

Comments on Waste Action Plan for a Circular Economy

The comments below are made in addition to the national submission prepared by the Regional Waste Management Planning Offices and Waste Enforcement Regional Lead Authorities on behalf of Local Authorities. Further reasoning for some of the Headline Issues below is put forward in the above mentioned national submission.

Improved Regulation of Waste Collection Sector

In Donegal, our food waste bin roll out increased in the last few years from 1,000 bins to 12,000 bins. Notwithstanding this positive trend; the use of the bins and subsequent diversion of food waste has not enjoyed the same success. It should be noted that some barriers to success have been identified and Donegal County Council are now asking for support from the relevant agencies in order to address these.

An incentive for collectors to engage positively with their customers is lacking. Some collectors are not incentivising the service enough either in terms of price, equipment or information.

There is no financial / economic regulator dealing with the pricing structures. There is huge confusion amongst the public when trying to compare all the different pricing structures and it is difficult to determine if the recycling bin and food waste bin are actually being incentivised.

Suggestions: 1 – 17

1. Need to incentivise collectors who in turn will incentivise households

Implement the necessary mechanisms to disincentivise and prevent collectors from bringing waste from a one / two bin system to a final destination. This can be achieved by taking random samples from collectors at the destination facilities and determining both the recyclable and compostable content. Based on a negative result where the recyclable or compostable content is over a certain percentage apply one of two options – rejection of loads or alternatively and preferably apply a 6 month financial loading to the gate fee charged to that particular collector.

2. Introduce a payment for Waste Collectors for every tonne of food waste diverted to a food waste processing facility (similar to the scheme for recyclable material).

3. Condition Waste Collectors to roll out their awareness campaign

Following the completion of the current trial of information and tools for the improved uptake of the food waste bin, review WCPs and condition collectors to roll out the most successful option. This may be the provision of indoor caddies, compostable bags and information.

4. Introduce Financial / Economic Operator

There is inadequate regulation in place for ensuring that collectors collect from certain areas and that an adequate level of customer service is being provided to waste customers. This regulator, in addition to reviewing pricing structures could also deal with the situation in which collectors can currently cherry pick where they want to cover and not cover thus leaving areas vulnerable to no service or else monopolies.

The findings and recommendations of the Price Monitoring Group should be reviewed and implemented where deemed appropriate. We need to define what incentivisation is e.g., Recycling bin should be x% cheaper than residual bin etc.

5. Introduce the Waiver Scheme as previously agreed by collectors

6. Additional Resources for Local Authorities

The introduction of Bye-laws by Local Authorities will require significant follow up in terms of house visits due to the significance of the corner that needs to be turned in some Local Authorities. This need could be reduced if collectors were properly incentivised / disincentivised (as per above) so that they would incentivise households to do the right thing. More collectors may then improve how they engage with their customers, by improving their information campaigns, supplying better tools to households, by examining bins and rejecting bins from households where no effort is made to segregate, by rewarding households that have good segregation. It is acknowledged that some collectors are very progressive on this front.

In addition could the Tidy Town awards include a category that awards marks for the combined recycling rates for all the households in a particular town? The collectors would collate the data for all the customers in a particular area, and determine the recycling rates. The higher the recycling rate band that the town falls into the higher the Tidy Town marks the town would receive. This local competition could achieve a number of results; community driven actions, households monitoring their individual performance, households demanding improved services, Local Authorities being able to verify the data through back office inspections, less need for enforcement of the segregation aspect of the Bye-laws. Enforcement should only be picking up on the few that don't comply as opposed to trying to pursue the majority.

General Enforcement Improvements

Waste Regulation and Enforcement has seen significant improvements in terms of resources, tools and coordination of activities in the last few years and the suggestions below may help with this continual improvement.

7. Fixed Payment Notices

It has been demonstrated that they are a useful tool. They could be expanded upon (we need to formalise the appeal process and we are working with CU WERLA on this aspect). It would be beneficial if additional FPNs were in place for more offences – tyres, waste facility authorisations, etc.

