

Kilkenny Local Authorities Enforcement Policy on breaches of Environmental Law

Introduction

This document sets out the policy framework that Kilkenny Local Authorities (KLA) will endeavour to follow in using its statutory powers to act against illegal environmental activity. Day to day enforcement practice will be guided by this Policy, the application of professional judgement and common sense. KLA is committed to applying resources, including training as necessary, to supplement the DEHLG enforcement grant, for the implementation of this Policy and the Enforcement Plan.

The relevant legislation includes the following:

- Waste Management Acts 1996 as amended (WMA)
- Local Government (Water Pollution) Acts 1977 as amended (WPA)
- Litter Pollution Act 1997 as amended (LPA)
- Environmental Protection Agency Acts 1992 as amended (EPAA)
- Air Pollution Act, 1987 (APA)
- Protection of the Environment Act, 2003 (POE)
- Planning & Development Acts 2000 as amended (PDA)

Kilkenny Local Authorities' functions within these acts include the regulation of waste activities permitted under the WMA, regulation of discharges licensed under WPA, regulation of emissions licensed under the APA and litter control measures under the LPA.

The purpose of this policy is to inform stakeholders of the factors that are likely to be taken into account in determining enforcement responses to illegal activity, including whether prosecutions will be pursued.

Kilkenny Local Authorities will have regard to the two Section 60 Policy Directions issued by the Minister for the Environment, Heritage and Local Government in May 2005 and July 2008, under the WMA (see Appendix 1).

Kilkenny Local Authorities will work with all Regulators including other local authorities and the EPA / Office of Environmental Enforcement (OEE) through the Environmental Enforcement Network (EEN) to ensure efficient use of resources and coherent enforcement of environmental law. The objective of the network is to enhance the effectiveness of all participants by sharing information and adopting a co-ordinated approach to environmental enforcement. KLA may ask An Garda Síochána to become involved in any more serious cases of illegal activity.

Environmental controls on certain developments may be by way of planning condition under the Planning and Development Acts. The Environment Section will work closely with the Planning Section in assisting the enforcement of those conditions under Planning's Enforcement Policy.

Delivering Outcomes

The aim of Kilkenny Local Authorities is to deliver effective, proportionate and dissuasive actions against illegal operators through the use of its legislative powers. It will seek to prevent illegal environmental activity by taking a systematic and consistent approach to enforcement against such activities to achieve the following outcomes where possible:

All legislation:

- timeliness in achieving cessation, regularisation and remediation of the illegal environmental activity
- provision of awareness about the importance of compliance with environmental law and the achievement of societal goals
- implementation of the EU Recommendation on the Minimum Criteria for Environmental Inspections (RMCEI) and an effective complaint handling system
- use of criminal sanctions, where appropriate

Waste (WMA):

- early cessation of the illegal activity
 - by use of powers provided in sections 55, 57 or 58 of the Waste Management Acts
- regularisation of illegally deposited waste (cessation and the leaving of illegal waste unregulated are not acceptable)
 - through issuing a permit or licence under section 39
 - through offsite movement to comply with section 32 requirements
- remediation of the site
 - in accordance with the EPA Code of Practice: Environmental Risk Assessment for Unregulated Waste Disposal Sites
- deterrence of illegal waste activity
 - through removing any financial gain or advantage derived through bypassing the legal requirement of a prior authorisation
 - through application of the landfill levy on the owner/operator of an illegal landfill

Water (WPA):

- early cessation of the illegal activity
 - by use of powers provided in sections 12 and 13 of the Water Pollution Acts
 - by use of an application to the High Court for an order to prohibit continuance of the discharge under section 11
- regularisation of illegal discharges
 - through issuing a licence under sections 4 or 16

Air (APA):

- early cessation of the illegal activity
 - by the use of powers under sections 26,27 and 28 of the Air Pollution Act
- regularisation of the illegal emission
 - through issuing a licence under section 30

Litter (LPA):

- prevention of litter
 - use of powers under sections 15, 16, 17, 18, 19, 20, 21 and 22
- removal of litter
 - through use of a section 9 notice

Noise (EPAA):

- control of noise
 - by use of powers under sections 107 and 108

Kilkenny Local Authorities (KLA) will provide information and advice to stakeholders on the importance of compliance with environmental law. This Policy sets out the general principles which

KLA will endeavour to follow in relation to enforcement against illegal environmental activity. KLA will monitor the implementation and effectiveness of the Policy and revise it when and where necessary. It will be reviewed annually.

