



Ms. Teresa Roche,
 Environmental Protection Agency
 PO Box 3000
 Johnstown Castle Estate
 County Wexford

(e-mail: t.roche@epa.ie)

8th April 2015

Re: IWMA Submission on ‘Draft Better Regulation Policy’ and ‘Draft Compliance & Enforcement Policy’ – EPA 2015

Dear Ms. Roche,

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.

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
Total:	74	6,026,087	3,524,197

Our members have had a wide range of experiences in interactions with the EPA, so we welcome this opportunity to provide feedback on the areas of 'Better Regulation' and 'Compliance & Enforcement Policy'.

The IWMA very much welcomes and supports the EPA's commitment to adherence to the core principles of 'Better Regulation'. However, in this submission we point to areas where we consider that these principles could be further applied in regulation of the waste sector in Ireland. In some cases our comments relate directly to the EPA and in other cases we address the wider regulation of the waste sector by all relevant authorities.

The IWMA has the utmost respect for the EPA and the professional standards that are consistently applied by Agency staff, so whilst this submission is clearly critical, it is focussed on matters that we believe are important for Better Regulation in Ireland and we hope that the Agency accepts the criticisms in that context. Many of our criticisms are directed at the enforcement system rather than the EPA, but we suggest that the EPA is in a strong position to promote reform of the wider system.

Proportionality

It is apparent from our members' experience, that EPA enforcement action is driven more by complaints than by harm or risk of harm to the environment or public health. We consider the Agency's response to be somewhat reactive rather than proportional in this context.

The EPA's press release in early March 2015, around the issuing of the Enforcement Report on the Waste Sector, made it very clear that the number of complaints is a significant driver of enforcement action.

Whilst complaints are sometimes reflective of poor environmental performance, we are aware of many cases where the number of complaints is not a good reflection of the standard of operation of a facility or the risk of harm to the environment or public health. Complaints can be used as a tool against a waste company for reasons that do not relate to environmental performance. For example, we are aware of more than one case where a complainant has used this tool in attempts to force the waste company to buy their property at an inflated price.

The number of complaints also affects the annual fees for a licensed facility, as calculated as part of the RBME. However not all complaints are justified or accurate. The EPA should consider rating complaints in the following way:

- i. "Valid complaints"- whereby the EPA has carried out their own surveys or where the operator acknowledges a complaint as accurate.
- ii. "Unsubstantiated complaints" whereby the complaint could neither be proven or disproved and
- iii. "Incorrect complaints" whereby a complaint related to a different facility or was proven to be not justified

In the wider context of Better Regulation in Ireland, we suggest that criminal activity that is under the EPA's radar, has a much greater potential to cause harm to the environment or public health. The EPA focus is clearly on licensed sites and we often find it difficult to convince the EPA to take a wider view, despite the 'proportionality' argument.

Risk-based enforcement policy in Ireland assumes that C&D materials are relatively harmless compared to MSW. We consider that C&D fines pose a greater threat to the

environment than MSW, as this material is easy to hide and is generally highly contaminated with sulphate from the gypsum in plasterboard. The sulphate ions are highly mobile and pose a high risk of contamination of groundwater and/or surface water.

EPA engagement with the IWMA to identify and discuss the environmental risks associated with waste management would be very welcome and would undoubtedly enhance the EPA's enforcement policy. This engagement may also identify areas where the wider enforcement authorities could focus their resources in an effective manner that would provide greater environmental protection as well as supporting compliant businesses from the impact of competition from illegal dumpers and other rogue operators.

Consistency

Our members have experienced inconsistencies in EPA regulation on a number of levels as described below.

Inconsistency with EPA Inspectors

EPA inspectors are not always consistent with each other in their enforcement actions. Feedback from our Members suggests that there is a lack of consistency regarding the interpretation of licences and the approach to regulation by EPA inspectors. Enforcement action can impact on the competitiveness of each facility, so consistency is important to ensure a level playing field for all licensed waste facilities.

We are particularly concerned when we see cases where a local authority licensed site is treated differently to a private sector licensed site. A recent case was observed whereby a local authority site receiving significant quantities of C&D waste for restoration purposes was allowed to decommission its weighbridge, despite the fact that a condition of the licence (rightly) required all waste materials to be weighed as they were received at the site. In contrast a private sector company (non-IWMA member) was recently prosecuted in the District Court for not installing a weighbridge at a licensed land restoration site.

Consistency with other Regulators

There is a lack of consistency between EPA and local authority enforcement and also inconsistencies across local authority enforcement in general. Some local authority permitted sites have operated for several years without an inspection. The same could not be said for any licensed site in the country.

We respect the fact that EPA inspectors are independent and well removed from the local politics that prevails in local Government. It also appears to us that the EPA Inspectors are less likely to be intimidated by criminals, particularly if they are not based or living locally.

We also wish to acknowledge at this point that EPA inspectors are well educated, appropriately trained and always professional in dealings with our Members.

The IWMA has consistently called for greater EPA involvement in local authority enforcement of permitted waste sites. There has certainly been some gains in the area of consistency between EPA and LA enforcement in recent years, through NIECE, but we respectfully suggest that there are one or two permitted sites in the country that require EPA intervention if criminal activity is to be adequately addressed. As these cases are very few in number, we do not expect that this will result in significant pressure on EPA resources. Without such intervention, these sites will continue to attract business away from highly regulated licensed sites and well operated permitted sites, with significant consequences on the environment associated with illegal dumping and other serious criminal activities.

Consistency with interpretation and instruction on EWC coding is also sometimes lacking. This is a critical issue in relation to outlets for some materials, such as recycled aggregate. There are cases where permitted sites have a competitive advantage over licensed sites in this regard.

