ICLG

The International Comparative Legal Guide to:

Environment & Climate Change Law 2015

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A practical cross-border insight into environment and climate change law

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1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in Ireland and which agencies/bodies administer and enforce environmental law?

Environmental policy in Ireland is largely driven by, and derived from, EU policy on the environment, and is developed locally by the Department of the Environment, Community and Local Government ("**DECLG**"). Environmental law in Ireland is administered, regulated and enforced mainly by local authorities, such as County Councils, and by the Environmental Protection Agency ("**EPA**"). Most recently, many of the existing water services functions of local authorities (including prosecutorial powers in respect of certain water services matters) were transferred to Irish Water, a newly established semi-state company.

Local authorities deal with planning matters, including the grant of permission (also including conditions for minor environmental matters) for day-to-day development, subject to appeal to *An Bord Pleanala* ("**ABP**"). More significant development consent applications are made directly to ABP. The EPA licenses major industry (in addition to any other development consents required) purely with regard to environmental discharges, emissions and waste handling.

Environmental enforcement in general is undertaken by local authorities and the EPA, however, members of the public (and therefore NGOs) can themselves enforce the legislation (and in many cases do so).

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

In Ireland, regulatory agencies will act either by way of statutory notice requiring compliance and/or ultimately by prosecution of the offender.

In the case of local authorities and Irish Water, they will generally (depending on the legislation in question) issue warning letters followed by enforcement notices which, if not complied with, may then be followed by legal proceedings, including criminal prosecution. Similarly, the EPA, which has a separate enforcement arm called the Office of Environmental Enforcement ("**OEE**"), will, in the event of non-compliance with environmental laws, and depending on the urgency of the matter, issue a warning, followed, if necessary, by enforcement action.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

Public authorities are obliged by legislative provisions to provide such information to interested parties, and in certain cases, to the public generally. The obligation relating to information on the environment arises pursuant to the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. 133/2007) as amended by the European Communities (Access to Information on the Environment) Regulations 2011 (S.I. 662 of 2011) and the European Communities (Access to Information on the Environment) Regulations 2014 (S.I. 615 of 2014), which transpose Directive 2003/4 EC into Irish law. A public authority has the discretion to refuse a request on certain grounds, including commercial or industrial confidentiality or intellectual property rights.

In addition to the above, there exists "freedom of information" legislation, requiring the provision of information generally to the public in relation to activities of public authorities.

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

The EPA, local authorities and Irish Water will issue permits to persons intending to discharge emissions to the environment during the course of their activities or business. Depending on the nature of the activity and the emission or discharge, a person will make an application for an Industrial Emissions Licence ("**IE Licence**"), an Integrated Pollution Control Licence ("**IPC Licence**"), a greenhouse gas emissions permit ("**GHG Permit**"), a waste licence to the EPA, an application for an air pollution licence or waste permit to the local authority or a trade effluent discharge licence to Irish Water.

Depending on its nature, a permit can usually be transferred from one person to another. Prior to the transfer of an IE Licence, an IPC Licence, a waste licence or a GHG Permit, the consent/approval of the EPA will be required. Although the law is not entirely clear as to whether water, air and waste permits require permission to be transferred, it is generally advisable for permit holders to liaise with the relevant regulatory authority informing them of the change of permit details.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

A decision of a local authority or Irish Water in relation to water and air pollution permits can be appealed to ABP and can be subject to judicial review. Decisions of a local authority in relation to waste collection permits may be appealed to the District Court and appeals in relation to certificates of registration and waste facility permits are made to the court of competent jurisdiction.

Prior to the granting of an IE Licence, an IPC Licence, GHG Permit or waste licence by the EPA, the EPA will issue a proposed decision on the permit/licence application and an applicant or other relevant person can make an objection to the EPA within eight weeks. Once a final permit has been granted, the decision of the EPA can be judicially reviewed on points of procedure in the High Court within eight weeks of the decision.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Typically, an ongoing environmental auditing procedure will apply as part of an environmental management system and the monitoring and reporting procedure set out in the conditions of a permit.

