



Cumann Lucht Bainistíochta Contae agus Cathrach  
County and City Management Association

## **Business case for Waste Enforcement Regional Lead Authorities Model**

**Final Document Approved:**

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**Frank Curran  
Project Chair**

**Date:**

**01 April 2015**

# April 2015

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Role	Name	
Project Chair	Frank Curran	CCMA & CE Leitrim Co Co
Project Board	Frank Curran Philip Nugent John Carley Frank Pentony Gerard O'Leary Philip Ryan	CCMA & CE Leitrim Co Co Principal Officer DECLG DoS Wexford Co Co DoS Louth Co Co Director, Environmental Protection Agency Detective Garda, National Bureau of Criminal Investigation

<b>Project Team</b>	Niall McLoughlin Teresa Walsh Jim Moriarty Carol McCarty John McKeon	DECLG DoS South Dublin Co Co Environmental Protection Agency Kilkenny County Council Leitrim County Council
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## 1. Executive Summary

### 1.1 Introduction

Effective enforcement is vital for the credibility of our systems of waste management. The key objectives for waste enforcement are to ensure that an effective system is in place to:

- Protect Ireland's environment and the health of its citizens;
- Ensure efficiency and effectiveness of waste enforcement regime;
- Provide a "level playing field" for all waste Industry operators and their clients;
- Ensure that those who seek competitive advantage by flouting their legal obligations pay the penalty;
- Take legal action, where necessary, against those who ignore or flout waste legislation
- Ensure full closure of ECJ Case 494 of 2001;.

The Government's Waste Management Policy, *A Resource Opportunity*, contains a commitment to complete a review of the respective regulatory and enforcement roles of the Environmental Protection Agency (OEE) and local authorities by the end of 2013<sup>1</sup>.

In early 2013, the Department of the Environment, Community and Local Government established a group to carry out that review by examining current enforcement structures in order to identify the existing strengths and weaknesses and make recommendations for the future.

The review was also carried out in the context of the examination being undertaken by local government with respect to its existing service delivery models and cost base, and in identifying more efficient ways and means by which services could be delivered.

This Business Case builds on the work of the 2013 Review. It is sponsored by the Department of the Environment, Community and Local Government (DECLG), authored by a project team representative of the local government sector and EPA and endorsed by a project board chaired by Frank Curran, Chief Executive of Leitrim County Council.

The format of the business case is in keeping with the guidance and templates provided by the local government PMO and the governance of the project conform to that set out in the *PMO User Guide: Delivery of the CCMA Shared Service Programme*.

#### **Project Board Membership:**

Frank Curran - Chief Executive, Leitrim County Council

Ger O'Leary - Director, Office of Environmental Enforcement, EPA

John Carley - DoS Wexford County Council

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<sup>1</sup> *A Resource Opportunity* states as follows:

A review of the respective waste regulation and enforcement roles of the environmental protection agency (office of environmental enforcement) and local authorities is being initiated and will be completed by the end of 2013. This will have a particular focus on dealing with serious criminal offenders and the need for more intelligence-led and coordinated multi-agency enforcement, aimed at ensuring targeted, timely and effective enforcement outcomes... The establishment of a team of waste enforcement officers for deployment in cases relating to serious criminal activity will be prioritised in consultation with An Garda Síochána.

Frank Pentony- DoS Louth County Council  
Philip Ryan - Detective Garda, National Bureau of Criminal Investigation,  
Philip Nugent - Principal Officer, DECLG.

**Project Team Membership:**

Jim Moriarty- Environmental Protection Agency,  
Teresa Walsh- South Dublin County Council,  
Carol McCarty- Kilkenny County Council,  
John McKeon- Leitrim County Council,  
Niall McLoughlin- DECLG.

The purpose of this business case is to consider the current arrangements in waste enforcement; identify any requirements for change and, based on the project team's findings, propose the optimum structures to support and deliver the best outcomes in terms of waste enforcement by local authorities.

**1.2 Background- Local Authority Waste Enforcement**

Local authorities have improved how public complaints are dealt with by implementing systematic waste complaint enforcement systems and the vast majority of waste complaints received are now closed out promptly. Major illegal waste activity has been tackled right across the country including very significant action against unauthorised scarp-yards. Many local authorities have been very proactive in working on a cross agency basis. This approach, involving the Gardaí, Revenue, the Department of Social Protection and local authorities has produced significant results. There is a level of criminality involved in some instances where such a robust approach has been required. Many of those involved in these illegal businesses are doing environmental and economic damage that the country cannot afford and should not be subjected to.

The enforcement of waste legislation requires specialised expertise, detailed knowledge of waste legislation and legal proceedings and a strong commitment to the task of protecting the environment through strong and effective enforcement- in this we are fortunate that significant expertise and experience has been developed within the local authority system. There are many waste enforcement officers who have regularly carried out dangerous operations, endured threats and intimidation and who have consistently secured important enforcement prosecutions.

Good enforcement practice has been underpinned by financial support from the DECLG which has been used to retain a network of 120 enforcement officers across the country as part of Ireland's response to the ECJ C494 judgement. Despite the year on year reduction of receipts to the Environment Fund, the grant to fund local authority enforcement staff (€7.4M) has been maintained; however in order to continue to secure this level of subvention going forward it is imperative that the system it is supporting is as efficient and effective as possible and that the optimum structures are in place to deliver the best possible outcomes in terms of waste enforcement.

Putting People First- Action Programme for Effective Local Government recognises the waste management experience extant in local authorities and confirms their role will continue to be at the forefront of the enforcement of waste management legislation. It is appropriate however that the system of waste enforcement is evaluated to ensure that it is in the best position to continue to deliver enhanced environmental outcomes while achieving the maximum efficiencies possible.

### **1.3. The Case for Change**

The quality of Ireland's environment is essential to the Government's purpose of increasing sustainable economic growth. Many of the mainstays of Ireland's economy, such as established industries like tourism, agriculture and the food and drink sector, depend on good quality air, land and water for the quality of their products and services. It makes absolute sense, therefore, from an individual commercial perspective as well as from a national economic perspective, that we protect those resources.

It is recognised that local authorities have made a significant contribution in the area of waste enforcement in recent years. This work has been supported by the provision of the enforcement grant which has served to insulate this sector from the worst effects of the economic downturn. In order for the DECLG to agree a renewed programme of enforcement funding it is necessary for the local authority enforcement sector to demonstrate that they have the capacity to change and to learn from the successful regionalisation of other waste functions which are beginning to achieve the required efficiencies and consistencies.

Performance indicators for local authorities in waste for 2013 produced by the EPA, indicates that 32% of local authorities have what can be characterised as a high level of performance in the waste area, 30% of local authorities are recorded as having a less than acceptable level of waste performance which rises to 35% for less than acceptable levels of waste enforcement performance – a return that clearly presents scope for improvement.

These figures serve to demonstrate that local authority waste enforcement needs to deliver significant change to the way that it operates, building on the changes it has already delivered in recent years in order to secure enhanced departmental enforcement funding going forward that supports a more flexible, targeted way of working.

The proposed changes set out in this plan are designed to achieve that, essentially by introducing simpler, more effective and more joined-up processes and procedures that will support local authorities in taking a more joined-up, outcome-based approach to the way enforcement operates on the ground. They should also support an approach which can accommodate innovation by taking a reasonable account of risk and which is flexible enough to deal with novel activities.

Underpinning these improvements will be an ability to apply a wider range of effective penalties to those who fail to comply or who carry out criminal activities. Ultimately the proposed new approach will be fairer, enable more effective and efficient enforcement of waste legislation.

#### 1.4 Findings

The performance of the existing waste enforcement system in Ireland was considered by the project team and informed by the evaluation of the system undertaken by the Waste Enforcement Review Group established as per the commitment in the National Waste Policy- A Resource Opportunity to identify the strengths and weaknesses of the system and to make recommendations for the future.

In their examination of the current enforcement regime both groups identified a number of issues affecting the performance of the local authority waste enforcement which are elaborated on in the business case. However, both the lack of capacity of the system to deal with pressing or emerging infractions of waste legislation and the inconsistency in the application of enforcement actions across local authority areas was felt to have the most serious implications for the performance of individual local authorities and Ireland Inc. in general.

It is acknowledged that there are a number of structures already operating in the area of waste planning / environment enforcement. In summary these include

- Regional Waste Management Planning Offices
- Network for Ireland's Environmental Compliance and Enforcement (NIECE)
- Regional Task Groups for Waste Enforcement and Regulation
- Regional Planning Offices
- National Transfrontier Shipments Office (NTFSO)
- National Waste Collection Permit Office (NWCPO)
- Office of Environmental Enforcement (OEE)

Any proposal for the optimisation of waste enforcement structures must take cognisance of these structures and consider how the work undertaken by these organisations can be best utilised.

A number of waste enforcement options were considered and evaluated. The project team is recommending the establishment of a lead enforcement authority in each of the three waste management planning regions. Each of these new Lead Regional Waste Enforcement Authorities would have responsibility for coordinating waste enforcement actions within regions, setting priorities and common objectives for waste enforcement, ensuring consistent enforcement of waste legislation across the three existing waste management planning regions while still leaving local authority personnel as first responders on the ground to specific breaches of waste legislation.

Under this recommendation the role of the Lead Waste Enforcement Authorities would, in summary, be as follows:

- To deliver an integrated approach to waste enforcement which will drive consistent enforcement of legislation across the regions;
- To provide enhanced enforcement of waste legislation in a manner which supports economic growth;
- To identify, assess, respond to and address serious infraction of waste law through coordinated enforcement actions and targeted deployment of resources;

- To develop a strong regional enforcement network which shares intelligence and expertise across local authority boundaries as required;
- To deal with strategic national waste enforcement priorities and serious criminal offenders such as cross border diesel laundering activity or major illegal dumping in the State through intelligence led and co-ordinated multi-agency enforcement actions;
- To act as contact point with the EPA in terms of taking national priorities and implementing them regionally;
- To drive improved levels of compliance with waste obligations from business, industry, the public and by targeting operators functioning outside the framework of current waste legislation.

**By expressions of interest and/or selection, one or more local authorities will be chosen by the CCMA as the Lead Regional Waste Enforcement Authority for each of the three existing Waste Management Planning Regions.**

It is proposed that an initial total staffing resource of 3 dedicated lead regional waste enforcement authority staff is required for each of the regional offices, comprising:

- 1 no. Senior Executive Officer, 1 no. Senior Executive Engineer/Scientific Officer, 1 no. Assistant Staff Officer or
- 1 no. Senior Engineer, 1 no. Administrative Officer, 1 no. Assistant Staff Officer.

In addition, "boots on the ground" local authority enforcement staff will be made available as required to support the work of the lead authorities, while enforcement staff with particular expertise with respect to specialised areas of waste enforcement or prosecutions will be drawn upon on a case by case basis and made available to support the work of other local authorities as required.

This enforcement structure to be put in place for an initial period of five years with a review as to its effectiveness carried out after year 2.

### **1.5 Required Resources**

It is estimated that the annual fixed operational costs will be in the region of €900,000 (9 Staff salaries and uplift of 40% of basic pay to encompass costs for office accommodation, utilities, back office, IT support etc.) and will be 100% funded by DECLG without any diminution to the level of the subvention local authorities currently receive from the DECLG towards waste enforcement activities. This would mean that the level of funding provided by the department to local authority waste enforcement would increase from €7.2M to over €8M.

Should the CCMA determine that the three existing Lead Regional Waste Authorities be chosen to also fulfil the role of Lead Waste Enforcement Authorities then the costs associated with office accommodation etc. will be reduced.

## **1.6 A Modern System of Waste Enforcement**

Ireland has, in the past, experienced the worst of practices in terms of illegal waste activity. We still have an outstanding judgement against the State in relation to the failures of the past. Those failures have cost the environment and the taxpayer dearly. That is a chapter of our history both national and local stakeholders are working to close.

Over 120 additional enforcement staff have been recruited to the local authority system through the environment fund (a fund created as a result of the plastic bag and landfill levies) to enhance enforcement on the ground. This increased resource has yielded the following results:

- Increased concerted enforcement actions
- Increased investigations for prosecution on indictment
- Increased use of the High Court by local authorities to secure orders against unauthorised sites
- Increased use of aerial surveillance by local authorities and
- Preparation of Enforcement Inspection Plans (RMCEI Plans) by all local authorities

While there has been a marked improvement in waste enforcement in recent years and a corresponding change in the culture of compliance, every day we face new and more complex challenges which require not only new solutions but also greater flexibility in the way we deliver them.

The purpose of this business case is to consider whether better use can be made of the tools and resources that we have and whether they can be used to protect the environment and human health more effectively. The proposals outlined in this plan are designed to deliver an efficient, modern and focussed enforcement structure which will enable the system to focus greatest effort on the waste problems and issues that matter most. The plan also proposes a more consistent range of enforcement tools so that swift, proportionate and effective action can be taken against those who would damage the environment for criminal profit or through wilful neglect.

These changes will facilitate a transformation from process driven enforcement, structured around separate implementation of individual regulations, to one that is more flexible and targeted in its actions. Under the proposed new framework the existing waste regions will be better able to address environmental harms by taking a more robust approach to assessing risk and analysing and setting priorities. This will help local authorities to deploy its resources where they will have the greatest impact, taking a preventative approach where possible.

A modern waste enforcement system needs to be able to take a more cohesive and outcome focused approach to regulating operators and pursuing those engaged in acts of waste crime. Such an approach will provide greater efficiency, effectiveness and fairness. This will enable businesses operating in the waste sector to develop in ways which enhance rather than damage our environment.

## **2.0 Context / Environmental Analysis**

### **2.1 Local Authority Waste Enforcement to Date**

Utilising a range of powers, local authorities have made a significant contribution to the progress Ireland has made in the area of waste enforcement and general compliance with our obligations under the Waste Framework Directive.

