



South Tipperary County Council

Environment Section

Enforcement Policy for Unauthorised Waste Activities

1. INTRODUCTION

This document sets out the policy framework that South Tipperary County Council (the Local Authority) will adopt when enforcing environmental legislation in relation to unauthorised waste activities. The principal legislation is contained in the Waste Management Acts 1996 to 2008 (WMAs), as amended from time to time; other relevant legislation will be used where deemed appropriate. The purpose of the policy is to inform stakeholders of the factors that will be taken into account in determining appropriate enforcement responses to contraventions of environmental legislation including whether prosecutions are likely to be pursued.

2. POLICY AIMS

It is the aim of the Local Authority to deliver effective, proportionate and dissuasive actions as soon as practicable under its Enforcement Policy. The Local Authority will seek to prevent unauthorised waste activities by taking a systematic and consistent approach to enforcement against unauthorised activities in order to achieve the following outcomes:

- prompt identification of potential offences - resources will be focused on illegal operators and the regulated community;
- early cessation of the unauthorised activities by the use of powers provided in sections 55, 57 or 58 of the WMAs;
- regularisation of illegally deposited waste either through removal by a licensed operator for recovery or disposal at a licensed or permitted facility or, in extreme cases, where waste is to be left in situ, through a waste facility permit or waste licence (depending on the scale of activity) issued either by the Local Authority or by the Environmental Protection Agency;
- remediation of the site of unauthorised waste activities as required, in accordance with the Environmental Protection Agency Code of Practice: Environmental Risk Assessment for Unregulated Waste Disposal Sites, 2007;
- deterrence of unauthorised waste activities to remove any financial gain or other advantage derived through by-passing the legal requirements of a prior waste licence,

- permit or certificate of registration, or the legal requirements of compliance with conditions attached to same or other legal requirements applying to waste activities;
- deterrence to prevent offenders repeating the offence and to discourage others from committing similar offences;
 - 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 waste law and the achievement of societal goals;
 - implementation of the Local Authority's Recommendation on the Minimum Criteria for Environmental Inspections (RMCEI) by the Local Authority's Enforcement Team and an effective complaints handling system; and
 - criminal sanctions where appropriate.

This policy sets out the general principles which the Local Authority intends to follow in relation to enforcement action against unauthorised waste activities. The annual RMCEI Plan, which the Local Authority prepares and implements, will incorporate objectives from this Enforcement Policy. The Local Authority will carry out an annual review of the policy.

3. POLICY OBJECTIVES

This Enforcement Policy is structured to promote the following objectives:

- to ensure that certificates of registration, waste facility permits, issued by the Local Authority, and waste collection permits issued by the relevant nominated Local Authority, are fully complied with and that the holders of these authorisations do not contribute to unauthorised waste activities;
- to ensure effective, proportionate and dissuasive sanctions, as soon as practicable, against those engaged in unauthorised waste activities;
- to provide a coherent approach to sanctions, and their use;
- to ensure that unauthorised waste activities are made subject to sanctions and not only actions aimed at their cessation;
- to encourage 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 promote the polluter pays principle; and
- to actively communicate enforcement actions to all stakeholders including the general public.

4. PRINCIPLES OF ENFORCEMENT

Underlying the enforcement policy of the Local Authority against unauthorised waste activities are the five key principles of:

- 1) *proportionality* in the application of environmental law and in securing compliance;
- 2) *consistency* of approach;
- 3) *transparency* about how the Local Authority acts;
- 4) *targeting* of enforcement action; and
- 5) *implementation* of the *polluter pays principle*.

The following enforcement measures/actions will be deployed by the Local Authority, as the situation demands:

4.1 Direct environmental audits and inspections – The use of auditing, inspections and specialist monitoring enables the Local Authority to assess specific issues relating to a certified/permitted facility or an unauthorised waste activity.

4.2 Warning Letters – A warning letter is written notification issued by the Local Authority stating that, in the opinion of the Local Authority, an offence has been committed. It will be used in cases of minor infringements to warn an activity of its non-compliance with waste legislation as well as providing instruction on how to bring about compliance. Failure to comply with a warning letter will be followed by the service of a statutory notice (see 4.5 below) and/or the commencement of legal proceedings, as appropriate, by the Local Authority.

