



Limerick County Council's Enforcement Policy on illegal waste activity

1. Background

In July 2008 the Minister for the Environment Heritage and Local Government issued a Policy direction under Section 60¹ of the Waste Management Act. The direction sets out to strengthen the Irish enforcement system, particularly in relation to enforcement actions & penalties in order to meet the requirements of the Waste Framework Directive. This Direction complements the Ministerial Direction under Section 60 issued in May 2005² on actions to be taken against unauthorised waste activity.

2. Introduction

This document sets out the policy framework that Limerick County Council will use in acting against illegal waste activity. The legislation which The Council operate under is the Waste Management Acts 1996 to 2008 (WMA Acts). The purpose of this policy is to inform stakeholders of the factors that will be taken into account in determining enforcement responses to illegal waste activity including whether prosecutions will be pursued.

3. Limerick County Councils Approach

Limerick County Council is responsible for the regulation of activities permitted under the WMA Acts, in addition to performing statutory environmental protection functions.

Limerick County Council will work with the local authorities in the Mid-West Region through the Mid-West Regional Waste Management Office and with other local authorities and Regulators through the Environmental Enforcement Network (EEN) to ensure efficient use of resources and coherent enforcement of environmental law. The objective of this network is to enhance the effectiveness of all participants by sharing

¹ Circular WPRR: 04/08 - Policy guidance pursuant to section 60 of the Waste Management Act, 1996 Action against illegal waste activity - the use of sanctions

² Circular WIR: 04/05 - Policy guidance pursuant to section 60 of the Waste Management Act, 1996 1 Action against illegal waste activity 2 Movement of waste

information and adopting a co-ordinated approach to environmental enforcement. Limerick County Council will integrate Illegal Waste Policy objectives into our Inspection Plans (RMCEI) and enforcement plans. This will help to ensure a risk based prioritisation of national and regional priorities as well as taking account of local circumstances.

Enforcement plans shall set out the resources that will be applied to enforcement with provision for review of resource needs and training or specialists advice/needs. In this regard efforts to coordinate with other regulatory authorities and also the Garda Síochána should be planned so as to maximise the effectiveness of the use of resources.

4. Delivering Outcomes

Our aim is to deliver effective, proportionate and dissuasive actions against such operators through the use of our legislative powers. Limerick County Council will seek to prevent illegal waste activity by taking a systematic and consistent approach to enforcement against illegal waste activities to achieve the following outcomes:

- early cessation of the illegal activity by use of powers provided in sections 55, 57 or 58 of the Waste Management Acts;
- regularisation of illegally deposited waste through a permit or licence (section 39) or offsite movement to comply with section 32 requirements;
- cessation and the leaving of illegal waste unregulated are not acceptable,
- remediation as required, in accordance with the EPA Code of Practice³;
- deterrence of illegal waste activity to remove any financial gain or advantage derived through bypassing the legal requirement of a prior waste licence or permit ;
- application of the landfill levy on the owner/operator of an illegal landfill;
- timeliness in achieving cessation, regularisation and remediation referred to above;
- provision of awareness about the importance of compliance with the law and the achievement of societal goals.
- implementation of the Recommendation on the Minimum Criteria for Environmental Inspection (RMCEI) and an effective complaint handling system;
- criminal sanctions, where appropriate.

³Code of Practice: Environmental Risk Assessment for Unregulated Waste Disposal Sites – available for download at <http://www.epa.ie/downloads/advice/waste/waste/name,22439,en.html>

Limerick County Council will provide information and advice to stakeholders on the importance of compliance with waste law. This Policy sets out the general principles, which Limerick County Council intends to follow in relation to enforcement activity against illegal waste activity. Limerick County Council will monitor the implementation and effectiveness of the Policy and revise it when and where necessary.

5. Policy Objectives

- To ensure effective, proportionate and dissuasive sanctions, in a reasonable timescale, against those involved in illegal waste activities;
- To take the necessary enforcement actions to protect the environment;
- To ensure that permits/registrations issued by the Limerick County Council are fully complied with and that permit/registration holders do not contribute to illegal waste activity;
- To ensure waste collectors in County Limerick fully comply with their waste collection permit, that they dispose/recover all collected waste at an appropriately permitted/licensed facility and they do not contribute to illegal waste activity;
- To ensure that unauthorised waste activities are made subject to sanctions and not only actions aimed at their cessation;
- To ensure the removal of illegally deposited waste, or regularise illegally deposited waste through a permit or registration
- To promote the implementation of the polluter pays principle;
- To deter illegal waste activity and seek to remove any financial gain or advantage;
- To subject illegal waste disposal activities to the application of the landfill levy.
- To seek criminal prosecutions at the highest appropriate level and particularly at Circuit or High Court level to ensure that the sanction is commensurate with the crime.
- To actively communicate enforcement actions to all stakeholders including the general public.

The policies outlined above will be implemented through Limerick County Councils enforcement plans. Limerick County Council will allocate resources to achieve the policy objectives set out above and review this policy and its enforcement plans annually.

6. Principles of Enforcement

Underlying this policy against illegal waste activity are the five key principles of; *proportionality* in the application of environmental law and in securing compliance; *consistency* of approach; *transparency* about how Limerick County Council operates; *targeting* of enforcement action and implementation of the *polluter pays principle*.