Under the European Communities (Environmental Impact Assessment) Regulations 1989 to 2006, and Ireland's planning legislation generally, an environmental impact assessment (an "**EIA**") is required at the development stage of all projects that are likely to have a significant impact on the environment. In addition, an appropriate assessment pursuant to the habitat regulations applicable in Ireland may be required where a project is likely to have a significant impact on flora or fauna.

Following the decision of the European Court of Justice in *Commission v. Ireland* [case C-50/09], Ireland introduced new sets of Regulations in 2012, 2013 and 2014 in order to remedy various defects in Ireland's EIA legislation.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Environmental regulators have extensive powers under environmental legislation to take the necessary steps to remedy breaches of environmental permits. A regulator will usually issue a notice in the first instance calling on a non-compliant person to remedy the breach. Failure to comply with a notice is an offence and the regulator can prosecute a person for such failure. The nature of any fine imposed will depend on the breach, but environmental legislation provides for maximum fines of up to €15,000,000 and/or imprisonment of up to 10 years. The regulator can also take steps to remedy a breach itself and seek to recover the cost from the permit holder, or the owner or occupier of the site where the breach occurred. Where there is a persistent and serious breach of a permit, a regulator can carry out a review or revoke or suspend a permit or licence. See question 1.1 above regarding enforcement by members of the public.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

The Waste Management Acts 1996 to 2013 ("**WMA**") define waste as any substance or object which the holder discards or intends or is required to discard. The definition excludes various gaseous effluents, unexcavated contaminated soil, certain non-hazardous agricultural and forestry materials. It also excludes uncontaminated soil, which is to be used for the purpose of construction on the site from which it was excavated. Recent changes have clarified when by-products are no longer classed as waste and when waste can cease to be waste, having undergone a recovery process. Pursuant to the European Union (Industrial Emissions) Regulations 2013, certain categories of waste activity which fall under the First Schedule are now licensed by the EPA under an IE Licence and are associated with another IE Licensable activity.

There are certain categories of waste which involve additional duties or controls, including hazardous waste, waste oils, bio-waste, batteries, tyres, end-of-life vehicles and waste electrical and electronic equipment ("**WEEE**").

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

Certain waste can be stored on a temporary basis for up to six months, provided that a certificate of registration is obtained.

The original waste producer or other waste holder must be authorised to dispose of waste and must carry out the treatment of the waste in accordance with the waste hierarchy and so as not to cause or facilitate the abandonment or dumping of waste or the transport, recovery or disposal of that waste in a manner that causes or is likely to cause environmental pollution.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

The WMA places a duty on a waste producer/holder to only transfer waste to an "*appropriate person*", being a person authorised to undertake the collection, recovery or disposal of the class of waste in question. After the waste is transferred, the person who has taken possession of the waste becomes a waste holder and, as such, there is an unbroken chain of responsibility. Provided that the original waste producer has transferred the waste to another person in accordance with the provisions of the WMA (save where the transfer is for preliminary treatment only), the original waste producer will not retain any residual liability. However, if waste is transferred other than in accordance with the WMA, then in accordance with the "*polluter pays*" principle, the costs of waste management may be borne by the original waste producer, in addition to any other holder of the waste.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Take-back and recovery obligations are imposed on waste producers (including retailers, importers and manufacturers) of certain streams

of waste, including batteries, end-of-life vehicles, tyres, WEEE, packaging waste and farm plastics. There are a number of approved schemes for the collection and recovery of such waste.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Where there is a breach of environmental law and/or a permit, liability can arise in both criminal law and/or civil law. A breach of criminal law arises where a person breaches statutory duty, fails to comply with a direction and/or fails to comply with permit conditions. Depending on the nature of the breach, a person could be liable on prosecution for a fine and/or a term of imprisonment and any cost of clean-up and remediation required. Civil liability can arise where there is a claim for damages for breach of statutory duty, negligence, trespass or nuisance and a claim for damages would include a claim for any loss, costs and expenses, including the cost of remediation. See question 1.2 above.