4.3 Powers of Inspection – Powers bestowed upon the Local Authority under section 14 of the WMAs enable the Local Authority to enter any premises if there are grounds for believing that there may be a risk of environmental pollution arising from the carrying on of an activity at the premises and to direct the holder of waste thereon to take the necessary measures to remove any risk of environmental pollution.

4.4 Powers of Direction – Powers bestowed upon the Local Authority under section 14 of the WMAs enable the Local Authority, if it considers that waste is being handled or transported in such manner, as to constitute a risk of environmental pollution, to direct the holder of such waste to take such measures as are considered by the Local Authority to be necessary to remove that risk.

4.5 Statutory Notices – A statutory notice is a legally binding instruction requiring information to be submitted in writing to the Local Authority regarding waste (section 18 of the WMAs), or, if issued under section 55 of the WMAs, an instruction to carry out specified measures to prevent environmental pollution. Failure to comply with the content of a statutory notice **will** result in legal proceedings being taken by the Local Authority for non-compliance with the terms of the notice.

4.6 Direct Intervention – Powers bestowed upon the Local Authority under section 56 of the WMAs enable the Local Authority to act itself, or empower others to carry out such actions as

are required to prevent or limit environmental pollution. All costs incurred and breaches of environmental law will be vigorously pursued through the courts.

4.7 Court Orders – Powers bestowed upon the Local Authority under sections 57 and 58 of the WMAs enable the Local Authority to apply to the courts to have an order made to carry out such actions as are required to prevent or limit environmental pollution.

4.8 Review of Certificate of Registration/ Permit – Waste management legislation empowers the Local Authority to review a certificate of registration or permit to operate.

4.9 Refusal of Certificate of Registration/ Permit – Following completion of a review, the Local Authority may, in the case of a certificate of registration or permit or revised certificate of registration or permit, refuse to grant a revised certificate of registration or permit.

4.10 Revocation of Certificate of Registration/ Permit – Waste management legislation empowers the Local Authority to revoke a certificate of registration or permit to operate.

4.11 Bond Retention – The Local Authority may retain a bond or securities lodged as a condition of a certificate of registration or permit to remediate any environmental liabilities associated with the facility.

4.12 Refusal of Surrender of Certificate of Registration/ Permit – If the Local Authority is not satisfied that the condition of the relevant installation is not causing or is not likely to cause environmental pollution, and is not satisfied that the site of the activity is in an acceptable state, it may refuse to receive the surrender of the certificate of registration or permit.

4.13 Litter Management Action Plan – The Litter Management Plan reaffirms the Local Authority's commitment to the environment and litter prevention in the county. It is the policy of the Local Authority to enforce legislation associated with the prevention of litter generated pollution in the local environment.

4.14 Working with Other Regulators – The Local Authority will co-operate with the Environmental Protection Agency's Environmental Enforcement Network, other public bodies and other Local Authorities with regulatory functions, both internally and externally, to facilitate effective co-ordination of waste enforcement and to avoid inconsistencies.

5. SANCTIONS

There is a range of sanctions available to the Local Authority, under both civil and criminal law, that can be employed to secure action against unauthorised waste activities. Where relevant, the Local Authority will use one or more of these sanctions to ensure the objectives of this policy are met. These are:

5.1 Civil Law

5.1.1 Court Orders

Where deemed necessary, the Local Authority will seek to obtain an injunction against persons involved in unauthorised waste activities using powers under sections 57 and 58 of the WMAs. The Local Authority will seek to recover the costs for work completed to prevent or limit environmental pollution associated with unauthorised waste activities using powers under section 56 of the WMAs.

5.1.2 Civil Penalties

The Local Authority will seek to ensure that the courts apply civil penalties under environmental legislation 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;
- there is a community expectation that the matter will be dealt with by way of enforcement action;
- the unauthorised waste activities have resulted in harm or detriment to the environment, cultural heritage, economy, resources, assets or well being of the community; or
- the unauthorised waste activities are of such nature, magnitude or impact that it is important to deter other potential contraveners and/or to increase public awareness.