The combination of

- the work of local authority waste enforcement teams supported by the use of the Environment Fund to support the retention of waste personnel;
- the provision of specialised training by the Office of Environmental Enforcement; and
- the consolidation of expertise through the NIECE network

has ensured that the majority of stakeholders are in compliance with their waste obligations. This progress is reflected in the latest EPA national waste bulletin which demonstrates that Ireland is meeting its obligations under the broad range of EU waste regulation.

**However staff changes and other challenges posed by the economic crisis have made waste enforcement increasingly disparate across local authority areas.**

Despite a significant rise in responsibilities since 2007, there has been no accompanying increase in staff numbers and with the retirement of enforcement personnel, experience and historical knowledge has been eroded. Wider local authority reform measures have also had an impact such as amalgamation of authorities, workforce planning, the establishment of Irish Water, election of new Councils and formation of Municipal Districts – all these have impacted on staff structures and areas of responsibility.

**The financial crisis has also led to the emergence of a range of waste challenges** such as the increase in the incidents of metal theft and serious and expensive fuel laundering clean-up operations as documented in the EPA report *Focus on Environment Enforcement Ireland 2009 - 2012*.

The escalation of waste crime would suggest that the view has been taken by illegitimate operators that the prospect of detection and prosecution is negligible. Waste crime has the potential for significant environmental impacts and associated costs to the State and to legitimate waste and recycling operators who have invested in the industry and deserve to have that investment protected.

The Irish Waste Management Association report that while inspections and enforcement of the requirements of their members' permits is strong, the more difficult enforcement actions required to curb the activities of illegal waste collectors are not being pursued.

Performance indicators for local authorities in waste for 2013 produced by the EPA, indicates that 32% of local authorities have what can be characterised as a high level of



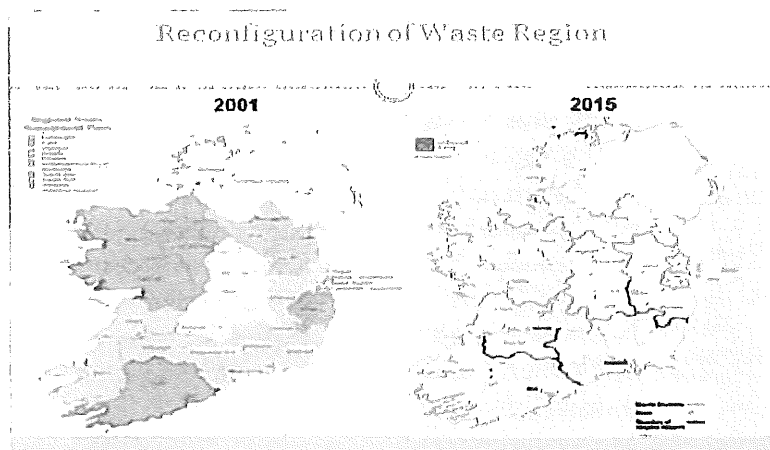
performance in the waste area, 30% of local authorities are recorded as having a less than acceptable level of waste performance which rises to 35% for less than acceptable levels of waste enforcement performance – a return that clearly presents scope for improvement.

## 2.2 Reconfiguration of Waste Regions

National waste management policy is governed primarily by the requirements of European law, particularly Directive 2008/98 on Waste. How the EU law applies in Ireland is set down and embellished upon in a succession of national policy statements, which collectively determine how a wide range of major waste types should be handled both now and in the future. EU law also has a major influence on the national waste legislation. The national legislative framework is substantiated by Regional Waste Management Plans. These are drafted by local authorities and set out how the implementation of these policies is to take place on the ground.

The number of local authority waste planning regions was reduced to three in 2013, mirroring the Regional Framework set out in *Putting People First* and reflecting the desirability of rationalising regions allowing for greater concentration of resources whilst also considering geographical differences. The CCMA invited local authorities in the Southern & Connacht-Ulster Waste Regions to express an interest in becoming the Lead Authority for the Region and following a selection process the Lead Authorities were agreed (Eastern & Midlands Authority agreed to Dublin City Council and did not require a competition). The shared service approach to planning of waste management is expected to deliver the planning function in a more efficient manner.

This is in line with the centralisation of other waste management functions previously discharged by individual local authorities. Local authorities' role in relation to the trans-frontier shipment of waste has been consolidated into the NTFSO. Similarly, the establishment of the NWCPO has significantly streamlined the collection permitting system from 34 authorities into a single entity.



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#### **LA Enforcement Grant**

*In 2003, local authorities were notified of their allocations under a scheme of grants deriving from the use of the Environment Fund to support Local Authority Enforcement Measures-some €7m was initially allocated. The idea was that this grant scheme would operate for 5 years – commencing in 2004-but with a reduced level of support, on a sliding scale from 80% to 20%.*

*The scheme led to the recruitment/retention of 120 local authority enforcement officers and provided an effective and visible deterrent to waste crime at local level. Given the success of the scheme and the strong part it played in Ireland's response to the ECJ case the scheme was extended for a further 5 years until 2014 and at the 100% rate.*

*The grant has been allocated based on a verifiable programme of enforcement activity and associated work plan. The plan sets out how the programme of enforcement is to be organised, how inspections are to be carried out, arrangements for follow-up and arrangements for making the reports on the programme of activities available to the public thereby strengthening compliance with, and contributing to a more consistent implementation and enforcement of, waste legislation and generally raising awareness and confidence in the local authority enforcement system.*

*Enforcement programmes are monitored by the DECLG and the retention of trained and experienced staff is an essential requirement. The DECLG may specify other conditions in the annual enforcement grant circular in response to emerging or serious threats to the environment or in line with Government Waste Policy.*

This consolidation of functions has delivered efficiencies for local authorities, for the waste industry and the economy generally and an extension of this model to include waste enforcement to drive further efficiencies has been considered as part of this business case.

#### **2.3 DECLG Enforcement Network Funding**

In a landmark judgement against Ireland on the 26 April 2005 the European Court of Justice ruled that Ireland had infringed the Waste Framework Directive by persistently failing to fulfil its obligation to various articles under the Directive.

The Court found that a tolerant approach existed, particularly with respect to waste enforcement which was indicative of a large-scale administrative problem. In response, the State agreed to draft a road map of deliverables and committed to delivering on all issues with a firm time line for each item.

A key component of the agreed programme of measures was a commitment to funding for maintaining 120 local authority waste enforcement staff in place in local authorities, despite acute public service staffing controls introduced in response to the unprecedented economic difficulties being experienced. **Funding for this resource was guaranteed until the end of 2014.**

If, as anticipated, *ECJ C494/01* is closed in 2015, it is likely that Ireland will remain under the scrutiny of the Commission to ensure that there is no repeat of the systemic failures which characterised the original judgment. Ireland will need to demonstrate that the most effective system of waste enforcement is in place.

The DECLG recognises that enforcement is the cornerstone of an effective waste system and regards waste enforcement as a key driver in the move to a more circular economy. As a consequence the DECLG is prepared to maintain funding for the enforcement network going forward and notwithstanding the commitment ending in 2014. In so doing however the department must satisfy all stakeholders that this investment in enforcement represents value for money, is being utilised as efficiently as possible and is continuing to realise the best outcomes for the environment.

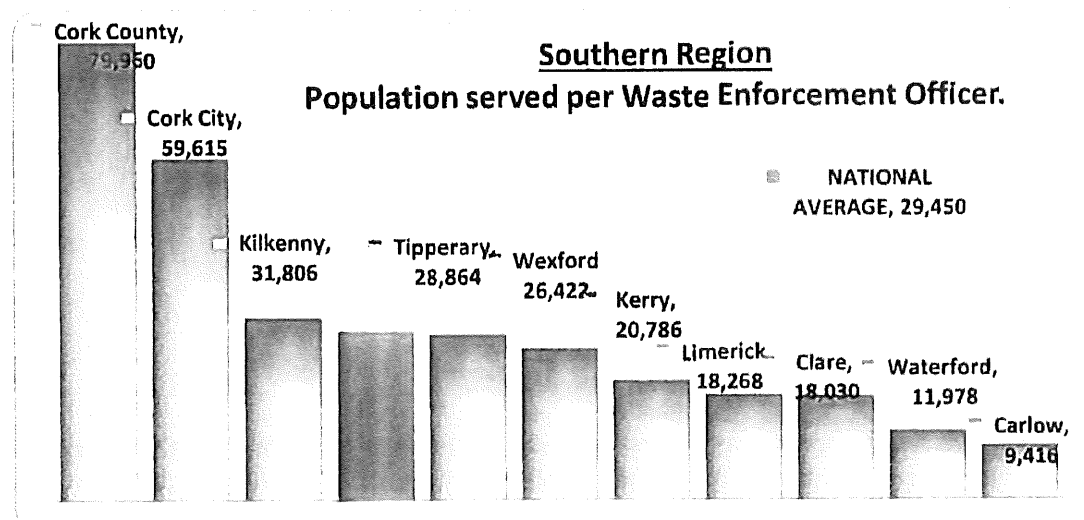
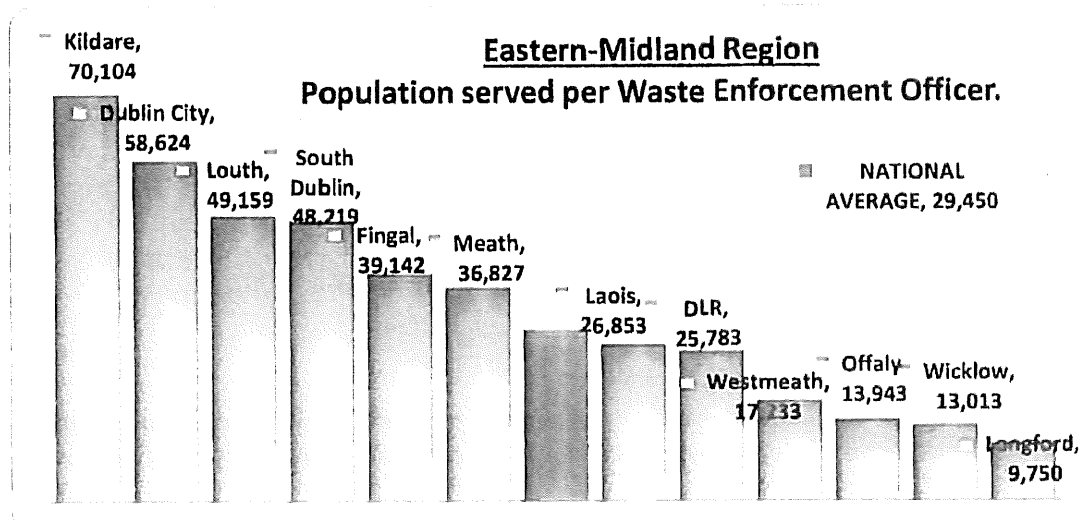
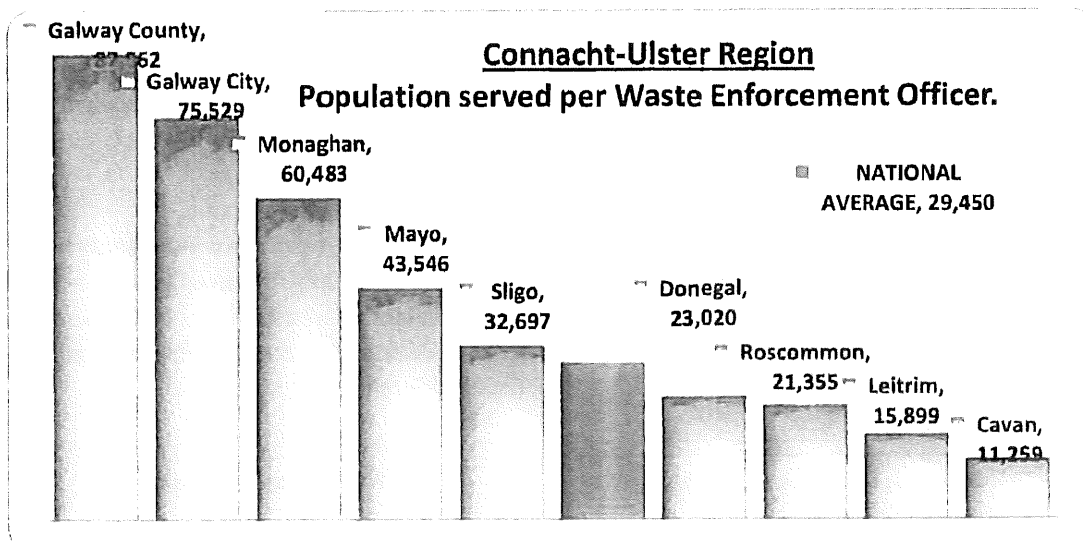
The outputs delivered by the grant are summarised in the table below. The next phase of an enforcement grant should reflect

the fact that Ireland is entering a post-judgement period and that rather than addressing the mistakes of the past we are future proofing the system and the funding which underpins it. This should be reflective of a system which is moving from an inspect and enforce model to one with a greater focus on outcomes rather than outputs.

As of January 2014, there were 155.8 full time equivalent waste enforcement officers based in the 31 local authorities. (Their distribution is set out in Table 1 below). It should be noted that this data is based upon local authority responses to a questionnaire issued attempting to calculate the baseline of number of officers currently engaged in waste enforcement and where anomalies appear this may be as a result of different interpretations as regards the responsibilities of officials currently funded by this enforcement grant.