8. End of waste criteria / By-products and Exemptions

There has been a lot of discussion on this issue and we now need to implement measures similar to what is available in the UK for a lot of the C&D materials so as to encourage the reuse of “waste” as opposed to using virgin aggregates. This, if implemented properly, will be one of the quickest ways of achieving results in our journey to the circular economy.

9. Construction and Demolition Plans and Management

Refer to attached document titled Guidance on Soil and Stone By-products (Consultation text 19th October 2018) Comments by Donegal County Council.

10. Electronic library of information leaflets on waste management

Previously there would have been an information pack for each waste stream (Race Against Waste, Enfo, regional office etc would have coordinated and printed) and it would be good if there were standard leaflets available for circulating to households and businesses. Currently Local Authorities are relying on local leaflets and a few regional ones.

11. National Education Campaigns

12. Examine most effective agency for implementing certain legislation provisions

Identify most appropriate agencies to implement certain legislation, taking into account their powers and their current engagement with that sector, e.g., Vehicle Importers obligation to pay a €20 fee per vehicle.

VRT is applied by Revenue at point of registration of imported vehicle. It would be a straight forward process if Revenue were tasked with collecting ELV Registration fees at this point of contact as opposed to LAs trying to chase vehicle importers after the event. The cost of collection of the fee by LA far outweighs the actual fee whereas if it was a requirement that you couldn't register a vehicle in the state unless VRT, Vat, NOx and this environmental charge were paid, we would get 100% collection of the fee with the stroke of a pen (and buy in from Revenue).

13. Cross sectional working group on the management of Sludge's

14. Cross sectional working group on the management of AD plants

15. Sharing of data between agencies

This is an area that needs attention urgently.

16. Introduce a national system whereby environmental bonds can be put in place for waste facilities

17. Review guidance for Planning Authorities on space requirements for bin storage and facilities in new dwellings

Refer to the document prepared by ADEPT – making Space for Waste

21st February 2020
Donegal County Council

Guidance on Soil and Stone By-products (Consultation text 19th October 2018)

Comments by Donegal County Council

1. General and Background

Introduction

The first point is that it is great to have a guidance document started as there is a lot of uncertainty and confusion in both the private and regulatory sector. Transport Infrastructure Ireland have produced very substantial guidance documents and the waste regulation sector should have a similar clear document if we want to have all state organisations and the private sector adhering to best practice.

It would be beneficial if we could be very clear with state organisations and the private sector as to what is required in terms of waste management. As a general point I think that the document does not provide enough certainty in comparison to other documents that are out there.

It would be great to have an up to date FAQ or nationally agreed presentation that could be delivered to all stakeholders.

In addition the information required in Construction and Demolition Waste Management Plans needs to be strengthened and some Local Authorities have some excellent guidance on this that go further than the National Guidance but unfortunately it is still guidance and not a requirement.

End of Waste Criteria (Article 28)

I understand that we are working on end of waste criteria for road planning's and in the absence of same for this and other materials some organisations look to other jurisdictions for guidance. This practice of looking to other jurisdictions would be similar to way British Standards were used in situations where an Irish Standard didn't exist. I find that when we don't have an end of waste criteria for something that some organisations and agencies will refer to the procedures from other jurisdictions. Some claim to be of the view that they are adhering to best practice in the absence of any guidance in our jurisdiction and hence of the view that they are complying with legislation. I notice that the Commission is considering the following:

'2. The Commission shall monitor the development of national end-of-waste criteria in Member States, and assess the need to develop Union-wide criteria on this basis. To that end, and where appropriate, the Commission shall adopt implementing acts in order to establish detailed criteria on the uniform application of the conditions laid down in paragraph 1 to certain types of waste.

In that regard I had previously asked if possible to:

Clarify the situation in the short term, to state organisations with regard to using standards applicable to waste from other jurisdictions and using end of waste criteria from other jurisdictions.