5.2 Criminal Law

5.2.1 Prosecution

Prosecution is an important part of enforcement. It aims to punish offenders and bring to justice those who commit offences and to act as a deterrent to both the offender and to others. The Local Authority will consider the use of prosecution in all cases of breaches of environmental legislation. Where prosecution occurs, it will be at the highest appropriate level and, particularly, at Circuit and High Court level to ensure that the sanction is commensurate with the crime. Where the circumstances warrant it, immediate prosecution will be pursued. The Local Authority will prosecute those responsible for the offence. This will normally refer to an individual or to the company in question where the offence resulted from the company's activities. The Local Authority 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.

The Local Authority 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 foreseeability of the offence or the circumstances leading to it;
- the intent of the offender, individually or corporately;
- the history of offending; and
- the attitude of the offender and the level of co-operation provided to the investigating officers of the Local Authority.

The above factors are not exhaustive and those that apply will depend on the particular circumstances. The Local Authority will decide how important each factor is in each case and make an overall assessment. However, the Local Authority will normally prosecute in the following circumstances:

- illegal disposal of waste;
- carrying out waste activities without a relevant certificate of registration/permit;
- use of unauthorised waste collection/disposal/recovery services or facilities;
- failure to comply with warning letters or statutory notices;
- obstruction of Local Authority staff in carrying out their legitimate functions by the use of threatening behaviour, obstruction or assault;
- excessive or persistent breaches of regulatory requirements; or
- failure to supply information without reasonable excuse or knowingly or recklessly supply false or misleading information.

When preparing a case for eventual prosecution, all evidence from detection through to investigation will be gathered in accordance with best practice and accepted judicial standards.

The WMAs provide for the Local Authority to prosecute summarily in the District Court. In the case of serious environmental crime, the Local Authority will consider referring the case to the Director of Public Prosecutions with a recommendation 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 contraventions 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 community , including harm to the environment, cultural heritage, economy, resources, assets or wellbeing of the state and 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.

5.2.2 Penalties

Penalties available under current environmental legislation are as follows:

- on summary conviction, a fine not exceeding €3,000 or imprisonment for a 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 10 years or both fine and imprisonment.

The Local Authority will always seek to recover the full cost of the investigation, detection and prosecution of the offence.

6. PUBLIC AWARENESS

The Local Authority maintains displays of literature at its principal offices and through its website (www.southtippcoco.ie), on practices which are harmful to the environment. It conducts regular advertising campaigns in the press and on radio, and communicates with the general public keeping them informed of their responsibilities towards protecting the environment.

This policy document will be made available:

- to view and download on the Local Authority's website (www.southtippcoco.ie) ;
- to view and purchase (at a reasonable cost) at the Local Authority's principal offices and at its area offices; and
- to view and purchase (at a reasonable cost) at the offices of Clonmel Borough Council and of Carrick-on-Suir, Cashel and Tipperary Town Councils.

It will be uploaded onto the Local Authority's intranet site and will be circulated to:

- the County Manager and other members of the Local Authority's Management Team;
- all existing and future staff of the Local Authority's Environment Section, including the Enforcement Team;
- the members of the Local Authority and the members of Clonmel Borough Council

- and of Carrick-on-Suir, Cashel and Tipperary Town Councils;
- the members of Dáil and of Seanad Éireann representing any part of the functional area of the Local Authority; and
- the holders of, and applicants for, waste / waste facility permits or certificates of registration.

It will be the policy of the Local Authority to regularly publish details in the media of successful prosecutions taken under environmental legislation.

7. CONSISTENCY IN ENFORCEMENT

The Local Authority, through its involvement in the Environmental Protection Agency's Environmental Enforcement Network, will strive to develop a commonly accepted approach to enforcement of legislation in respect of unauthorised waste activities.

8. TRAINING AND STAFF RESOURCES

Appropriate training will be provided to all members of the Local Authority's Enforcement Team to ensure that there is a clear understanding of the implementation of this policy. The allocation of staff resources will be reviewed on an annual basis in the light of circumstances then obtaining.

9. AREA OF APPLICATION

This Environmental Policy applies to the functional area of South Tipperary County Council, which for the purpose of the Waste Management Acts 1996 – 2008, as amended from time to time, includes the functional areas of Clonmel Borough Council and of Carrick-on-Suir, Cashel and Tipperary Town Councils.

10. COMMENCEMENT

This Enforcement Policy will come into operation on 01 January 2009.

Signed: *Seán Keating,*
Director of Services,
Environment and Water Services.

Dated: 23 December 2008