

# **Office of Environmental Enforcement (OEE)**

## **Enforcement Policy**

### **Introduction**

This document sets out the policy framework that the Office of Environmental Enforcement (OEE) will use when enforcing environmental legislation. This legislation includes the Environmental Protection Agency Acts 1992 and 2003 (EPA Acts), the Waste Management Acts 1996 to 2003 (WMA Acts), the Local Government (Water Pollution) Acts 1977 and 1990 and the Air Pollution Act 1987. The purpose of this policy is to inform stakeholders of the factors that will be taken into account in determining appropriate enforcement responses to contraventions of environmental legislation including whether prosecutions will be pursued.

The enforcement provisions which are specified in the legislation referred to above are conferred on the Environmental Protection Agency. The OEE is one of the five offices in the EPA. The other offices are the Office of Corporate Governance (OCG), the Office of Licensing and Guidance (OLG), the Office of Environmental Assessment (OEA) and the Office of Communications and Corporate Services (OCCS).

The OEE operates under the control and direction of the Board of the EPA. All powers available to the OEE are those vested in the Board of the EPA.

### **The OEE Approach**

The OEE will put the environment first and encourage individuals and businesses to integrate good environmental practices into normal working methods. The OEE will seek to prevent environmental pollution before it has a chance to occur. The OEE will provide information and advice via published guidance to those it regulates to secure environmental improvements while ensuring value for money.

The OEE's functions within the Environmental Protection Agency include the regulation of activities licensed under EPA and WMA Acts in addition to the supervision of local authorities in relation to the performance of their statutory environmental protection functions.

The OEE will work with local authorities and other Regulators to ensure efficient use of resources and coherent enforcement of environmental law. Where appropriate the OEE will co-operate with local authorities and other public bodies, voluntary groups and non-governmental organisations in order to achieve common goals.

This Policy sets out the general principles, which the OEE intends to follow in relation to enforcement and prosecution. The OEE will monitor the implementation and effectiveness of the Policy and revise it when and where necessary.

## Objectives

- To improve overall compliance with environmental protection legislation in Ireland.
- To raise awareness about the importance of enforcement of environmental protection legislation in Ireland.
- To enhance Irelands reputation as a country with a clean and good quality environment.
- To ensure that licences issued by the Environmental Protection Agency are fully complied with.
- To ensure that local authorities perform their statutory functions in relation to environmental protection.
- To achieve better and more consistent enforcement of the Waste Management Acts by local authorities particularly in relation to unauthorised waste disposal and recovery, the transfrontier shipment of waste and the enforcement of waste permits.
- To take appropriate enforcement action in a coherent, consistent, objective and timely manner.
- To promote the implementation of the polluter pays principle.
- To actively communicate its enforcement actions to all stakeholders including the general public.

## Principles of Enforcement

Underlying the enforcement policy of the OEE are the principles of; **proportionality** in the application of environmental law and in securing compliance; **consistency** of approach; **transparency** about how the OEE operates; **targeting** of enforcement action and implementation of the **polluter pays principle**.

### Proportionality

The concept of proportionality is one of the basic tenets of environmental protection and is achieved through ensuring that the enforcement action taken is balanced with the risk posed to the environment and the costs of remedial works required.

Whether an incident breaches regulatory requirements causing serious environmental damage or interferes with people's enjoyment of the environment, the enforcement action taken by the OEE will be proportionate to the risks posed to the environment.

The OEE's priority will be to prevent harm to the environment before it occurs or to stop it from continuing.

### Consistency

The OEE aims to achieve consistency in its response to pollution and other incidents, in its use of powers and in decisions on whether to prosecute.

The OEE will take account of many variables such as the scale of environmental impact, the attitude and actions of the management concerned and the history of previous incidents or breaches. The OEE will continue to develop arrangements to promote consistency including effective liaison with other enforcing authorities.

### Transparency

Transparency is important in maintaining public confidence in the OEE's ability to regulate. It means helping those regulated and others to understand what is expected of them and what they should expect from the OEE. It also means making clear why the OEE intends to take, or has taken, enforcement action.

Monitoring records and reports, site inspection reports, audit reports, warning letters, Statutory Notices or such other correspondences in relation to enforcement actions undertaken by the OEE will be made available for inspection at the relevant office. The OEE will actively communicate significant enforcement actions taken against polluters and will publish annually a report on work undertaken by the office.

### Targeting

The OEE's direct actions will focus on activities that cause the greatest environmental damage, pose the greatest threats to the environment or undermine the public's confidence in the environmental legislation enacted to protect and improve the environment.

The OEE will develop systems for gathering and acting on information about unauthorised activities. It will have regard to legitimate complaints from the public regarding the environmental operations of regulated activities as well as the statutory performance of local authorities.

