

WASTE LAW

**In the Pipeline - Modernisation of the Regulation of Waste**

Last July, the Minister for Environment announced a review of the waste permit regime to make it more workable in practice. Draft collection permit Regulations and draft facility permit Regulations are currently being reviewed by the Department in light of the numerous submissions made, including a recommendation for the establishment of a waste regulator. It is anticipated that new Regulations will be brought into force later this year. The proposed Regulations provide for, among other things, an increase in the type of activities to be subject to local authority facility permitting and the issuing of national collection permits. These regulations shall affect waste service providers.

**WEEE Prosecution**

On the 23 January, the EPA successfully prosecuted Boots Retail (Ireland) Limited for breaching provisions of the WEEE Regulations 2005. Boots failed to have a notice in its retail outlet informing the customer that the price of the electrical and electronic goods included a contribution to a Producer Recycling Fund for collecting and recycling WEEE.

**New Vehicles - Reusable, Recyclable and Recoverable parts**

Directive 2005/64/EC on type approval for new passenger cars and light vans is required to be transposed into Irish law by 15 December 2006. This Directive requires manufacturers of these vehicles to demonstrate that their components are reusable and that the materials are recyclable and recoverable to levels required by the 2000 End-of-Life Vehicles Directive. From 15 December 2008, member states must refuse type approval of new vehicles that do not comply with this and from December 2010, they must refuse registration, sale or entry into service of new vehicles that do not comply with the 2000 Directive.

**Proposed changes to the EU Waste Framework Directive (WFD)**

In December 2005, the EU Commission proposed a revised version of the WFD, which, among other things, clarifies the definition of what constitutes waste. Of particular importance is the specific non-application of the Directive in respect of unexcavated contaminated soil. In addition, it proposes to consolidate some of the waste legislation by incorporating the regulation of hazardous wastes and waste oils into the WFD. It also clarifies when waste ceases to be waste and provides for regulatory relief in respect of recycled products that are not considered harmful to the environment.

LAND USE

**Developers Beware of Exclusion zones**

The amended Seveso Directive on the Control of Major Accident-Hazards involving Dangerous Substances was brought into effect in Ireland in February this year. Its repercussions are already having an impact on planning, in that Kilkenny County Council recently refused planning permission for housing development adjacent to a fertilizer and storage yard. The Health and Safety Authority advised the planning authorities that this yard, which stored nitrates, would come under the 2006 Regulations.

**Infrastructure Fast-tracking in the Pipeline**

The Government announced a new Strategic Infrastructural Bill on the 16 February. It aims to improve efficiency in setting in motion major infrastructural projects. It proposes the establishment of a new division of An Bord Pleanála which will deal at first instance with the determination of consents in respect of major projects such as, gas terminals, hazardous waste facilities, incinerators, gas and oil pipelines, large pylon projects, power stations, oil refineries, wind farms, air terminals, sea ports and sewage plants projects. The Bill is expected to be passed in June 2006.

## **Obstacles to Wind farm Projects in England**

The plan to put in place the biggest wind farm in England was recently rejected by the UK Authorities, casting a doubt on the government's commitment to renewable energies. The reason for the refusal was that the impact on the landscape and recreation was disproportionate to the benefit to be achieved from renewable energy generation.

## **WATER LAW**

### **Waste Water Treatment Plants**

The 2005 Waste Water Treatment Regulations came into effect on the 13 December last. They sets out the legal requirements for waste water treatment plant design, construction, operation and maintenance so as to avoid causing nuisance from odour emissions or noise. Operators of such plants must maintain records and report to the EPA in respect of their compliance with these regulations and any incidents of noise or odour.

### **Agriculture - Nitrates Directive**

The Good Agricultural Practice Regulations 2005, which was brought into force on the 1 February 2006, deals with the protection of water from agricultural pollution and purports to give effect to the Nitrates Directive. It sets limits on the amount of fertiliser that can be applied to land. These limits are based on guidelines issued by Teagasc. However, these limits are now in dispute and the implementation of Part III of the Regulations has been deferred for review by the Department of Environment and Agriculture.

### **Bathing Waters Law Revised**

The revised Bathing Waters Directive, which introduces new water quality categories and sets stricter quality standards for coastal and inland waters, must be implemented in Ireland by 24 March 2008.