**TABLE 1: NATIONAL DISTRIBUTION OF WASTE ENFORCEMENT OFFICERS**

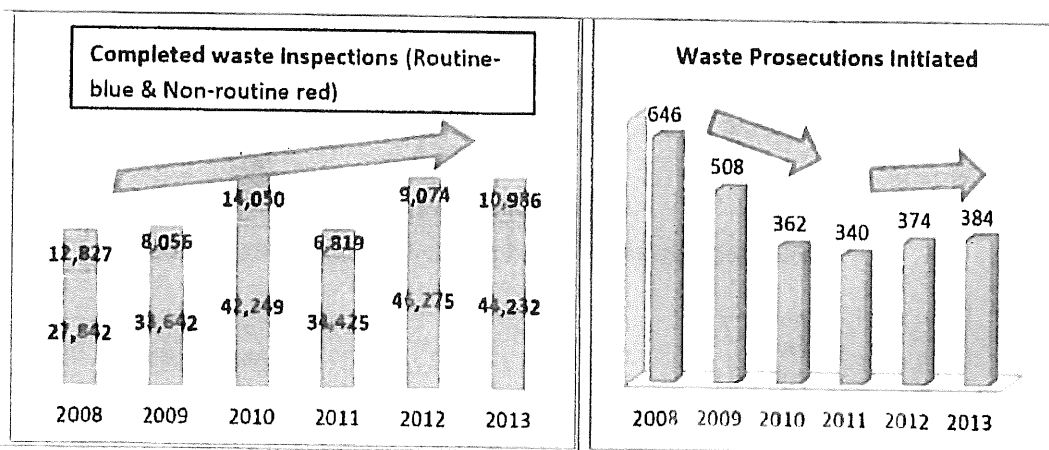
REGION	LOCAL AUTHORITY	Waste Enforcement Officers (Full Time Equivalent)	Population	Population/ FTE
Connacht-Ulster	Galway County	2	175,124	87,562
Connacht-Ulster	Galway City	1	75,529	75,529
Connacht-Ulster	Monaghan	1	60,483	60,483
Connacht-Ulster	Mayo	3	130,638	43,546
Connacht-Ulster	Sligo	2	65,393	32,697
	<b>NATIONAL AVERAGE</b>			<b>29,450</b>
Connacht-Ulster	Donegal	7	161,137	23,020
Connacht-Ulster	Roscommon	3	64,065	21,355
Connacht-Ulster	Leitrim	2	31,798	15,899
Connacht-Ulster	Cavan	6.5	73,183	11,259
<b>Connacht-Ulster Total</b>		<b>27.5</b>	<b>837,350</b>	<b>30,449</b>
Eastern-Midland	Kildare	3	210,312	70,104
Eastern-Midland	Dublin City	9	527,612	58,624
Eastern-Midland	Louth	2.5	122,897	49,159
Eastern-Midland	South Dublin	5.5	265,205	48,219
Eastern-Midland	Fingal	7	273,991	39,142
Eastern-Midland	Meath	5	184,135	36,827
	<b>NATIONAL AVERAGE</b>			<b>29,450</b>
Eastern-Midland	Laois	3	80,559	26,853
Eastern-Midland	Dun Laoghaire Rathdown	8	206,261	25,783
Eastern-Midland	Westmeath	5	86,164	17,233
Eastern-Midland	Offaly	5.5	76,687	13,943
Eastern-Midland	Wicklow	10.5	136,640	13,013
Eastern-Midland	Longford	4	39,000	9,750
<b>Eastern-Midland Total</b>		<b>68</b>	<b>2,209,463</b>	<b>32,492</b>
Southern	Cork County	5	399,802	79,960
Southern	Cork City	2	119,230	59,615
Southern	Kilkenny	3	95,419	31,806
	<b>NATIONAL AVERAGE</b>			<b>29,450</b>
Southern	Tipperary	5.5	158,754	28,864
Southern	Wexford	5.5	145,320	26,422
Southern	Kerry	7	145,502	20,786
Southern	Limerick	10.5	191,809	18,268
Southern	Clare	6.5	117,196	18,030
Southern	Waterford	9.5	113,795	11,978
Southern	Carlow	5.8	54,612	9,416
<b>Southern Total</b>		<b>60.3</b>	<b>1,541,439</b>	<b>25,563</b>
<b>National Total</b>		<b>155.8</b>	<b>4,588,252</b>	<b>29,450</b>



## 2.4 Inspections

Information from the EPA demonstrates the crucial importance of the funding provided by the DECLG towards local authority enforcement as waste inspections completed by local authorities does not reflect the reducing staff trend at local authorities overall.

However subsequent prosecutions have declined, with some level of recovery seen in recent years. It has to be acknowledged that prosecutions represent a financial risk to the local authority concerned with some authorities better placed than others to fund court proceedings. A number of local authorities have taken successful prosecutions but have been unable to recover their costs notwithstanding court orders in their favour.



Source: EPA

An analysis of the type of inspection (see below) undertaken by local authorities demonstrates that the majority are not activities where you would expect a high degree of criminality.

- Permitted facilities
- Certificate of registration sites
- Waste Electrical and Electronic goods
- Producers, self-compliers and major producers as defined under the packaging regulations
- End of life vehicles
- Farm plastics
- Plastic bag producers
- Tyres
- Litter
- Illegal Dumping
- Waste collector permits

The Commission has previously expressed its disappointment that even with the higher monetary sanctions available by way of prosecution on indictment very few prosecutions on indictment have been brought by local authorities. They also believe that from the few

cases brought it is not possible to identify a consistent approach to achieving sanctions that deter illegal waste activity. This will need to be addressed in order to satisfy the Commission that Ireland's waste enforcement system at all levels is fit for purpose going forward.

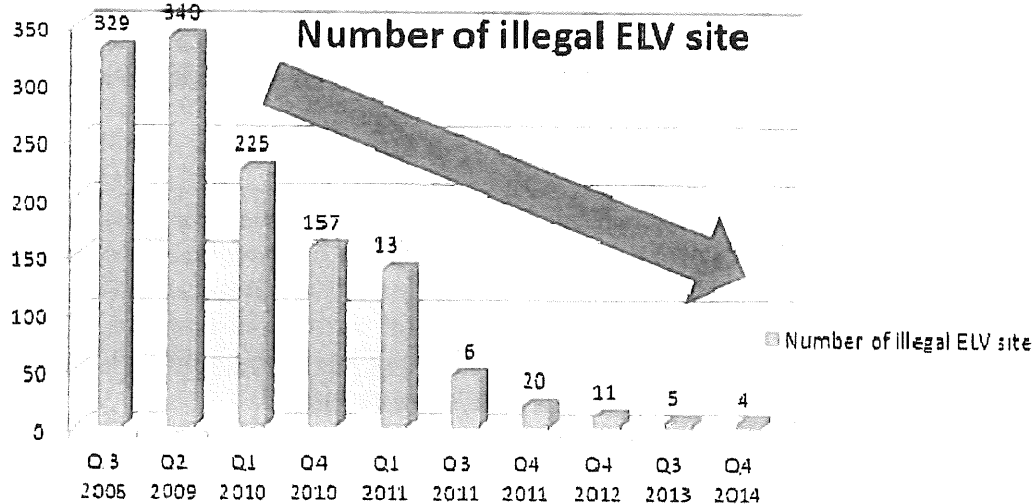
## 2.5 Enforcement Policy on Unauthorised Waste

Since 2008, local authorities have been directed to prepare an enforcement policy in respect of unauthorised waste activities to encourage and promote systemic and consistent enforcement actions against illegal waste operators across Ireland. All local authorities have now developed documented enforcement policies that set out how instances of illegal waste activities in their functional area will be handled. **However, the application of those policies still varies considerably from one local authority to another.**

Following significant declines in recent years there has been an increase in the EPA use of Section 63 powers when investigating complaints. While not fully understood, this apparent trend demonstrates the need for local authorities to have effective enforcement systems in place to investigate and enforce waste complaints.

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Section 63 Power Used	151	62	19	28	19	13	11	17	15
Referrals	253	317	205	179	203	150	141	105	102
Total	404	379	224	207	222	163	152	122	117

The EPA also used Section 63 to deliver an outcome in relation to illegal car scrapyards. The proliferation of these unauthorised facilities was a significant aspect of the C494 judgement against Ireland. It was a key deliverable Ireland signed up to in response to the judgement and the DECLG made significant resources available to local authorities to address this matter. Despite the priority status afforded to the issue by the Department and despite the fact the matter was highlighted at RMCEI planning meetings throughout 2008-2010 and listed as a top priority for/in the RMCEI plans, the use of Section 63 was still required. This approach delivered the required outcome as evidenced by chart below.



### **3. Business Case Development**

This business case for the waste enforcement lead authority model takes into account the following:

- Programme for Government
- Waste Enforcement Review Group Report
- Application of the national waste policy A Resource Opportunity and ensuing outputs
- Expected successful closure of ECJ C494/01 Case in 2015 and subsequent end to existing financial commitments for enforcement
- Adequacy of financial resources into the future to support current structures without impacting on effective delivery of enforcement functions, particularly in the context of the increasing effectiveness of economic instruments such as the landfill and plastic bag levies
- Local Government Efficiency Review
- Establishment of lead authorities for regional waste management planning
- Launch of Draft Regional Waste Management Plans
- The Environment Protection Agency Focus on Environmental Enforcement in Ireland 2009 – 2012 Report
- Environmental Protection Agency DRAFT Local Authority Environmental Performance Report 2013

The Environment Protection Agency Focus on Environmental Enforcement in Ireland 2009 – 2012 states that *"The 2013 review of waste enforcement governance in Ireland should lead to a smarter waste enforcement system that is better equipped to tackle serious environmental crime and result in a significant improvement in the remaining poor compliance rates seen in the waste sector."*



#### **ECJ C494/01**

*In a landmark judgement against Ireland on the 20 April 2005, the European Court of Justice ruled that Ireland had infringed the Waste Framework Directive by generally and persistently failing to fulfil its obligation to fulfil various articles under that Directive. The judgement declared that, "by failing to take all the measures necessary to ensure a correct implementation of...Council Directive 75/442/EEC of 15 July 1975 on waste, as amended, Ireland has failed to comply with its obligations under those provisions;" and that a tolerant approach existed which was indicative of a large-scale administrative problem.*

*In an additional letter of formal notice issued by the European Commission on 30 September 2010, the Commission acknowledged that significant progress had been made in satisfying the judgment. However, it declared that the measures taken to date by Ireland remained incomplete or were otherwise deficient. In addition, 7 sites, the subject of other legal proceedings, came within the remit of the case and other issues such as unregulated sewage hub facilities, unregulated end of life vehicle sites and Irish ISPAT (over its licensing status) added to the list of outstanding deliverables.*

*Following a number of bilateral meetings with the European Commission, and in an effort to avoid the imposition of millions of euros of fines, the State agreed to draft a Road map of outstanding deliverables and committed to delivering on the remaining issues with a firm time line for each item. Ireland's undertaking to commit the necessary resources in order to close the case was re-affirmed by Government Decision of 24 April 2012.*

*It is anticipated that the case will be formally closed during 2015.*

In recent years there has been considerable centralisation of waste management functions previously discharged by individual local authorities. Waste management planning has taken place on a regional basis and has now moved from ten to three regions in line with the on-going programme of reform of local government.

Local authorities' role in relation to the trans-frontier shipment of waste has been consolidated into the NTFSO Office. Similarly, the establishment of the National Waste Collection Permit Office (NWCPPO) has significantly streamlined the collection permitting system from 31 authorities into a single entity.

This consolidation of functions has delivered efficiencies for local authorities, for the waste industry and the economy generally and an extension of this model to include waste enforcement could serve to drive further efficiencies.

#### **4.0 Problem Analysis**

With successful closure of **ECJ C494/01** against Ireland likely in 2015 and the existing commitment to fund the enforcement network ending in 2014 there is now an opportunity for a review of the current enforcement structures with critical evaluation of existing structures and planning for optimum enforcement structures going forward with due consideration of current economic, financial, staffing and enforcement needs.

Environment legislation is designed to protect the quality of the environment and human health; the implementation of this legislation by enforcement officers spread across 31 local authority areas can result in inconsistent and disproportionate implementation of policy. An inconsistent approach to enforcement has been highlighted by business as an impediment to growth, while the need to engage with the public to increase their understanding of their responsibilities under environmental law through the use of consistent messages is an essential component of enforcement.

The following summarises the critical points for consideration:

- Expected successful closure of ECJ C494/01 Case in 2015 and subsequent end to existing financial commitments for enforcement.
- Decline in receipts to the Environment Fund from which the DECLG provides an annual grant of €7.4M to local

authorities to fund the retention of 120 waste enforcement officers.

- Lack of capacity to respond to pressing or emerging waste issues in a co-ordinated and timely manner.
- No formal mechanism which facilitates the sharing of such expertise across local authority boundaries .
- Decline in Waste Prosecutions initiated with no correlating evidence of an increase in compliance levels .
- Existing expertise within LA environment sections is in general targeted towards regulatory compliance and there is a lack of resources to go beyond this approach.
- This regulatory approach is limited in its effectiveness to bring about sustainable compliance.
- EPA continuing to issue Section 63 waste complaints to local authorities.
- Inconsistency of approach to waste enforcement across local authority areas.
- Variations in local authority environmental performance.
- Increased threats to the personal security of local authority enforcement staff dealing with criminality over prolonged periods thus eroding the relative anonymity or detachment of enforcement staff from offenders.
- Loss of experienced staff (Circulars WPRR 01/09 and WP 09/09 refers).
- The level of environmental waste enforcement and activities in the waste environment varies considerable between local authorities.
- The existence of 31 separate local authorities has led to inconsistency in the application and interpretation of waste regulation and responsibilities which has resulted in piecemeal, intermittent and incoherent measures.
- Due to the above the benefits that multi agency plans and programmes would bring have not been realized in terms of efficiencies or achieving waste quality objectives.
- The required level of expertise in the waste enforcement area is missing in many local authorities.
- The need to ensure that waste enforcement remains a high priority for local authorities and the link between proper enforcement of waste legislation with economic benefits such in terms of tourism, industry, agriculture, human health.

In reviewing the waste enforcement system in Ireland the Review Group established as per the commitment in A Resource Opportunity identified the following issues with the current structure:

- Capacity of the current system to deal with pressing or emerging issues on a coordinated basis across multiple local authority areas;
- Consistency of approach at a local, regional and national level;
- Prioritisation of waste streams across local level authority areas and a perception of a lack of coherence regarding treatment of waste streams;
- Security of local enforcement staff in some areas;
- Adequacy of financial resources into the future to support current structures without impacting on effective delivery of enforcement functions, particularly in the context of the increasing effectiveness of economic instruments such as the landfill and plastic bag levies.