As a general rule, the OEE will focus its direct actions on priority issues and investigation of serious cases of environmental pollution. However this does not mean that minor breaches of environmental law will be ignored, particularly where such breaches are persistent, and where there are cumulative effects where appropriate corrective actions are not put in place.

### Polluter Pays Principle

The OEE fully embraces the polluter pays principle and will work towards ensuring that activities or persons that cause environmental damage are held financially accountable for their actions.

While taking prosecutions, the OEE will petition the courts to impose sanctions that ensure that offenders shall not derive economic benefit from violation of environmental law.

## PROSECUTION

### Purpose

Prosecution is an important part of enforcement. It aims to punish wrongdoing and avoid a recurrence. The OEE will consider the use of prosecutions in conjunction with other available enforcement tools, for example legal notices to implement specific measures to prevent or remedy pollution. Where the circumstances warrant it immediate prosecution will be pursued.

### Grounds for initiation of a prosecution

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

The **environmental and other effects** of the offence, the **foreseeability** of the offence or the circumstances leading to it, the **intent** of the offender, individually and/or corporately, the **history** of offending, the **attitude** of the offender and the level of co-operation provided to investigating authorities, and where appropriate other factors that may arise.

The above factors are not exhaustive and those that apply will depend on the particular circumstances. The OEE will decide how important each factor is in each case and make an overall assessment.

The OEE will normally prosecute in the following circumstances:

- incidents or breaches which have significant consequences for the environment or which have the potential for such consequences;
- carrying out activities without a relevant licence from the Environmental Protection Agency;
- excessive or persistent breaches of regulatory requirements;
- the use of unauthorised waste disposal/recovery facilities;
- failure to comply with statutory notices;
- failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information;
- obstruction of OEE staff in carrying out their legitimate functions by the use of threatening behaviour, obstruction, or assault.

A prosecution will not be commenced or continued by the OEE unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction.

The OEE will encourage local authorities to adopt a similar approach to prosecution in relation to enforcement of environmental legislation.

## Companies and Individuals

The OEE will prosecute those persons responsible for the offence. This will normally refer to the company in question where the offence resulted from the Company's activities.

The OEE will also consider any part played in the offence by officers of a Company, including Directors. Action may also be taken against such officers (as well as the Company) where it can be shown that the offence was committed with their consent or was due to their negligence and/or other appropriate circumstances.

## Court and Offences

The Environmental Protection Agency Acts 1992 and 2003 and the Waste Management Acts 1996 to 2003 provide for the OEE to prosecute summarily in the District Court.

In the case of serious environmental crime, the OEE will consider referring the case to the Director of Public Prosecutions for prosecution on indictment.

## Penalties

Penalties available under the EPA and WMA Acts are as follows:

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

The OEE will always seek to recover the full costs of the investigation, detection and prosecution of the offence.

## Alternatives to Prosecution

While in many cases a prosecution will be the ultimate sanction that will be used by the OEE it may not always be the most appropriate course of action. The alternatives to prosecution that may be considered by the OEE include the following:

### Warning letters

A warning is a written notification that, in the OEE's opinion, an offence has been committed (e.g. non-compliance with the conditions of a licence). It will be recorded and may be referred to in subsequent proceedings.

Warning letters will be clear, simple and unambiguous informing the party to which it is issued of the offence and what is expected to remedy the situation. Failure to comply with a warning will be followed by appropriate action.

### Statutory Notice

A Statutory Notice, which is legally binding, may be issued under the following circumstances:

- To direct local authorities to submit information and/or take specified actions for the purposes of environmental protection;
- To suspend or revoke a licence issued by the Environmental Protection Agency;
- To ensure proper waste management and prevent environmental pollution from waste;
- Prevention of water pollution and associated remedial works;
- Prevention of air pollution and associated works;

#### Court Orders

In certain circumstances an application may be made to the appropriate Court for an order to cease causing pollution, including the cessation of the activity giving rise to the pollution, and to mitigate or remedy the effects of such pollution. The courts may also make provisions in relation to costs as considered appropriate.

### Working with other Regulators

The OEE will establish an enforcement network within Ireland involving the various public bodies with enforcement responsibilities. The objective of this network will be to enhance the effectiveness of all participants by sharing information and adopting a co-ordinated approach to environmental enforcement.

Where the OEE and other enforcement bodies have the power to prosecute, the OEE will liaise with those bodies to facilitate effective co-ordination and to avoid inconsistencies.

The OEE will also co-operate with local authorities, the National Bureau of Criminal Investigation, the Criminal Assets Bureau, the Office of the Director of Corporate Enforcement and other public sector bodies involved in enforcement activities.

The OEE will work with other international environmental regulators particularly with regard to cross-border issues where co-ordinated enforcement actions are required. In addition the OEE will participate in initiatives such as IMPEL, the European Union's informal network of environmental enforcement bodies, aimed at sharing experience and developing guidance for best practice in environmental regulation.