Waste or not a Waste (Article 11 / 27)

The document in the link below from TII is comprehensive and goes into a lot of details on when material is considered a waste and when it isn't. Actually it is an excellent document that could be used by enforcement staff with some amendments.

TII Document: **The Management of Waste from National Road Construction Projects GE-ENV-01101**

<http://www.tiipublications.ie/library/GE-ENV-01101-01.pdf>

2. Comments on the document titled Guidance on Soil and Stone By-products

I note from the guidance that decisions on whether something is a waste or not is determined on a case by case basis which is understandable, however there needs to be a process that gives a decision in a timely fashion, and a register of the decisions should be kept along with FAQs and guidance. All the relevant sites should be mapped on a national database similar to the Section 22 Register. This would be of benefit in any future investigations of complaints about the sites.

Reuse on the same Project Site

The document talks about using uncontaminated soil and stone on the same project and in some cases this is not regarded as a waste which makes sense. However what is the project site, is a whole National Road a project or is it just the part getting upgraded? Is a whole farm holding a project site in that a farmer can move a hill from one part of his landholding to a hollow in another part of his land holding which may be several miles away. We probably need to define what a project is so as to reduce the uncertainty and ambiguity.

By - Product Conditions

Having read the document a few times, I am still not clear on the situation here. A lot hinges on the intention or requirement to discard. The document on page 2 after the part where it talks about discarding says it will be a by-product if it meets each of the four by-products conditions below. Does this mean that even if the person does discard it, the material can still be deemed to be a by-product, if it meets the criteria?

In terms of the term to discard, what if the person says I am not discarding the material as Joe Bloggs down the road wants this material for his site in order to improve his land or to comply with a condition of his planning permission. I note that the Oxford dictionary defines discard as to *get rid of (someone or something) as no longer useful or desirable*. Could an operator giving excess soil and stone to a neighbour make a strong case that he was not discarding the soil as it still was useful and it was desirable (just not by the producer of the soil!)

The extract below from the 2018 Waste Framework Directive does discuss this term and the need for guidance.

- (61) To facilitate adequate interpretation and implementation of the requirements set out in Directive 2008/98/EC, it is appropriate to develop and periodically review guidelines concerning those requirements and to ensure the exchange of information and sharing of best practices among Member States on the practical implementation and enforcement of those requirements. Such guidelines, information exchange and sharing of best practices should, *inter alia*, facilitate a common understanding and application in practice of the definition of 'waste', including the term 'discard', and should take into account circular business models in which, for instance, a substance or object is transferred from one holder to another holder without the intention to discard.

There is also a call in the directive for backfilling to be defined and an amendment is included:

- (13) A definition of backfilling should be introduced to clarify that it means any recovery operation of suitable non-hazardous waste for the purposes of reclamation in excavated areas or for engineering purposes in landscaping. The waste used for backfilling should be limited to the amount strictly necessary to achieve those purposes.

(g) the following point is inserted:

- '17a. "backfilling" means any recovery operation where suitable non-hazardous waste is used for purposes of reclamation in excavated areas or for engineering purposes in landscaping. Waste used for backfilling must substitute non-waste materials, be suitable for the aforementioned purposes, and be limited to the amount strictly necessary to achieve those purposes;'

- (52) Industrial waste, certain parts of commercial waste and extractive waste are extremely diversified in terms of composition and volume, and very different depending on the economic structure of a Member State, the structure of the industry or commerce sector that generates the waste and the industrial or commercial density in a given geographical area. Hence, for most industrial and extractive waste, an industry-oriented approach using Best Available Techniques reference documents and similar instruments to address the specific issues related to the management of a given type of waste has been considered a suitable solution. However, industrial and commercial

⁽¹⁾ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

packaging waste should continue to be covered by the requirements of Directives 94/62/EC and 2008/98/EC, including their respective improvements. With a view to exploring further the potential to increase the preparing for re-use and recycling of commercial waste, non-hazardous industrial waste and other key waste streams, the Commission should consider the setting of targets for those waste streams.