#### **4.1 Better Coordination**

Environmental regulators in Ireland are responsible for in excess of 500 environmental protection functions contained within some 100 pieces of legislation. Complex legislation and many different enforcement authorities, often with overlapping jurisdictions results in the need for a high degree of coordination.

**NIECE**- the Network for Ireland's Environmental Compliance and Enforcement brings key enforcement bodies together within a framework of coordination and cooperation in their enforcement efforts.

The core objective of the network is to improve co-operation and coordination between the various agencies involved in enforcement of environmental legislation so that "a higher and more consistent" standard of environmental protection can be achieved in Ireland. The enforcement network now numbers over 1,000 public sector staff registered from about fifty agencies within Ireland.

Building on earlier experiences, by 2010 the network had developed a systematic approach to enforcement planning for all authorities based on the adoption of risk-based methodologies to determine priorities.

A core part of the network is the working groups of experienced practitioners from relevant agencies to tackle particular implementation issues. These working groups exchange best-practice and develop plans for tackling illegal dumping of waste, historic landfills, mining regulations, sewage sludge, end of life vehicles, biodegradable municipal waste, food waste, waste tyres, drinking water (water safety plans), wastewater, water quality issues (nitrates, farm inspections, septic tanks), solvents/deco paints, noise and air quality matters (coal bans), and WEEE and battery regulations.

Ongoing enforcement efforts in relation to monitoring the unauthorised movement of waste across counties have included regional organisation of enforcement activities. For example, during 2011 nine local authorities organised a concerted regional action programme to tackle unauthorised waste movement.

While the NIECE network demonstrates that improved coordination between relevant bodies can deliver better environmental outcomes, active participation in the network has declined and there is a need to re-energise the group in order to extract more from the system and this point is explored under 7.1 below.

**SOPs**- Standard Operating Procedures (SOPs) are a critical part of any organisation. The development and use of SOPs is an integral part of a successful quality system. It provides organisations with the information to perform a job properly and facilitates consistency in the quality and integrity of an end-result through consistent implementation of a process or procedure. In addition, SOPs are frequently used as checklists by inspectors when auditing procedures. Ultimately, the benefits of a valid SOP are reduced work effort, along with improved data comparability, credibility, and legal defensibility.

The drafting of common SOPs for local authorities to facilitate more efficient enforcement and best practice e.g. SOP for auditing a facility permit) would assist in bringing greater consistency to waste enforcement regionally.

#### **4.2 Effective and Consistent Enforcement**

Measuring the effectiveness of enforcement measures is complex and establishing causal effects requires a carefully planned research method.

The difference between output and outcome needs to be also taken into account. Apart from basic methodological problems, measurement is also complicated by the fact that illegal waste flows are difficult to study by nature. It is therefore difficult to relate the number of offences to the total number of illegal movements. In other words, it is difficult to estimate how much of the illegal activity has been stopped and to draw conclusions about compliance and the effectiveness of enforcement activities.

Reviews focus typically on the number of inspections and infringements, the practical aspects of enforcement measures, and on cooperation between the agencies involved. These reviews do not provide any insight into the effectiveness of enforcement measures.

Establishing the compliance rate is even more difficult where enforcement activities are risk-based. Although such an approach is in itself an efficient strategy, the number of offences detected cannot be used to calculate the overall level of compliance. The lack of information is due to the small number of inspections performed in practice and to the lack of reliable information on inspections and infringements. Weaknesses in the IT systems used to manage inspections can also make it very hard to perform the necessary analysis.

Clearly written and understood regulations, a systematic and consistent approach is a prerequisite to an effective enforcement system and comprises of a number of core requirements.

There are five key principles of effective enforcement, developed by the EU Network for the Implementation & Enforcement of Environmental Law (IMPEL) which guide enforcement practice and the selection of the appropriate enforcement response. The five principles are:

- **Proportionality in the application of environmental law and in securing compliance:** Enforcement action is taken in proportion to the magnitude of the breaches and/or environmental impact, taking account of the conduct of the parties involved.
- **Consistency of approach:** The environmental regulator should aim to ensure a consistent response, across the regulated communities and across different locations, to pollution and other incidents and in its use of powers and in decisions on whether or not to prosecute.

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### **Packaging Enforcement**

*It is estimated that 5,000 (EPA, 2009) to 5,200 (DECLG, 2007) businesses were likely to be designated obligated major producers by the change in "de minimis" threshold under the Waste Management (Packaging) Regulations 2007. This was not reflected in the increase in Repak membership (circa 150 businesses) and the number of self-compliers registered (138 companies representing 106 unique producers). Assuming the estimated increase in the number of producers (c. 3,000) due to the change in "de minimis" threshold in 2007 was correct, enforcement of the packaging producer obligations has not been effective as it did not result in a significant increase in the number of compliant producers.*

*According to Repak there have been circa 50 prosecutions under the Packaging Waste Regulations between 1997 and 2012. These prosecutions have been secured by 8 Local Authorities, with Dublin City Council accounting for 64% of the prosecution. Most of the prosecutions have taken place prior to 2003.*

*While the recycling and recovery rates for packaging remain very strong there are a significant number of obligated businesses which are not compliant with the Packaging Regulations. The non-compliant businesses put compliant businesses at a competitive disadvantage and risk undermining the packaging PRI.*

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- **Transparency about how an environmental regulator operates:** it means helping those who are subject to regulation and others to understand what is expected of them
- **Targeting of enforcement action:** The environmental regulators should focus their enforcement effort on activities that cause the greatest environmental damage, that pose the greatest threats to the environment or that undermine the public's confidence in the environmental legislation enacted to protect and improve the environment.
- **Implementation of the polluter pays principle:** The environmental regulator should apply the polluter pays principle and work towards ensuring that activities or persons that cause environmental damage are held financially accountable for their actions. The severity of the non-compliance and the possible enforcement action form a sequence of responses, which can be escalated to match the severity of the non-compliance.

The most common criticism levelled at the waste enforcement sector in Ireland is that legislation is interpreted and implemented differently from one local authority to another. This causes significant difficulties for legitimate operators as inconsistent implementation can distort the market. For the reasons outlined previously it is difficult to give specific, documented and measurable data and detail with respect to the consistency of the application of local authority waste enforcement outside of the data available with respect to the number of inspections and enforcement actions taken. Some examples are provided here for illustrative purposes but given that the greatest number of complaints received by the DECLG whether from industry, the public or other enforcement bodies are by their nature anecdotal it would not be appropriate to include them as exemplars in a document such as this.

However failing to recognise and accept that there are inconsistencies in the system is to also deny the good practices being put in place by other local authorities. This can be seen in the roll out of the household brown bin throughout the country. Some local authorities have been proactive in this regard, not waiting for the phased introduction of the brown bin in their functional area and instead introducing by laws compelling waste collectors to provide this service to their customers in advance of the national legislation. However other local authorities have failed to enforce the household brown bin regulations

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## IFFPG

*The Irish Farm Film Producers Group is an approved body under the Waste Management Farm Plastics Regulations. The IFFPG attempts to work closely with local authorities to identify illegal operators in this area. The consequence of illegal suppliers of farm plastic to the market results in loss of revenue through the environmental contribution levy and the loss of VAT to Revenue. The IFFPG have developed a site inspection protocol for local authorities to assist them identify unlevied product and have gone so far as to appoint a compliance officer in 2012. The role of the compliance officer is to gather intelligence on illegal suppliers to the market i.e. neither self-compliers nor members of an approved scheme, and this information is passed directly to the Enforcement Section of the local authorities. Despite the quality of the intelligence furnished by IFFPG to local authorities there have been no prosecutions taken in the 14 years since the introduction of the legislation. In 2009, there were 140 inspections; the number of inspections has since decreased with 65 in 2010 and 81 in 2011. It is noted that 2 out of the 5 border counties with Northern Ireland have carried out no inspections despite the fact that the cross border movement of farm film plastic is extensive given that there is not a similar scheme in operation in Northern Ireland and thus farm film and plastics are less expensive given that there is no contribution being made to the management of the material at end of life. The IFFPG have offered to make their compliance officer available to work full time and free of charge with a local authority for the duration of the forthcoming silage cutting season in order to improve enforcement in this area.*

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within the time-frame specified by legislation, undermining both national policy and those local authorities who were enforcing the household food waste regulations.

Another case in point, became apparent when in order to improve the traceability of waste received and to counter the trade in stolen metal, an amendment to the Waste Management (Facility Permit and Registration) Regulations 2007 was introduced in 2014 which required facilities to record the identity of individuals presenting waste for sale, the nature of the material presented and a declaration from the individual concerned that they were the rightful owner of the material. Waste facility permits were amended on foot of this Regulation but the DECLG has received a significant number of complaints as to how the legislation is being enforced.

Six facilities complying with the legislation have contacted the DECLG directly to report individuals refusing to comply with the new obligations and simply taking their waste to another part of a city or a neighbouring county where the material is accepted by a competing facility without the requirements of the legislation being met because the legislation is not being enforced in that local authority area. Issues such as this could be addressed through the introduction of SOPs designed to standardise forms and establish a minimum criteria.

### 4.3 Availability and Sharing of Expertise

Notwithstanding the continuation of the enforcement grant there are concerns that there is inadequate waste enforcement staff with the technical competency and experience to comply with waste enforcement legislation. Despite a significant rise in responsibilities since 2007, there has been no accompanying increase in staff numbers and with the reductions in numbers, experience and the historical knowledge base has been lost.

In order that the experience that is available can be utilised to the greatest effect the expertise of individuals in each local authority should be established and used to support teams to deal with national issues, e.g. searches and inspections of suspected diesel laundering facilities could be undertaken by authorized officers from counties other than the border counties; problematic illegal or contaminated sites, prosecution of important test cases.

The use of other enforcement officers from different counties as authorised officers under **Section 14 of the Act** to attend cases where intimidation or the safety of the enforcement officer may be an issue should be considered.

In the event that a waste crime is detected that warrants taking a case on indictment, its success invariably comes down to the capacity or experience of the waste enforcement officers, their legal team and the resources available to the team.

**If the extant expertise already in place in a number of local authorities could be utilised by authorities less proficient in this area then further successful indictable prosecutions could be undertaken leading to increased efficiencies, increased experience and higher value outcomes.**

This would also increase the confidence of those local authorities who are considering taking such cases through the courts but have received unfavourable judgements in the past and are concerned about the cost exposure associated with unsuccessful actions. The DECLG has also provided financial assistance to local authorities taking important test cases in the past and would be prepared to do so going forward in a more coordinated manner through the identification of such cases by the lead waste enforcement authority.

#### **4.4 Continued Risk of EU Enforcement of Waste Framework Directive Implementation**

The **European Court of Justice (ECJ)** has the power to impose substantial fines on Member States, for noncompliance with environmental law, through environmental infringement cases. Unresolved infringements not only indicate ongoing environmental problems, but also damage Ireland's international reputation.

There are now 9 open infringement cases against Ireland, which is a substantial improvement from 2010 when Ireland had 32 open infringements. The closure of these 23 cases, including those relating to Drinking Water quality, Shellfish Waters, Dangerous Substances and Urban Wastewater Discharge Directives was a direct result of proactive and prioritised engagement with the Commission with enforcement of new regulations and provision of guidance. One significant case regarding waste activities, the landmark ECJ judgement (20th April 2005), has resulted in addressing structural and administrative deficiencies as well as site specific cases.

There is an expectation that the case may be closed in 2015 however it is likely that Ireland will remain under the scrutiny of the Commission to ensure that there is no repeat of the systemic failures which characterised the original judgment.

In the past year the Commission has brought Poland, Bulgaria, Spain, Slovenia, Italy, and Greece to the Court for breaches of Waste legislation (on December 2nd 2014 Greece was ordered to pay a financial penalty of €10M with further additional penalties of €14M for every six months until proven compliance with the judgment taken against them). Ireland has received fines from CION in relation water issues and is at further risk of fines with respect to other environmental issues.

Consequently it is important that the system is in a position to respond proactively to emerging waste issues. The recession saw a spike in the price of commodities including metals which resulted in increased instances of metal theft throughout the State including metals associated with waste- scrap, end-of life vehicles, WEEE etc. As the economy begins to recover the system needs to be prepared to respond to new challenges.

Given that there has already been a significant upturn in the levels of activity in the construction sector with this expected to continue to grow over the coming years greater enforcement will be required on the management of waste including soil arising from works on brownfield and contaminated land. The lack of enforcement in this area has left those in the construction sector to essentially self-regulate their waste activities. The DECLG is aware of occasions when soil arising from contaminated sites has been disposed of at local authority permitted sites having been rejected by EPA licensed sites due to the material not complying with their acceptance criteria.

The Commission has identified Ireland's response to the C494 Waste case as an example of best practice in a Member State addressing failures identified by them and working with the Commission through each component part until both the specific issues and the policy underpinning the failures have been addressed. Ireland has been asked by the Commission to present to other Member States on how our "programme of actions" approach can drive compliance through a collective approach with all agencies of the State playing a role and oversight and responsibility held at both a central and local level with respect to specific actions. A key element to the successful implementation of the programme of measures, and one which the Commission has referenced when dealing with other Member States facing waste related infringement proceedings is the manner in which the Department succeeded in impressing upon all agencies of the State at both central and local levels that this case was an "Ireland inc." challenge and that everyone had a role in resolving it- the judiciary, local authorities, EPA, NGOs.

Were Ireland to be found in contravention of any element of the waste framework directive in a post-C494 scrutiny period the reputational damage for the State would be immense and would serve to call into question the level of investment (€160M) required to address the shortcomings previously identified by the Court. It could also serve to undermine other infringement cases that the State are attempting to negotiate towards closure and would undoubtedly raise questions about Ireland's commitment to fulfilling its obligations under the waste directive. In addition there is no doubt that future adverse findings would trigger the imposition of significant fines which were previously avoided due to the programme of actions approved by Cabinet to address the C494 findings.