### **Proposed European Flood Directive**

On the 18<sup>th</sup> of January 2006 the EU Commission proposed a Directive, which will lay down a framework for flood risk management, to include risk assessments, mapping and management plans. Its aim is to assist in the prevention and limitation of floods, and their damaging effects on human health, the environment, infrastructure and property.

## **DANGEROUS SUBSTANCES**

### **Chemical Legislation - "Reach" Update**

The European Council agreed to the text of the new EU chemical legislation (REACH) mid-December

2005 and is envisaged to be adopted later this year or early 2007. The new system, REACH, will establish an integrated system for the registration, evaluation, authorisation and restriction of chemicals. REACH will ensure that the gaps in existing information on the hazardous properties of some 30,000 chemicals are filled and that there is greater safety in respect of the manufacturing and use of chemical substances. These rules will affect not only chemical companies but also nearly all importers and users of chemical substances, such as motor vehicle and component manufacturers and makers of consumer goods, such as furniture, electric products, detergents and household products.

The Irish government proposes to appoint the Health and Safety Authority as the National Body for REACH.

### **Electrical and Electronic Equipment Revisited**

Following the introduction of the Waste Electrical and Electronic Equipment Regulations ('WEEE') on the 15 August 2005, a related piece of legislation, the Restriction of certain Hazardous Substances in Electrical and Electronic Equipment Regulations ('RoHS') shall come into effect on the 1 July 2006. It will have a significant impact on those who supply electrical and electronic equipment to the market i.e. the retailer, importer and manufacturer. The regulations restrict the use of certain hazardous substances in eight categories of electrical and electronic equipment for sale on or after the 1 July 2006. This includes large and small household appliances, IT and telecommunication equipment, consumer and lighting equipment. Hazardous substances refer to lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB) or polybrominated biphenyl ethers (PBDE). The European Commission made a Decision on 21 October 2005 to exempt from the remit of RoHS Regulations the use of lead in optical and filter glass and electronic ceramic parts and cadmium in electrical contacts.

### **Packaging, Labelling, Marketing & Use of Dangerous Substances**

Directive 2004/73/EC on the classification, packaging and labelling of dangerous substances was transposed into Irish law by way of regulations on the 25 January 2006. The regulations will have an impact on manufacturers, importers and other entities proposing to place a new chemical on the market for the first time. Such entities are required to submit to the Health and Safety Authority a notification containing information on the proposed classification and labelling of the chemical, in addition to the test to

which the substance has undergone. Storage containers of these chemicals must carry warning labels and be properly designed and constructed. These obligations however do not apply to certain categories of substances covered by other European legislation such as medicinal, cosmetic and waste products. The Directive adds a number of dangerous substances to the list of classified dangerous substances in the EU.

Of note also is Directive 2006/8/EC amending Directive 1999/45/EC relating to the classification, packaging and labelling of dangerous preparations. It introduces new warning labels for paints and varnishes containing lead, products containing chlorine, preparation containing cadmium and cement containing chromium. Ireland is required to implement this Directive by 1 March 2007.

### **Dangerous Substance –Mercury**

On the 21 February the European Commission tabled a proposal to ban the marketing of mercury in new fever and room thermometers, barometers, blood pressure gauges and manometers and sphygmomanometers. The aim is to bring about a decrease in the industry's use of mercury.

## **IPPC & AIR QUALITY**

### **IPPC Implementation Action Plan**

The EU Commission recently adopted an action plan, which includes the issuing of guidance documents, the monitoring of the number of permits issued and the checking of compliance of installations with high levels of emissions. It is also considering a review of the IPPC Directive.

### **Clean Air Strategy full steam ahead**

The proposed new Ambient Air Quality Directive aims to overhaul European air quality legislation; it proposes to cut concentrations of PM2.5 in the atmosphere and to cap concentrations in areas of heavy air pollution.

## **ENERGY AND POWER**

### **All Ireland energy market**

The Department of Communication, Marine and Natural Resources are taking steps to create an all Ireland energy market in the form of a new Energy Bill 2006, which is at the second stage in the Dáil.

### **Development in the Green Energy Market Financial Support Mechanisms – Renewable Energies**

The Government announced in September 2005 that it would fund the sum of €19 million over a fifteen year period to support renewable energy projects by way of a fixed price tariff system. The Finance Act 2006 enables the giving of excise relief for transport bio fuels to the end of 2010 for licensed facilities.

