

# Monaghan County Council



## Enforcement Policy on Illegal Waste activity

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### **Background**

In July 2008, the Minister for the Environment Heritage and Local Government issued a Policy Direction under Section 60<sup>1</sup> of the Waste Management Act. The direction sets out to strengthen the Irish enforcement system, particularly in relation to enforcement actions & penalties in order to meet the requirements of the Waste Framework Directive. This Direction complements the Ministerial Direction under Section 60 issued in May 2005<sup>2</sup> on actions to be taken against unauthorised waste activity.

### **Introduction**

Monaghan County Council's Environment Policy on Illegal Waste Activity sets out the policy framework that will be used in acting against illegal waste activity. The Waste Management Acts 1996 to 2008 (WMA Acts) are the primary pieces of legislation used by Monaghan County Council in dealing with such illegal activities. 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.

### **Monaghan County Council's Approach**

A major function of the Environment Section of Monaghan County Council is the regularisation of certain waste related activities under the Waste Management Acts 1996 to 2008. Monaghan County Council will continue to work with regulatory bodies such as the EPA, An Garda Síochána, Revenue Commissioners and other local authorities through the Environmental Enforcement Network (EEN) to ensure appropriate and efficient use of resources. Monaghan County Council will continue to work with the EPA to integrate Waste Policy objectives within its RMCEI Inspection plans, subject to the availability of appropriate and sufficient resources.

### **Delivering Outcomes**

It is the aim of Monaghan County Council to deliver effective, proportionate and dissuasive actions against illegal operators through the implementation of environmental legislation. Monaghan County Council will continue to seek to prevent illegal waste activity by taking a systematic and consistent approach to enforcement against illegal waste activities to achieve the following outcomes:

- early cessation of the illegal activity by use of powers provided in sections 55, 57 or 58 of the Waste Management Acts;
- regularisation of illegally deposited waste through a permit or certificate of registration or offsite movement to comply with section 32 requirements;

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

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

However, Monaghan County Council recognises that allowing illegally dumped material to remain in situ is, in the majority of cases, unacceptable. Consequently, Monaghan County Council will endeavour to ensure that such illegal waste is recovered or disposed of in the shortest practicable time, without endangering the environment or human health and without using processes and methods that could harm the environment or human health. Monaghan County Council will endeavour to ensure that certain sites (*as outlined in the policy direction contained in Circular WIR 04/05 of 3<sup>rd</sup> May 2005*) shall be remediated at all times. Similarly, where Monaghan County Council deems it appropriate to leave waste in-situ, the guiding principles as outlined in *Circular WIR 04/05 of 3<sup>rd</sup> May 2005* will be adhered to.

- regulation of all illegal waste activities
- remediation as required, in accordance with the EPA Code of Practice<sup>3</sup>;
- deterrence of illegal waste activity to remove any financial gain or advantage derived from bypassing of the legal requirement of a waste license or permit ;
- application of the landfill levy on the owner/operator of an illegal landfill;
- timeliness in achieving cessation, regularisation and remediation referred to above;
- Provision of awareness about the importance of compliance with environmental 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.

**Note:**

The effectiveness of the above “delivery outcomes” may be dependent on the availability of appropriate and sufficient resources.

This Environment Policy sets out the general principles which Monaghan County Council intends to follow in relation to enforcement against illegal waste activity. Monaghan County Council will monitor the implementation and effectiveness of the Policy and revise it annually.

**Policy Objectives**

- To ensure that Waste Permits and Certificates of Registration are fully complied with and that these do not contribute to illegal waste activity.
- To ensure effective, proportionate and dissuasive sanctions, within 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.

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<sup>3</sup> Code of Practice: Environmental Risk Assessment for Unregulated Waste Disposal Sites .

## Environment Section, Monaghan County Council.

- 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 Monaghan County Council operates; *targeting* of enforcement action and implementation of the *polluter pays principle*.