Typically, it would be a defence to show that the activity alleged to constitute a breach was carried out in accordance with the permit or licence conditions and/or that a person was not responsible for causing or permitting the breach (including an act of God) and/or they used reasonable care to prevent the breach. Environmental breaches are typically strict liability offences, meaning that proof of the intention of the person is not required. The expression "causing or permitting" is widely defined and if an activity or premises is in the control of a person (being an owner or occupier) and a breach of law or of permit conditions occurs, that can be sufficient to render a person liable.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Notwithstanding the permit defence in question 4.1 above, an operator could possibly be liable under common law torts for breach of statutory duty, negligence, trespass, and nuisance, regardless of the fact that the polluting activity is operated within the permit limits. An operator can also be liable under the European Community (Environmental Liability) Regulations 2008 to 2011, where they fail to comply with a direction from the EPA to remedy or prevent an imminent threat of environmental damage.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Yes, although usually it would have to be shown that the director or officer was in control of and/or had knowledge of the breach and it arose due to an act or omission on their part. It is possible for directors to get insurance cover against civil liabilities but not against criminal liabilities. See section 11 below.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

In a share sale, all of the liabilities, both past and present, transfer on closing. In an asset purchase, only the asset transfers. Therefore, in an asset transfer, the liability for environmental issues is limited to those that relate specifically to the asset transferred and this, of course, could carry a risk of future liability for the cost of the clean-up and remediation of a contaminated site.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

The law in relation to lender liability in Ireland is unclear. However, there is a risk that if a lender (in enforcing its security) has control over or participates in the activity and decision-making which causes or permits a breach of environmental law, it may incur liability.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

The law in Ireland is fragmented and there is no specific legislation which addresses contaminated land. In general, the liability for contamination to land lies with the owner or occupier of the land. The "*polluter pays*" principle applies to water and air where liability lies with the person who caused or permitted the pollution. Liability for waste management lies with the original waste producer, and the current and/or previous waste holders.

Environmental clean-up is mandatory where a party breaches the provisions of the EPA Acts 1992 to 2014 ("**EPA Acts**"), the WMA and the Water Services Act, 2007 to 2013 ("**Water Services Act**"). Sections 55 to 58 of the WMA are particularly relevant and may require that a person who is holding, recovering or disposing of waste be liable for the costs of clean-up and any costs incurred by the relevant regulatory authority in investigating an incident. A person found guilty of an offence under the WMA, the EPA Acts or the Water Services Act may face criminal prosecution (see questions 1.2 and 2.4 above). In addition to the common law obligations, there is a statutory civil liability where water or air contamination causes injury, loss or damage to a person or a person's property. Larger installations are likely to be subject to the IE licensing regime.

Where a development is proposed on contaminated land, the regulatory authority may make remediation of the site a condition to the grant of planning permission, licence or permit. There are also powers under legislation regarding derelict sites.

With regard to historic contamination of soil, unless the contamination is at risk of moving off-site, there would generally be no obligation to disclose such contamination or to do anything with the site in that respect.

5.2 How is liability allocated where more than one person is responsible for the contamination?

Where there is more than one person responsible, they will be jointly and severally liable and any decision of the courts may be enforced in full against any of those found to be responsible.

5.3 If a programme of environmental remediation is 'agreed' with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

A regulator could come back and require additional works. This would arise in the context of any agreement and they would reserve

their rights to do so. An agreement could be deemed to constitute an act or decision by the authority which could be judicially reviewed. Where a review is sought, the courts will review the decision-making process and not the merits of the decision.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

The general rule in property transactions is "*caveat emptor*" (buyer beware). The purchaser must satisfy itself as to the condition of the property and is not entitled to any redress from the seller unless it can show a misrepresentation or a breach of any agreed warranty. The authorities may still pursue the previous owner for any offences it committed during its period of ownership, subject to any limitation periods.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g. rivers?

