



Circular Economy Programme  
EPA Headquarters,  
PO Box 3000  
Johnstown Castle Estate  
Co Wexford,  
Y35 W821

By email only to [byproduct@epa.ie](mailto:byproduct@epa.ie)

30<sup>th</sup> September 2022

**Re: Consultation on National By-Product Criteria – Greenfield Soil and Stone.**

Dear Sir/Madam,

Further to your call for consultation on the above-referenced subject, I offer the following responses and comments on behalf of the Irish waste Management Association (IWMA). The IWMA is comprised of 60 members that operate about 70 waste management companies.

Our website, [www.iwma.ie](http://www.iwma.ie), provides details of our members. Note that some members have acquired other companies in recent years and therefore trade under several brand names. Here are some slides from a presentation showing many of our members' logos:

**IWMA Members – Non-Hazardous**



## IWMA Members – Hazardous



## IWMA Members – Metal Recyclers



We have added 4 new member companies since these slides were prepared in March 2022.

Our members handle household, commercial, C&D, metals, liquid and hazardous wastes and are involved in the following waste management activities:

- Waste Collection
- Waste Transfer
- Recycling Operations
- Metal Recycling
- Composting
- Anaerobic Digestion
- Hazardous Waste Management
- Specialist Treatments (such as Sterilisation)
- Soil Treatment and Recovery
- Waste to Energy
- SRF Production
- Landfill Operations
- Export of Waste for Treatment Abroad

It is clear that the IWMA represents a broad spectrum of waste management activities, so we have no inherent bias towards or against any particular waste management options. Our main goals are to raise standards in the industry, to promote compliance with all legislation and to assist Ireland in meeting the targets set by the EU in a variety of Directives. All our submissions are available publicly on our website.

Our members accept that greenfield soil and stone should be used as a by-product once it has been proven to be uncontaminated and free from invasive species. However, we are very concerned about the self-policing nature of the proposed National By-product process. This relies on the integrity and expertise of the producer, landowner and end-user, which we suggest is insufficient for environmental protection.

We note that the statutory declaration of conformity uses the words: *“I certify that the above information is complete and correct to the best of my knowledge.”* The producer may not have the knowledge to recognise contaminants or invasive species, so may be legally correct in their declaration and at the same time cause environmental damage at the end destination.

For these reasons, we suggest that the process must involve declarations by independent Competent Persons that have the relevant knowledge, expertise and qualifications to make such a declaration and are willing to stake their professional reputation on their reports. In many cases, this may require two experts, one to verify that the material is uncontaminated and from a greenfield source and another to verify that there are no invasive species, such as Japanese knotweed, at the source site.

We also suggest that where there is some contaminated material has been identified on (or proximal to) the source site, the Competent Person (or consultancy) that verifies the uncontaminated nature of the by-product material should be on site when it is excavated and loaded to ensure that contaminated material is not included with the by-product material. We believe that the mixing of contaminated waste material with uncontaminated by-product material is a high risk for this process.

We also suggest that the public register for these By-Product declarations and movements should be fully transparent, kept up to date and should include the Competent Persons reports as well as all the other information that is required. A transparent system will allow for peer-review which can lead to targeted enforcement, which saves resources that would otherwise be needed for a wider enforcement net. Our members have suggested that an equivalent process to the Waste Transfer Form (WTF) process could work well in this context.

We have no objection to the EPA charging a reasonable administration / enforcement fee for every declaration made. This could be a banded system that would be very low for small quantities and higher for large quantities. Any charges should be ringfenced for administration and enforcement of the system.

We make other specific observations and comments in Appendix 1 below in the format that you have provided.

We hope that this submission is helpful and we look forward to further positive engagement with the EPA Circular Economy Team on this and other waste and resource management issues.

