



## Environmental Law Bulletin

### TOPIC: ENVIRONMENTAL LIABILITY

#### **Environmental Liability Directive – Now in Force**

The main provisions of the EC Environmental Liability Directive were brought into effect this April by way of the EC (Environmental Liability) Regulations 2008. Polluters will be required to prevent and remedy 'environmental damage' caused by their activities. Environmental damage includes damage to protected species and habitat (e.g NHAs or SACs); damage to waters and land contamination. Polluters have new positive duties to notify the EPA of any actual or potential environmental damage and to take immediate interim steps to manage the damage. The public now also have an enhanced role in ensuring this regime is effectively implemented. These regulations will affect both private businesses and the public sector in carrying out their operations.

*For more details see:* EC (Environmental Liability) Regulations 2008 SI No.547 and Environmental Liability Bill 2009.

#### **Eco-Crime Directive**

The EC Directive on the protection of the environment through criminal law aims to protect the environment across the EU through criminal law. Ireland must transpose this Directive by the end of 2010. The Directive basically lays down a list of environmental offences that must be considered criminal

offences by all Member States, if committed intentionally or with serious negligence.

*For more details see:*

Directive 2008/99/EC on the protection of the environment through criminal law

### ENERGY AND POWER

#### **EU Renewable Energy – Developments**

On the 23<sup>rd</sup> April the EU published the Renewable Energy Directive 2009. Under this Directive, Ireland is required to adopt national targets consistent with the EU target of at least 20% of electricity to be generated from renewable by 2020 and to submit a national allocation plan by the end of June 2010 on how it proposes to meet this target. The Directive also contains provisions on simplifying and streamlining authorisation procedures for renewable project.

*For more details see:* Directive 2009/28 on the promotion of the use of energy from renewable sources

#### **Offshore Renewable Energy Development Bill**

The Oireachtas Joint Committee on Climate Change and Energy Security has issued a draft Bill on Offshore Renewable Energy Development. Its aim is to provide a simplified, streamlined and fast-track planning framework for the development of offshore energy renewable technologies. It envisages a

prominent role for the Marine Institution, as planning authority.

For more details see: [www.oireachtas.ie](http://www.oireachtas.ie)

TOPIC: WASTE

### Mining Waste

The EC Directive on Mining Waste deals with the management of extractive waste in the mining and quarrying industry for the purposes of protecting human health and the environment. Extractive waste includes for instance, tailing, waste rock and topsoil.

This Directive requires operators in the extractive industry to:

1. Prepare waste management plans for its extractive waste.
2. Obtain appropriate permits for mining waste facilities.
3. Devise major accident prevention policy.
4. Develop procedures for closing and managing closed mining waste facilities.
5. Provide financial guarantee for certain types of mining waste facilities (e.g. that which contains hazardous waste or dangerous substances above a certain threshold).

This Directive once implemented in Ireland will affect most mining operations and quarries. It will not though impact on offshore operations. In respect of existing mining operations this Directive should not bring significant additional requirements to what is already required under IPPC licensing. However, in respect of quarries the impact of this Directive will be more pronounced. Although Ireland was required to transpose this Directive by May last year, the Regulations purporting to transpose the Directive are still in draft form.

For more details see:

<http://www.environ.ie/en/Publications/Environment/Waste/WasteManagement/FileDownload,18529,en.pdf>

### Sub-Standard Landfills

The 16 July 2009 was the deadline for sub-standard landfills in Ireland to comply with the Landfill Directive. Ireland has made significant progress in respect of dealing with unregulated waste sites.

For more details see: Waste Management (Certificate of Historical Unlicensed Waste Disposal and Recovery Activities) Regulations 2008 S.I. No. 524 and the EPA Code of Practice on Environmental Risk Assessment for Unregulated Waste Disposal Sites.

TOPIC: IPPC

### In the Pipeline: Proposed EC Directive on Industrial Emissions

The EC Commission proposes to revise and merge seven existing Directives on industrial emissions into one single Directive on Industrial Emissions. It aims to streamline permitting, reporting and monitoring requirements of industrial installations. The EU Environment Ministers have reached a provisional agreement on the content of this proposal and it may come into being later this year. Watch the space for the final version.

The Department of Environment has carried out a Screening Regulatory Impact Analysis (RIA) of the proposed Directive.

For more details see:

<http://www.environ.ie/en/Legislation/Environment/Miscellaneous/FileDownload,17220,en.pdf>

TOPIC: AIR

### Stricter air quality standards for 2012

In February new Regulations relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air came into effect. The Regulations specify target values for concentrations of these substances to be

achieved from 31 December 2012. The EPA can require specific measures to be taken to deal with any exceedance of target values. Failure to comply with such measures can result in criminal prosecution.

*For more details see:* Arsenic, Cadmium, Mercury, Nickel and Polycyclic Aromatic Hydrocarbons in Ambient Air Regulations 2009 (SI No. 58)

#### TOPIC: LAND USE

### NEW Code of Archaeological Practice

On the 24 June the Minister for the Environment, Heritage and Local Government published three new Codes of Practice to improve archaeological protection on major infrastructural projects.

*For more details see:*  
<http://www.archaeology.ie/en/CodesofPractice/>

### In the Pipeline new planning legislation

The Planning and Development (Amendment) Bill, 2009 was published on 28 May. The Bill introduces a number of changes to the current Planning and Development Acts. Its main aim is to promote sustainable development and to support economic renewal. The Bill introduces a number of key changes to the Planning Code including (among others):-

- Only minor modifications will be permitted to Development Plans or Local Authority Plans which have been the subject of public consultation.
- More synergises between National Spatial Strategy, Regional Planning Guidelines, development plans and local areas plans.

- Decisions by An Bord Pleanála in relation to routine cases will only require a quorum of 2 members (now it is 3).
- A new provision allowing the Planning Authority to refuse permission where the applicant has carried out substantial unauthorised development.
- Extension to planning where substantial works have not been carried out (in certain circumstances).

#### TOPIC: AGRICULTURE

### Stricter Rules on Water Protection

In March, the Minister for Environment brought into law revised rules on agricultural practices. The revised rules:-

- Strengthen enforcement powers for local authorities.
- Impose requirements for improved farmyard management.
- Enable application to the Minister for Agriculture, Fisheries and Food for a derogation under the Nitrates Directive.

Penalties for offences under the Regulations remain the same, namely a maximum of €5,000 or 3 months for a minor offence and up to €500,000 and/or 1 year for a more serious offence.

*For more details see:* EC (Good Agricultural Practice for Protection of Waters) Regulations 2009 (SI 101)

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