

“Environmental Destruction Issues in light of the R.T.E. Investigation on the increasing problem of illegal dumping in Ireland with particular reference to Donegal”

OPENING STATEMENT OF MR. SEAMUS NEELY, CHIEF EXECUTIVE OF DONEGAL COUNTY COUNCIL

I am Chief Executive of Donegal County Council (“DCC”) and the following is my opening statement to the above meeting of the committee. I am joined today by Michael McGarvey, Director of Services for Water & Environment and Sean Scott, from the Regional Waste Enforcement Lead Authority and Leitrim County Council.

1. INTRODUCTION

1.1 The R.T.E. Investigates programme above referred to was broadcast on the night of Monday the 18th of June 2018 under the title “Ireland’s Wild Waste”. While I unequivocally fully endorse and welcome the public interest behind the screening of a programme on illegal waste activity and the role of proper regulation of operators within the waste industry, I believe it is a national issue/problem. I cannot therefore accept the premise within the programme that it particularly concerns the west. The programme itself referred to illegal waste activity/deposits in many counties. I regard the title of the programme conjuring images of the “wild west” and specifically referencing the Wild Atlantic Way within it (which has been such a tremendous marketing success for the western seaboard) to have been unnecessary and unhelpful in dealing with a national issue. One of the contributors to the programme made the point that about 90% of the illegal sites that he found were in rural locations with about 10% in urban locations. He said that was mainly for the (obvious) reason that “in urban areas they have witnesses and things get picked up and people notice things happening whereas in rural areas there are less witnesses basically”. Rural/non-urban is clearly not synonymous with the west of the country in general.

1.2 I mention also that other contributors to the programme made the following general points (which might be taken into account in assessing the Local Authority’s enforcement role):-

- The waste regulatory regime is very complex and technical leaving open the possibility of loopholes affecting enforcement authorities.
- Securing criminal prosecutions in waste management cases can be difficult for the reason that these type of prosecutions are of a technical nature and frequently involve circumstantial evidence.
- A prosecution would not be a regulator’s first option and they would seek to persuade, encourage and cajole operators first.

2. DCC MANAGEMENT / STAFF

2.1 I have been Chief Executive (and formerly County Manager) of DCC since July 2010. Waste services including regulation and enforcement fall within the environment and water directorate of DCC under Director, Michael McGarvey. All waste collection and disposal facilities within County Donegal are privatised and so DCC's role in relation to same is a regulatory and enforcement one. It also has a separate planning enforcement role in relation to the development of waste facilities – which is under the Planning Services Directorate. It has the following dedicated waste management/litter regulation and enforcement staff comprising –

- 1 x Waste Regulation Officer
- 1 x Assistant Waste Regulation Officer
- 1 x Litter Warden Supervisor
- 4 x Litter Wardens
- 5 x Mobile Litter Unit Operatives
- 1 x Staff Officer
- 1 x Assistant Staff Officer

Additional Posts Sanctioned:

- 3 x Waste Enforcement Officers
- 1 x Assistant Waste Enforcement Officer
- 1 x Clerical Officer

2.2 APPROVAL TO ENGAGE ADDITIONAL WASTE STAFF

The work of the staff is directed by the Director of Services and other members of the Management Team (Senior Engineer and Senior Executive Chemist) and is augmented from time to time as required. The need for support for the dedicated staff in waste regulation / enforcement has necessitated other staff being temporarily assigned particularly when surveillance is required over an extended period and the nature of such work is that in many instances, it has to be done outside normal working times and indeed during the night to achieve best results. This arrangement has worked well and has resulted in a number of successful outcomes for the Council.

In June 2017, the Council having regard to the level of activity and reports of potential significant incidents of indiscriminate dumping, conducted a review of the staffing levels and made a business case to the Department of Communications, Climate Action & Environment for financial support for the employment of additional waste regulation staff. This was approved by the Department. Consequent to the approval of the business case and following the adoption of the 2018 revenue budget, the Council sought approval to the creation and filling of five new posts in January 2018. Approval has since been received from the Department of Housing, Planning & Local Government and the posts are in the process of being filled. This signals the Council's ongoing commitment to monitor and enforce compliance with the provisions of Waste Management legislation.