#### **4.5 Criminality**

Waste crime includes fly-tipping, the operation of illegal waste management sites and the illegal export of waste. It can damage the environment and human health, cause pollution, and harm local neighbourhoods.

The exposure of waste enforcement officers to organised criminal elements who are typically involved in illegal waste collections/movements gives rise to concern.



Using their powers under the Act local authority waste enforcement personnel can frequently come into contact with criminal and or subversive elements. This can present a risk to the safety of the waste enforcement officer in carrying out their duties. A number of local authorities have raised a question mark over their personnel continuing to be involved in coordinated raids to counteract this activity, with An Garda Síochána, the Revenue Commissioners and others.

NIECE and the various action programmes being undertaken at Regional or local authority level are delivering a series of concerted actions, but it is increasingly obvious that this is not enough to deal with the more persistent criminal elements involved in the illegal movement and disposal of waste.

This a growing problem that needs to be addressed with aspects such as:

- Vehicle surveillance,
- Movement from one functional area or even from one waste planning region to another,
- How to always activate the chain in order to track the vehicles in other areas,
- Potentially illegal waste and waste activities crossing the border and therefore being an illegal shipment under the Waste Shipment Regulation with incurrent consequences for the whole country rather than one area,
- The manner in which criminals operate such as scale of activity and level of economic return,
- The risk factor for personal threat.

The formation of regional enforcement teams has been reported as one method to redress personal threat to enforcement staff through the temporary re-assignment of regional enforcement officers to respond to a particular case or complaint once the likelihood or incidence of personal threat has escalated against local enforcement officers who have a history with certain organisations, individuals or other criminal elements.

There is also a need for a dedicated national waste enforcement steering group which would organise strategic operations involving targets associated with serious crime.

This is a point considered under the Review of the Producer Responsibility Initiative Model in Ireland report that *"An additional recommendation is the establishment of a team of specialist waste enforcement officers working in tandem with An Garda Síochána to tackle areas of serious criminal activity relating to waste disposal."*

#### **4.6 Minimum Criteria for Environmental Inspection Plans (RMCEI)**

In 2001, the European Parliament and Council made a Recommendation on the Minimum Criteria for Environmental Inspections (RMCEI) in EU Member States. The purpose of the recommendation is to strengthen compliance with, and contribute to a more consistent implementation and enforcement of, EU environmental law.

The recommendation requires that authorities, with the responsibility for regulating industrial and other enterprises subject to authorisation, permitting or licensing under EU Law, undertake their inspection duties in accordance with the recommendation.

The key requirements of the recommendation are that authorities:

- Produce a plan for environmental inspections, including a general assessment of major environmental issues within the plan area and a general appraisal of the state of compliance by the controlled installations with EU legal requirements. For example dealing with the illegal infill of wetlands and other locations of high biodiversity interests with construction and demolition waste, could be a priority in an area or region and inspections planned accordingly;
- Undertake inspections of regulated installations and produce written reports of those site inspections.

The RMCEI inspection planning system has developed to a point where all local authorities produce annual inspection plans. Regional and local circumstances are taken into account with all activities carried out in accordance with a risk-based prioritisation system.

The inspection plans produced by Irish regulatory authorities must:

- Be approved by senior management (i.e. Director of Services) within the local authority;
- Define the time period and geographical area to which the plan relates;
- Detail specific sites or types of installations covered by the plan;
- Include programmes for routine environmental inspections, taking into account environmental risks;
- Include procedures for non-routine inspections such as dealing with complaints, accidents and incidents;
- Develop procedures to co-ordinate actions with other Inspecting Authorities; and
- Define a time frame and methodology within which the plan must be reviewed.

Enforcement plans should also set out the resources that will be applied to enforcement and review the resources, training and any specialist advice requirements. In this regard efforts to co-ordinate with other regulatory authorities and also the Garda Síochána should be planned and performed so as to maximise the effectiveness of the use of resources.

### **5.0 Opportunity Analysis**

The benefits of good enforcement can be weighed against the costs.

BENEFITS INCLUDE:-

- avoidance of environmental clean-up costs,
- avoidance of EU fines,
- avoidance of social welfare fraud and
- a level playing field for good operators that ultimately leads to better environmental performance.
- VAT payments,

- landfill levy payments.

The Project Team has identified the following business opportunities:

- The alignment of the Government's commitment to review the effectiveness of waste enforcement with the re-examination of the waste enforcement grant by the DECLG and the imminent closure of the waste case against Ireland;
- DECLG commitment to continue to subvent the costs associated with effective waste enforcement despite other financial pressures;
- On-going programme of reform of local government and development of shared services approach;
- Enhanced enforcement of waste policy supports economic growth- e.g. tourism, retail, multi nationals/ inward investment;
- Good enforcement network in place, could be developed further on a regional basis to stream line and facilitate the sharing of expertise and intelligence;
- The availability of dedicated specialist training through the OEE to increase the capacity of regions to deal with emerging or priority waste issues;
- Increased centralisation of waste management functions previously undertaken by local authorities (movements of hazardous waste, waste collection permitting system) has delivered efficiencies to local authorities, the waste industry and the economy generally. An extension of this model to include waste enforcement could serve to drive further efficiencies;
- The establishment of Regional Lead Authorities for the purposes of waste management planning and the associated reduction in the number of regions from 10 to 3 provides a model which could be utilised to develop a new regional lead authority approach to waste enforcement;
- Introduction of a range of fixed payment notices for infractions of a broad range of waste legislation;
- Very significant expertise has been developed in many local authority areas with respect to specific areas of waste enforcement- closure of unauthorised sites, introduction of effective waste by laws, experience of successfully taking cases to higher courts' landfill remediation, multi-agency operations;
- Experience gained by some local authority staff in interacting with the Commission with respect to specific cases or systemic failures as part of Ireland's response to the ECJ judgement could be shared across the regions in a post judgement scrutiny period;
- Capacity to support the concept of local democracy by setting and responding to local waste enforcement priorities while being part of a broader regional team with access to specific expertise as required and represented on a national group to ensure consistency of approach to enforcement generally;

Local authorities have made a vital contribution to the progress Ireland has made in the area of waste enforcement in recent years, and this progress has been supplemented by the development of the NTFSO, NWCPO and other bodies. This expertise should be fully utilised not just at a local level but made available to other local authorities in the region and across the country.

Particular skill sets have been developed by enforcement officers dealing with particular illegal environmental activity, e.g. unauthorised treatment facilities. A revised enforcement structure which could facilitate that experience being brought to bear on emerging environmental threats in another part of the country would have a very positive impact in addressing these threats before escalation.

A structure which drives a consistent approach to enforcement generally, and can identify and direct resources at priority areas would deliver efficiency gains in terms of getting the most out of available funding while effectively tackling waste crime and non-compliance generally.

## **6.0 Solution Options**

The Group established to conduct a review of waste enforcement structures in Ireland as per the Government's commitment in the national waste policy considered six options for the future of waste enforcement in Ireland:

1. No Change
2. Local Authorities to finance their waste enforcement out of their own resources
3. Lead Authorities assigned with certain enforcement responsibilities
4. Lead Authority Approach to waste enforcement on a regional basis supplemented by a National Steering Group
5. Transfer of statutory function from local government to new regional assemblies augmented by national steering group
6. Transfer of local authority statutory functions for waste enforcement to the Office of Environmental Enforcement.

The issues identified by the Project Team's problem analysis effectively ruled out the no change option, while the ending of funding from the Environment Fund at this point would have extremely negative consequences for waste enforcement activities so option 2 was not considered to be sufficiently viable to merit further consideration by the Team.

While option 3 may derive some advantages in terms of driving enhanced compliance, with a limited enforcement role it could result in confusion of roles and clash of priorities between the lead authorities and local authorities.

Option 5 could provide for streamlining of enforcement structures and staffing but the capacity of the system to respond dynamically to urgent or emerging issues would be jeopardised with an unworkable burden also being placed on the network of litter wardens who would be expected to take on a role as first responder on the ground locally.

Based on this initial analysis the Project Team have concluded that the following options merit further consideration:

1. Regional Collaborative Structure with Business Process Improvement
2. Lead Local Authority Approach on a Regional Basis supplemented by a National Steering Group
3. Enhanced Role for the Office of Environmental Enforcement.

*This report proceeds to examine each of the 3 no. options outlined.*

#### **7. Option 1: Regional Collaborative Structure with Business Process Improvement**

Under this option all of the existing roles and responsibilities of the local authorities remain unchanged but with a number of key improvements introduced into the system informed by the experience of delivering waste enforcement to date, the efficiencies brought to the administration of waste policy through the establishment of the Waste Regions and associated offices, the NTFSO and the NWCPO.

The draft regional waste management plans emphasise the role the new regional structure has to play in delivering better waste enforcement. The plans recognise that local authorities have an enhanced waste enforcement role which will require them to build on the platform of knowledge, activities and systems currently in place. Over the plan period the local authorities will continue to plan and prioritise enforcement activities in the region. The intention is to improve the coordination of enforcement, through a sharing of experiences and to collaborate on the ground to deliver a more effective and consistent approach. Increased monitoring activities and enhanced waste enforcement will have a positive impact on the environment through increased awareness and compliance. In relation to unauthorised waste activities the plans recognise the need to put in place consistent systems which are effective and accessible. The development of a consistent approach to the recording, management and issuing of corrective actions, as appropriate, to tackle unauthorised waste activities will also be implemented over the plan period.

Utilising the powers outlined previously, local authorities have made a major contribution to the progress Ireland has made in the area of waste enforcement in recent years. In particular, the work of local authority waste enforcement teams has ensured that the vast majority of operators are in compliance with their obligations under the Act and associated regulations.

This work has been assisted by:

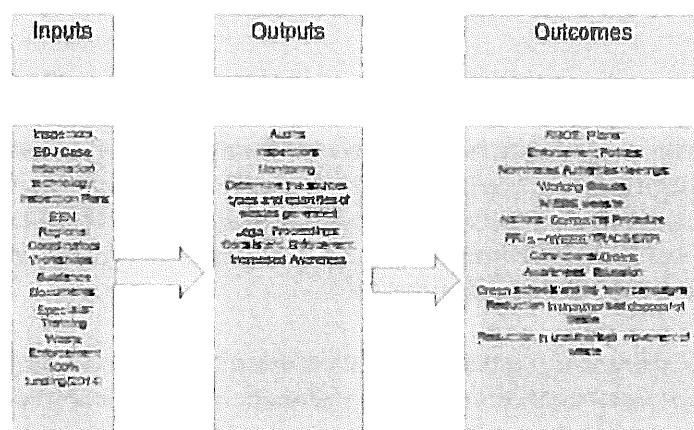
- The use of the Environment Fund to support local authority enforcement activities<sup>2</sup> and

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<sup>2</sup> Circular WIR 10/03, issued on 12<sup>th</sup> August 2003, advised the local authorities of the availability of funding from the Environment Fund to support local authority waste enforcement measures. Circular

- the provision of dedicated specialist training by the OEE to build capacity within waste enforcement teams
- the consolidation of expertise and consistency of approach across local authorities within NIECE.

#### Development of LA Waste Enforcement since 2003



This progress is reflected in the EPA's National Waste Report for 2012 which states that Ireland is meeting its obligations under the broad range of EU waste regulation.

However, there are also important issues that the current structures are not well placed to address. For example, the capacity of the current system to deal with pressing or emerging issues on a coordinated basis. There are issues around consistency of approach and prioritisation across local authority areas and a perception of a lack of coherence regarding treatment of waste streams. This option considers how greater regional collaboration combined with business process improvement across a number of key enforcement areas could contribute to a more effective system of waste enforcement nationally.

### 7.1. NIECE

The **Network for Ireland's Environmental Compliance and Enforcement (NIECE)** operates under the remit of the **Office of Environmental Enforcement (EPA)**.

All local authorities through participation in NIECE have learned to foster co-operation between the various public service bodies involved in the enforcement of environmental legislation, so that a higher and more consistent standard of enforcement is achieved throughout the country.

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WPPR 7/09 of 2009 advised that this funding would be extended at current levels, instead of tapering off as had initially been envisaged.

NIECE is broad ranging and encompasses such enforcement and compliance areas as RMCEI, air, waste, waste water and drinking water and has an extranet site which is also a repository for advice and guidelines. This extranet site was developed to provide a central, secure location for relevant personnel to share information, procedures and guidance on environmental enforcement activities. Access to the site is restricted to public sector staff involved in the regulation and enforcement of environmental protection legislation.

**A further refinement of this site which would facilitate better coordination of waste enforcement at regional level could lead to greater consistency in how legislation is being enforced.**

Informal feedback from local authorities indicate that the updates provided through NIECE are not always immediately relevant to their enforcement work on the ground and are instead focussed on more national issues/priorities than local/regional operational matters. There are also complaints that facilitating access to the NIECE system for local authority staff is too slow. Enforcement officers have to wait for access to be approved which can slow down the administrative duties in the enforcement section. This has resulted in the resource being underutilised and a lack of discussion and sharing of best practice via the on-line forum taking place with less than 10 waste related topics being posted by local authorities in 2014.

A decentralised version of NIECE managed on a regional basis, focussing on pressing or emerging waste issues within that region and which identifies the available expertise within the region and provides a platform to access this resource could result in the potential of this resource being more fully utilised. Capacity building is a critical function of enforcement and NIECE has an important role to play in this regard. In addition to the current role of the NIECE, the development of standard enforcement documentation or standard operation procedures (SOPS) would also be useful to facilitate enhanced enforcement. Training videos and webcasts could also be developed to facilitate capacity building. A dedicated enforcement website or section within the NIECE /EDEN extranet could also be used to store all relevant documents, videos and contents. There could also be consideration in setting up specific working group(s) as part of the NIECE, which could be used to share the expertise and experience which has been developed within the local authority system expertise on the issues relating to specific streams of waste enforcement.