The relevant authorities are entitled to claim general damages. The courts may also impose fines. The definition of environmental damage has been expanded under the Environmental Liabilities Directive, which has been transposed into Irish law.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

Under environmental legislation in Ireland, regulators have extensive powers to issue notices, make directions, order the production of documents, take samples, conduct site inspections and carry out investigations into breaches of the statutory code.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

Environmental legislation specifically provides that a person must disclose pollution to an environmental regulator when it is migrating off-site. Specific reporting provisions are set out under the IE and IPC licensing regime, water pollution and waste legislation. An operator is also obliged under the European Community (Environmental Liability) Regulations 2008 to 2011 to notify the EPA where there is an imminent threat of environmental damage.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

A person has an affirmative obligation to investigate land for contamination where there is an imminent threat of environmental damage. If there was a risk that land contamination was migrating off-site and/or polluting groundwater, there could be a threat of environmental damage. Even if there was historical contamination but no threat of environmental damage exists, there is no obligation to investigate for land contamination.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

There are no specific statutory provisions that require the disclosure of environmental problems by a seller to a purchaser. A purchaser typically raises pre-contract enquiries, requisitions on title and carries out a due diligence exercise which assists in identifying any environmental problems. Subsequent disclosure and negotiation of warranties may also identify environmental issues.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

The use of environmental indemnities is possible and is often used in commercial transactions such as mergers or acquisitions in order to limit exposure for environmental liabilities. However, payment under such an indemnity would not prevent criminal sanction following prosecution by regulatory authorities as those authorities would not (and could not) be bound by the indemnity. With regard to other third parties, they would be free to pursue either or both parties for environmental damage.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

Although it is possible to hold contaminated land or a manufacturing site in a separate corporate entity, this will not necessarily achieve the desired result, as the directors and officers of that entity may well have personal criminal liability in respect of the environmental liabilities. See question 4.3 above.

Subject to the above comments, particularly in relation to liability of directors, officers and possibly others in a company, the dissolution of a company holding a polluting asset could result in environmental liability being borne by the State. However, depending on the precise circumstances of the case, if contamination by waste materials was involved (the most common situation) and if the directors or indeed shareholders of the dissolved company were themselves responsible for the polluting activities, then aside from criminal prosecution, they could possibly be held responsible for remediation costs in civil law.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

Although highly unlikely in normal circumstances, under Ireland's legislative regime on waste and, in particular, Section 9(2) of the WMA, a company shareholder can (in limited situations) be held

liable for the pollution caused by the company. This could arise in circumstances where the shareholder was in effective control of the company's non-compliant actions.

There is no provision of Irish law expressly permitting a parent company to be pursued in respect of pollution caused by its foreign subsidiary or affiliate. However, if the parent company has provided a parent company guarantee in respect of the environmental obligations of the subsidiary then the parent company will have an obligation under that instrument to either pay or remedy damage and could be sued on foot of it.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

Yes, the Protected Disclosures Act, 2014 (the "**2014 Act**") came into law in July 2014. The objective of the 2014 Act is to enable employees and contractors to make disclosures which are in the public interest without the fear of being identified. The 2014 Act also provides "whistle-blowers" with protection from victimisation and most civil proceedings.

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

There are certain types of "class action" available in this jurisdiction. However, they are so limited as to be virtually useless.

There is very limited provision for exemplary or penal damages in Irish Statute law. While there have been very few awards of exemplary or "punitive" damages by the Irish courts, they have shown themselves willing to make such awards if the circumstances demand it.

8.6 Do individuals or public interest groups benefit from any exemption from liability to pay costs when pursuing environmental litigation?