3. WASTE ENFORCEMENT REGIONAL LEAD AUTHORITIES

The establishment of the Waste Enforcement Regional Lead Authorities (WERLA'S) (Donegal & Leitrim is the joint regional lead authority for the Connaught Ulster Region) has been a significant development introduced following a review conducted in 2013 by the then Department of Environment, Community & Local Government of the respective regulatory and enforcement roles of the Environmental Protection Agency and Local Authorities. As part of that review a group comprised of representatives of the Department of Environment, Community & Local Government, Local Authorities, the Environmental Protection Agency, the National Transfrontier Shipment Office, the National Waste Collection Permit Office and An Garda Síochana met to review the existing strengths and weaknesses in this area and made recommendations for change. The group recommended the establishment of the WERLA'S and I will elaborate further on the role and objectives of the WERLA'S later (see section 8).

4. WASTE REGULATION RESOURCES IN DONEGAL

One of Donegal's principal attributes and what it is known for among residents and tourists alike is its natural beauty and environment. I am a Donegal native and like everyone else am appalled when evidence comes forward of significant illegal waste deposits/environmental destruction within the County. I was particularly concerned by any suggestion/implication in the programme of a link between the cases highlighted and a claimed lack of resources by DCC in relation to Waste Regulation on the basis that RTE had found on the application of their metric that DCC was ranked lowest among all Local Authorities in the Country. I believe the reality to be far different and in fact the Ferry case referenced in the programme and dealt with in more detail below is an example of huge resources being applied by DCC when needed to deal with what turned out to be the most serious Environmental Law breaches ever uncovered within County Donegal.

5. RTE METRIC AND DCC RESPONSE

- 5.1 The commitment of DCC to its work in waste enforcement and associated areas is endorsed by the fact that it has achieved the grade "target" for waste enforcement in the Environmental Protection Agency's Publication "Focus on Local Authority Environmental Enforcement 2014 - 2016 Performance Report".
- 5.2 I would also refer here to the RMCEI Enforcement Plan Evaluations for the years 2015 and 2016 which are conducted by the Environmental Protection Agency. The evaluation assesses the key areas of environmental priorities and outcomes, enforcement resourcing and plan review. A summary of evaluation for Donegal County Council is attached as appendix A.
- 5.3 The metric used by RTE to determine performance and establishing the league table suggests that a direct link can be established between the resources required to monitor compliance with waste permit conditions. Each permit can be subject to different conditions which consequently require different monitoring arrangements. For

example, a facility with significant throughput / activity will generally require more resource application. It is also true to say that where issues are identified, this inevitably requires further input. DCC does not therefore agree that the application of the RTE metric provides a reliable ranking of the necessary resource application of individual local authorities to waste regulation. DCC believes it has the appropriate level of resourcing required which will be enhanced by the additional staffing referred to in Section 2 above when the posts are filled. Notwithstanding this, I am keeping under continuous review the DCC staffing allocation to Waste Regulation with a particular focus on monitoring/compliance issues for all operators within the waste industry in County Donegal to ensure that they have all necessary waste management and planning consents in place and up to date and that the conditions of same are being complied with on an ongoing basis.

6. **WASTE ENFORCEMENT - "FLY TIPPING" DISTINGUISHED FROM ILLEGAL ACTIVITIES OF (PERMITTED) OPERATORS WITHIN THE WASTE INDUSTRY**

So called "fly tipping" is rightly regarded as a scourge in Donegal and elsewhere. This is where individuals/entities engage in disposing of their waste by discarding it in the countryside. This is generally regarded as littering but it is now the case that some individuals may on occasion discard their weekly waste in black bags in this way. However the focus of the programme was (and probably rightly so) on those in the waste industry who operate outside the law and particularly so where there are large deposits of illegal waste involved. Such actions –

- are an affront to customers of waste collection businesses involved in such activity, who pay for the collection and proper disposal of their waste in the belief that this will be done;
- have the potential for enormous environmental damage when account is taken of the volume of waste that the waste collector handles on a weekly basis;
- result in clean-up costs which will always greatly exceed the cost of proper disposal had that happened in the first place;
- mean that while DCC and other Local Authorities will always seek to recover the cost from the party responsible (on the polluter pays principle) that may not always be possible (e.g. if the business has gone into liquidation etc.) and the cost may therefore have to be met from the public purse.