### **Proposal for the auctioning by ESB of Green Energy**

The Commission for Energy Regulation (CER) and ESB tabled a proposal in March 2006 to auction green electricity to licensed green suppliers by way of a GVIPP Agreement (Green Virtual Independent Power Producer contract)

### **Wave Energy in the Pipeline**

According to the Marine Institute, the available wave energy in Ireland has the potential to meet ESB total generating capacity. Sustainable Energy Ireland and Marine Institute proposes to pilot a wave energy generator off the west coast of Ireland.

### **Energy Agreements**

These agreements, developed by Sustainable Energy Ireland and based on new Irish Standard on Energy Management Systems (ISO 393), are aimed at helping companies, particularly energy-intensive enterprises, to manage the cost of energy and participation in the EU-ETS.

### **Energy Efficiency – Buildings**

New Regulations, which come into effect on the 1 July 2006, shall impose higher energy performance standards for new non-domestic buildings and introduces a new method for assessing energy performance for new dwellings. However buildings for which planning permission has been applied for on or before 30 June 2006, and which are substantially completed by 30 June 2008, will not be required to comply with these new standards.

The Building Control Bill 2005, which is at the second stage in the legislative process, shall require the issuing of Building Energy Rating certificates (BERs) in respect of newly constructed dwellings as and from 1 January 2007, newly constructed non-domestic buildings from January 2008 and existing buildings (when sold or let) as and from 1 January 2009.

### **Energy Developments in the EU**

#### **European Energy Strategy Launched**

Earlier this month the EU Commission adopted a Green paper entitled 'Strategy for Sustainable,

Competitive and Secure Energy', which is now open for public consultation. It proposes among other things, the development of a European internal gas and electricity market, energy security and a road map for renewable energy sources.

### **Legislative Developments - New Energy Efficiency Directive**

On the 14<sup>th</sup> March 2006, the EU energy ministers adopted a Directive on Energy end-use efficiency and energy services. It establishes targets and frameworks to eliminate barriers to energy efficiency. It shall have an impact on distributors and retailers of energy to end user, such as the gas and electricity sector. Ireland has two years in which to implement its provisions.

## **CLIMATE CHANGE AND EMISSIONS TRADING**

### **EPA Auctions Emission Units**

The first auction of GHG allowances was launched by the EPA on the 27 January 2006. Bids were accepted up until the 17 February 2006. The EPA in Ireland (as well as other competent authorities in the EU) envisages holding more auctions later this year.

### **IN THE PIPELINE**

#### **Climate Change Target Bill 2005**

The purpose of the 2005 Bill is to put in place a framework to enable Ireland to reach an annual pro rata reduction in GHG emissions to enable the average increase in global temperature to be maintained at less than 2 degrees. This Bill is currently at the second stage at the Dáil.

#### **Preparations begin for Phase II (2008-12) of the EU ETS**

The 30 June 2006 is the deadline for Ireland to notify the European Commission of its National Allocation Plans (NAPs) for phase II of the EU Emissions Trading Scheme (ETS). The European Commission has published a communication setting out guidance to help member states draw up these plans.

Relying on a report by ICF and Byrne O'Cleirigh on the implementation in Ireland of Phase II, the Government announced at the end of March, its preliminary allocation of emission allowances for Phase II. It proposes to cap industry's (the trading sector) CO<sub>2</sub> emissions at 23 million tonnes per year. It is envisaged that 10% of the emission allowances will be held for new entrants to the trading sector during that period and that in respect of rationalizing firms,

installations closed in phase II can retain up to 75% of their intended allocations allowances for phase II. The Government also proposes to purchase 3.6 million credits per year from abroad.

Emission Units (one tonne of CO<sub>2</sub> per unit) are currently trading at approximately €27 per unit. Investment banking firms predict that into the future this could cost between €35 and €50. Companies that will be most affected by Phase II are the energy intensive sectors such as those involved in combustion, cement production, glass production, oil refineries and paper mills. Public consultation in respect of the draft NAP for 2008-2012 commence shortly.

