

EU Policy Review

Analysis of recent EU legislation and policy for local and regional government



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For further information on these issues, or if you would like to receive copies of any of the documents mentioned, please contact Mark Callanan at the IPA (Tel [01] 240 3632 or email mcallanan@ipa.ie)

LEGISLATION

European Court rules against Ireland over Standards and Inspection of Septic Tanks

The Irish government lost a case in the European Court of Justice in October over the approach taken to the regulation and inspection of septic tanks and other private waste water treatment systems in rural Ireland. The European Court in the case found that the approach taken in most counties in Ireland (with the exception of Cavan) did not properly conform with the provisions of various EU Directives, and in particular a 1975 Directive on waste (75/442/EEC), which requires national governments to ensure that waste is properly disposed without damaging human health or the environment, and that measures are taken to prohibit the uncontrolled disposal of waste.

There are about 400,000 septic tanks in Ireland, compared with some 100,000 in Scotland, and 800,000 in England. The European Commission in taking the case against the Government argued that there are serious shortcomings in the management of septic tanks in Ireland with negative environmental implications – these relate to different deficiencies, which the Commission argues includes incorrect construction, unsuitable siting, insufficient capacities, maintenance and inspection of septic tanks, and insufficient enforcement by local authorities. Despite Irish legislation in this area, the Commission argued that serious environmental damage is caused by septic tanks, and that current legislation has not improved the situation.

The Court in making its judgement reviewed the various powers of local authorities under Irish law to regulate, inspect and enforce environmental standards on septic tanks, including the Public Health (Ireland) Act 1878, the Local Government (Water Pollution Acts, 1977 and 1990, the Building Control Acts 1990-2007 and Building Regulations and Technical Guidance, and the Planning and Development Acts 2000-2006. Part H of the Building Regulations and Technical Guidance Document H include requirements for septic tanks in terms of siting, capacity, ventilation.

The Irish government in its defence pointed to existing legislation, and a circular issued to local authorities in 2003 regarding the assessment of sites, design, installation and maintenance of septic tanks, as well as the 2005 Sustainable Rural Housing Guidelines. The Government indicated during the case that it intended to make both the 2005 Sustainable Rural Housing Guidelines and the 2007 Development Plan and Development Management Guidelines mandatory. The Government also pointed to the provisions of the Water Services Act 2007 on areas such as rural water services, although the Court dismissed this as a defence, given that the relevant provisions had not been enacted before the case was referred to the Court.

The Court in its judgement argued that EU legislation in this area covers **all** septic tanks and individual waste water treatment systems, both old and new. It found that Building Control legislation only applied to septic tanks and private waste water treatment systems constructed after 1992, and that the Planning code only applied to septic tanks and private waste water treatment systems constructed after 2000. Therefore, Irish legislation does not adequately cover earlier installations. While the Local Government (Water Pollution) Acts 1977 and 1990 prohibit water pollution, the exemptions under those acts for discharges of domestic sewage of less than 5 cubic metres excludes a large number of septic tanks.

The Court also noted that the standards in Building Control Standard S.R.6 of 1991 (referred to in Technical Guidance Document H) are not suited to the geological and soil characteristics generally found in Ireland. It therefore, found that planning permissions granted on the basis of these standards did not ensure a level of environmental and human health protection that was required under EU law.

In terms of monitoring, the Court found that monitoring systems must involve regular inspections by local authorities of the functioning and maintenance of septic tanks and individual waste water treatment systems. The Court found that Irish local authorities have powers of inspection under various Irish laws, which also set out minimum standards of inspection. However, it argued that these powers are not exercised within a framework of regular checks and inspections at appropriate intervals. The Court rejected any argument that an absence of regular inspections could be justified on the basis of the high number of septic tanks in Ireland.

The Court cited the example of Cavan County Council, who introduced bye-laws in 2004 on water pollution to implement a complete system of management of septic tanks and individual waste water treatment systems, both old and new – this includes a requirement that every waste water treatment system complied with the EPA manual on Treatment Systems for Single Houses, and that inspections be carried out at least every 7 years. The Commission in taking the case against Ireland had conceded that these bye-laws in Cavan had constituted an adequate legal mechanism for complying with the Directive, and therefore, excluded Cavan as part of the subject matter of the legal action.

The Department of the Environment, Heritage and Local Government has indicated that it will be launching a public consultation into the management, licensing and inspection of septic tanks and onsite sewage treatment systems.

For a full copy of the Court's judgement, please email Mark Callanan at mcallanan@ipa.ie

Commission Legal Action against Ireland over Strategic Environmental Assessment

The European Commission is sending Ireland a final written warning in relation to the incorrect application of the Strategic Environmental Assessment Directive (2001/42/EC), which requires an assessment of the impact of plans or programmes on the environment before they are approved.