Policy Objectives

- To encourage and promote compliance with statutory authorisations (waste permits, certificates of registration, discharge licences, air pollution licences etc.) issued by Kilkenny Local Authorities and to ensure that licensees do not contribute to illegal activity.
- To promote effective, proportionate and dissuasive sanctions, in a reasonable timescale, against those involved in illegal environmental activities.
- To ensure that unauthorised environmental activities are made subject to sanctions and not only actions aimed at their cessation.
- To encourage criminal prosecutions at the highest appropriate level and particularly at Circuit or High Court level to ensure that the sanction is commensurate with the crime.
- To promote the implementation of the polluter pays principle.
- To actively communicate enforcement actions to all stakeholders including the general public.

Principles of Enforcement

Underlying this policy against illegal environmental activity are the five key principles of;

1. proportionality in the application of environmental law and in securing compliance;
2. consistency of approach;
3. transparency about how Kilkenny Local Authorities operates;
4. targeting of enforcement action; and
5. implementation of the polluter pays principle.

KLA will endeavour to achieve this by drawing on the following enforcement tools/measures actions, as the situation demands:

- Audit and Inspection to assess the nature and extent of the illegal activity;
- Warning Letters to advise an illegal activity of its non-compliance with environmental legislation as well as providing instruction on how to bring about compliance;
- Statutory Notices providing legally binding instructions to an operator to provide information or take measures to prevent pollution from the activity;
- Carrying out of urgent works at the illegal site by Kilkenny Local Authorities to prevent pollution taking place;
- Application for a court order to have works carried out to prevent pollution;
- Review of licence/permit to regularise unauthorised activity;
- Refusal/revocation of authorisations;
- Bond retention for environmental liabilities associated with the illegal activity.

The inspection regime is set out in the annual RMCEI (Recommended Minimum Criteria for Environmental Inspection) Plan for Kilkenny Local Authorities.

Sanctions

There are a range of sanctions available to Kilkenny Local Authorities that can be employed to action against illegal environmental activity. Where relevant, KLA may use a mix of these to ensure that the objectives of this policy are met, these include:

Court Orders:

Where deemed necessary, KLA may seek to obtain an injunction against persons involved in unauthorised activities. KLA will also seek to recover the full costs for works we complete to cease ongoing pollution from an unauthorised activity.

Civil Penalties:

KLA will seek that the courts apply civil penalties under environmental legislation where there is sufficient evidence of one or more of the following:

- Blatant disregard for or significant degree of indifference to the civil law by the illegal operator
- The State or the community expects that the matter will be dealt with by way of enforcement action
- The illegal activity has resulted in or had the potential to result in significant real harm or detriment to the state or the community, including substantial harm to the environment, cultural heritage, economy, resources, assets or wellbeing of the state or its citizens; or
- It is of such a nature or magnitude that it is important to deter other potential contraveners and/or to educate the public.

Prosecution:

Prosecution is an important part of enforcement. It aims to punish wrongdoing and avoid a recurrence. Kilkenny Local Authorities will consider the use of prosecutions in conjunction with other available enforcement tools. Where the circumstances warrant it, immediate prosecution may be pursued. KLA will prosecute those persons responsible for the offence. This will normally refer to the company in question where the offence resulted from the Company's activities. KLA will also consider any part played in the offence by officers of a Company, including Directors. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent or was due to their negligence and/or other appropriate circumstances. Action may be taken against the landowner and/or the occupier as appropriate.