7. **THREATS/RISKS TO ENFORCEMENT STAFF AND COLLABORATION WITH OTHER RELEVANT AGENCIES**

Regulation and enforcement of waste laws (and relevant planning law where applicable) is therefore a key concern for DCC and Local Authorities in general. It has however to be recognised that waste is yet another commodity (not unlike drugs/illegal tobacco products etc.) which when traded illegally can generate considerable financial benefit to those involved. In tackling such persons local authorities have therefore to work in collaboration with other relevant agencies such as the Gardai, CAB, Revenue and Customs etc. Efforts to thwart such illegal

waste operations can lead to Local Authority Waste Enforcement Staff being the subject of intimidation. This has happened in Donegal where some particularly nasty and insidious incidents have occurred. Where such incidents do occur in the ordinary course, they are reported to the Gardaí for investigation.

8. WERLA'S AND THEIR PURPOSE AND OPERATION TO DATE

As previously referenced at section 3 above the WERLA's were established following a recommendation from the inter-agency group. The purpose was to drive improved performance and greater consistency in Waste Enforcement. In 2015, Cork County Council, Dublin City Council and (in a combined bid) Leitrim & Donegal County Councils were selected as new Waste Enforcement Regional Lead Authorities for the Southern, Eastern and Midlands, and the Connaught/Ulster Regions respectively. Since the establishment of the Lead Authorities, the opportunity to collaborate with all relevant regulatory / enforcement authorities has enhanced the ability of Local Authorities to bring forward prosecutions based on information sharing and evidence gathering by the respective organisations to support the preparation of robust prosecution cases. It is hoped that this ongoing collaboration will prove to be an effective deterrent to those who might consider engaging in unlawful activity in the disposal of waste. The Connaught, Ulster WERLA is also a significant additional resource to the Waste Enforcement function of DCC which would not have been factored into the RTE metric.

9. DONEGAL CASES FEATURED BY RTE

Some of the cases below which featured on the programme are ones where investigations are still ongoing and I have to be mindful in those circumstances of not including matters in this statement which (and by saying this without prejudging the outcome of the further investigations) could potentially prejudice prosecutions that subsequently might be brought. I am also mindful of the public interest and in particular, I want to reassure those who pay for the collection and proper disposal of their waste that the Council will continue to do everything in its power to ensure that this is done. Bearing the above in mind I offer the following by way of comment on the three particular cases:-

- (i) **Rossbrackan Site - Mr. James (Jim) Ferry & others** - this case has featured significantly in the media since High Court proceedings were instituted by the Council in the early part of last year. The facts were that following a detailed complaint made to DCC and on the basis of what was alleged therein, very detailed excavations and investigations took place on the site which established massive deposits of waste illegally buried throughout the site together with significant quantities of further waste on the surface in excess of the amount permitted under the waste facility permit applying to the site. That permit authorised its use as a waste transfer station and certainly not as a landfill and there was a limit on the waste that could be brought on to the site at any particular time. Effectively the permitted use of the site as a waste transfer station was being used as a cover for a wholly illegal waste disposal operation underground. The Council resolved at an early stage that the matter would have to be pursued by way of High Court

Injunction proceedings under the Waste Management Act to ensure the effective decommissioning of the site as a waste facility and so that no further waste could be brought thereon pending the eventual remediation thereof. After Orders were obtained the assets of the Ferry Waste Collection business were ultimately sold and the purchaser is now operating its own Waste Collection service within Donegal and Ferry's are no longer operating. Following default by the Respondents to the proceedings to obey a Court Order to remove all surface waste on the Rossbrackan site for lawful disposal and commence assessments under the EPA code of practise to establish the remediation steps required for the buried waste, DCC had to seek liberty from the Court to take these steps itself. So far the surface waste has been removed and arrangements for the carrying out of the required assessments to address the buried waste are being made. The focus in the proceedings has now moved to seeking recovery of costs against the Respondents and that it ongoing – the matter was most recently before the Court on the 3rd of this month.

