



Environmental Pillar

Response to the EPA Draft Compliance and Enforcement Policy

April 2015

1. Introduction

The Environmental Pillar welcomes the opportunity to respond to the Draft Better Regulation and Draft Compliance and Enforcement Documents.

2. Overarching comments:

2.1 Adherence to policies:

While the production of such policy documents must be welcomed, we note that both include a disclaimer/caveat providing the EPA with the flexibility to disregard the policies. While we appreciate that in extraordinary circumstances – the EPA should have the flexibility to take extraordinary measures – our concern that the caveat to circumvention of the policy is without any criteria or requirement to report and rationalise on any such deviations from policy. We submit that such precautions are necessary measures in order to ensure the policy is adhered to in the main, and that there is sufficient transparency and accountability provided for regarding such decisions. Such is in the interests of maintaining the reputation of the EPA, public confidence, and the credibility of its policies, and of course environmental protection.

2.2 Ecosystem Based Approach:

Healthy ecosystems are a fundamental requirement for sustainable development. Unfortunately, present trends of economic development, often supported by inappropriate financial incentives; typically undervalue the ecosystem processes and services leading to over-exploitation of valuable resources.

Ecosystem- based management attempts to regulate our use of ecosystems so that we can benefit from them while at the same time modifying our impacts on them so that the basic ecosystem functions are preserved.

It is only partly about ecological sciences. It has much do to with gaining an appreciation of the economic, social and cultural factors affecting the communities concerned with projects. Furthermore, it must be flexible in approach in order to adapt to continually changing situations and conditions. Recognition of the inevitability of change is very important.

Moreover, the ecosystem approach recognizes the need for public and community participation at all stages of project development and implementation.



3. Regulation:

2.1 More inspections must take place – and inspections must take place in a timely manner. A proportion of inspections should be unannounced. The EPA should be adequately resourced so they can do this. Many facilities (such as Dixon-Tobertynan and Keegan quarries have operated without discharge licences.) This must be addressed.

2.2 The EPA should also give advice and guidance at the planning permission stage, and lodge observations to Local Authorities and An Bord Pleanála objections and appeals and observations with An Bord Pleanála where necessary. Such should be clearly articulated in its policy document,

2.3 Better Regulation has become somewhat synonymous with poorer environmental protection at the cost of business and jobs particularly in the current economic climate. We welcome the fact the 6 principles of the EPA’s approach reflect a need for Proportionality based on health and environmental risks, the additional principles of consistency, necessity, transparency and accountability, risk-based and polluter-pays are all important. However there is a need for explicit clarity on the relative weighting of these principles and who trade-offs and conflicts will be resolved particularly when more short –term economic pressures and imperatives are introduced. The principle of “Necessity” is positioned as being in terms of determination of inspections – we feel this element of the policy needs further expansion.

4. Reporting and evaluation:

There is a need to evaluate the policy and to explain how that will be done, and to measure the effect of changes in approach to regulation in particular. We submit that specific pilots and approaches should be regularly evaluated as a policy matter to promote innovation in the approach.

5. Enforcement:

Requirement for measurement and transparent reporting.

We submit the Enforcement policy lacks any metrics or measurement proposals and any reference to reporting is totally absent or certainly not prominent. To evaluate the efficacy of the policy as a whole and the various measures therein – such as for example initiatives such as ‘promotion of compliance behaviour’ – it is absolutely necessary that all elements of the policy must be rigorously evaluated. Otherwise resources may be expended fruitlessly, in fact wasted, and at the cost of effective environmental protection.



The EPA should also give advice and guidance at the planning permission stage, and lodge observations to Local Authorities and An Bord Pleanála and appeals and observations with An Bord Pleanála where necessary with a view to assisting Planning Authorities in deciding on the environmental risks, addressing appropriate mitigation and conditions, and considering the risks presented by past compliance behaviour. Such should be clearly articulated in its policy document, and would serve to in some part incentivise compliance.

The number of prosecutions should be increased. At the moment many County Councils are polluting water supplies. Enforcement actions should be taken in these cases (i.e Glenamaddy Turlough). The EPA's legal obligations regarding licencing should not be delayed and effectively compromised to avoid difficult problems – otherwise its autonomy, independence, fairness and credibility come into question.

