



Code of Practice for the
Development of an Enforcement Policy for
Unauthorised Waste Activities

Environmental Protection Agency

The Environmental Protection Agency (EPA) is a statutory body responsible for protecting the environment in Ireland. We regulate and police activities that might otherwise cause pollution. We ensure there is solid information on environmental trends so that necessary actions are taken. Our priorities are protecting the Irish environment and ensuring that development is sustainable.

The EPA is an independent public body established in July 1993 under the Environmental Protection Agency Act, 1992. Its sponsor in Government is the Department of the Environment, Heritage and Local Government.

OUR RESPONSIBILITIES

LICENSING

We license the following to ensure that their emissions do not endanger human health or harm the environment:

- waste facilities (e.g., landfills, incinerators, waste transfer stations);
- large scale industrial activities (e.g., pharmaceutical manufacturing, cement manufacturing, power plants);
- intensive agriculture;
- the contained use and controlled release of Genetically Modified Organisms (GMOs);
- large petrol storage facilities;
- waste water discharges.

NATIONAL ENVIRONMENTAL ENFORCEMENT

- Conducting over 2,000 audits and inspections of EPA licensed facilities every year.
- Overseeing local authorities' environmental protection responsibilities in the areas of - air, noise, waste, waste-water and water quality.
- Working with local authorities and the Gardaí to stamp out illegal waste activity by co-ordinating a national enforcement network, targeting offenders, conducting investigations and overseeing remediation.
- Prosecuting those who flout environmental law and damage the environment as a result of their actions.

MONITORING, ANALYSING AND REPORTING ON THE ENVIRONMENT

- Monitoring air quality and the quality of rivers, lakes, tidal waters and ground waters; measuring water levels and river flows.
- Independent reporting to inform decision making by national and local government.

REGULATING IRELAND'S GREENHOUSE GAS EMISSIONS

- Quantifying Ireland's emissions of greenhouse gases in the context of our Kyoto commitments.
- Implementing the Emissions Trading Directive, involving over 100 companies who are major generators of carbon dioxide in Ireland.

ENVIRONMENTAL RESEARCH AND DEVELOPMENT

- Co-ordinating research on environmental issues (including air and water quality, climate change, biodiversity, environmental technologies).

STRATEGIC ENVIRONMENTAL ASSESSMENT

- Assessing the impact of plans and programmes on the Irish environment (such as waste management and development plans).

ENVIRONMENTAL PLANNING, EDUCATION AND GUIDANCE

- Providing guidance to the public and to industry on various environmental topics (including licence applications, waste prevention and environmental regulations).
- Generating greater environmental awareness (through environmental television programmes and primary and secondary schools' resource packs).

PROACTIVE WASTE MANAGEMENT

- Promoting waste prevention and minimisation projects through the co-ordination of the National Waste Prevention Programme, including input into the implementation of Producer Responsibility Initiatives.
- Enforcing Regulations such as Waste Electrical and Electronic Equipment (WEEE) and Restriction of Hazardous Substances (RoHS) and substances that deplete the ozone layer.
- Developing a National Hazardous Waste Management Plan to prevent and manage hazardous waste.

MANAGEMENT AND STRUCTURE OF THE EPA

The organisation is managed by a full time Board, consisting of a Director General and four Directors.

The work of the EPA is carried out across four offices:

- Office of Climate, Licensing and Resource Use
- Office of Environmental Enforcement
- Office of Environmental Assessment
- Office of Communications and Corporate Services

The EPA is assisted by an Advisory Committee of twelve members who meet several times a year to discuss issues of concern and offer advice to the Board.

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Published by the Environmental Protection Agency, Ireland.

ISBN 978-1-84095-305-3.

06/09/300

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Preface

This Code of Practice (CoP) is primarily aimed at environmental regulators and provides guidance on developing enforcement policies to deal with unauthorised waste. It will also be of interest to other stakeholders, including waste operators and the general public.



Chapter 1 Introduction

1.1 Background

On 25 July 2008, a Ministerial Policy Direction was issued from the Department of the Environment, Heritage and Local Government in relation to Enforcement Actions & Penalties (ref. WPRR: 04/08 attached in Appendix 1). The policy direction, issued under Section 60 of the Waste Management Act, 1996 (WMA), complements a Section 60 direction issued on 3 May 2005 on taking action against illegal waste activity (ref. WIR: 04/05 attached in Appendix 2). The July 2008 policy direction is aimed at further strengthening the Irish enforcement system in order to meet the requirements of the Waste Framework Directive. In particular, the direction requires environmental regulators to prepare an enforcement policy in respect of unauthorised waste activities, which should encourage and promote the following objectives:

- Ensuring that effective, proportionate and dissuasive sanctions are imposed in a reasonable timescale, against those involved in unauthorised waste activities;
 - Providing a coherent approach to sanctions and their use;
 - Ensuring that unauthorised waste activities are subjected to sanctions and not only actions aimed at their cessation;
 - Encouraging actions at the highest appropriate level and particularly at Circuit or High Court level to ensure that the sanction is commensurate with the non-compliance;
- and
- Ensuring the imposition of the landfill levy for illegally landfilled waste.

The Agency is empowered under Section 76 of the Environmental Protection Agency Act, 1992 (as amended) to prepare and publish codes of practice for the purpose of providing practical guidance with respect to compliance with any enactment or otherwise for the purposes of environmental protection. A document under the seal of the Agency purporting to be a code of practice published under Section 76 shall be received in evidence without further proof.