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

- Audit and Inspection to assess the nature and extent of the illegal activity;
- Warning Letters to advise an illegal activity of its non-compliance with waste legislation and to provide instruction on how to ensure compliance;
- Statutory Notices providing legally binding instruction to an operator to provide information (S18) or take measures (S55) to prevent pollution from the waste activity;
- The completion of works at the illegal waste site by Monaghan County Council to prevent pollution taking place (S56 WMA);
- Application for a court order to have works carried out to prevent pollution (S57, S58 WMA);
- Review of Waste Permit/Certificate of Registration to regularise unauthorised activity;
- Refusal/revocation of authorisations;
- Bond retention for environmental liabilities associated with the illegal activity.

### **Sanctions**

There are a range of civil and criminal law sanctions available to Monaghan County Council that can be employed against those involved in illegal waste activity . Where appropriate Monaghan County Council will use a combination of these to ensure that the objectives of this policy are met. Such options available to Monaghan County Council include, but may not be limited to, administrative measures, civil remedies and criminal sanctions.

These include:

#### **Court Orders**

Where deemed necessary, Monaghan County Council will seek to obtain an injunction against persons involved in unauthorised waste activities (WMA S57/S58). Monaghan County Council will also seek to recover the costs for works carried out by the Council to prevent environmental pollution from an unauthorised waste activity (WMA S56).

### **Civil Penalties**

Monaghan County Council will seek to have civil penalties enforced under the Waste Management Acts where there is sufficient evidence of one or more of the following:

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

### **Prosecution**

Prosecution will be an important part of enforcement. Monaghan County Council will consider the use of prosecutions in conjunction with other available enforcement tools. Where the circumstances warrant it, immediate prosecution will be pursued and Monaghan County Council, where possible, will prosecute those persons responsible for the offence. This will normally refer to the company in question where the offence resulted from the Company's activities. Monaghan County Council will also consider any part played in the offence by officers of a Company, including Directors. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent or was due to their negligence and/or other appropriate circumstances. Monaghan County Council will only pursue a prosecution after full consideration of the event giving rise to environmental concerns. This consideration will include the following factors in deciding whether or not to prosecute:

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

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

- illegal disposal of waste;
- illegal shipment of waste abroad;
- carrying out waste activities without a relevant licence or permit;
- the use of unauthorised waste disposal/recovery facilities;
- failure to comply with statutory notices

## Environment Section, Monaghan County Council.

- obstruction of Monaghan County Council 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/recklessly supplying false or misleading information.

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

A serious offence is one in which:

- There is a significant degree of criminality on the part of the offender;
- Previous administrative or civil responses to contravention by the suspect have not resulted in compliance
- the State or the community expects that a crime will be dealt with by prosecution conducted in open court (and for which serious sanctions may be imposed including the possibility of imprisonment )
- 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**

Penalties available under the WMA Acts are as follows:

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

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

### **European Court of Justice Cases**

Monaghan County Council will investigate all illegal activities if directed to do so by the European Court of Justice. The operator and landowner of such illegal activities will be identified and the appropriate legal action taken wherever possible to ensure that the illegal activity is ceased and the site remediated to an environmentally satisfactory state.

### **Historic unauthorised landfills**

Monaghan County Council will identify and assess all known historically unregulated landfills, both public and privately owned in Co. Monaghan. Each landfill will be identified and placed on a Section 22 Register. The Section 22 Register will consist of the historic unregulated landfill sites (closed landfill sites) and illegal landfill sites

identified in Co. Monaghan. Monaghan County Council will apply the EPA Code of Practice (COP) Guidelines which involves the identification of sites using the “Methodology for the Identification of Waste Disposal or Recovery Sites in Ireland”.

### **Communication Of Policy**

Monaghan County Council’s Enforcement Policy on Illegal Waste Activity will be communicated to all Council staff, elected representatives, and to the general public via the Monaghan County Council website.

### **Training to Ensure Delivery of Policy Objectives**

Monaghan County Council will endeavour to make available appropriate training to all relevant staff members to ensure delivery of the policy objectives.