This will be achieved by drawing on the following enforcement tools/measures actions, as the situation demands:

- Audit and Inspection to assess the nature and extent of the illegal activity;
- Warning Letters to advise an illegal activity of its non-compliance with waste legislation as well as providing instruction on how to bring about compliance;
- Statutory Notices providing legally binding instruction to an operator to undertake monitoring (S15), provide information (S18) or take measures (S55) to prevent pollution from the waste activity;
- The completion of works at the illegal waste site by Limerick County Council to prevent pollution taking place (S56 WMA);
- Application for a court order to have works carried out to prevent pollution (S57, S58 WMA);
- Review of permit/registration to regularise unauthorised activity;
- Refusal/revocation of authorizations;
- Bond retention for environmental liabilities associated with the illegal activity.
- Imposition of landfill levy, where applicable

7. Sanctions

There are a range of sanctions available to Limerick County Council that can be employed to action against illegal waste activity. Where relevant Limerick County Council will use a mix of these to ensure that the objectives of this policy are met, these include:

7.1 Court Orders

Where deemed necessary Limerick County Council will seek to obtain an injunction against persons involved in unauthorized waste activities (WMA S57/S58). Limerick County Council will also seeks to recover the costs for works

we complete to cease ongoing pollution from an unauthorized waste activity (WMA S56).

7.2 Civil Penalties

Limerick County Council will seek that the courts apply civil penalties under the Waste Management Acts where there is sufficient evidence of one or more of the following:

- Blatant disregard for or significant degree of indifference to the civil law by the illegal operator.
- The State or the community expects that the matter will be dealt with by way of enforcement action
- The illegal waste activity has resulted in or had the potential to result in significant real harm or detriment to the state or the community, including substantial harm to the environment, cultural heritage, economy, resources, assets or wellbeing of the state or its citizens; or
- It is of such a nature or magnitude that it is important to deter other potential contraveners and/or to educate the public.

8. Prosecution

Prosecution is an important part of enforcement. It aims to punish wrongdoing and avoid a recurrence. Limerick County Council will consider the use of prosecutions in conjunction with other available enforcement tools. Where the circumstances warrant it, immediate prosecution will be pursued. Limerick County Council will prosecute those persons responsible for the offence. This will normally refer to the company in question where the offence resulted from the Company's activities. Limerick County Council will also consider any part played in the offence by officers of a Company, including Directors. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent or was due to their negligence and/or other appropriate circumstances.

Limerick County Council will only pursue a prosecution after full consideration of the event giving rise to environmental concerns. This consideration will include the following factors in deciding whether or not to prosecute:

- the seriousness of the environmental and other effects of the offence;
- the predictability of the offence or the circumstances leading to it;
- the intent of the offender, individually and/or corporately;
- the history of offending;
- the attitude of the offender and the level of co-operation provided to investigating authorities.

Examples of illegal waste activities which would normally result in prosecution include:

- illegal disposal of waste;
- carrying out waste activities without a relevant licence or permit;
- the use of unauthorised waste disposal/recovery facilities;
- transferring waste to unauthorized persons;
- handling, collecting, disposing and recovery waste in a manner that is likely to cause environmental pollution;
- failure to comply with statutory notices
- obstructing Limerick County Council staff from carrying out their legitimate functions by the use of threatening behaviour, obstruction, or assault.
- excessive or persistent breaches of regulatory requirements;
- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.

The Waste Management Acts 1996 to 2008 provide for Limerick County Council to prosecute summarily in the District Court. In the case of serious environmental crime, Limerick County Council will consider referring the case to the Director of Public Prosecutions for prosecution on indictment. A serious offence is one for which:

- There is a significant degree of criminality on the part of the offender; or
- Previous administrative or civil responses to contravention by the suspect have not resulted in compliance; and
- Where the State or the community expects that a crime will be dealt with by prosecution conducted in public before a court and usually carries the risk of imprisonment in serious cases, and
- The crime produced significant real or potential harm to the state or the community, including harm to the environment, cultural heritage, economy, resources, assets or wellbeing of the state or its citizens; or
- The crime is of such a nature or magnitude that it is important to deter potential offenders and prosecution will act as a very effective deterrent.

9. Penalties

Penalties available under the WMA Acts are as follows:

- on summary conviction, a fine not exceeding **€3,000** or imprisonment for any term not exceeding 12 months or both fine and imprisonment, or
- on conviction on indictment, a fine not exceeding **€15,000,000** or imprisonment for a term not exceeding ten years or both fine and imprisonment.

Limerick County Council will always seek to recover the full costs of the investigation, detection and prosecution of the offence.

10. Communications

Limerick County Council will utilise a variety of methods to communicate the results of our activities. These will include the Waste Management Plan Annual Report, the RMCEI Inspection Plans, in addition to the MidWest Regional website www.managewaste.ie, newsletters, and conventional media outlets such as press, radio and television where appropriate.

11. Consistency in Enforcement

Limerick County Council will continue to develop and implement its inspection plans prepared in accordance with RMCEI. In addition, Limerick County Council will ensure that complaints, whether communicated through the Councils complaints system, the OEE Illegal Dumping Line or otherwise, are investigated in accordance with the National Environmental Complaints Procedure.

Limerick County Council will work in conjunction with the local authorities in the Mid-West Region with the aim to ensure consistency in enforcement throughout the Region. Limerick County Council will attend bimonthly regional waste enforcement meetings and work towards achieving the objectives of the annual regional enforcement plan.