- (ii) **Sites at Merville - Davey Transport Limited** – the issues in respect of these sites which featured on the RTE programme were notified to DCC just over two weeks before the programme aired. These matters were new information to the Council (even though the footage aired dated back to the winter months) and were immediately treated as complaints that would require investigation. The investigation of same is ongoing and all aspects of what was shown and said on the programme will be thoroughly examined and RTE have been contacted to secure available evidence. I intend to update the Committee as to the further progress of that investigation as of the date of the meeting on the 11th.
- (iii) **Bridgend Site** – DCC is aware of waste management issues in relation to the site at Bunnamayne, Bridgend and has had extensive involvement with other statutory stakeholders, landowners and other parties in relation to these matters. Following investigations which involved the excavation of trial pits at the site DCC issued a Section 55 Notice in 2011 which covered a portion of the site in which waste material was found to have been deposited. On foot of the Section 55 Notice this waste was removed from the site. DCC carried out further extensive investigations on other areas of the site and on adjoining lands in 2015 in full collaboration with the EPA with a view to obtaining evidence in relation to the extent of any further areas of waste deposition. DCC continues to work with the EPA and the Department of Communication, Climate Action and the Environment (DCCAE) in order to determine any further risk to the Environment and to identify remedial measures, if any, that may be required to be put in place at this location.

Thank you for your time.

Appendix A

RMCEI Enforcement Plan Evaluation 2015

Donegal County Council

The 2015 RMCEI Enforcement Plan evaluation assesses the key areas of: Environmental Priorities and Outcomes; Enforcement Resources and Scheduling; and, Monitoring and Reviewing of the Plan. A summary evaluation is provided below with details of evaluation criteria overleaf. This evaluation is used in the Local Authority Environmental Performance Indicators.

Summary of Evaluation:

1. Environmental Priorities	High
2. Environmental Outcomes	High
3. Enforcement Resourcing & Plan Review	High
Overall Plan Rating	High

Comments:

The plan is subdivided into a Water/ Air section and a Waste section. There is good consistency in format between the two sections.

Environmental Priorities

Priorities are outlined.

Environmental Outcomes

Outcomes are linked to identified priorities and include intermediate outcomes.

Enforcement Resourcing

The plan includes detailed spreadsheets outlining resources, FTE and Inspection planning linked to the priorities and outcomes.

1. Environmental Priorities Purpose: to assess if priorities have been clearly outlined and include National Priorities identified at the RMCEI Seminar	Yes/No
1.1 Have priorities for this current year been included in the Plan?	Yes
1.2 Do these priorities include:	
1.2.1 Waste priorities	Yes
1.2.2 Water priorities (incl. RBMP)	Yes
1.2.3 Air priorities	Yes
1.3 Do the priorities include those identified at RMCEI Seminars?	Yes
Score and Rank (High-Med-Low)	High
2. Environmental Outcomes Purpose: to assess if environmental achievement (outcomes) have been clearly outlined and are measurable	Yes/No
2.1 Have 3 to 5 intermediate outcomes been identified in the Plan?	Yes
2.2 Are the identified intermediate outcomes valid (actual outcomes not outputs)?	Yes
2.3 Are these outcomes based on identified priority areas?	Yes
2.4 Have specific targets and actions (metrics) been set to measure the achievement of these outcomes? <i>Metrics (measurements outlined but no targets)</i>	Yes
2.5 Are intermediate outcomes linked to final environmental outcomes?	Yes
Score and Rank (High-Med-Low)	High
3. Enforcement Resourcing & Plan Review Purpose: to assess if resources are directed at the identified priorities & to ensure that enforcement planning is an ongoing process	Yes/No
3.1 Is there a quantification of resources available to carry out and report on inspections? <i>Detailed spreadsheets provided with FTE in Spreadsheet</i>	Yes
3.2 Based on facilities in each of the above categories has a relative risk been assigned to them? <i>Inspection plan linked to priority categories.</i>	Yes
3.3 Have resources been assigned according to the risk category?	Yes
3.4 Does the plan demonstrate how resources have been allocated in line with the aforementioned priorities? <i>Well documented within spreadsheet.</i>	Yes
3.5 Has the Plan been signed by the Director(s) of Services?	Yes
3.6 Have the targets within the Inspection plan been copied to the PMDS team/operational plans?	No
3.7 Is there a periodic review mechanism in place to check implementation during the year (monthly or quarterly)? <i>Half year (Air & Water), Quarterly (Waste)</i>	Yes
Score and Rank (High-Med-Low)	High
4. Innovation, Outcomes, Case Studies of note: <i>Purpose: to capture novel approaches and best practice undertaken</i>	
Good use of spreadsheets to track Priority, Outcomes, Inspections and Resources	