### **"Linking" Directive Update**

The purpose of the Directive is to link the current EU Emission Trading Scheme (ETS) with the "Kyoto project mechanism", namely the Clean Development and Joint Implementation mechanisms. These mechanisms will enable entities coming under the ETS to purchase emission credits (known as (certified) emission reduction units) as an additional way of complying with their obligations under EU ETS. This Directive was implemented in Ireland on the 11<sup>th</sup> of November last.

## **EUROPEAN DEVELOPMENTS**

### **European Agreement on Reducing Fluorinated GHG**

An agreement was reached on the 31<sup>st</sup> January this year to reduce emissions of fluorinated GHG used in refrigeration, air conditioning, fire-fighting, electrical transmission systems and various industry processes. The Commission proposes to implement a Regulation to deal with emission from stationary applications using these gases and to ban products and equipment containing them.

### **EU ETS and Aviation Update**

The European Commission issued communications on 27 September 2005 entitled "Reducing the Climate Change Impact of Aviation". The communications consider ways of reducing GHG in the air transport sector. It is envisaged that new legislative proposals to bring aviation emissions under the EU ETS will be set in motion towards the end of 2006. Finally, the Commission also expressed the view that that tax exemption for aviation fuel should be removed.

## REPORTING AND MANAGEMENT

### Public Access to Information on Pollution.

On the 24<sup>th</sup> February 2006, the European Regulation on establishment of a European Pollutant Release and Transfer Register came into force. It provides for a publicly accessible electronic database on pollutants above a specific threshold value released by operators of facilities in for instance, the energy, mineral, chemical and waste sector. In addition, certain off-site transfers of waste and pollutants in waste water and release of pollutants from diffuse sources (where available) will also be accessible. This opens the way for industry's environmental performance to be scrutinized more readily by the general public.

### Guidance on Contaminated Land

UK Environmental Agency has issued new guidelines on management of contaminated land. It consists of guidance for safe development of housing on contaminated land and model procedures to be adopted when dealing with contaminated land.

### UK – Guidance for Business

On the 24 January 2006, the UK Government published guidelines to help companies voluntarily report on their environmental performance as part of their annual business review. This Guidance may be of use to business in Ireland and may also signal a shift in this direction in Ireland.

## ENVIRONMENTAL LITIGATION

### GHG Reduction

#### *Connecticut v. Power Electric USA 2005*

Eight US States together with New York City took action against American Electric Power Company among others, requesting them to reduce their greenhouse gas emissions. It was claimed that their emissions were causing a public nuisance and contributed to global warming. The case was dismissed by the Manhattan Federal Court on the grounds that it could not decide on political matters, as the commitment to Kyoto and other similar instruments was the remit of the Government. Although the case was dismissed, what is most interesting is the fact that the action was taken by eight US States. It may signal further litigation in this arena.

### Asbestos

In a recent French judgment, the courts ruled that a vessel containing asbestos awaiting export for dismantling did not constitute dangerous waste based

on the small amount of asbestos involved and that the ship-owner had an adequate dismantling yard.

### Tran Frontier Shipment of Waste – The Notifiers obligations

The European Court (ECJ) ruled on the 16<sup>th</sup> February 2006, that for authorities to block a shipment of waste to another member state, it must show a risk of harm to the environment or health. The ECJ, in giving an interpretation of EU Regulation on the Supervision and Control of Shipment of waste within, into and out of the EU ruled that

1. the competent authority can object to shipment if there is no information on the condition of recovery of that waste in the State of destination. It stressed that the notifier can't be required to prove that the recovery in the Destination State is equivalent to that of the dispatch State.
2. the time for the competent authority to object to a shipment starts to run when that authority has acknowledged receipt of notification of shipment. When the time expires the authority can no longer object to the shipment of the waste or request additional information.

### The Cost of Non-Compliance with Environmental Law

In July 2005, the ECJ ordered France to pay a sum of €20 million for its non-compliance with a 1991 ECJ judgment on its failure to enforce fisheries rules. The Commission decided in January of this year that France had not yet fully complied with the judgement and was required to pay a further €7 million penalty payment.

For further information, to receive a copy of our legal updates or to discuss any aspect of environmental law developments please contact [finola.mccarthy@rdj.ie](mailto:finola.mccarthy@rdj.ie) or [aoife.shields@rdj.ie](mailto:aoife.shields@rdj.ie)

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