KLA may only pursue a prosecution after full consideration of the event giving rise to environmental concerns. This consideration will include the following factors in deciding whether or not to prosecute:

- the seriousness of the environmental and other effects of the offence;
- the foresee-ability of the offence or the circumstances leading to it;
- the intent of the offender, individually and/or corporately;
- the history of offending;
- the attitude of the offender and the level of co-operation provided to investigating authorities.

Examples of illegal activities which might normally result in prosecution include:

- illegal disposal of waste;
- illegal burning of waste;
- illegal shipment of waste abroad;
- illegal discharge of effluent;
- pollution of a water source;
- illegal discharge of air emission;
- carrying out waste activities without a relevant licence or permit;
- the use of unauthorised waste disposal/recovery facilities;
- failure to comply with statutory notices;
- failure to pay on-the-spot fines;

- obstruction of Kilkenny Local Authorities' staff in carrying out their legitimate functions by the use of threatening behaviour, obstruction, or assault;
- excessive or persistent breaches of regulatory requirements;
- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information.

The environmental legislation provides for Kilkenny Local Authorities to prosecute summarily in the District Court. In the case of serious environmental crime, KLA may consider referring the case to the Director of Public Prosecutions for prosecution on indictment. A serious offence is one for which:

- There is a significant degree of criminality on the part of the offender; or
- Previous administrative or civil responses to contravention by the suspect have not resulted in compliance; or
- Where the State or the community expects that a crime will be dealt with by prosecution conducted in public before a court and usually carries the risk of imprisonment in serious cases, or
- The crime produced significant real or potential harm to the state or the community, including harm to the environment, cultural heritage, economy, resources, assets or wellbeing of the state or its citizens; or
- The crime is of such a nature or magnitude that it is important to deter potential offenders and prosecution will act as a very effective deterrent.

Penalties

Penalties available include the following:

Waste:

- on summary conviction, a fine not exceeding €3,000 or imprisonment for any term not exceeding 12 months or both fine and imprisonment, or
- on conviction on indictment, a fine not exceeding €15,000,000 or imprisonment for a term not exceeding ten years or both fine and imprisonment.

Water:

- on summary conviction to a fine not exceeding €1,000 or imprisonment for a term not exceeding 6 months, or both, or
- on conviction on indictment, to a fine not exceeding €25,000 or imprisonment for a term not exceeding 5 years, or both.

Air:

- on summary conviction, to a fine not exceeding €1,000 (together with, in the case of a continuing offence, a fine not exceeding €100 for every day on which the offence is continued and not exceeding in total an amount which, when added to any other fine under this paragraph in relation to the offence concerned, equals €1,000), or to imprisonment for any term not exceeding six months or, at the discretion of the court, to both such fine and such imprisonment,
- on conviction on indictment, to a fine not exceeding €10,000 (together with, in the case of a continuing offence, a fine not exceeding €1,000 for every day on which the offence is continued), or to imprisonment for any term not exceeding two years or, at the discretion of the court, to both such fine and such imprisonment.

Litter:

- on summary conviction to a fine not exceeding €1,500.

- if the contravention is continued, the person shall be guilty of a further offence and be liable on summary conviction to a fine not exceeding £100 for each day during which the contravention continues.

Kilkenny Local Authorities will always seek to recover the full costs of the investigation, detection and prosecution of the offence.

While Kilkenny Local Authorities will use all reasonable endeavours to comply with this policy, logistical and organisational circumstances may dictate its response in some cases.

Communications

Kilkenny Local Authorities will utilise a variety of methods to communicate the results of our activities. These will include the annual RMCEI Plan of Enforcement Activity and published service indicators in addition to the website www.kilkennycoco.ie and conventional media outlets such as press, radio and television where appropriate.

Members of the public are encouraged to notify Kilkenny Local Authorities when they see any illegal environmental activity in Co. Kilkenny. KLA operates a free phone number at 1800-200-156 to facilitate reporting.

The national illegal dumping hotline, operated by the EPA is 1850-365-121. This confidential telephone service is designed to encourage reporting of large scale illegal dumping of waste or abandoned illegal dumps.

Policy Approved on 1st January, 2010.

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