Illegal fly tipping

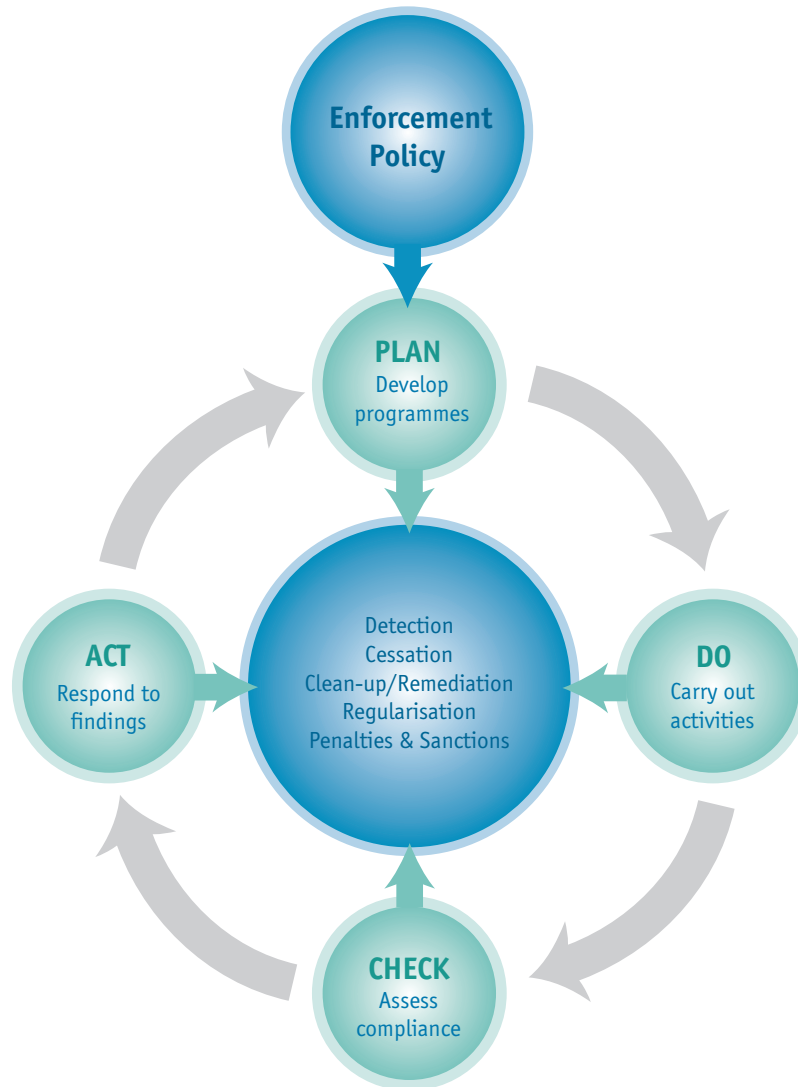
1.2 Objectives

This CoP has been produced to support and promote systematic and consistent enforcement actions against illegal waste operators by regulators that in turn will deliver effective, proportionate and dissuasive sanctions against such operators.

This CoP details the approach, factors and considerations that should be taken into account when developing an enforcement policy for unauthorised waste activities.

This document details the objectives that should be pursued by environmental regulators. The objectives should include specific targets and actions along with a set of performance indicators that can be used to measure the effectiveness of enforcement activities.

A general statement of intent is not satisfactory if not supported by a clear plan of action. Figure 1.0 outlines the steps to achieving distinct outcomes in the enforcement of unauthorised waste activities.

Figure 1.0 Enforcement Policy Implementation

Policies developed by environmental regulators must detail the activities that will be taken to counter illegal waste activity. Not only does the enforcement policy have to be drafted incorporating national¹ and local priorities, it also requires senior management commitment and approval. Review of the policy should occur at least annually.

¹ Circular No. WPRR 10/08 Waste Enforcement Priorities 2009 (available for download from www.environ.ie).

Chapter 2 National Framework for Enforcement

2.1 Introduction

This Policy sets out a systematic and consistent enforcement framework for environmental regulators. It is anticipated that such a framework will foster the development of clear objectives and networking of environmental regulators, which in turn will lead to a consistency of approach and the attainment of waste management objectives against illegal waste activities.

2.2 Enforcement Co-Ordination

European Waste Directives (2006/12/EC and 2008/98/EC) require a seamless chain of responsibility for waste. This includes:

- Holders of waste must have it handled by specified collectors or recovery/disposal undertakings or otherwise in accordance with the directive;
- The operators collecting or dealing with the waste must be subject to a permit or registration system and to inspection;
- The abandonment, dumping or uncontrolled disposal of waste must be prohibited.

The European Court of Justice Case C/494/01 found that Ireland had not correctly implemented Articles 9 and 10 of the Directive pertaining to recovery and disposal.

One of Ireland's responses to the judgement was the establishment of the Environmental Enforcement Network (EEN) by the Agency in conjunction with other public bodies with responsibility for the implementation and enforcement of environmental legislation. The EEN's core objective is to foster co-operation between all regulators involved in the enforcement of environmental legislation so that there is a higher and more consistent standard of enforcement achieved throughout the country (i.e. assure a seamless chain of responsibility for waste).

The key EEN functions are to:

- Ensure more effective co-ordination in the implementation of environmental enforcement activities;
- Provide a framework for a co-ordinated approach to special investigations/actions;

- Develop a consistent approach to the enforcement of environmental legislation;
- Promote the exchange of information and experience in the implementation, application and enforcement of environmental legislation;
- Provide assistance to local authorities and other relevant agencies in the development of best practice;
- Provide a mechanism for feedback to policy makers and legislators on the practical implementation of policies and regulations.

The EEN comprising public bodies with enforcement responsibilities saw the establishment of a number of working groups dealing with priority issues such as Transfrontier Shipment of Waste, packaging waste and unauthorised waste activities. These groups worked together to produce guidance material, and planned and executed concerted enforcement actions. The EEN, through its working groups, holds bi-annual workshops to agree priorities for the year and to review progress with previous enforcement plans.

2.3 Inspection Planning

In 2001, the European Parliament and Council made a Recommendation on the Minimum Criteria for Environmental Inspections (RMCEI) in EU Member States. The purpose of the Recommendation is to strengthen compliance with, and contribute to a more consistent implementation and enforcement of, EU environmental law.

The Recommendation requires that authorities, with the responsibility for regulating industrial and other enterprises subject to authorisation, permitting or licensing under EU Law, undertake their inspection duties in accordance with the Recommendation.

The key requirements of the Recommendation are that authorities:

- Produce a plan for environmental inspections, including a general assessment of major environmental issues within the plan area and a general appraisal of the state of compliance by the controlled installations with EU legal requirements. For example, problematic waste

streams, such as dealing with illegal infill of wetlands and other locations of high biodiversity interests with construction and demolition waste, could be a priority in an area or region and inspections planned accordingly;

- Undertake inspections of regulated installations and produce written reports of those site inspections.

Guidance on the implementation of the RMCEI is available for EEN members on a dedicated extranet site (www.enforcementnetwork.ie).