## **7.2 Use of ICT in Enforcement (also applies to option 2)**

The notion of “smart enforcement” means “using the most appropriate enforcement or compliance tools to address the most significant problems to achieve the best outcomes as quickly and effectively as possible.”

Learning better ways to implement legislation by its nature involves constantly reviewing and evaluating the effectiveness and mix of various enforcement tools, and makes the case for practitioners to experiment to a degree on complimentary and new ways of mixing the use of enforcement tools.

The use of high-tech equipment in tackling littering is becoming more common in local authorities and researchers at NUI Maynooth are working with local authorities to examine and deploy novel and emerging technologies to address litter and illegal dumping. Fingal County Council have installed a CCTV camera at a particular dumping black spot which is connected to a Garda station which continuously monitors it, along with Fingal County Council Waste Enforcement Officers.

The use of on-line enforcement management systems have been shown to demonstrate tangible results while making the best use of available resources. A web-based portal that allows permit holders and local authorities to communicate electronically could increase efficiencies for both businesses and LAs.

The recent implementation of a national septic tank regime has led for the first time to a paperless enforcement system and this could be replicated across waste enforcement activity.

Roscommon County Council has successfully completed a pilot project using smartphones to improve efficiencies in the completion of household waste surveys. The advantages include real-time update of databases, elimination of paper, increased productivity, ease of task management and integrated GPS and photo data.

To date however such initiatives are being taken by local authorities in isolation and findings from such initiatives which demonstrate that investment in smarter enforcement tools represents a good use of resources, value for money, and delivery of tangible results is not being shared between authorities.

In the absence of testimonials from peers there remains a reluctance to make the initial investment in the ICT which could ultimately deliver greater efficiencies for local authorities. Greater collaboration on these initiatives at a regional level and the establishment of a forum to share best practice would serve to bolster the current system particularly in the context of diminishing staff numbers.

### **7.3 Risk Based Approach to Enforcement**

Building on earlier experiences of using risk-based approaches, local authorities could utilise that experience in focusing some of its enforcement effort on problems that are persistent within certain sectors.

This should determine what is specifically examined during audits, inspections and other interactions with the sector (e.g. the investigation of incidents and complaints, sectoral meetings, guidance). Engagement on a sectoral level also delivers relevant information and guidance to operators of similar activities, with common issues, and promotes improved environmental performance across a sector.

A mechanism to share the experience garnered in targeting persistent sectoral problems/infractions with other local authorities in a region would assist in building greater



capacity into the system and would serve to give a consistent message to business operating across different local authority areas.

#### **7.4 Improved Coordination**

Following the establishment of the Southern Region in 2013, a task group for waste enforcement and regulation was set up by the Southern Regional Waste Management Office (SRWMO). Each local authority within the region has a representative on the task group which meets a minimum three times per year. The group meets to discuss and address issues of common concern in relation to waste enforcement and regulation and also to ensure consistent enforcement and regulation across the region.

This structure could be further developed across the regions to improve coordination with local authorities within a region with local authorities taking specific roles and responsibilities for improving regional coordination such as

- Dissemination of information
- Collation/Feedback of information/issues to other local authorities
- Implementation of Regional waste priorities
- Standardisation of Waste Enforcement Procedures across local authorities
- RMCEI/Enforcement Planning advising/co-ordination among local authorities
- RMCEI/Enforcement Plans Implementation monitoring among local authorities
- Monitoring of complaints procedures and handling
- Provision of staff to regional enforcement team in exceptional circumstances
- Liaising with other relevant agencies
- Development of best practice and innovative approaches

The approach would reduce the number of RMCEI plans to be drafted allowing more resources to be spent on enforcement activities. It would also improve coordination and standardisation across the region.

#### **7.5 Outsourcing**

Greater use of outsourcing could be considered for routine inspections. Outsourcing is a proven business practice which provides a flexible solution to resourcing issues.

The co-funding of public enforcement by the Producer Responsibility Organisations could be explored as a precedent has now been established with the subvention of €1.2M being paid by WEEE compliance schemes directly to local authorities to off-set some of the costs in providing a national WEEE take-back network for the public.

Increased compliance is of mutual benefits to the authorities, the PROs and the compliant producers. The Irish Farm Film Plastics Group have offered to fund the secondment of their compliance officer to work with local authorities during the next silage cutting season in order to facilitate more targeted, intelligence led enforcement in this sector.

The introduction of a range of fixed payment notices for contravention of certain provisions of waste legislation will also provide local authorities with the opportunity to develop this enforcement tool into a potential revenue stream.

## 7.6 Costs

Under this option, DECLG would continue to provide a subvention towards the costs of the enforcement network. The grant would continue to facilitate local authorities to:

1. Respond to the outcome of *ECJ Case C-494/01* in which a key finding was systemic failure to enforce national legislation;
2. Deal with national waste enforcement priorities; and
3. Send a strong signal to any illegal operators or unauthorised waste depositors that a robust waste enforcement presence will continue to be maintained

## 7.7 Risks

- Government waste policy identified the need to conduct a review of the current enforcement system to critically evaluate if it was best placed to respond to increased instances of illegal waste activity, to provide optimum enforcement solutions and contributed towards the attainment of increased waste targets imposed by the European Commission.
- If Ireland is continue to meet these onerous targets and provide legitimate business in the waste sector with a level playing field by effective enforcement against rogue operators, a more fundamental change to the current system would be required.
- The Review of the Producer Responsibility Model in Ireland report, published in 2014 has stated that greater enforcement across PRI waste streams is required if Ireland is to meet its European targets - failure to do so would lead to proceedings against the State being initiated.
- While the enhancements outlined to the current system would improve consistency and efficiency of waste enforcement it also represents a limited opportunity to address the deficiencies already identified in the existing structures.
- Performance indicators for local authorities in waste for 2013 produced by the EPA, indicates that 32% of local authorities have what can be characterised as a high level of performance in the waste area, 30% of local authorities are recorded as having a less than acceptable level of waste performance which rises to 35% for less than acceptable levels of waste enforcement performance – a return that clearly presents scope for improvement.
- EPA concludes that despite some improvement in local authorities' handling of environmental complaints (68% of which relate to litter and 17% related to other waste matters), a significant number of cases still resulted in the EPA issuing notices to local authorities under *Section 63 of the EPA Act*.
- The reputational damage to the State and local authorities should a further waste infringement be identified by the Commission would be very significant;
- The benefits of rationalising regions as set out in *Putting People First* are beginning to be realised as the regional waste plans become finalised. There is an opportunity to learn from the experience of establishing the three waste planning regions which

is facilitating greater concentration of resources whilst also considering geographical differences.

### **8 Option 2: Local Authority Approach on a Regional Basis supplemented by a National Steering Group**

This option would provide for the transfer of a number of existing waste enforcement functions currently discharged by local authorities to three Regional Waste Enforcement Teams, each based in a regional "lead authority". It should be noted that certain BPIs described under option 1 would also apply to this option- such as the improved use of ICT in waste enforcement and standard operating procedures.

#### **8.1. Key Functions of Lead Waste Enforcement Authority**

The lead authorities would have responsibility for developing regional enforcement plans that would take account of national enforcement priorities and for ensuring that local authority waste enforcement plans / RMCEIs take the regional enforcement plans into account.

This structure would complement the existing regional waste management planning group structure and the cooperative multi-agency approach of the NIECE network.

The establishment of lead regional enforcement authorities would also facilitate more streamlining of the tasks currently undertaken in the waste enforcement area and would:

- Coordinate local authority waste enforcement plans across the region to ensure consistency.
- Coordinate the provision of legal advice for consistency of approach and support individual local authorities in bringing enforcement proceedings that have a national relevance (e.g. test cases) likely to impact on other authorities.
- Support and monitor implementation of waste enforcement priorities (local, regional and national) and coordinate liaison with the EPA / An Garda Síochána and the DECLG.
- Identify specific / emerging waste enforcement challenges within the region and develop strategic responses to issues
- Establish and organise regional waste enforcement teams to deal with emerging issues / emergencies on a case by case basis and identify operations requiring a regional enforcement team response
- Identify serious regional waste enforcement issues (as part of the development of waste enforcement plans) and liaise with outside agencies and departments and cross border agencies in formulating appropriate responses
- Identify current training deficits among waste enforcement staff within the region and future training requirements including specific specialist training where necessary and organising relevant training and refresher training.
- Provide the structure to facilitate greater cooperation between enforcement authorities, allow for increased peer-to-peer learning and allow for the creation of forums for knowledge sharing of best practice.

- Provide a visible presence in the field across local authority areas within the region to assist local authorities dealing with specific problematic/emerging/priority aspects of waste enforcement.

## **8.2 Criminal Activity**

NIECE and the various action programmes being undertaken at Regional or local authority level are delivering a series of concerted actions but it is increasingly obvious that this is not enough to deal with the more persistent criminal elements involved in the illegal movement and disposal of waste.

There is an increasing level of serious criminality making this a growing problem that needs to be addressed. While some regions are more seriously affected than others, National Waste Policy recognises that there is need for a more coordinated strategic response to this growing threat. The establishment of Lead Waste Enforcement Authorities working with a National Waste Enforcement Steering Group would enhance the capacity of local authorities to organise strategic operations involving targets associated with serious waste crime.

The Lead Waste Enforcement Authorities would provide strategic and practical support to local authorities within the regions to deal with:

- Strategic national waste enforcement issues;
- Serious criminal offenders such as cross border issues or major illegal dumping in the State;
- Intelligence led and co-ordinated multi-agency enforcement;
- Securing targeted, timely and effective enforcement outcome.

The national steering group would also be established with a special focus on organised and serious criminal waste activity and on supporting the work of the lead authorities. Issues of organised crime in the waste area can be raised with the other agencies at such a forum which would facilitate more coordinated interagency operations taking place on a regional basis.

## **8.3 Staffing**

The 120 waste enforcement staff supported by the enforcement grant would continue to be maintained and additional personnel appointed to the lead regional enforcement authorities. Positions within the regional teams would be filled by means of secondments from local authorities, which will allow for expressions of interest from suitably qualified members of local authorities.

Any person appointed to a role within the Regional Teams will continue to be paid by their Local Authority and their terms and conditions will remain exactly the same – funding for these positions will remain the responsibility of the DECLG. The DECLG would also be willing to fund the costs associated with replacing an officer seconded to another local authority to ensure no diminution in local enforcement capacity. Local authorities are already expected

to redeploy resources freed up from a more efficient waste management planning regime for essential work on the implementation and enforcement of the new regional plans.

The three Enforcement Regions would consist of;

- Connaught Ulster Region – Donegal, Galway, Mayo, Leitrim, Roscommon, Sligo, Monaghan and Cavan;
- Southern Region – Limerick, Clare, Kerry, Cork, Tipperary, Wexford, Waterford, Carlow and Kilkenny; and
- Eastern and Midlands Region – Dublin, Kildare, Wicklow, Meath, Westmeath, Longford, Offaly, Laois and Louth.

In addition – and as envisaged by A Resource Opportunity – a National Steering Group would also be established with a focus on organised and serious criminal activity in the waste area and on supporting the work of the lead authorities.

The Steering Group could identify priorities and ensure consistency of approach by the NTFSO and the Regional Waste Management Planning Offices, as well as issuing advice on the “enforceability” of conditions imposed by the NWCPO and the objectives of the Regional Waste Management Plans.

Membership of the Group would include:

- DECLG (Chair)
- CCMA
- Chief Executive of Lead Local Authorities
- LA Regional Waste Enforcement Coordinators (3 No.)
- LA Regional Waste Management Planning Coordinators (3 No.)
- EPA
- NTFSO
- Revenue Commissioners
- An Garda Síochána

#### **8.4 Role of Lead Waste Enforcement Authorities**

The role of the Lead Waste Enforcement Authority will include:

- Chief Executive will be a member of the National Steering Group
- Line management of lead regional waste enforcement staff.
- HR and payroll services for lead regional waste enforcement staff.
- Arrange accommodation space for lead regional waste enforcement staff within existing local authority offices.
- Provide Information Technology equipment including computers, dedicated server space (this maybe on the “cloud”), mobile phones.
- Provide PPE and other H&S requirements.

- Agree annual budget for lead regional waste enforcement with DECLG.
- Procure lead regional waste enforcement staff

## 8.5 Enforcement Functions

The actual enforcement functions to be carried out by Lead Local Authorities are set out below.

Lead authorities would have a visible presence in the field to support local authorities in the delivery of their statutory functions with a clear “boots on the ground” approach to waste enforcement apparent. The lead authorities would also have responsibility for developing regional enforcement plans that would take account of national enforcement priorities and for ensuring that local authority waste enforcement plans / RMCEIs take the regional enforcement plans into account.

This structure would complement the existing regional waste management group structure and the cooperative multi-agency approach of the NIECE network. The establishment of lead regional enforcement authorities would also facilitate more streamlining of the tasks currently undertaken in the waste enforcement area.

In the event that a waste crime is detected that warrants taking a case on indictment its success invariably comes down to the capacity or experience of the waste enforcement officers, their legal team and the resources available to the team. If the extant expertise already in place in a number of local authorities could be utilised by authorities less proficient in this area then it is arguable that further successful indictable prosecutions could be undertaken leading to increased efficiencies, increased experience and higher value outcomes.

High profile prosecutions represent the most effective method of fostering a greater culture of compliance across a sector so it could be reasonably expected that improved environmental outcomes would accrue as a result.

There is also the potential for lead authorities to become centres of excellence for enforcement functions in specific waste streams (for example, ELVs, WEEE, tyres etc.). This has advantages in terms of maximising the staffing resources available throughout the system, as well as further supporting the drive for improving performance and enhancing the consistency of application of waste legislation.

Similarly, such an approach would also lend itself to building up expertise in prosecutions and putting together successful legal challenges in relation to upper end offences.

### Functions to be carried out by Proposed Lead Regional Waste Authorities

- Coordinate local authority waste enforcement plans across the region to ensure consistency and prepare regional waste enforcement plans.
- Coordinate the provision of legal advice to ensure consistency of approach and support individual local authorities in bringing enforcement proceedings that have a wider relevance (e.g. test cases) and likely impact on other authorities.