Generally, the costs of proceedings are at the discretion of the court and usually costs are said to "follow the event" – i.e. the losing side is liable to pay the costs of the other side. However, judicial discretion in judicial review cases concerned with specific environmental matters has been limited by the introduction of Section 50B of the Planning and Development Acts 2000 to 2014 (the "**Planning Acts**") and further amended by s. 21 of the Environment (Miscellaneous Provisions) Act, 2011 (the "**2011 Act**") whereby in certain circumstances each party to the proceedings must bear its own costs. The court may award costs to an applicant to the extent that it is successful in its application. The court may order costs against a party (including an applicant) where a claim is vexatious, the party mis-conducted itself or is in contempt. In addition, the court is entitled to award costs in favour of a party in a matter of exceptional public importance and where it is in the interests of justice to do so. This will likely favour NGOs or those challenging decisions in circumstances where they would not otherwise have been entitled to recovery of their costs.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in Ireland and how is the emissions trading market developing there?

Ireland is part of the EU Emissions Trading Scheme ("**ETS**"). The ETS covers various types of high emission stationary installations, including power stations, combustion plants and oil refineries. The aim of the ETS is to help EU Member States achieve their commitments to limit or reduce greenhouse gas emissions in a cost-effective way. In 2012, the ETS was extended to include certain aircraft flying from, to or within the EU. The national emission trading registry is required to be maintained and this is done by the EPA.

The ETS was launched on 1 January 2005 and has now entered its third phase, which will run from 2013 until 2020. The main changes in the third phase include (i) a single, EU-wide cap on emissions, in place of 27 national caps, (ii) auctioning free allocation, now being the default method for allocating allowances, (iii) for those allowances still given away for free, new harmonised allocation rules will apply, and (iv) additional sectors and gases are included in the third phase.

9.2 Aside from the emissions trading schemes mentioned in question 9.1 above, is there any other requirement to monitor and report greenhouse gas emissions?

GHG Permits are regulated in Ireland under the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012, as amended (the "**2012 Regulations**"). The 2012 Regulations implement the ETS in Ireland.

Aside from obligations arising under the ETS, domestic legislation, in particular the EPA Acts and the Air Pollution Act 1987, provide certain requirements to monitor and report emissions (i.e. an emission of a pollutant into the atmosphere).

Under the EPA Acts, IE and IPC Licences are required for, but not limited to, any activity which releases emissions. The EPA will not grant an IE Licence or an IPC Licence unless it is satisfied that the emissions released will not contravene a relevant standard or cause significant environmental pollution. Conditions can be attached to these licences, which may include specifying the means of controlling and monitoring the emissions.

Under the Air Pollution Act, 1987 a local authority has the power to grant a licence to operate an industrial plant and such a licence will only be granted if, amongst other things, the emissions from that plant will comply with any relevant emission limit value. Local authorities also have the power to specify emission limits for different areas or classes of areas. In addition, the local authorities have the power to carry out monitoring of air quality and the nature and effect of emissions as they deem necessary, or as directed by the Minister for Environment, Community and Local Government (the "**Minister for the Environment**").

9.3 What is the overall policy approach to climate change regulation in Ireland?

Ireland ratified the Kyoto Protocol on 31 May 2002 and agreed to a target of limiting its greenhouse gas emissions to 13% above 1990 levels by the first commitment period 2008-2012.

The Climate Action and Low Carbon Development Bill 2015 is currently being debated in the Dáil. The purpose of the Bill is to provide for the approval of plans by the Government in relation to climate change for the purpose of pursuing the transition to a low-carbon, climate-resilient and environmentally sustainable economy by the year 2050.

In addition to the above, domestic legislation such as the Energy (Biofuel Obligation and Miscellaneous Provisions) Act, 2010, as amended by the Energy (Miscellaneous Provisions) Act, 2012, the Electricity Regulation (Amendment) (Carbon Revenue Levy) Act, 2010 and the Natural Gas Carbon Tax Regulations 2010 have been implemented to assist Ireland in reducing its carbon emissions.