The RMCEI inspection planning system has developed to a point where all 34 local authorities produce annual inspection plans. Regional and local circumstances are taken into account with all activities carried out in accordance with a risk-based prioritisation system.

The inspection plans produced by Irish regulatory authorities must:

- Be approved by senior management (i.e. Director of Services) within the local authority;
- Define the time period and geographical area to which the plan relates;
- Detail specific sites or types of installations covered by the plan;
- Include programmes for routine environmental inspections, taking into account environmental risks;
- Include procedures for non-routine inspections such as dealing with complaints, accidents and incidents;
- Develop procedures to co-ordinate actions with other Inspecting Authorities; and
- Define a time frame and methodology within which the plan must be reviewed.

The environmental regulator must work with other international environmental regulators particularly with regard to cross-border issues where co-ordinated enforcement actions are required. In this regard IMPEL, the European Union's Network for the implementation and enforcement of environmental law, shares experience and develops guidance for best practice in environmental regulation and is a useful source of information.

Enforcement plans (sample plans available on www.enforcementnetwork.ie) should also set out the resources that will be applied to enforcement and review the resource, training and any specialist advice requirements. In this regard efforts to co-ordinate with other regulatory authorities and also the Garda Síochána should be planned organised and performed so as to maximise the effectiveness of the use of resources.



Multi-agency spot checks on waste transporters

A systematic and consistent approach is a prerequisite to an effective enforcement system and consists of a number of core requirements.

2.4 Core Requirements for an Effective Enforcement System

(A) Detection

Identification of potential offences is the first step in the enforcement chain. Detection activities need to be focused both on the regulated community and on illegal operators. Detection activities could include, but are not limited to:

- Proactive targeted inspection of a sector (e.g. car scrapyards);
- Follow-up on information gathered through a low-cost telephone line such as the Illegal Dumping Line (1850 365 121);
- Working with trade and industry federations.



EPA with the successful tenderer for the Illegal Dumping Line

The National Environmental Complaints Procedure (available on www.enforcementnetwork.ie) developed by the EEN sets out a consistent mechanism for investigating and responding to complaints.

(B) Cessation

Having detected an offence, the priority switches to bringing about an end to the unauthorised activity as quickly as possible. Cessation of the activity not only involves bringing the illegal offence to an end but also that the site is either remediated or regulated.

(C) Clean-Up/Remediation

The Code of Practice “Environmental Risk Assessment for Unregulated Waste Disposal Sites” (available on www.epa.ie) provides guidance on the environmental risk assessment of unregulated waste disposal sites. It sets out a detailed risk-based procedure that allows all historic unregulated waste disposal sites to be identified, the potential risks to be assessed and then the appropriate remedial measures or corrective actions to be put in place. The Code can also be applied to any new waste disposal site that is identified.

The Section 60 Direction (ref. WIR:04/05) of 3 May 2005 details circumstances where waste should at all times be removed, such as wetlands.

Securing the site, including the removal of waste from high-risk sites², should be a priority. Waste left *in situ* for extended periods of time should be avoided, as this is not consistent with the polluter pays principle.

(D) Regularisation

This involves proper regulation wherein the waste is handled and removed by licensed operators for recovery/disposal at licensed facilities³.

Illegally deposited waste can only be left *in situ* if a satisfactory environmental risk assessment carried out in accordance with the EPA CoP has been completed and a waste licence or permit has been granted.



Illegal dumping site

² This, inter alia, reflects the requirements of Article 4(1) of the Waste Framework Directive to ensure that waste disposal or recovery does not cause environmental harm.

³ This, inter alia, reflects the requirements of Articles 4(2), 8, 9 and 10 of the Waste Framework Directive which are aimed at ensuring that waste is covered by a waste permit or licence or is otherwise lawfully held.

(E) Penalties & Sanctions

The imposition of penalties & sanctions in a timely and consistent manner is central to an effective enforcement system. Consideration of the nature and extent of the illegal activity will dictate the degree of the sanctions that need to be taken against the polluter to ensure that:

- Persons will not gain financial or other advantage through by-passing the legal requirement of a prior waste licence or permit, the legal requirement of compliance with licence and permit conditions or other legal requirements applying to waste activities⁴;
- The risk of the offender repeating the offence is minimised;
- Others are discouraged from committing the same offence.

The issue of advocating for sanctions is dealt with in Section 3.5.

2.5 Enforcement Response

The following five key principles of enforcement were adapted from principles developed by IMPEL⁵, the network of European enforcement authorities. These principles guide enforcement practice and the selection of the appropriate enforcement response.

The five principles are:

1. Proportionality in the application of environmental law and in securing compliance;
2. Consistency of approach;

3. Transparency about how an environmental regulator operates;
4. Targeting of enforcement action; and
5. Implementation of the polluter pays principle.

2.5.1 Proportionality

The concept of proportionality is one of the basic tenets of environmental protection and enforcement. It is achieved through ensuring that the particular enforcement action taken is balanced with the risk posed to the environment and the costs of remedial works required. Enforcement action is taken in proportion to the magnitude of the breaches and/or environmental impact, taking account of the conduct of the parties involved.

Whether an incident breaches regulatory requirements causing serious environmental damage or interferes with people's enjoyment of the environment, the enforcement action taken by an environmental regulator should at all times be proportionate to the risks posed to the environment. The main priority is to prevent harm to the environment before it occurs or to stop it as soon as possible.

Proportionality must always determine the upper limits of enforcement action.

2.5.2 Consistency

The environmental regulator should aim to ensure a consistent response, across the regulated communities and across different locations, to pollution and other incidents and in its use of powers and in decisions on whether or not to prosecute.

The environmental regulator should take account of variables such as the scale of environmental impact and risk to human health, the importance of particular habitats and ecosystems, the attitude and actions of the management concerned, and the history of the facility in dealing with previous incidents or breaches.

⁴ This, *inter alia*, reflects the need to ensure that the requirements of the waste Framework Directive in terms of lawfulness of waste activities are effectively upheld.

⁵ The European Union Network for the **Implementation and Enforcement of Environmental Law (IMPEL)** is an international non-profit association of the environmental authorities of the Member States, acceding and candidate countries of the European Union and EEA countries. The Association is the continuation of the informal network, which was commonly known as the IMPEL Network (<http://ec.europa.eu/environment/impel/>).