- Ensuring that the local knowledge built up by LA waste enforcement teams is effectively harnessed.
- Support and monitor implementation of waste enforcement priorities (local, regional and national); and coordinate liaison with the EPA / An Garda Síochána and the DECLG.
- Reviewing and reporting on enforcement priorities implementation to relevant stakeholders (with waste enforcement plans reflecting this).
- Identification of specific / emerging waste enforcement challenges within the region and developing strategic responses to issues
- Establishing and organising regional waste enforcement teams to deal with emerging issues / emergencies on a case by case basis and the identification of operations requiring a regional enforcement team response.
- Identification of serious regional waste enforcement issues (as part of the development of waste enforcement plans) and liaising with outside agencies and departments and cross border agencies in formulating appropriate responses.
- Identification and development of Standard Operating Procedures and Protocols.
- Identification and exploration of best practices for waste enforcement approaches across the local authorities within the region, within other regions, among various state agencies and in other jurisdictions and putting in place such practices within the region.
- Review awareness raising activities of local authorities in the promotion of waste legislation compliance and formulating best practice and targeted approaches in this area.
- Conducting reviews of operational approaches across local authorities as regards waste enforcement activities and exploring options for greater operational efficiencies in the waste enforcement efforts across the region.
- Ensuring proper procedures and data management in respect of the transport / transfer / movement of waste between local authority areas.
- Conducting research into new technological advances that could be used to aid the enforcement effort within the region such as complaints management and reporting technologies and covert and overt monitoring technologies. This could include completion of the on-line AER reporting tool for all permit/ certified and licensable activities.
- Identification of current training deficits among waste enforcement staff within the region and future training requirements including specific specialist training where necessary and organising relevant training and refresher training.
- Conducting regular reviews of waste complaints and incidents within the region so as to highlight particular issues and so as to develop appropriate enforcement responses.

In addition to risk based inspections the lead waste enforcement authorities could ensure that sufficient random checks are also being carried out in the region and use the results of these checks to calculate a statistical estimate of the overall level of compliance.

Lead authorities could also examine the potential for procurement initiatives to produce savings in certain areas of enforcement e.g. diesel laundering clean-up operations, transport

of waste, disposal, using the purchasing power of a region rather than a local authority to achieve cost savings.

## **8.6 Staff Resources**

### **3No. Coordinators**

At SEO/SE or equivalent grade, each will be responsible for delivering an annual work programme in a lead regional authority area. Their role will include:

- Management of Lead Regional Enforcement Authority staff;
- Management of budgets;
- Work with local authorities in the region to develop annual enforcement plans;
- Coordinate local authority waste enforcement plans across the region;
- Establish human resource requirements for the sector in conjunction with the National Team;
- Coordinate the provision of legal advice to ensure consistency of approach and support local authorities in bringing enforcement proceedings that have wider relevance;
- Identification of specific/emerging waste enforcement challenges within the region and developing strategic responses to issues;
- Establishing and organising regional waste enforcement teams to deal with emerging issues and the identification of operations requiring a regional enforcement response;
- Identification and development of Standard Operating Procedures and Protocols;
- Conducting reviews of operational approaches across local authorities and explore options for greater operational efficiencies across the region.

While each coordinator will have primary responsibility for their own area they will be expected to develop enhanced expertise and contribute nationally on specific issues and tasks as required.

### **3No. Technical Officers**

At SEE/AO or equivalent grade, their role will include:

- Support and monitor implementation of waste enforcement priorities;
- Review and report on enforcement priorities and coordinate liaison with other public bodies as appropriate;
- Review awareness raising activities of local authorities in the promotion of waste legislation and formulate best practice and targeted approaches in this area;
- Ensuring proper procedures and data management in respect of the transport/transfer/movement of waste between local authority areas;
- Conducting a review of the ICT tools utilised in the region for the purposes of waste enforcement and research and procure new technology that could be used to aid the enforcement effort within the region;



- Identification of current training deficits among waste enforcement staff within the region and future training requirements including specific specialist training where necessary.

### **3No. Assistant Staff Officers**

- Provide the necessary clerical support to the lead enforcement office;
- Conducting a skills survey of the technical capacity of enforcement staff within the region;
- Auditing the application of ICT across the regions enforcement teams;
- First point of contact with members of the public or with other public bodies seeking information or making a waste complaint;
- Other tasks as required and identified by the Regional Coordinator.

### **8.7 Costs**

It is recognised that local authorities need to become self-funded to the greatest extent possible; an optimal uniform approach to waste enforcement will assist with this. New funding streams are being developed through amendments to existing legislation, where Fixed Penalty Notices can be issued for less serious breaches of the Act and regulations thereunder e.g. fines for not carrying a waste collection permit, minor permit non-compliances, certain PRI offences etc. while the use of additional levies will also be considered.

In order to provide the funding necessary to implement the proposed revised enforcement structures, and in recognition of the critical importance that proper enforcement of legislation has to play in driving a culture of compliance which compliments the move towards a more circular economy, the department is prepared to increase its financial contribution to the enforcement system in Ireland. Under this option local authorities will continue to receive the same level of enforcement grant subvention as heretofore with the additional costs of establishing and staffing the three regional enforcement offices being also met by the DECLG.

Additional resources should become available to local authorities through the increased efficiencies brought to the system by the revised structures, the availability of regional expertise to assist with challenging and problematic enforcement issues and the additional revenue that can be realised through enhanced enforcement and an increase in the number of waste infractions that can be prosecuted by means of FPNs.

It would also be expected that the costs associated with bringing cases to higher courts could be reduced and a reasonable expectation that improved judgements could be achieved through the availability of specialised expertise in this area from the regional lead waste enforcement authority.

It should be noted that should the existing Waste Regions be chosen by the CCMA to also become Lead Waste Enforcement Authorities some overhead savings would be realised. This can be quantified by the Project Team upon request.

## STAFFING STRUCTURE COSTS

	STRUCTURE 1 €	STRUCTURE 2 €
<b>* Payroll Costs (inc. ER PRSI):-</b>		
Senior Executive Officer	76,897	-
Senior Executive Engineer/Scientific Officer	73,192	-
Senior Engineer	-	82,070
Administrative Officer	-	59,297
Assistant Staff Officer	39,157	36,942
<b>Total Payroll Costs</b>	<b>189,246</b>	<b>178,309</b>
<b>** Fixed Overheads @ 40%</b>	<b>68,351</b>	<b>64,400</b>
Imputed Pension Overhead (13% of Basic Pay)	24,602	23,180
Once-off Establishment Costs	20,000	20,000
<b>Total Fixed Overhead Costs</b>	<b>112,953</b>	<b>107,581</b>
<b>Total Fixed Costs per location</b>	<b>302,199</b>	<b>285,889</b>
<b>Total Fixed Costs for 3 locations</b>	<b>€ 906,597</b>	<b>€ 857,667</b>
<b><u>Variable Costs:-</u></b>		
Travel Expenses	10,000	10,000
Legal Fees	20,000	20,000
Consultancy Fees	10,000	10,000
Training Costs	20,000	20,000
<b>Total Variable Costs per location</b>	<b>60,000</b>	<b>60,000</b>
<b>Total Variable Costs for 3 locations</b>	<b>€ 180,000</b>	<b>€ 180,000</b>
<b>Total Costs for 3 locations</b>	<b>€ 1,086,597</b>	<b>€ 1,037,667</b>

### ASSUMPTIONS:-

\* Salary Figures are taken from Circular EL05/13: Revision of Pay of Local Authority Employees, pay scales (as revised under the Haddington Road agreement).  
The Salary Figures taken are the mid-point of the relevant scale.

\*\*The Fixed Overhead Figures cover Central Management Charges for Utilities, IT, Facilities, Back Office etc. support.

## **8.8 Delivery and Deployment**

Subject to local authorities expressing an interest, the Programme Management Office, with direction from the PSROG, will facilitate a process to determine the three lead regional authorities on behalf of the regions. The lead authorities will be the employing local authority for the lead regional waste enforcement staff and staff will be procured by the regional lead local authorities.

Successful staff from local authorities may be seconded on a contract basis to the regional lead enforcement authority. In such a scenario full backfilling of posts will be sanctioned by the DECLG.

## **8.9 Risks**

There would be some re-configuration of functions required but this mechanism could also be put in place without major institutional or legislative reform, with the process also being informed by the experience in establishing the waste planning regions, the NTFSO and the NWCPO previously.

The creation of a regional lead authority could be perceived as an additional administrative layer and there is the risk of loss of local expertise, as well as a more cumbersome process in escalating the response to a regional level. Consequently the demarcation of roles would need to be defined as precisely as possible, as would the procedures by which staff belonging to the local authority would assist the regional team.

Clarity around staffing, funding and governance arrangements will be critical to the successful roll-out of these arrangements. Other issues that would need to be addressed include the avoidance of an additional layer of reporting – with consideration of the opportunity to streamline the existing process of RMCEI reporting on a national basis.

Integration of IT resources would help ensure a consistently improved use of technology. Existing protocols for local authority interaction with the EPA would also need to be reviewed, to avoid duplication with the regional team's work.

A number of risks for the lead authorities have been identified as follows:

- Lead regional waste enforcement staff will be funded by DECLG. If funding levels are cut then the lead local authority will be liable for staff payroll costs.
- Waste legislation and regulation continues to evolve and the lead local authority will be required to be flexible, adaptable and accommodating in its management and structures and yet maybe constrained by decisions outside of its control.

Description	Likelihood	Impact©	Mitigating Actions
Loss of local expertise	Low	High	Expertise will be provided to local authorities on a multi- regional basis; targeted staff training will be delivered across priority and emerging waste areas to build increased capacity within the regions.
More cumbersome process in escalating response to a regional level.	Low	Medium	Good experience in implementing task-based approach has been gained through the establishment of the NTFSO and the NWCPO and can be utilised in interacting with the new lead authorities..
Additional layer of reporting	Low	Medium	Streamline on a national basis the existing process of RMCEI reporting.
Lack of clarity around staffing and governance arrangements	Medium	Medium	Demarcation of roles will be precisely defined as will the procedures by which staff belonging to the local authority would assist the regional team.
DECLG Funding	Medium	High	Notwithstanding the pressure on the public purse, the enforcement grant has been maintained at the same level since 2005; the DECLG is prepared to continue to maintain the level of funding for the enforcement network and fund the establishment of the three lead regional enforcement offices provided that efficiencies throughout the network are realised and driven through the new lead authorities. Further funds will become available through the introduction of a range of fixed payment notices for breaches of certain provisions of waste legislation.

## 8.10 Role of Local Authorities

### Continued enforcement role for each local authority

The following enforcement responsibilities would continue to be undertaken by each individual local authority:

- Issue waste authorisations such as certificate of registrations or waste facility permits;
- Carry out routine inspections of authorised facilities;

- Continue to investigate complaints that are “local” in nature;
- Continue to investigate “local” unauthorised waste activities that come to light in other ways (other than through complaints and reporting procedures);
- Historical landfills monitoring and remediation;
- Continue to carry out periodic inspections associated with:
  - Planning/ CoR/ WFP/ SSF applications
  - WCP audits
  - Waste vehicle inspections
  - Extractive industries
  - ECJ sites inspections
  - EEN joint inspections
  - Hazardous waste sectorial inspections
  - Construction and demolition waste sites
  - RFS office joint inspections
- Other inspections such as:
  - Food waste
  - Tyre suppliers
  - WEEE
  - Battery
  - Farm plastics
  - Plastic bag levy
  - Packaging

#### **8.11 Oversight/Governance**

- Each of the three Lead Regional Waste Enforcement Authorities would report to a National Steering Group.
- Lead Regional Waste Enforcement staff would be accommodated in local authority offices within the three existing waste management planning regions. Lead Regional Waste Enforcement Staff will report to the Chief Executive of that Authority.
- The Lead Regional Waste Enforcement authority would be chosen as the Employing Authority for the lead regional enforcement staff in that region.

The National Steering Group would coordinate and support the work of the lead authorities and provide a focus on organised and serious criminal activity in the waste area.

The National Steering Group would identify priorities and ensure consistency of approach by the NTFSO and the Regional Waste Enforcement Offices, as well as issuing advice on the “enforceability” of conditions imposed by the NWCPO and the objectives of the Regional Waste Management Plans.

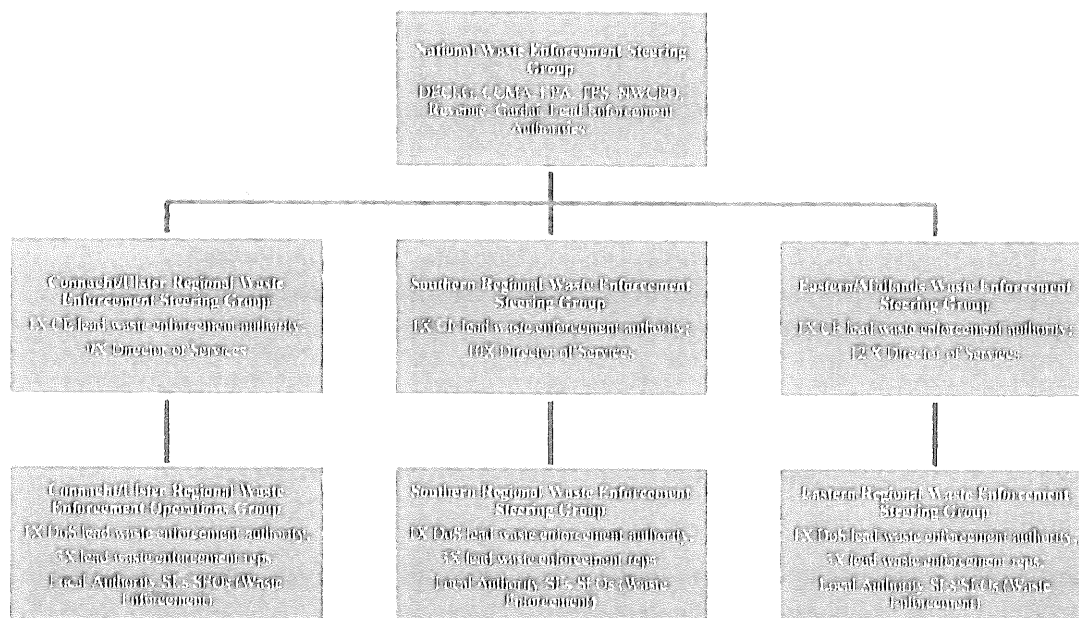
The other management and implementation structures proposed would mirror those already being utilised effectively for the purposes of regional waste planning.