The case involves the possibility under Irish legislation for land identified in a development plan to be re-zoned before the final approval of the plans, without these changes being subject to a Strategic Environmental Assessment (SEA).

The purpose of the SEA Directive is to ensure that environmental consequences of certain plans and programmes, including development plans, are identified and assessed during their preparation and before their adoption. Potential environmental consequences can include implications for urban waste water treatment, drinking water supplies and transport pressures. Public and environmental authorities can give their opinion and all results are integrated and taken into account in the course of the planning procedure. After the adoption of the plan or programme the public is informed about the decision and the way in which it was made. In the case of likely cross-border significant effects the affected EU state and its public are informed and have the possibility to make comments which are also integrated into the national decision making process.

The European Commission is concerned that Irish legislation applies a wider discretion than the SEA Directive intended, potentially removing the requirement for environmental assessment for land-use plans involving a population of less than 10,000 people. If Ireland does not take the action necessary to ensure that its legislation complies with the requirements of EU law, the Commission may refer the case to the European Court of Justice.

The SEA Directive 'on the assessment of the effects of certain plans and programmes on the environment' requires a formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment. Authorities which prepare and/or adopt such a plan or programme must prepare a report on its likely significant environmental effects, consult environmental authorities and the public, and take the report and the results of the consultation into account during the preparation process and before the plan or programme is adopted. They must also make information available on the plan or programme as adopted and how the environmental assessment was taken into account.

POLICY INITIATIVES AND ANNOUNCEMENTS

EPA Reviews Enforcement of EU Environmental Directives in Ireland

The Environment Protection Agency, *Focus on Environmental Enforcement in Ireland: A report for the years 2006-2008*, (2009) report notes a significant increase in the amount of environmental legislation enacted in Ireland over the three-year review period (2006-2008) and this was matched by an increase in the level of inspection and enforcement actions by environmental regulators. The level of activity from local authorities in 2008 alone included over 130,000 environmental inspections, 10,000 enforcement actions and 750 prosecutions.

The EPA is responsible for regulating over 200 waste activities (e.g. landfills/waste transfer stations) and 550 industrial activities that have significant polluting potential. Local authorities control the collection and movement of waste in their functional areas and regulate smaller industrial waste and wastewater activities as well as controlling diffuse sources of pollution.

During the review period 2006–2008 there was a major strengthening of enforcement powers available to the EPA to improve the compliance with EU Directives relating to urban wastewater and drinking water. A process for authorising urban wastewater treatment plants was introduced in 2007. Drinking water regulations introduced in the same year designated the EPA as the supervisory authority over public water supplies and the local authorities for the group water scheme sector.

The outcomes of enforcement activities by EPA and local authorities with respect to waste, water, air and noise during 2006–2008 are highlighted in the Report.

Waste

The EPA and local authorities carried out over 30,000 audits and inspections of waste activities in 2008, and over 700 waste prosecutions. This number of prosecutions is a significant increase over the 2007–2008 period (e.g. waste prosecutions taken by local authorities increased from 404 to 695).

In line with government policy there was an increased use of higher courts (Circuit and High Courts). This was effected by securing High Court orders against unauthorised waste facilities or submitting files to the Director of Public Prosecutions.

Odour complaints from waste transfer stations reduced almost three-fold (from just under 200 to 68); however, there was an increase in the level of landfill odour complaints (almost 520 in 2006 to over 1300 in 2008). The level of remediation work at landfills and waste transfer stations has increased and there were seven prosecutions in relation to odours and landfill gas issues by the EPA during the period.

Some 36% (i.e. 76) of EPA licensed waste facilities ceased operation during 2006–2008, indicating increased consolidation in the waste market.

Water

The period 2006–2008 saw a 40% increase (i.e. to almost 4,500) in the number of discharges to water and sewer licensed by local authorities. This increase is primarily due to a large increase in licensing of emissions to sewers by Dublin City Council in 2008. Over 60,000 water-related inspections and 80 water-related prosecutions took place across the country.

The EPA identified 339 public drinking water supplies (representing 36% of public supplies) that require detailed profiling to ensure that the supply is providing clean and wholesome drinking water. In all 544 notifications of failure to meet the drinking water standards were reported to the EPA by local authorities in the period 2007–2008. The EPA issued 45 directions and prosecuted one local authority in the same period.

Data submitted as part of IPPC licensing indicates a 20% decrease in mass emissions of polluting matter (as measured by Biochemical Oxygen Demand) to waters from the food and drink sector during 2004–2007. The number of seriously polluted river stations has decreased from 39 to 29 during the period 2006–2008. €530m was allocated during the period 2006–2008 under the Farm Waste Management Scheme to improve farm infrastructure so as to prevent water pollution. In parallel with this investment, farm inspections undertaken by local authorities increased to over 5,000 in 2008.