2.5.3 Transparency

Transparency is important in maintaining public confidence in the environmental regulator's ability to regulate. In practice, it means helping those who are subject to regulation and others to understand what is expected of them. It also means clarifying to stakeholders what to expect from the environmental regulator, and where necessary explaining why the environmental regulator intends to take, or has taken, particular enforcement action.

2.5.4 Targeting

The environmental regulators should focus their enforcement effort on activities that cause the greatest environmental damage, that pose the greatest threats to the environment or that undermine the public's confidence in the environmental legislation enacted to protect and improve the environment.

2.5.5 Polluter Pays Principle

The environmental regulator should apply the polluter pays principle and work towards ensuring that activities or persons that cause environmental damage are held financially accountable for their actions.

The severity of the non-compliance and the possible enforcement action form a sequence of responses, which can be escalated to match the severity of the non-compliance. In response to relatively minor contraventions of environmental legislation, or where the suspect has been particularly co-operative, it may be appropriate to pursue administrative rather than legal remedies. Administrative measures do not involve court action.



Chapter 3 Sanctions and Penalties

3.1 Criminal Sanctions

Criminal sanctions are aimed at achieving a series of outcomes including bringing the illegal situation to a position of legality in a timely fashion and punishing the offender. The policy direction WIR 04/05 of 3 May 2005 directed that the regulatory authorities should take the following steps:

- Pursue illegal holders of the waste, looking to the maximum potential sanctions available in law using the powers available under the WMA as amended and other relevant legislation;
- Apply the landfill levy in all circumstances of illegal deposition;
- Take civil remedies, where possible, against illegal operators under the provisions of Sections 55 to 58 of the WMA; and
- Seek to recover the costs of measures taken to prevent or limit environmental pollution caused by the waste in all cases.

3.2 Civil Remedies

Where the environmental regulator's investigation produces sufficient evidence of non-compliance, appropriate civil sanctions may be sought through the higher courts. Such sanctions include injunctions and court orders for repair and mitigation of damage to the environment.

These measures should be considered in instances with at least one of the following attributes:

- It involves a blatant disregard for or significant degree of indifference to the civil law;
- The State or the community expects that the matter will be dealt with by way of enforcement action;
- It resulted in or had potential to result in real harm or detriment to the State or the community, including harm to the environment, cultural heritage, economy, resources, assets or well-being 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 raise the awareness of the public.

An application is made to the higher courts for an order to cease causing pollution, including the cessation of the activity giving rise to the pollution, and to mitigate or remedy the effects of such pollution (see Sections 57/58 of the Waste Management Acts). The environmental regulator should seek to recover costs as considered appropriate.

Injunctions can be sought from the courts against facility operators that are operating without authorisation by a licence or permit or where they are operating in breach of the terms of their licence or permit. The environmental regulator may apply to court, without notice to the other party, for an interim injunction. The regulator in applying for relief may also include a claim for damages and/or a perpetual injunction. Regulators taking this course of action should be cognisant of the fact that they may be liable to pay damages to affected parties in the event that the injunction is not granted.

3.3 Administrative Measures and Responses

While specific responses will be dependent on legislation and/or the remit of the regulator, administrative measures and responses may include some or all of the following:



Directed environmental audits – This may involve the use of site agents, specialist monitoring, inspection or auditing to assess specific issues relating to the facility or area.

Warning letters – A warning letter is a written notification that, in the environmental regulator's opinion, an offence has been committed (e.g. non-compliance with the conditions of a licence). A record is kept and copy is retained on the licensee file and this may be referred to in subsequent proceedings. Warning letters are clear, simple

and unambiguous, informing the party to which they are issued of the offence and what is expected to remedy the situation. Failure to comply with a warning may be followed by the commencement of legal proceedings.

Statutory Notice – A Statutory Notice is a legally binding written direction that may be issued in the following circumstances:

- To direct illegal waste operators to submit information and/or take specified actions for the purposes of environmental protection – see, for example, Section 18 of the WMA;
- To require measures to be taken to ensure proper waste management and prevent environmental pollution from waste – see Section 55 of the WMA.

Statutory Notices are also available under Section 26 of the Air Pollution Act and Section 12 of the Water Pollution Act.

Generally, such Notices allow for representations to be made to the regulator before the final Notice is prepared.

Revision of a licence/permit – The EPA and Waste Management Acts provide for the review of a licence or the amendment of the licence by altering any or all of the conditions contained within it. This can be done where emissions from the activity are, or are likely to be, of such significance that the existing emission limit values, or equivalent parameters or technical measures specified in the licence or revised licence need to be reviewed or new such values, parameters or measures, as the case may be, need to be specified in the licence or revised licence.

Refusal of a licence/permit – Where the environmental regulator has decided to complete a review of a licence or permit such a consideration may result in refusal or a revised licence/permit.

Revocation of a licence/permit – Where the regulator moves to revoke the licence or permit to operate and therefore render any continued operation of the facility illegal.

Bond retention – Retaining bonds or securities lodged as a condition of permits, licenses or approvals to remediate any harm caused by a violation for the specified time period.

Refusal of surrender of a licence – If the regulator considers that the condition of the relevant installation is causing or likely to cause environmental pollution and the site of the activity is in a satisfactory state, it shall refuse to accept the surrender of the licence or permit.

3.4 Prosecution

Prosecution aims to address wrongdoing and to deter future breaches of environmental legislation. The basic objectives of a criminal prosecution are to:

- Punish offenders and bring to justice those who commit offences; and to
- Act as a deterrent both to the offender and to others.

The environmental regulator should only pursue a prosecution after full consideration of the event or events 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; and finally
- The stated policy on illegal waste activity.

The above factors are not exhaustive and will depend on the particular circumstances of the illegal activity. The environmental regulator should weigh up these factors before making a final decision.

Notwithstanding this, the environmental regulator should generally prosecute in the following circumstances:

- Incidents or breaches that have significant consequences for the environment or that have the potential for such consequences;
- Carrying out activities without a relevant licence;
- Excessive or persistent breaches of regulatory requirements;
- The use of unauthorised waste disposal/recovery facilities;
- Failure to comply with Statutory Notices;
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information;
- Obstruction of environmental regulator staff in carrying out their legitimate functions by the use of threatening behaviour, obstruction, or assault.