RMCEI Enforcement Plan Evaluation 2016

Donegal County Council

The 2016 RMCEI Enforcement Plan evaluation assesses the key areas of: Environmental Priorities and Outcomes; Enforcement Resources and Scheduling; and, Monitoring and Reviewing of the Plan. A summary evaluation is provided below with details of evaluation criteria overleaf. This evaluation is used in the Local Authority Environmental Performance Indicators.

Summary of Evaluation:

1. Environmental Priorities	High
2. Environmental Outcomes	High
3. Enforcement Resourcing & Plan Review	High
Overall Plan Rating	High

Comments:

Concise well written plan that clearly outlines priorities and how these will be achieved through outcome planning, facility risk assessment and resource allocation.

Environmental Priorities

Priorities for water, air and waste are included within two sub-sections. The plan would benefit from incorporating these in the opening section of the plan.

Environmental Outcomes

Provided using the standard outcome table in the two sub-sections. These are clearly outlined and linked through intermediate outcomes. The plan would benefit from including specific targets in the metric section, rather than just providing a measurement unit.

Enforcement Resourcing

Summary information is provided in the plan demonstrating the risk categorisation process and the calculation of resources available and needed to complete the inspection programme. Detailed facility risk classifications and inspection planning is provided in Annex 1 (although we have not been provided this for review).

1. Environmental Priorities Purpose: to assess if priorities have been clearly outlined and include National Priorities identified at the RMCEI Seminar	Yes/No
1.1 Have priorities for this current year been included in the Plan?	Yes
1.2 Do these priorities include:	
1.2.1 Waste priorities	Yes
1.2.2 Water priorities (incl. RBMP)	Yes
1.2.3 Air priorities	Yes
1.3 Do the priorities include those identified at RMCEI Seminars?	Yes
Score and Rank (High-Med-Low)	High
2. Environmental Outcomes Purpose: to assess if environmental achievement (outcomes) have been clearly outlined and are measurable	Yes/No
2.1 Have 3 to 5 intermediate outcomes been identified in the Plan?	Yes
2.2 Are the identified intermediate outcomes valid (actual outcomes not outputs)?	Yes
2.3 Are these outcomes based on identified priority areas?	Yes
2.4 Have specific targets and actions (metrics) been set to measure the achievement of these outcomes? <i>Measurement units only, would benefit from specific targets.</i>	No
2.5 Are intermediate outcomes linked to final environmental outcomes?	Yes
Score and Rank (High-Med-Low)	High
3. Enforcement Resourcing & Plan Review Purpose: to assess if resources are directed at the identified priorities & to ensure that enforcement planning is an ongoing process	Yes/No
3.1 Is there a quantification of resources available to carry out and report on inspections?	Yes
3.2 Based on facilities in each of the above categories has a relative risk been assigned to them?	Yes
3.3 Have resources been assigned according to the risk category?	Yes
3.4 Does the plan demonstrate how resources have been allocated in line with the aforementioned priorities?	Yes
3.5 Has the Plan been signed by the Director(s) of Services? <i>Text</i>	Yes
3.6 Have the targets within the Inspection plan been copied to the PMDS team/operational plans? <i>No reference</i>	No
3.7 Is there a periodic review mechanism in place to check implementation during the year (monthly or quarterly)? <i>Half year</i>	Yes
Score and Rank (High-Med-Low)	High
4. Innovation, Outcomes, Case Studies of note: <i>Purpose: to capture novel approaches and best practice undertaken</i>	
Clear and concise written plan that includes summary inspection data from the previous year for comparison of activity planned for 2016.	