Air & Noise

The EPA and local authorities conducted over 4,000 inspections each year relating to air and noise issues. The EPA took eighteen prosecutions (the majority relating to odour from licensed waste facilities) and nine prosecutions were taken by local authorities (including unauthorised sales of bituminous coal and unlicensed air emissions) during the reporting period. The EPA prepared three files for consideration by the Director of Public Prosecutions (DPP) relating to air emissions.

Returns to date indicate that total greenhouse gas emissions under the EU Emissions Trading Scheme (ETS)

for the 100 main emitters in Ireland reduced by 9% between 2005 and 2008 (from 22.4Mt CO₂ equiv. to 20.4Mt).

Ireland developed a National Emissions Reduction Plan (NERP) under the Large Combustion Plants Directive (2001/80/EC). NERP limits for nitrous oxide and dust have been achieved. It is expected that the NERP limit for sulphur dioxide (SO₂) will be achieved following modifications and improvements at the ESB Moneypoint power station.

Future Enforcement Challenges

The number of activities regulated as a consequence of new environmental legislation will double in the next two years. This arises from an increased role for the EPA in:

- Licensing and enforcement of urban wastewater treatment plants;
- Enforcement of public drinking water supplies;
- Licensing of additional waste recovery, power sector and pig & poultry activities due to the introduction of lower thresholds;
- The registration of historic landfill sites.

Local authorities will also have an increased role in the regulation of:

- Private drinking water supplies;
- On-site systems for wastewater treatment;
- Farm emissions;
- Solvent use.

In addition, local authorities will play a key role to deliver the Programmes of Measures (POMs) under the Water Framework Directive (2000/60/EC). This Directive sets a target of good water quality status by 2015.

Full details of the report are available at:

<http://www.epa.ie/downloads/pubs/enforcement/focus/>

Commission calls for Better Implementation of EU Waste Laws

In November, the Commission published two reports on the implementation of the EU legislation on waste over the period 2004 – 2006. The implementation reports cover Directives 2006/12/EC on waste, 91/689/EC on hazardous waste, 75/439/EEC on waste oils, 86/278/EEC on sewage sludge, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste, 2002/96/EC on waste electrical and electronic equipment, and 2000/53/EC on end-of-life vehicles.

The assessment highlights the need for significant efforts by national governments and implementing bodies to ensure that waste management meets the standards set by EU legislation. The reports show that implementation and enforcement of EU waste law remain poor particularly regarding the Waste Framework Directive, the Landfill Directive, and the Waste Shipment Regulation. In many cases, waste treatment infrastructure is missing and waste is not collected separately. This results in reuse, recycling and recovery targets for waste streams such as electrical and electronic equipment, end-of-life vehicles or packaging being missed. There are also a high number of cases of illegal shipments of waste.

The Commission pursues Member States that breach EU environmental law in the European Court of Justice – over 20% of all environmental infringement cases are related to waste management. Coordinated efforts are being made to improve the awareness of national authorities, clarify legislation, provide guidance and exchange best practice.

In 2009, a number of cases were taken against national governments for structural and wide-spread failure to address illegal waste dumping. The Commission receives on a daily basis a vast number of complaints related to illegal landfills lacking the permits required by EU waste legislation, causing serious adverse effects to the environment and risks to human health. These complaints have demonstrated a general and persistent nature of significant implementation deficiencies in a large part of the EU. In the cases observed, public authorities have often tolerated serious deficiencies for long time periods without ensuring that illegal activities are brought to an end and punished. A large number of landfills do not comply with the requirements of the Landfill Directive and there is a real risk that a vast majority of EU states will not meet the deadline of July 2009 by which all sub-standard landfills that existed before the introduction of the Directive need to comply with its requirements (unless specifically derogated). Only nine EU states report having met the 2006 targets for the diversion of biodegradable municipal waste from landfills and capture of landfill gas appears insufficient.

The Commission has improved its efforts to support national authorities in better implementation. Actions include awareness raising and information exchange events, guidance documents for the relevant authorities on a number of key issues concerning EU waste legislation, joint enforcement actions, and inspection activities in different EU states in close cooperation with the EU network for the implementation and enforcement of environmental law (IMPEL). The Commission is also examining the feasibility of creating an EU Waste Implementation Agency to help address the problem of inadequate implementation and enforcement deficit.

Member States are obliged to report regularly on the implementation of waste legislation. Reports are sent to the Commission every three years and cover a number of waste directives or regulations. Member States also have to report annually (or every second year) on reuse, recycling and recovery rates achieved for various waste streams.

A copy of the Commission's report is available at:

<http://ec.europa.eu/environment/waste/reporting/index.htm>

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