



## Fingal County Council

### Waste Enforcement Policy on Illegal Waste Activity 2017

#### ***Background:***

In July 2008 the Minister for the Environment Heritage and Local Government issued a Policy Direction under Section 60 of the Waste Management Act 1996. The Direction sets out to strengthen the Irish enforcement system, particularly in relation to enforcement actions and penalties in order to meet the requirements of the Waste Framework Directive. This Direction compliments the Ministerial Direction under Section 60 issued in May 2005 on actions to be taken against unauthorised waste activity.

#### ***Introduction:***

The Environment Division of Fingal County Council has responsibility for enforcement of the following environmental legislation and regulations made thereunder;

- Water Pollution Act, 1977
- Air Pollution Act, 1987
- EPA Act, 1992
- Waste Management Act, 1996
- Litter Pollution Act, 1977
- Protection of the Environment Act, 2003
- Water Services Act, 2007-2013
- Water Framework Directive 2000/60/EC

This document sets out the policy framework that the Environment Division of Fingal County Council will use in acting against illegal waste activity. 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.

#### ***Fingal's Approach:***

The Environment Division's functions include the regulation of activities under the Waste Management Acts 1996 as amended, in addition to the supervision and monitoring of permitted facilities in relation to the performance of their statutory environmental protection functions.

The Environment Division will work with all Regulators (The Waste Enforcement Regional Lead Authority (WERLA), other Local Authorities, the EPA, An Garda Siochana etc.) to ensure efficient use of resources and coherent enforcement of environmental law. The Environment Division is committed to enhancing the effectiveness of all participants by sharing information and adopting a co-ordinated approach to environmental enforcement.

The Environment Division provides information and advice via published guidance to those it regulates and to members of the public to secure environmental improvement and compliance with environmental legislation.

### ***Plans:***

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

The Enforcement Policy should be read in conjunction with the Recommended Minimum Criteria for Environmental Inspections (RMCEI) Plan for Fingal County Council.

### ***Training:***

Environmental training is an important part of an environmental management system. It ensures that employees are aware of the environmental requirements and its impact on their day to day work.

Fingal County Council will undertake to continually review and assess the training needs for staff to assist them in carrying out their functions and implementing new permits or regulations. This covers both a general introduction to Waste & Environmental Management as well as specific issues relating to, for example, Inspection Skills and Court Room Skills training.

### ***Aims:***

Our aim is to deliver effective, proportionate and dissuasive actions in a reasonable timescale against such operators through the use of our legislative powers. The Environment Division 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:

- 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.
- Early cessation of the illegal activity by use of powers provided in Sections 55, 57 or 58 of the Waste Management Act 1996.
- Regularisation of illegally deposited waste through a permit or licence (Section 39 of the Waste Management Act 1996) or offsite movement to comply with Section 32 requirements.
- Cessation and the leaving of illegal waste unregulated are not acceptable.
- Remediation as required and the recovery of the full costs associated with remediation.
- 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.
- Implementation of the Recommendation on the Minimum Criteria for Environmental Inspections (RMCEI).
- An effective complaints handling system (A CRM complaints handling system is used to record and update all complaints.)
- Criminal sanctions, where appropriate.

The Environment Division will provide information and advice to stakeholders on the importance of compliance with waste law. This Policy sets out the general principles, which the Division intends to follow in relation to enforcement activity against illegal waste activity.

### ***Objectives:***

- To ensure that permits issued by the Environment Division are fully complied with and that permits do not contribute to illegal waste activity.
- To ensure that notices issued by the Inspectorate Division are fully complied with.
- To ensure effective, proportionate and dissuasive sanctions, in a reasonable timescale, against those involved in illegal waste activities.
- 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 implementation of the polluter pays principle.
- To actively communicate enforcement actions to all stakeholders including the general public.

***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 the Environment Division 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:

- Audits and Inspections 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 provide information (Section 18 of the Waste Management Act 1996) or take measures (Section 55 of the Waste Management Act 1996) to prevent pollution from the waste activity.
- The completion of works at the illegal waste site by the Inspectorate Division to prevent pollution taking place (Section 56 of the Waste Management Act 1996).
- Application for a court order to have works carried out to prevent pollution (Section 57 & 58 of the Waste Management Act 1996).
- Review of permits to regularise unauthorised activity.
- Audits of permits to ensure compliance.
- Refusal/revocation of authorisations.
- Bond retention for environmental liabilities associated with the illegal activity.
- Bond retention for environmental liabilities associated with permitted activities.
- The use of covert surveillance may be used for a short term duration focused on individual specific and relevant locations.
- The issuing of fixed penalty notices.