A prosecution should not be commenced or continued by the environmental regulator unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that the prospect of conviction is real. In this regard, adherence to best practice in conducting investigations is critical. Section 2.4 of the Environmental Enforcement Network Guidance Manual⁶ contains useful information and should be consulted.

3.4.1 District Court

Environmental regulators generally have powers to summarily prosecute offences in the District Court. A summary trial is intended to provide the speediest dispatch of justice. In deciding which court to go to, the environmental regulator should have regard to the effect of any delay likely to arise from the choice of court, the advantages of a speedier resolution in terms of deterrence, the effect on the environment or the application of remedial measures. It should be noted that for most offences arising from contravention of licence conditions, strict liability applies where, to establish that an operator has committed an offence, the only thing that needs to be proved is the act or omission.

⁶ Available to Enforcement Network members at www.enforcementnetwork.ie.

The Environmental Protection Agency Act, 1992 as amended and the Waste Management Act 1996, as amended, provide for summary prosecution in the District Court.

Penalties available under the EPA and WMA Acts are, on summary conviction, a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months, or both fine and imprisonment.

The environmental regulator should always seek to recover the full costs of the investigation, detection and subsequent prosecution of the offence.

3.4.2 Circuit Court

In certain serious situations, the environmental regulator should propose prosecution to the Director of Public Prosecutions (DPP) who may decide to prosecute either summarily or on indictment in the Circuit Court (or it may happen that the District Court will refer a case forward to the Circuit Court). The environmental regulator's investigations will have to produce sufficient evidence to prove all elements of a serious offence beyond reasonable doubt. 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; or
- 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; or
- 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 well-being 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.

On conviction on indictment, fines not exceeding €15,000,000 or imprisonment for a term not exceeding ten years or both fine and imprisonment are available under the WMA and EPA Acts.

The final decision on whether or not a prosecution is to be instituted or continued rests with the DPP. This decision is taken in accordance with the Prosecution Policy of the State, with the primary criterion being whether or not prosecution is in the public interest. In taking this decision, the DPP takes into account the views expressed by the environmental regulator on the issue.

Examples of the types of situations where prosecution on indictment should be considered are:

- Seriousness or scale of impacts on the environment and/or human health;
- Where there is premeditated disregard for environmental law and particularly offences involving falsification of records;
- The duration of the offence;
- The scale of financial gain;
- Previous history of convictions.

In its document "Guidelines for Prosecutors" the office of the DPP sets out some further factors to be taken into account when making a decision to prosecute⁷.

⁷ Sections 4.18, 19, 20, Guidelines for Prosecutors; Office of the Director of Public Prosecutions 2007.

3.5 Advocating for Appropriate Sanction

In the view of the doctrine of the separation of powers enshrined in the Irish constitution, it is not open to the regulator to prescribe penalties for offences. However environmental regulators should be aware that the Interpol Pollution Crimes Working Group has produced an advocacy memorandum "Arguments for Prosecutors of Environmental Crimes"⁸. In Ireland the Office of the DPP in its "Guidelines for Prosecutors" states that while the prosecutor should not advocate a sentence of a particular magnitude, the duties of a prosecutor include, *inter alia*:

- Ensuring that the court has before it all available evidence relevant to sentencing;
- Ensuring that the court is aware of the range of sentencing options available to it;
- Ensuring that the court has before it evidence relating to the accused's previous convictions as well as evidence relating to the circumstances of the offence which would assist the court in determining sentence; and
- Referring the court to any relevant authority or legislation that may assist in determining the appropriate sentence.

It is recommended that these issues are discussed between the environmental regulator and legal counsel prior to and during the conduct of the court case.

⁸ Interpol Pollution Crimes Working Group, *Advocacy Memorandum, Arguments for Prosecutors of Environmental Crimes* (Lyon: Interpol, 2007), available at: <http://www.interpol.int/Public/EnvironmentalCrime/Pollution/issues/ArgumentsProsecutorsEC.pdf>

Chapter 4 Communicating Outcomes

4.1 Communicating Outcomes

The importance of communicating outcomes in fostering long-term commitment to compliance with legislation cannot be overstated. The regulator should explore methods to communicate the outcome of the enforcement efforts. The public should be better informed about the importance of compliance with environmental law. Communication tools, including the use of the Internet, should be utilised that allow the public and the regulated community to see and understand the results of enforcement actions. Outcomes can be reported on by showing improved compliance levels, improved quality in the environment, presenting the amount of environmental infrastructure put in place, investment in environmental schemes and, where enforcement action is taken, that the sanctions were adequate as a deterrent effect.

Additional enforcement outcome data may include:

- Compliance data on a sectoral basis;
- Annual summary enforcement reports;
- Data review and identification of common causes;
- The enforcement inspections planned *versus* executed;
- Case studies of outcomes, issues; and
- Publish prosecutions and Section Notices on the Internet.

The environmental regulator, in pursuing actions under its Enforcement Policy, should at all times be looking for the following series of outcomes:

- Cessation of the activity as soon as practicable;
- Regulation of the illegal situation;
- Site clean-up and environmental remediation;
- Deterrence;
- Timeliness in bringing the matter to a conclusion;
- Application of the polluter pays principle, including the application of the landfill levy;
- Sanctions against the illegal operator; and
- Implementation of the Recommended Minimum Criteria for Environmental Inspections (RMCEI) and an effective complaint-handling system.



Abandoned Vehicle

4.2 The Environmental Regulator and the Public

Proper management of waste is a fundamental requirement for sustainable development and environmental protection. It is a major challenge for society, which must be tackled with vigour and imagination. The environmental regulator has a responsibility to develop advice and provide guidance to the community where necessary. Awareness of what is required is an important precursor to ensure public compliance. In designing awareness campaigns, the regulator should consider all the options, tools and communications available. These include, but are not limited to:

- Print ads (unauthorised collection, backyard burning);
- Booklets (i.e. See Something, Say Something);
- Promotion of a pollution hotline (e.g. Illegal Dumping Line 1850 365 121);
- Local and national radio ads;

- Green schools, communities and business campaigns; and
- Clean-up campaigns (e.g. National SpringClean week).



In the course of implementing an enforcement policy, the regulator should devise a strategy to inform the public and to promote awareness about the importance of compliance with environmental laws and ultimately change behaviours.