Yours Sincerely,



Conor Walsh  
IWMA Secretary

[cwalsh@slrconsulting.com](mailto:cwalsh@slrconsulting.com)  
[www.iwma.ie](http://www.iwma.ie)

# Appendix 1

Specific Comments on the Consultation  
Document

Category No.	Submission Category Description:		Comments
1.	Notified material	Greenfield soil and stone	<p>The definition contained in 1.3 does not reference any chemical substances – these should be included.</p> <p>Given the lack of a definition of contaminated ground elsewhere in EPA guidance or regulation care is required in this statement as it may become the default reference nationally.</p> <p>Verification of uncontaminated soil requires input by a qualified environmental professional. Involvement of an independent qualified professional (e.g. PGeo, CSci, CEng, MCIWM etc) who may hold appropriate P.I. insurance will assist in complying Regulation 27(1)(d). In the absence of a qualified independent professional the decision is left to economic operators with commercial interests and so evidence may not be reliable. Designated qualified person is mentioned in section 3.5 of the document as a suggestion but does not appear elsewhere and is not a requirement. Suggest making it clearer and a requirement.</p> <p>Similarly, a Competent Ecologist is needed to identify invasive species at the source site. Without this, the producer can spread invasive species in ignorance and comply fully with the statutory declaration, as <u>to the best of their knowledge</u>, the material was free from invasive species.</p>
2.	Production process	Development of a greenfield site that requires excavation.	It is unclear if the Producer is the Landowner or Contractor.
3.	End use and lawfulness	Use as part of a development that has been granted planning permission or which is in receipt of a Section 5 Declaration of Exemption (specific to the nature and quantity of material required).	Exempted development including forestry exemptions have been abused in the past.
4.	Statement of Conformity	To be completed by the producer and checked by the end user.	<p><i>“This includes producer details, the material quality, the production process and the end-use which forms part of a development. The Statement of Conformity will include the information required by both Declarations of Soil Quality (civil and environmental) which are currently used in the case-by-case notification system.”</i></p> <p>Verification and declarations of Soil Quality (civil and environmental) to confirm uncontaminated soil requires assessment by a competent qualified environmental professional who takes professional responsibility for the assessment. Involvement of an independent qualified professional (e.g. PGeo, CSci, CEng, MCIWM etc) who hold appropriate P.I. insurance will assist in complying with Regulation 27(1)(d). In the absence of a qualified independent professional the decision is left to economic operators with commercial interests</p>

			<p>and so evidence may not be reliable. Suggest including the requirement for an Environmental Site Assessment Report for the source site which would go on file as part of the evidence.</p> <p>Verification of invasive species needs to be carried out by a qualified ecological professional. Suggest including the requirement for an Ecological Site Assessment Report which would go on file for the source site as part of the evidence.</p>
5.	End Use Declaration	To be completed by the end user and checked by the producer.	See comments on competency and qualification for assessing Soil Quality and absence of Invasive Species.
6.	Register	<p>To be completed by the producer and checked by the end user.</p> <p>The register will be available for the local authority to check e.g. the planning details relating to specific end use developments.</p>	<p>Suggest including as much evidence as possible within the register including site investigation reports, Environmental Site Assessment Report, Ecological Site Assessment Report. These reports are not overly costly and are routinely available for developments. They would provide evidence to minimize the risk of environmental or health impacts as required under 27(1)(d).</p> <p>We also suggest that the public register for these By-Product declarations and movements should be fully transparent, kept up to date and should include the Competent Persons reports as well as all the other information that is required. A transparent system will allow for peer-review which can lead to targeted enforcement, which saves resources that would otherwise be needed for a wider enforcement net. Our members have suggested that an equivalent process to the Waste Transfer Form (WTF) process could work well in this context.</p>
7.	Non-Conformance Reports	<p>Reports can be raised by:</p> <ul style="list-style-type: none"> <li>- the end user in relation to non-conforming material received from the producer/approved supplier.</li> <li>- An enforcement officer e.g. the local authority in relation to non-conforming material being used at the end use location, the end used being unauthorised or the end use not being provided for in the scope of the planning permission/exemption for the development.</li> </ul>	<p>It is unlikely that an End User will produce NCRs as they are not required to have qualified staff and are unlikely to have any management system in place.</p> <p>Significant inconsistencies and resources observed between LA areas. Suggest regional enforcement team with specialist knowledge in geology/land contamination is established.</p>
8. (A)	Other	Logs of material	Will this log be submitted and checked by the EPA? Verifiable by-product stats are important in demonstrating national waste reduction stats.