10 Asbestos

10.1 Is Ireland likely to follow the experience of the US in terms of asbestos litigation?

While Ireland has had some asbestos-related litigation, it has not been widespread due to the lack of any real exposure to asbestos. In Ireland, asbestos litigation has centred on more controversial claims for damages from the fear of contracting an asbestos-related disease, as opposed to damages resulting from an actual physical injury or psychiatric illness.

This jurisdiction does not allow the recovery by plaintiffs of damages for psychiatric injury resulting from an irrational fear of contracting a disease because of their negligent exposure to health risks by their employers, where the risk is characterised by their medical advisors as very remote. This is sometimes referred to as the "fear of disease" and was confirmed in the recent case of *B v C* [2011]. The court confirmed that it was well established that proof of damage was an essential component of recovery in negligence, citing the UK case of *Rothwell v Chemical & Insulating Co Ltd* [2008]. To date, there are no proposals to follow the example of Northern Ireland or Scotland, which have introduced specific legislation to counteract the *Rothwell* decision. Therefore, in order to succeed, a plaintiff must suffer from an actual physical injury or recognisable psychiatric illness as a result of the exposure to asbestos.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

The law in Ireland does not specifically target owners/occupiers, but focuses on duties of employers to employees. Asbestos is classed as hazardous waste and, as such, those who handle it must be licensed to do so. The Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006-2010 (the "**Asbestos Regulations**") apply to activities in which employees are likely to be exposed to dust arising from either, or both, asbestos and materials containing asbestos, during their work. Employers and occupiers also have duties in respect of workplaces and premises under the common law.

If its employees are "likely to be exposed", an employer is required to assess the risk to its employees' health and safety. Employers must take all necessary steps to identify presumed asbestos-containing materials at a premises or place of work before commencing any demolition, removal or maintenance work at the premises or place of work.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in Ireland?

Environmental insurance is available in Ireland but is usually placed through the London market or other major insurance markets. The insurance types available include those covering environmental risks in the professional indemnity policies of engineers or architects, those contained in typical construction policies (which tend to exclude all but pollution from "one-off" accidents), and specific environmental insurance cover in relation to particular risks arising from known or suspected pollution. Environmental insurance does not play a very significant role in Ireland but like all insurance, its absence could become very regrettable should relevant contamination occur.

11.2 What is the environmental insurance claims experience in Ireland?

Due to a lack of reported cases, there is no readily available claims experience in Ireland. Claims, where they arise, tend to be substantial but we think that exposure of insurers tends to be limited by the care that they exercise in assessing the risk involved and in drafting the relevant policies (in particular the exclusion clauses).

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in Ireland.

Some recent legislation:

Waste Legislation:

The European Union (End-of-Life Vehicles) Regulations 2014 (the "**End of Life Regulations**") were commenced in June 2014. The End of Life Regulations transpose Directive 2000/53/EC into Irish law. These regulations oblige every producer of vehicles in Ireland to establish a national collection system for the collection of specified vehicles. Each producer must ensure that it has at least one authorised treatment facility in the functional area of each local authority and must ensure that the facility has sufficient capacity to treat the number of end-of-life vehicles for which the producer is responsible.

The European Union (Waste Electrical and Electronic Equipment) Regulations, 2014 (the "**WEEE Regulations**") were commenced in March 2014. The WEEE Regulations revoke the previous European Union (Waste Electrical and Electronic Equipment) Regulations, 2011. The key changes made by the WEEE Regulations include revised targets for the collection, treatment, recovery and disposal of waste electrical and electronic equipment ("**WEEE**"). The WEEE Regulations impose obligations on the suppliers of WEEE in Ireland to collect, treat, recover and dispose of WEEE in an appropriate manner. Suppliers can exempt themselves from certain obligations under the WEEE Regulations if they participate in a recognised scheme for the collection, treatment, recovery and disposal of WEEE. In Ireland, there are two recognised schemes, "WEEE Ireland" and "European Recycling Platform Ireland"/"ERP Ireland". Payment is required to become a member of these schemes and in turn the scheme will supply the member with a certificate and assist the member in meeting its obligations under the WEEE Regulations by taking charge of the collection, treatment, recovery and disposal of WEEE.