Appendix 1

Circular WPRR: 04/08

Circular WPRR: 04/08

25th July 2008

Policy Guidance Pursuant to Section 60 of the Waste Management Act, 1996

Action Against Illegal Waste Activity - the Use of Sanctions

I am directed by the Minister for the Environment, Heritage and Local Government to advise you that the Minister, in exercise of the powers conferred on him by section 60 of the Waste Management Act 1996, hereby gives the following policy direction concerning enforcement actions and penalties. This direction should be read in conjunction with the previous policy direction (Circular WIR: 04/05 of 3 May 2005) issued on action against illegal activity.

1. Further Action Against Illegal Waste Activity

The Environmental Protection Agency ("EPA") and local authorities are directed to prepare an Enforcement Policy in respect of Unauthorised Waste Activities which will encourage and promote systematic and consistent enforcement actions against illegal waste operators across the State as a whole and which will deliver effective, proportionate and dissuasive sanctions against such operators for the purposes of and to effect full compliance with Directive 2006/12/EC of the European Parliament and of the Council on waste ("the Waste Framework Directive").

This direction is aimed at further strengthening the Irish enforcement system in order to meet the requirements of the Waste Framework Directive. In particular this direction requires the environment regulators referred to above to prepare an Enforcement Policy in respect of Unauthorised Waste Activities, which should encourage and promote the following objectives:

- ensuring effective, proportionate and dissuasive sanctions, in a reasonable timescale, against those involved in unauthorised waste activities;
- providing a coherent approach to sanctions, and their use;
- ensuring that unauthorised waste activities are made subject to sanctions and not only actions aimed at their cessation;
- encouraging 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; and,
- ensuring the imposition of the landfill levy for illegally landfilled waste.

2. Sanctions and Other Actions Covered Under the Previous Direction

The policy direction contained in Circular WIR: 04/05 of 3 May 2005 directed that regulatory authorities should take the following steps.

- Pursue illegal holders of waste looking to the maximum potential sanctions available in law. In that regard, prosecutions were to be taken in all cases using the powers available under the Waste Management Act, as amended, or other relevant legislation to maximise the deterrent factor. An Garda Síochána should be asked to become involved in regard to more serious offences and the prosecution of offences should be at the highest available judicial level.
- Apply the landfill levy in all circumstances of disposal of waste by means of an unauthorised landfill activity and if the deposition occurs after 28 July 2006 the local authority can retain 80% of the amount collected, for enforcement actions.

- authorities should, where practicable, pursue civil remedies against illegal operators under the provisions of sections 55 to 58 of the Act to, for example, seek to recover the costs of measures taken to prevent or limit environmental pollution caused by the waste.

This direction expands on the 2005 direction.

3. An Enforcement Policy to Focus on the Appropriate Use of Sanctions and Deterrents to Secure the Required Environmental Outcome

An Enforcement Policy in respect of Unauthorised Waste Activities should be directed towards a series of required outcomes and in particular:

- early cessation of the illegal activity by use of powers provided in sections 55, 57 or 58 of the Waste Management Acts⁹;
- 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, the policy direction contained in Circular WIR: 04/05 of 3 May 2005 details what is expected in this regard¹⁰;
- remediation as required, in accordance with the EPA Code of Practice¹¹;
- deterrence of illegal waste activity to remove any financial gain or advantage derived through bypassing the legal requirement of a prior waste licence or permit¹²;
- 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.

4. The Range of Sanctions, Deterrents and Enforcement Actions:

The Enforcement Policy in respect of Unauthorised Waste Activities should set out an appropriate mix of civil and criminal law remedies¹³. These include, but may not be limited to, administrative measures, civil remedies and criminal sanctions.

9 This inter alia reflects the requirement in Article 4(2) of the Waste Framework Directive to ensure the prohibition of unauthorised waste disposal. It also reflects the obligation in Article 8 of the Waste Framework Directive to ensure that the holders of waste have waste lawfully handled, disposed of or recovered.

10 This inter alia reflects the requirements of Articles 4(2), 8, 9 and 10 of the Waste Framework Directive which are aimed at ensuring that waste is covered by a waste permit or licence or is otherwise lawfully held.

11 This inter alia reflects the requirements of Article 4(1) of the Waste Framework Directive to ensure that waste disposal or recovery does not cause environmental harm.

12 This inter alia reflects the need to ensure that the requirements of the Waste Framework Directive in terms of lawfulness of waste activities are effectively upheld.

13 Details of such remedies have been forwarded to local authorities as part of the Manual on the Investigation of Unauthorised Activities.

5. Direction to the Local Authorities and the EPA

At the Minister's request, in support of this direction, the EPA has agreed to prepare a Code of Practice as provided for in section 76 of the Environmental Protection Act, 1992 which will provide a template for the development of an enforcement policy by environmental regulators.

In addition, the Code of Practice previously developed by the EPA on "Environmental Risk Assessment for Unregulated Waste Disposal Sites" sets out the manner in which such enforcement actions should be taken.

The Minister directs each local authority and the EPA to prepare, adopt and publish an Enforcement Policy in respect of Unauthorised Waste Activities in accordance with the Code of Practice to be developed by the EPA under section 76. The enforcement policy should remain in place until reviewed as described beneath or in accordance with such further directions the Minister may issue.

Local authorities are directed by the Minister to adopt the enforcement policy by the 31 December 2008 where practicable and forward copies to the Department (Mr Pat Fenton at pat.fenton@environ.ie).

The OEE Enforcement Network should review each individual policy to ensure consistency with the COP model and any amendments suggested on foot of this review should be incorporated in revised policies adopted by each authority during 2009.

Queries in relation to this Ministerial direction may be addressed to Pat Fenton at (01) 888 2616 or to the undersigned.

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To: Director General, Environmental Protection Agency, each County and City Manager, each Director of Services (Environment).

CC: Chief Officer, An Bord Pleanála

Appendix 2

3 May 2005

Circular WIR: 04/05

Policy Guidance Pursuant to Section 60 of the Waste Management Act, 1996 (as amended)

1 Action Against Illegal Waste Activity

2 Movement of Waste

I am directed by the Minister for the Environment, Heritage and Local Government to advise you that he, in exercise of the powers conferred on him by section 60 of the Waste Management Act 1996 (as amended), hereby gives the following policy directions.

