



NEW NATIONAL WASTE POLICY - PUBLIC CONSULTATION

Submissions are sought by **30 September 2011** on new initiatives proposed in light of the Waste Framework Directive regarding prevention, reuse, recycling, recovery and disposal.

Updates to submissions are also sought by **1 October 2011** on the proposed Section 60 Policy Direction concerning incineration. Although consultation on this was closed, additional comments are invited in the context of the new Waste Policy Statement.

For more details see:

www.environ.ie

WASTE NOT, WANT NOT – NEW WASTE MANAGEMENT REGULATIONS

The European Communities (Waste Directive) Regulations 2011 were signed into law on the 31 March 2011. It amends the Waste Management Acts. Features include:

- **Non application of the Waste Acts to:**
 - Land (in situ) including unexcavated contaminated soil and buildings;
 - uncontaminated soil and other naturally occurring material excavated and reused in its natural state on the same site from which it was excavated;
 - straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or the production of energy.
- **Amendments to Definitions**

- **Cost of Waste Management:** In accordance with polluter pays principle, the costs are to be borne by original waste producer or the current or previous holders;
- **Transfer of Waste:** The transfer to an authorised person for preliminary treatment does not discharge the transferor's responsibility for complete recovery or disposal;
- **Waste Hierarchy:** The regulations give the Waste Hierarchy a binding legal status;
- **Waste Prevention Programmes:** The Environmental Protection Agency ("EPA") must establish waste prevention programmes, to be integrated into the Local Authority Waste Plans;
- **End of Waste Status:** specifies criteria for when waste ceases to be waste;
- **New Duties:** Waste management companies are under an obligation to recover waste and authorities must enforce this.

For more details see:

<http://www.irishstatutebook.ie/2011/en/si/0126.html>

THE COST OF THE ENVIRONMENTAL CLEAN-UP?

In the High Court case of *Environmental Protection Agency v Nephin Trading Limited & Ors (2011)*, the court, on the 3rd March 2011, refused to disregard the company's limited liability protection to impose clean-up costs on directors personally under section 57 of the Waste Management Act. In this case regarding a landfill site polluting the surrounding area, the EPA sought so called "fall-back" orders, that is to impose personal liability on directors for the costs of environmental clean-up, where the company did not have adequate funds to pay.

Whilst noting the “polluter pays” principle, the court refused to remove the company’s limited liability protection, and impose the clean-up costs on the directors personally. In the circumstances the court found that the existing section 57 and 58 provisions contained in domestic waste law, did not in fact contain any automatic entitlement to make directors personally liable. As a result, directors, shareholders and other company officers may not be held personally liable for the costs of environmental clean-up under such “fall-back” orders.

For more details on this judgment see:
<http://www.courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/a15e79e19e15b2cf8025787000332787?OpenDocument>

ODOUR – WHAT A NUISANCE

In the recent English High Court case of Barr v Biffa Waste Services Ltd (2011) the Court established the appropriate threshold claimants must cross before allegations of odour from adjacent landfill sites become an actionable nuisance.

In this instance Biffa operated a landfill site close to a housing estate. The residents asserted that over a five-year period they had been affected by odour coming from pre-treated waste at Biffa’s site. The court suggested that where the odour was found to be localised and of varying intensity, the appropriate threshold that applied was 52 complaints of odour per year, and that the complainant had to show some form of record of complaint to the Environmental Protection Agency.

This high-profile judgment appears to establish that provided there is no lengthy record of complaints of odour, and that the operator of a landfill site continues to comply within the terms of its environmental permit, no claim in nuisance would lie against the operator. A similar approach may be adopted by the Irish courts.

Case Citation:
[Barr v Biffa Waste Services Ltd \[2011\] EWHC 1003](#)

ENVIRONMENTAL LITIGATION AND AWARDING COSTS

Some changes to the rules on how the courts award costs in civil proceedings relating to non compliance with planning permissions and other environmental consents (including judicial review) were introduced

on 23 August 2011. Each side is to bear its own costs in certain circumstances pursuant to the Environment (Miscellaneous Provisions) Act 2011.