In terms of the by product conditions in the guidance document: points (a), (b), and (c) are straight forward, point (d) is the problem one where it states further use is lawful...what does this mean, what legislation is being referred to?

If a site has planning permission to infill a site does this mean that it doesn't require waste authorisation if it meets a, b and c of the criteria? I think we need to include the exemption in a regulation because as it stands this activity is covered by a waste facility permit i.e. there is a class of soil and stone recovery that requires both a waste permit and planning. The legislation states that you can't grant a permit for soil and stone fill site unless the facility is in compliance with planning permission.

We need to find the balance that protects the environment while at the same time is not over complicated for people to bring small volumes of inert materials into a site. We can't have a situation whereby a farmer is entitled to buy virgin stone from a quarry and improve his land but cannot use stone coming from a development site as the material is often regarded as waste. On the other hand we don't want to give a carte blanche to all such operations, it does need to be controlled but in a more simplified way.

Possible Solution:

In a situation where a landowner who has planning permission to reclaim their land by importing in uncontaminated soil and stone, would it be possible to get the landowner to sign a detailed declaration that they will not cause environmental pollution, will keep 5 m back from water course, keep road clean etc, then the activity is regarded as lawful and does not require waste authorisation this could be counter signed by the economic operator? The site is then inspected in accordance with agreed protocol / template and logged on a National Register. I appreciate that this may have implications for AA screening and hopefully the relevant authorities are being consulted as part of this consultation process. At least then we would know exactly where the material came from and likewise when at the excavation site we would know exactly where the material went to when we ask the question or view a completed Construction and Demolition Plan.

Can this process deal with sites that had obtained retention planning permission for land reclamation works? How we regulate these types of facilities?

I do not think it is good practice that an economic operator does not receive a response from a regulator and can proceed on the basis that all is ok. I believe that the economic operator should not take measures until a go ahead is given, otherwise by the time a decision is made the site may already have been filled and we could have to ask an operator to remove fill from a site despite the fact that they adhered to the procedure at the time.

Having researched the matter a little further, I see that the UK – Department for Environment Food and Rural Affairs have what seems like an excellent system under CL:AIRE (Contaminated Land: Application in Real Environments) they have a Definition of Waste: Code of Practice see link <https://www.claire.co.uk/projects-and-initiatives/dow-cop>

<https://www.gov.uk/government/publications/legal-definition-of-waste-guidance/decide-if-a-material-is-waste-or-not#when-a-material-is-a-by-product-and-not-waste>

CL:AIRE have put a huge effort into this area with a good result and I think we could adopt a similar approach to regularising small scale inert material recover facilities. It would be worth consulting with them and determining the feasibility of running something similar here.

3. Future Actions

This consultation document deals with part of the scenario but we need to agree a national position (WERLAs, LAs and EPA) on three stages of dealing with soil and stone and other construction waste / materials;

1. What authorisation if any is needed for the receiving site? This soil and stone guidance document along with other mechanisms needs to be strengthened and clear instructions given to both industry and regulators.
2. The processing of applications and granting of facility authorisations – need to bring consistency to this element of waste regulation.
3. Action to take when an unauthorised soil and stone recovery site is discovered. A national position on this needs to be discussed and agreed if we are to adhere to the core principles of enforcement. The suggested steps below might get more discussion going on this and deliver a result.

Suggested steps;

- 3.1 Require an assessment to be carried out in accordance with the Code of Practice titled Environmental Risk Assessment for Unregulated Waste Disposal Sites. This will help inform the decision as to the best course of action to take with any fill found on site.
- 3.2 Regulate the activity (similar to retention planning permission or Section 22 register) and include a remediation plan.
- 3.3 Apply the landfill levy if it was deemed that the activity met the criteria.
- 3.4 Communicate any agreed approach to all the stakeholders at a National level so that all involved in the chain know the steps that a regulator has to take when coming across such sites, ie to be upfront and ensure that the different stakeholders knows the agreed consequences. This should act as a deterrent and lead to more effective enforcement.

14th December 2018

Donegal County Council