1 Action Against Illegal Waste Activity

Purpose

The intent of this direction is to encourage an intensification of action against illegal waste activity (which includes unauthorised disposal of waste, such as the abandonment, dumping or uncontrolled disposal of waste) and enhance the response of local authorities and the Environmental Protection Agency in ensuring the protection of the environment and human health and the prosecution of offenders. In determining the nature of such prosecutions regard should be had to the elimination of the economic benefit deriving from the illegal activity.

2.2 Need to Ensure a Level Playing Field

The majority of those involved in the provision of waste management services do so within the law and thus face substantial obligations and costs in order to abide by waste management controls aimed at protecting the environment and human health and they should not be put at a competitive disadvantage by illegal operators. There are adequate measures laid down in the Waste Management Act 1996, as amended, which facilitate sanctions against offenders. Additionally, as pointed out in the *National Overview of Waste Management Plans and Taking Stock and Moving Forward* the level of provision of recycling infrastructure is continuing at a rapid pace and the estimated remaining landfill capacity, for example, has increased from six to ten years.

2.3 Waste Management Plan requirements

Local authorities are reminded that section 22 of the Waste Management Act requires them to carry out, inter alia, an inventory and risk assessment of all non-licensed closed landfills where disposal or recovery activities have taken place. Local authorities are hereby directed to ensure that this requirement is met in the current review of their Waste Management Plans.

Guiding Principles

The principal aim in dealing with illegal waste activity should be to secure the protection of the environment and human health. Therefore the primary obligation of a local authority or the Agency when illegal waste activity is discovered is to ensure that the waste is recovered or disposed of, in the shortest practicable time, without endangering the environment or human health and without using processes and methods which could harm the environment and in particular without:

- risk to human or animal health, water, air, soil or plant life;
- causing a nuisance through noise or odours;
- adversely affecting the countryside, or places of special interest.

The scale and seriousness of the situation should be assessed as quickly as possible and adequate management and monitoring put in place to take stock of immediate and longer-term impacts. This will mean proper regulation wherein the waste is handled and removed by licensed operators for recovery/disposal at licensed facilities or left in situ under the terms of a waste licence or permit. The aim in all cases, having regard to this direction, and the Agency's code, should be the making safe of the site, including the removal of waste where required as a consequence of a risk-based assessment. In particular, all hazardous waste which is detected shall be removed and recyclable material shall be removed unless it can be shown that there are alternative environmentally sustainable options.

Each case needs careful assessment by reference to factors such as the scale and type of waste, where it is deposited, advantages of removal versus leaving and the impact it will have on the environment.

Certain sites should at all times be remediated such as:

- lands proximate to existing or planned residential development or educational facilities, in which case remediation shall require the removal, in the shortest practicable time, of all waste except only where it is shown that an alternative solution provides greater protection to the environment and the health of the local population;
- wetlands,
- Natural Heritage Areas, Candidate Special Areas of Conservation or Special Protection Areas;
- places of special interest such as high amenity areas.

Where it is deemed appropriate to leave waste in situ the holder of the waste shall:

- carry out, or arrange for the carrying out, of a risk assessment to determine the environmental impact, if any, of the waste illegally deposited;
- make application for a permit or licence to the relevant local authority or the Agency which will determine the actions required by the holder to remediate and manage the site into the future;
- comply with any permit or licence so given to ensure that all remediation and management measures determined by that permit or licence are complied with and that the site poses no identifiable future threat to the environment or human health;
- not be permitted to import greater quantities of material for deposition other than such inert material/soil as may be necessary for site conditioning.

The Agency will elaborate on these aspects when developing their code and will also advise on best available technology.

Other aspects to be examined when considering leaving the waste in situ include:

- where had an application been made for a waste permit or licence in normal circumstances the likelihood of its granting would be high, in the opinion of the relevant authority or the Agency, and /or
- the waste is non-hazardous, inert or unpolluted soil and considered to be low risk and /or,
- there are considerable disadvantages in removal by reference to the waste type and there are no environmentally sustainable alternatives.

2.4 Sanctions

While recognising that criminal sanctions are a matter for the courts, the regulatory authorities shall pursue illegal holders of waste looking to the maximum potential sanctions available in law. In that regard, prosecutions should be taken in all cases using the powers available under the Waste Management Act, as amended, or other relevant legislation to maximise the deterrent factor. An Garda Síochána should be asked to become involved in regard to more serious offences and the prosecution of offences should be at the highest available judicial level.

In addition,

- a landfill levy, as is prescribed in the Landfill Levy Regulations (S.I. No. 86 of 2002), shall be applied in all circumstances of disposal of waste by means of an unauthorised landfill activity after 1 June 2002,
- local authorities should, where practicable, pursue civil remedies against illegal operators under the provisions of sections 55 to 58 of the Act to, for example, seek to recover the costs of measures taken to prevent or limit environmental pollution caused by the waste.

2 Movement of Waste

The policy document *Taking Stock and Moving Forward* recognised a trend whereby certain planning permissions in respect of waste infrastructure restrict facilities to dealing only with waste arising within the area to which the waste management plan applies. The policy document reflects acceptance that facilities provided in a region must deal primarily with waste from that region. However, it also recognises that an unnecessarily restrictive approach may not be in keeping with the philosophy underpinning the regional approach to waste management planning and, by implication, the rational use of waste management infrastructure. The Environmental Protection Agency have stated that “the inter-regional movement and treatment of waste should be provided for...in appropriate circumstances”.

The Minister confirms that one of the fundamental components of policy in regard to the regulation of the movement of waste is the application of the proximity principle. However, relevant authorities, in preparing waste management plans, determining the necessary statutory authorisations and in regard to other associated waste management functions, should recognise that the application of the proximity principle does not entail interpreting administrative waste management planning boundaries in such a manner as to inhibit the development of waste infrastructure which will support the attainment of national waste management policy objectives through the rational development and use of such infrastructure.

Queries in relation to this Ministerial direction may be addressed to Pat Fenton at (01) 888 2616 or pat_fenton@environ.ie or the undersigned.

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To: Director General, Environmental Protection Agency, each County and City Manager, each Director of Services (environment).

CC: Chief Officer, An Bord Pleanála.