This Act has also introduced a statutory requirement that judicial notice must be taken of the Aarhus Convention (in relation to Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters). This is likely to open up the grounds for legal challenges being brought on environmental issues.

For more details see:
<http://www.irishstatutebook.ie/2011/en/act/pub/0020/print.html>

RENEWABLES – REACHING OUR RENEWABLE TARGETS

The *European Communities (Renewable Energy) Regulations 2011*, which gives effect to the EU Directive 2009/28/EC, was signed into law on the 28 March 2011. The Regulations seek to establish a national framework for the use of renewable energy and reach binding EU-wide targets and implement additional provisions including those relating to: access to and operation of the grid; guarantees of origin and the exemplary role of public bodies regarding public buildings.

For more details:
<http://eur-ex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:EN:PDF>

Circular:
<http://www.dcenr.gov.ie/NR/rdonlyres/C42ACBC8-61DE-4A10-9B59-2395CB7DDE2C/0/SI147of2011.pdf>

SEPTIC TANK OWNERS – WATCH OUT

Draft legislation is due to be published shortly to address the proposed regime for regulation of septic tanks which will involve registration and inspection of septic tanks to comply with obligations imposed by the ECJ on Ireland in 2009.

ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS FOR CERTAIN AGRICULTURAL ACTIVITIES

Following an ECJ ruling against Ireland, new rules were signed into law on the 8th September 2011, on the need to carry out EIA for certain types of agricultural activities, namely certain restructuring of rural land holdings; certain land drainage/reclamation works and use of uncultivated land for intensive agriculture.

For more details see:

European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 (S.I. No. 456 of 2011)

www.agriculture.gov.ie

PLANNING – ENVIRONMENTAL CHANGES TO THE PLANNING AND DEVELOPMENT REGULATIONS

The Planning and Development (SEA) (Amendment) Regulations 2011 came into operation on 3 June 2011. The key features include:

- **Environmental Assessment:** a reduction in the threshold for a mandatory environmental assessment of a local area plan with a target population of more than 10,000 persons to 5,000 persons, or where the area covered by the plan is greater than 50 km², or where it is being prepared for a town and its environs;
- **Environmental Assessment:** a requirement for the making of a determination as to the need for an environmental assessment of a local area plan with a target population under 5,000 persons or where the area covered by the local area plan is less than 50 km²;
- **Environmental Authority:** the expansion of the role of the Minister for the Environment as a designated environmental authority for the purposes of SEA.

For more details see:

<http://www.irishstatutebook.ie/2011/en/si/0201.html>

DEVELOPMENT CONTRIBUTION REFUND

On the 16th September, it was reported in the media that the High Court ruled that a building company was entitled to refund of money paid to satisfy a planning condition to develop a site. The planning condition required the company to make a contribution to the development by Galway County Council of a bypass in Barna. The court held that as the bypass was not complete the Council was “not entitled to require the developer to make a contribution to works that ultimately did not benefit the company’s development”. More than 7 years had lapsed since the contribution had been paid. The judgement has not yet been reported.

For more details see:

www.irishtimes.com

QUASHING A QUARRY PLANNING DECISION!

In the case of *Scanlon v Sligo County Council (2011) IEHC 143* the decision outlines that in responding to a planning authority’s Request for Further Information, the applicant must now furnish the response well inside the time limits required in order to protect the Planning application in its entirety. Pursuant to Article 33 of the Planning and Development Regulations 2006, a maximum period of nine months is provided in which to submit further information. The planning authority will therefore have sufficient time to consider the response and to revert to the applicant to seek clarification on matters, if required.

Case Citation:

[Scanlon v Sligo County Council \[2011\] IEHC 143](#)

For further information, to receive a copy of our legal updates or to discuss any aspect of environmental law please contact Finola McCarthy (finola.mccarthy@rdj.ie) or Aoife Shields (aoife.shields@rdj.ie), Ronan Daly Jermyn, 12 South Mall, Cork. Tel: 021 4802700

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