Financial Provision:

With the downturn in the economy, the EPA has become increasingly concerned with ensuring that adequate financial provision is in place for EPA licensed facilities, particularly in circumstances where the licence holder has gone or is likely to go into liquidation. The 2014 case of the *EPA v Greenstar Holdings, the Bank of Ireland and Others* [2013 No 1682 P] brought this issue to the fore. In this case, a syndicate of banks, which included the defendant Bank of Ireland (the "**Bank**"), made facilities available to Greenstar Holdings. Greenstar Holdings defaulted and the Bank transferred money from Greenstar Holdings into its possession. Greenstar Holdings was then put into receivership and there was insufficient money left to fund the closure, restoration and aftercare of the facility. The EPA argued that the gate fees, i.e. charges paid to landfill operators under section 53A of the WMA, were required to be used solely for

the purpose of paying for the closure, restoration and aftercare of a facility and that the gate fees should not have been used for the purpose of giving security to the Bank. The court ruled against the EPA. The EPA's claim that the Bank was not entitled to the funds was dismissed.

In 2014, the EPA published a guidance document entitled Guidance on Assessing and Costing Environmental Liabilities. This guidance replaces the previous 2006 guidance and outlines a systematic approach for assessing and costing environmental liabilities associated with closure, restoration, aftercare and incidents. In October 2014, the EPA published Draft Guidance on Financial Provision, which is yet to be finalised. Also in 2014, the EPA published five sets of financial provision templates which, the EPA says, are generally acceptable to it, depending on the individual circumstances of the licensee. These include a (i) Template Bond, (ii) template account charge, (iii) template insurance policy, (iv) template drawdown agreement, and (v) template parent company guarantee.

The updated EPA financial provision templates and guidance documents reflect the current times and emphasis is placed on the occurrence of insolvency events to ensure that, in circumstances where a licensee becomes insolvent, there will be sufficient financial provision to either (i) continue operations in compliance with the licence, or (ii) fund the adequate closure, restoration, and aftercare of the relevant site.

Some recent legislation:

- European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations, 2014.
- European Communities (Access to Information on the Environment) (Amendment) Regulations, 2014.
- European Union (Drinking Water) Regulations, 2014.
- European Union (Water Policy) Regulations, 2014.
- European Communities (Geological Storage of Carbon Dioxide) (Amendment) Regulations, 2014.
- European Union (Sulphur Content of Heavy Fuel Oil and Gas Oil) Regulations, 2014.
- European Union (End-of-Life Vehicles) Regulations, 2014.
- European Union (Packaging) Regulations, 2014.
- European Union (Waste Electrical and Electronic Equipment) Regulations, 2014.
- European Union (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) (Amendment) Regulations, 2014.
- European Union (Restriction of Certain Hazardous Substance in Electrical and Electronic Equipment) (Amendment No 2) Regulations, 2014.
- European Communities (Greenhouse Gas Emissions Trading) (Aviation) (Amendment) Regulations, 2014.
- Waste Management (Facility Permit and Registration) (Amendment) Regulations, 2014.
- European Union (Batteries and Accumulator) Regulations, 2014.
- European Union (Environmental Impact Assessment) (Planning and Development) Regulations, 2014.
- European Union (Environmental Impact Assessment and Appropriate Assessment) (Foreshore) Regulations, 2014.

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Having first qualified in environmental geochemistry, which included the study of natural resource use and environmental management policies, Rachel joined McCann FitzGerald as a trainee in March 2008 and qualified into the Construction Group in January 2011. Since qualification, Rachel has advised on a range of matters, including general construction queries, planning and environmental queries, the environmental aspects relating to the acquisition of a number of renewable energy projects and construction, environmental and planning litigation.

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