating under the enforcement radar. Naming and shaming licensed sites, whilst allowing permitted sites an exemption from this process, will only further widen the gap in this two tier system.

We ask that the Agency considers the following two options with regard to this system:

1. Divulging the scoring mechanism to licensees to allow a better understanding of how their sites are scored, thereby encouraging better performance. It is reasonable to expect that we will be afforded details and an explanation of the weighing used by the Agency for the four main “scoring” aspects to the methodology. Whilst foundation stones of the “scoring” system are outlined in the presentation, detail is very much required.
2. Regularly informing the licensees of the score attributed to their site and where their site stands in the ranking. This would provide a good incentive for poorly performing sites to invest in site improvements and possibly save the Agency the time and effort of proceeding with a prosecution.

Finally, I wish to thank the Agency for your continued and regular engagement with the IWMA and we look forward to continuing this forum. In the meantime I trust that our feedback will prove useful and be considered in your final decisions on these matters.

Yours Sincerely,



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IWMA Secretary

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