Steering Groups would be established in each of the regions, chaired by the CEs of the lead regional enforcement authorities with membership comprised of the DoSs of the local authorities within that region. This group would be required to meet six times a year.

At local level an operations committee would be established chaired by the DoS of the lead regional waste authority for each region. Membership of this group would be comprised of 3 no. lead waste enforcement authority Reps and the waste enforcement SEs/SEOs of each local authority within the region. The operations committee would meet every two months or as required to response to specific emerging enforcement issues as they arise.

As previously outlined, each waste enforcement lead local authority would have responsibility for the delivery of specific waste enforcement functions across the region. In practice, the local authorities within each region would enter into Service Level Agreements (SLA's) with the lead authority in order to verify the level of service to be committed. The National Steering Group could coordinate the drawing up of the SLA's between the lead regional waste enforcement authorities and each local authority. This would cast one party as the service provider and the other party as the client, and would record the shared understanding about services, priorities and responsibilities

The proposed management and implementation structures are described in the chart below.



## 8.12 Performance Measurement

The proposed new regional enforcement structures would be established for a period of five with a review of their effectiveness to be carried out after a period of two years.

Certain parameters can be used to evaluate the effectiveness of enforcement actions taken. Some measure results, such as improvement in rates of compliance. Some measure activity levels such as inspections and enforcement actions that contribute to deterrence. Others provide qualitative assessments of programme performance and direction. Measures include:

- Environmental results.
- Compliance rates.
- Progress in returning significant violators to compliance.
- Measures of compliance monitoring.
- Number of enforcement responses.
- Timeliness of enforcement responses.
- Monetary penalties.

Performance can be measured in two basic ways. One way involves setting goals or targets (for example: a certain number of inspections should be conducted each year), and then comparing actual activity to the goal. The second way involves tracking results, i.e., looking for trends and changes in activities or results over time (for example, a finding that 25% more inspections were conducted this year than last year may indicate an improvement in this activity). Tracking can either be routine (e.g., annually) or periodic. Tracking can be applied to any of the success measures described above but the goal-setting approach works only when realistic goals can be set.

For more efficient monitoring and assessment of the effectiveness of current and future enforcement, better systems for collecting compatible and comparable data need to be established. Such systems should provide links between offences, enforcement action and outcomes, to facilitate assessment of whether or not enforcement is achieving its purposes of securing compliance, correcting or halting situations that endanger the environment or public health and providing a suitable deterrent to prevent recurrence of the offence.

The proposed national steering group could draw up a Memorandum of Understanding between itself and each lead waste enforcement authority to record the shared understanding about services, priorities, responsibilities and to facilitate goal setting and establish the key performance indicators required to measure the effectiveness of the enforcement system in the three regions.

## **9. Option 3: Transfer statutory functions for waste enforcement to the Office of Environmental Enforcement (OEE)**

### **9.1 Description**

This option would involve all waste enforcement functions currently discharged by the local authorities and the waste regions moving with full statutory basis to the EPA, who would discharge the functions on a regional basis, primarily from the existing OEE network of regional offices. The waste enforcement staff would remain with the local authorities and not transfer or be seconded to the EPA. No role in waste enforcement for local or regional government other than litter wardens acting as first responder.

The Office of Environmental Enforcement is dedicated to the implementation and enforcement of environmental legislation in Ireland.

- It is directly responsible for enforcing EPA licences granted to waste, industrial and other activities such as local authority wastewater treatment plants.
- It prosecutes or assists in the prosecution of significant breaches of environmental protection legislation.
- It is the quality regulator for drinking water and urban wastewater and will continue in this role following the planned transfer of responsibility of such assets to Irish Water in 2014.
- It supervises the environmental protection activities of local authorities by auditing their performance, provision of guidance and working through NIECE (Network for Ireland's Environmental Compliance and Enforcement). The supervision work was recently extended to cover the inspection of septic tanks by local authorities.

The majority of waste enforcement responsibility within the EPA is assigned to the Office of Environmental Enforcement. Further enforcement responsibility is assigned to the Office of Climate, Licensing, Resource and Research (OCLRR), including the following responsibilities related to waste enforcement:

- Producer responsibility enforcement related to WEEE and batteries. The EPA works closely with the local authority waste enforcement officers in this regard and operates a producer responsibility enforcement network under NIECE, where enforcement guidance specific to the WEEE and battery regulations was developed, and local authority workshops are organized periodically.
- OCLRR is also responsible for the maintenance of the National PCB (polychlorinated biphenyls) Inventory, which has involved, among other things, significant interaction between the Agency and some local authorities with respect to PCB-contaminated sites and the hazardous waste arising therefrom.
- The National Waste Report is also produced annually by a team within OCLRR, which involves significant interaction with local authorities and includes site inspections to permitted, non-permitted and licensed sites to verify data submitted.



## **9.2 Role of Local Authority**

Local Authorities would act as agents for the EPA as the central controlling enforcement authority. The enforcement programmes would be prescriptive, with actions and penalties automatically triggered.

The model would be similar to the National Inspection plan for septic tanks and could work for routine enforcement measures, e.g., packaging regulations, waste facilities auditing, WEEE, batteries, etc. The OEE would determine the level of inspection required in line with national targets, provide templates, mobile applications and web based databases.

## **9.3. Risk Based Enforcement**

The EPA has implemented a risk-based approach to enforcement of environmental legislation. Risk-based enforcement strategies align resources to the activities that pose the highest environmental risk, thereby making best use of resources.

Risk-based enforcement strategies have been implemented across EPA licensed facilities, historic landfill sites and public drinking water supplies. Local authorities also have risk based approaches as part of their annual enforcement and inspection plans but under this proposed system the EPA would be the driver in identifying enforcement priorities and channelling resources in that direction.

This could result in improved tracking of resources, prioritisation of enforcement effort and outcome delivery. It would however mitigate against local authorities and the elected members in identifying and addressing what they might consider to be local waste related issues and priorities.

An enhanced role for the EPA in waste enforcement would see a continued emphasis on risk assessment and the prioritisation of available resources in order to deliver long-term environmental outcomes for Ireland. This emphasis would necessitate sustained investment along with collaborative approaches between regulators and the regulated community and would require the diversion of available funds from waste enforcement at local level to the Agency.

The EPA and local authorities together regulate approximately 4,500 waste authorisations. Local authority regulation covers over 600 waste facility permits, 240 'recycling bring bank' permits, and over 1,000 waste collection permits, with EPA regulating 200 waste licences (mainly waste transfer stations) and 2,500 authorisations covered by Certificates of Registration in accordance with the Waste Management (Facility Permit and Registration) Regulations 2007 and 2008.

Under the proposed system local authorities would still have a role in regulating the waste permitting system.

Almost €2.1m in fines and Agency costs were awarded in 2009–2012 in all waste cases taken by the Agency combined; with almost €1.6m relating specifically to Waste-licensed facilities

(includes DPP cases). In 2012 alone, almost €1.1 million was awarded in relation to a specific waste case taken by the DPP.

These fines display the seriousness with which the courts view such licence breaches and would indicate that should the EPA be given a wider remit in waste enforcement that significantly more waste prosecutions would be taken at all levels than is the case presently.

#### **9.4 Benefits**

This option could provide for a streamlining of enforcement structures through the transfer of all waste enforcement activities to the existing EPA Authority and the creation of critical mass of enforcement functions through local EPA enforcement officers reporting to existing EPA regional offices.

The relevance, consistency and proportionality of enforcement approach could be more readily achieved via a centralised EPA structure with a regional presence which would deliver the following:

- National and local inspection plans
- Prescriptive inspection templates/apps
- Web based database
- Enforcement statistics
- Training programmes
- Funding for inspection programmes carried out by LA

The existing local authority staff would carry out the inspection plans acting as agents for the central authority (EPA) and would continue to have responsibility for non-routine waste enforcement.

#### **9.5 Costs**

Under this option significant costs would arise. The OEE Regional offices are not resourced or equipped to take on the role of local authorities as enforcement authorities in the field. Additional staffing resources would be required by the OEE; the DECLG and potentially the local authorities would be required to subvent the operating costs which would arise.

#### **9.6 Risks**

Extensive legislative amendment and radical restructuring of the OEE would be required and the extent of the disruption to the system arising could be disproportionate to the gains that might ultimately accrue.

The option may also be problematic from the point of view of local democracy as local authority staff would become de facto agents for the central authority and the capacity for local authorities to establish priorities and work programmes would be curtailed. There would be a significant loss in local knowledge also. There would be a risk that EPA would

lose focus on its current enforcement role which might become diluted by taking of the extra workload. A mechanism to fund this structure would need to be established.

## 10 Recommended Option (Key Deliverable)

### 10.1 Option Rankings

The following table lists the criteria/components by which each of the solution options has been assessed.

A rating mechanism has been developed for each criterion/component so that ratings are then added to determine a total score for each option.

Criteria	Rating	Option 1	Option 2	Option 3
• Improved coordination and efficiency	100	70	90	80
• Consistency of enforcement	100	70	100	100
• Utilising existing expertise	100	60	90	80
• Addresses EU Commission concerns	100	70	90	90
• Addresses Criminality	100	70	90	80
• Governance	100	70	75	70
• Cost/VfM	100	70	90	80
• Risks	100	60	90	70
• Feasibility	100	90	90	80
• Socio/Economic Benefits	100	70	90	70
<b>Total Score</b>	<b>1000</b>	<b>700</b>	<b>895</b>	<b>800</b>

### 10.2 Option Recommended

Based on the total scores detailed above, the Project Team's 'Recommended Option' for the future delivery of Waste Enforcement is:

- Option 2: Local Authority Approach on a Regional Basis supplemented by a National Steering Group.

This option recommends the establishment of three lead local authorities with responsibility for coordinating enforcement actions within regions, setting priorities and common

objectives for waste enforcement, ensuring consistency of approach on a regional basis, but still leaving local authority personnel as first responders on the ground to specific breaches of the law and will provide for:

- Integrated national approach to enforcement of waste policy;
- Enhanced enforcement of waste legislation which supports economic growth;
- Identification of the most pressing risks which facilitates coordinated enforcement action and the prioritisation of resources;
- The development of a strong enforcement network which shares intelligence and expertise as required;
- Increased efficiencies in the local authority waste system and consequent cost savings;
- Improved levels of compliance with waste obligations by both business and the public which realises significant cost savings to the State.

Option 2 also represents the most sustainable approach to securing continued financial support both from the Environment Fund and from an increase in the number of successful enforcement actions taken by local authorities, utilising an enhanced system support network to maximise potential income from fixed penalty notices and successful court proceedings.

### **10.3 Conclusion**

In recent years there has been considerable centralisation of waste management functions previously discharged by individual local authorities. Waste management planning has taken place on a regional basis and has now moved from ten to three regions in line with the on-going programme of reform of local government. Local authorities' role in relation to the trans-frontier shipment of waste has been consolidated into the NTFSO Office.

Similarly, the establishment of the NWCPO has significantly streamlined the collection permitting system from 34 authorities into a single entity. This consolidation of functions has delivered efficiencies for local authorities, for the waste industry and the economy generally and an extension of this model to include waste enforcement could serve to drive further efficiencies.

Existing services will derive efficiency benefits from having three regional lead enforcement authorities to deal with rather than individual local authorities in terms of enforcing waste shipment regulations (TFS office), implementation of waste management plans (Regional Waste Management Lead Authorities) and enforcement and refinement of permitting conditions (NWCPO).

The establishment of dedicated enforcement offices will be an important pillar in the further consolidation and centralisation of waste management functions.

Three regional waste enforcement authorities have the capacity to improve performance, consistency and coordination of enforcement across the country through clearly defined structures and a coherent strategy which will deliver:

- a clear focus on results and delivering value for society;

- the adoption of a problem solving approach that identifies risks and patterns of non-compliance to concentrate enforcement resources on the most important environmental risks; and
- strengthening enforcement networks to share intelligence, to share expertise and to align enforcement effort across multiple regions and agencies.

The Irish Government is committed to boosting economic growth while continuing to protect and improve the environment. A vital component of this goal is developing and delivering a resilient, sustainable and more circular economy. It is essential that we make the best use of our materials and resources, keep them in circulation, prevent and deal with waste and recycle properly. This approach is critical for our future growth, increased resilience and ensures better environmental and human health. It is clear that local authorities have a vital role to play to facilitate and ensure the right framework is in place so that businesses have the tools and the certainty required to realise the benefits. This includes ensuring that the regulatory framework is properly enforced to ensure there is a level playing field for responsible businesses. However, for this to happen, we must continue to tackle unauthorised waste activity and entrenched and persistent poor performance in a consistent and coordinated manner.

Rigorous enforcement of waste policy and legislation is sound economic policy. A clean environment is shown to promote and maintain the health and wellbeing of communities and individuals, consumers, workers and visitors. A clean and well protected environment is a pre requisite for long term sustainable growth in Ireland. Enforcement of waste policy is not just important in achieving sound environmental objectives, but it is also a critical component in protecting and enhancing one of our vital assets, namely our 'green' image, which is essential for our tourism and food industries, and in attracting inward investment.

The Project Team is satisfied that Option 2 is the optimum solution in the current circumstances and, to this end, it recommends Option 2 for the consideration of the Project Board and Peer Review Group.