Ireland's Environment 2012 -In 2010, 40% of all samples taken from the 285 wells and springs in the EPA national groundwater monitoring network were polluted by microbial pathogens, which can pose a threat to private water supplies in particular.

As this is a threat to public health and biodiversity, we would encourage prosecutions. We also need a faster response and a method of alerting the local general public when there are local environmental problems – contamination of groundwater, air pollution, or high radon levels. This could happen through local radio stations, and the Garda text service which operates in many small local communities.

The policy document acknowledges the role of the polluter pays principle. However it is notable that revocation/suspension of licences is proposed as a step subsequent to recourse to District Court Action. Given the overhead and difficulty of action in the courts – particularly at this level – it would seem that suspension of licence should be something which should be prioritised and would provide for a compelling incentive to pay fines, complete remediation and promote future compliance.

We submit new licences should be structured and conditioned in such a way as to facilitate this.

Licensing conditions as a whole need as a policy matter to be reviewed and new licences and renewals written in such a way as to facilitate ease of enforcement.

The EPA as a policy matter needs to focus on engagement with the Judiciary at all levels as part of a systematic education programme to ensure that when it does resort to the courts there is an understanding and appreciation of the issues at stake, as this we understand is not often the case at the lower courts – or such is given as a reason for the reluctance of public authorities to resort to court action given the over-head involved.

Detailed reporting on non-compliances and the enforcement actions taken and the rationale for same needs to be part of the policy approach, to ensure transparency, fairness and to promote a culture of awareness that action will be taken and to support a drive on that within the agency.

The EPA as a policy matter should undertake a rigorous review of the relevant legislation and its resourcing needs – and make recommendations to Government for new or changed legislative powers and resources as needed. This should be subject to public consultation.



Un-notified spot inspections is we submit an effective way of supporting compliance behaviour, and a more effective inspection regime in terms of detecting problems.

6. Strategic Environmental Assessments –

We would like to see an increased role here – many government plans and programmes are produced without an SEA, through inappropriate evasion of the Directive’s obligations compromising the objectives of strategic assessment of Land Use. (E.g. Food Harvest 2020) Even where they are produced they can be of poor quality, and the output of the Environmental Report is not applied on the original programme – as was the case with Food Harvest 2020.

7. Communications and Education;

7.1 Reports

Reports should be summarised. When reports are large (for example the recent Climate Change Report), the press officer should notify the Environmental Pillar in advance (of date and time of release), to allow us to set aside time on the day so we can read the report in full and issue a timely press release.

7.2 Press releases

Almost 600,000 consumers in 153 water supply zones currently receive drinking water exceeding the European Union/ WHO parametric limit for Trihalomethanes. However, the public are not alerted as it is considered by the EPA to be a short term risk. Most carcinogens are not ‘immediate’ risks. The public should be alerted anytime EU/WHO guidelines are breached, so they can choose if they wish to be exposed to these levels of pollutants. This should be done through local and national media.

7.3 Website

(a) It is difficult to access information on the website – for example waste permits. The Search function could be improved – as without the specifics of the licence – it can be hard to find.

(b) As the website is often the first point of contact for people phoning with environmental complaints, the phone number and contact email (the ‘see it say it’ campaign) should be really easy to find.

(c) The local environmental information map should link in with Biology.ie to show the biodiversity in an area.

7.4 Education



The Environmental Pillar have noted some excellent recent presentations at the UCC Environmental Law Conference, and in the media, most recently with the water quality reports, when the EPA were critical of wastewater treatment facilities.

We welcome the EPA's involvement in schools, and would like to see local schools monitoring their own environment, air/ water quality, radon levels, etc.

8. Appendix

Use of the ecosystem approach

The Ecosystem Approach decision COP V/6 - Convention on Biological Diversity

<http://www.cbd.int/decision/cop/?id=7148>

<http://www.cbd.int/doc/nbsap/nbsapcbw-pac-01/nbsapcbw-pac-01-scbd-04-en>

This submission was developed using the Environmental Pillar processes but is not necessarily the policy of each member group in the Pillar.

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