An Gníomhaireacht um Chaomhnú Comhshaoil

Is í an Gníomhaireacht um Chaomhnú Comhshaoil (EPA) comhlachta reachtúil a chosnaíonn an comhshaoil do mhuintir na tíre go léir. Rialáimid agus déanaimid maoirsiú ar ghníomhaíochtaí a d'fhéadfadh truailliú a chruthú murach sin. Cinntimid go bhfuil eolas cruinn ann ar threochtaí comhshaoil ionas go nglactar aon chéim is gá. Is iad na príomh-nithe a bhfuilimid gníomhach leo ná comhshaoil na hÉireann a chosaint agus cinntiú go bhfuil forbairt inbhuanaithe.

Is comhlacht poiblí neamhspleách í an Gníomhaireacht um Chaomhnú Comhshaoil (EPA) a bunaíodh i mí Iúil 1993 faoin Acht fán nGníomhaireacht um Chaomhnú Comhshaoil 1992. Ó thaobh an Rialtais, is í an Roinn Comhshaoil agus Rialtais Áitiúil a dhéanann urraíocht uirthi.

ÁR bhFREAGRACHTAÍ

CEADÚNÚ

Bíonn ceadúnais á n-eisiúint againn i gcomhair na nithe seo a leanas chun a chinntiú nach mbíonn astuithe uathu ag cur sláinte an phobail ná an comhshaoil i mbaol:

- áiseanna dramhaíola (m.sh., líonadh talún, loisceoirí, stáisiúin aistrithe dramhaíola);
- gníomhaíochtaí tionsclaíocha ar scála mór (m.sh., déantúsaíocht cógaisíochta, déantúsaíocht stroighne, stáisiúin chumhachta);
- diantalmhaíocht;
- úsáid faoi shrian agus scaoileadh smachtaithe Orgánach Géinathraithe (GMO);
- mór-áiseanna stórais peitreal; agus
- scardadh dramhuisce.

FEIDHMIÚ COMHSHAOIL NÁISIÚNTA

- Stiúradh os cionn 2,000 iniúchadh agus cigireacht de áiseanna a fuair ceadúnas ón nGníomhaireacht gach bliain.
- Maoirsiú freagrachtaí cosanta comhshaoil údarás áitiúla thar sé earnáil - aer, fuaim, dramhaíl, dramhuisce agus caighdeán uisce.
- Obair le húdarás áitiúla agus leis na Gardaí chun stop a chur le gníomhaíocht mhídhleathach dramhaíola trí chomhordú a dhéanamh ar líonra forfheidhmithe náisiúnta, díriú isteach ar chiontóirí, stiúradh fiosrúcháin agus maoirsiú leigheas na bhfadhbanna.
- An dlí a chur orthu siúd a bhriseann dlí comhshaoil agus a dhéanann dochar don chomhshaoil mar thoradh ar a gníomhaíochtaí.

MONATÓIREACHT, ANAILÍS AGUS TUAIRSCIÚ AR AN GCOMHSHAOIL

- Monatóireacht ar chaighdeán aer agus caighdeán aibhneacha, locha, uisce taoide agus uisce talaimh; leibhéal agus sruth aibhneacha a thomhas.
- Tuairisciú neamhspleách chun cabhrú le rialtais náisiúnta agus áitiúla cinntiú a dhéanamh.

RIALÚ ASTUITHE GÁIS CEAPTHA TEASA NA HÉIREANN

- Caimníochtú astuithe gáis ceaptha teasa na hÉireann i gcomhthéacs ár dtiomantas Kyoto.
- Cur i bhfeidhm na Treorach um Thrádáil Astuithe, a bhfuil baint aige le hos cionn 100 cuideachta atá ina mór-ghineadóirí dé-ocsaíd charbóin in Éirinn.

TAIGHDE AGUS FORBAIRT COMHSHAOIL

- Taighde ar shaincheisteanna comhshaoil a chomhordú (cosúil le caighdeán aer agus uisce, athrú aeráide, bithéagsúlacht, teicneolaíochtaí comhshaoil).

MEASÚNÚ STRAITÉISEACH COMHSHAOIL

- Ag déanamh measúnú ar thionchar phleananna agus chláracha ar chomhshaoil na hÉireann (cosúil le plananna bainistíochta dramhaíola agus forbartha).

PLEANÁIL, OIDEACHAS AGUS TREOIR CHOMHSHAOIL

- Treoir a thabhairt don phobal agus do thionscal ar cheisteanna comhshaoil éagsúla (m.sh., iarratais ar cheadúnais, seachaint dramhaíola agus rialacháin chomhshaoil).
- Eolas níos fearr ar an gcomhshaoil a scaipeadh (trí cláracha teilifíse comhshaoil agus pacáistí acmhainne do bhunscoileanna agus do mheánscoileanna).

BAINISTÍOCHT DRAMHAÍOLA FHORGHNÍOMHACH

- Cur chun cinn seachaint agus laghdú dramhaíola trí chomhordú An Chláir Náisiúnta um Chosc Dramhaíola, lena n-áirítear cur i bhfeidhm na dTionscnamh Freagrachta Táirgeoirí.
- Cur i bhfeidhm Rialachán ar nós na treoracha maidir le Trealamh Leictreach agus Leictreonach Caite agus le Srianadh Substaintí Guaiseacha agus substaintí a dhéanann ídiú ar an gcrios ózóin.
- Plean Náisiúnta Bainistíochta um Dramhaíl Ghuaiseach a fhorbairt chun dramhaíl ghuaiseach a sheachaint agus a bhainistiú.

STRUCHTÚR NA GNÍOMHAIREACHTA

Bunaíodh an Gníomhaireacht i 1993 chun comhshaoil na hÉireann a chosaint. Tá an eagraíocht á bhainistiú ag Bord lánaimseartha, ar a bhfuil Príomhstíurthóir agus ceithre Stíurthóir.

Tá obair na Gníomhaireachta ar siúl trí ceithre Oifig:

- An Oifig Aeráide, Ceadúnaithe agus Úsáide Acmhainní
- An Oifig um Fhorfheidhmiúchán Comhshaoil
- An Oifig um Measúnacht Comhshaoil
- An Oifig Cumarsáide agus Seirbhísí Corparáide

Tá Coiste Comhairleach ag an nGníomhaireacht le cabhrú léi. Tá dáréag ball air agus tagann siad le chéile cúpla uair in aghaidh na bliana le plé a dhéanamh ar cheisteanna ar ábhar imní iad agus le comhairle a thabhairt don Bhord.



ENVIRONMENTAL PROTECTION AGENCY

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