***Sanctions:***

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

***Court Orders:***

Where deemed necessary the Environment Division will seek to obtain an injunction against persons involved in unauthorised waste activities (*Section 57 and 58 of the Waste Management Act 1996*). The Environment Division will also seek to recover the costs for works it completes to cease ongoing pollution from an unauthorised waste activity (*Section 56 of the Waste Management Act 1996*).

***Civil Penalties:***

The Environment Division 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:

- The illegal waste activity has resulted in or had the potential to result in significant real harm or detriment to the community, including substantial harm to the environment, cultural heritage, economy, resources, assets or wellbeing of the county and its citizens.
- It is of such a nature or magnitude that it is important to deter other potential contraveners.

### ***Prosecutions:***

Prosecution is an important part of enforcement. It aims to punish wrongdoing and avoid a recurrence. The Environment Division will consider the use of prosecutions in conjunction with other available enforcement tools. Where the circumstances warrant it, immediate prosecution will be pursued. The Environment Division will prosecute those persons responsible for the offence.

The Environment Division 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 Environment Division 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 and/or corporately.
- The history of offending.
- The attitude of the offender and the level of co-operation provided to investigating authorities.
- Satisfactory evidence obtained.

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

- Illegal disposal of waste.
- Burning of Waste (disposal).
- Illegal shipment of waste abroad.
- Carrying out waste activities without a relevant permit.
- The use of unauthorised waste disposal/recovery facilities.
- Failure to comply with statutory notices (i.e. Section 18 & 55).
- Obstruction of Environment Division staff in 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 Act 1996 provides for the Inspectorate Division to prosecute summarily in the District Court. In the case of serious environmental crime, the Environment Division will seek criminal prosecutions at the highest appropriate level and particularly at Circuit Court or High Court level to ensure that the sanction is commensurate with the crime. 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
- 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.

***Penalties:***

A person guilty of an offence under the Waste Management Act 1996 shall be liable-

- On summary conviction, to a Class A fine or to imprisonment for a term not exceeding 12 months, or to both such fine and such imprisonment, or
- On conviction on indictment, a fine not exceeding **€15,000,000** or imprisonment for a term not exceeding 10 years, or to both such fine and such imprisonment.

The Environment Division will always seek to recover the full costs of the investigation, detection and prosecution of the offence.

***Communications:***

The Environment Division will utilise a variety of communication methods.

The Network for Ireland's Environmental Compliance & Enforcement (NIECE) is used by Environment Division personnel to interact with the EPA and other local authorities during the process of enforcing environmental legislation. The council will communicate each prosecution to all Local Authorities (for example that a person/company has been convicted under Section 18 (6) of the Waste Management Act 1996).

Environment Division personnel communicate with the general public through all social media platforms, via the Communications Department of Fingal County Council. Other methods of communication include the Fingal News, the council's own website [www.fingalcoco.ie](http://www.fingalcoco.ie) and conventional media outlets such as press, radio and television, where appropriate.

***Consistency in Enforcement:***

The Environment Division will use the Network for Ireland's Environmental Compliance & Enforcement (NIECE) as a valuable resource in their effort against illegal dumping. In addition, the Environment Division will use the Illegal Dumping Hotline to investigate all complaints received in accordance with the National Environmental Complaints Procedure.

***Priorities for Environmental Enforcement during 2017:***

At a meeting on the 18<sup>th</sup> October 2016 the National Waste Enforcement Steering Committee agreed the following national waste enforcement priorities for 2017:

- Illegal dumping including construction and demolition waste;
- Household waste management compliance including brown bin;
- End-of-life vehicles,
- Tyres PRI

The inspections and monitoring to be undertaken by Fingal County Council during 2017 will focus on these priorities and will be carried out in conjunction with the WERLA National Priority Work

Programme 2017. The programme will also cover a pilot targeted packaging enforcement project which will focus on non-compliant major producers.

***Policy Review:***

Fingal County Council is committed to reviewing this policy annually.

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