Consistency with Other EU Member States

The licensing process has been slow and cumbersome in Ireland over the past two decades. Waste licences have taken 4 to 5 years to issue in many cases. This is not consistent with other EU Member States. For example, in the UK there is a target of 13 weeks from a 'duly made' application to a decision by the Environment Agency on a waste permit. This would not be possible under the licensing regulations in Ireland as there are several statutory periods for public consultation. Environment Agency permits in the UK are required by the same EU legislation as EPA licences, yet there is a major inconsistency in the time that it takes to get a UK waste permit versus an Irish waste licence. This has impacted badly on business in this jurisdiction.

There are also inconsistencies between the EPA in Ireland and similar Agencies in other EU Member States with regard to Financial Provision requirements. Financial Provisions are required for landfills, mines and large industrial sites in most EU Member States, but Material Recovery Facilities (MRFs) and Transfer Stations (TSs) are not generally required to put in place the sort of Financial Provision required by the EPA in Ireland. In the UK, the Environment Agency carries out credit checks for MRF and TS operators, rather than seeking bonds or other securities. It is our view that the EPA's approach in this regard puts an unnecessary burden on business in Ireland.

Necessity

We suggest that prosecutions taken by the EPA are not always necessary, particularly where enforcement action results in improved infrastructure or operating standards at a significant cost to the licensee. For example, if a facility is deemed to be responsible for odour nuisance and the operator agrees to install negative air pressure and an effective odour treatment system at a cost of €500,000 to €1m, it seems unnecessary for the EPA to follow through with a criminal prosecution, where the fines and costs are relatively small in the context of the financial outlay associated with the odour abatement measures.

Transparency

EPA licensing and enforcement is very transparent with on-line availability of applications and annual environmental reports, plus the use of the LEMA, EDEN and ALDER systems. We welcome this openness and have called for equal transparency with local authority permitted sites.

Accountability

Objections to EPA 'proposed decisions' on licences or objections against 'notifications of non-compliance' are decided by the EPA, so accountability is not ideal. We understand that an appeals board would require a lot of resources, but there may be a case for existing ombudsman powers to be extended to complaints against the EPA. Whilst the Ombudsman would not have the technical expertise, the Ombudsman's office could hire a single individual with the required technical knowledge and this could be supplemented by independent technical consultants, when required.

Polluter Pays

As detailed above, the IWMA is concerned that the current system of regulation of the waste sector in Ireland is missing the 'under the radar' criminal activities that result in illegal dumping and other environmental crimes that in turn lead to pollution. The shift of business, particularly evident in skip collections, from responsible and compliant operators to poorly regulated rogue operators is evident and flies in the face of the 'Polluter Pays Principle'. The criminal activity by the rogue operators allows them to charge less for waste collection and undercut the responsible operators, growing their businesses and unfortunately proving that crime pays. This is a growing problem that needs to be addressed jointly by the enforcement authorities in Ireland.

As stated earlier, the number of complaints can be a determining factor in increased annual EPA fees, despite the site having a proven good environmental performance and good audit records from the EPA visits. It would be more in keeping with the polluter pays principle if sites were judged on their environmental record, rather than their complaints register.

Risk Based & Effective

The EPA's Risk Based Method of Enforcement (RBME) may be effective for licensed sites, but it does not extend beyond licensed sites and it is therefore limited in its effect in terms of environmental protection. The criminal activities mentioned above pose a very high risk of pollution and appear to receive the least amount of attention from enforcement officers.

Whilst we appreciate the EPA's willingness to consult regularly with the waste industry, we respectfully suggest that the Agency could be more helpful with some difficulties that are currently faced by waste operators. The following issues are considered very important by the IWMA:

1. *End of Waste status for recycled aggregates.* Recycled aggregate was considered to be a product prior to the introduction of EU end of waste rules that do not allow a waste to be considered a product until it achieves end of waste status. The waste industry urgently needs the EPA's support in this area.
2. *C&D Fines.* C&D fines have the potential to pollute the water environment if they are not disposed or recovered in a lined cell with leachate collection and treatment. Tracking of this material is currently ineffective and EWC coding is an important factor in this. It is our view that C&D fines should be coded 19 12 09 and this code should be kept exclusively for this material, to improve the tracking of C&D fines. Any tracking proposals must extend to all permitted and licensed sites to be effective. Additional measures imposed on licensed sites only would have the unintended consequence of driving more waste from well regulated to poorly regulated sites.

Additional Comments on Compliance & Enforcement Policy

Under the heading '**Objective**' on Page 2, the words 'non-compliance' are used repeatedly. We are concerned that this term might refer to non-compliance with licence conditions, rather than non-compliance with environmental legislation in a broader sense. In our experience with EPA enforcement, the focus is exclusively on the former, not the latter.

We are informed by a member that the **enforcement terminology** used on Page 4 and Page 8 appears to be inconsistent with the terminology used on LEMA.

On page 5, it states that the EPA promotes **consistency nationally** through effective liaison with other enforcing authorities. We accept that the EPA is instrumental in promoting this

goal, but as detailed above, the IWMA believes that we are a long way from achieving national consistency. We are aware of the current initiative to put Regional local authority enforcement structures in place with a lead authority in each region and we hope that this will prove to be a major step in the right direction in this context.

Risk based enforcement should consider the risks to business caused by a lack of enforcement of rogue operators that hide in a 'blind spot' overlooked by the EPA. Illegal dumping and other rogue activities allow these criminals to undercut the fully regulated waste management companies and grow their businesses at the expense of the environment.

I hope that submission is considered helpful, despite its critical nature. We share a common desire to improve regulation in Ireland, which will ultimately better protect our environment.

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
Tel: 01-2964667