

**A review of waste disposal at the Mobuoy site
and the lessons learnt for the future regulation
of the waste industry in Northern Ireland**

by

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EXECUTIVE SUMMARY

An estimated total of 516,000 tonnes of macerated waste has been discovered by Northern Ireland Environment Agency (NIEA) officers in an area adjacent to the River Faughan in the townland of Mobuoy near Derry.

This illegal waste was deposited in an area stretching to almost 1.4km in and around a licensed Materials Recycling Facility (MRF) owned and run by City & Industrial Waste Ltd, with the majority of the waste being buried in sand and gravel pits which were originally excavated by Campsie Sand & Gravel Ltd.

It is not known who deposited this waste; however, this was a sophisticated operation which had been carried out over a number of years. A criminal investigation (Operation Sycamore) is ongoing and two people have been arrested and questioned.

The MRF site is regulated by the NIEA and has a history of repeated non-compliances. The site regulation was weak given that the operator repeatedly broke its waste licence conditions in relation to quantity and type of waste.

There were a number of complaints about the running of the site and possible illegalities, not all of which were investigated fully at the time. It is possible that at least one of these complaints could have led to the discovery of the illegal dumping as early as 2008.

Many external factors are facilitating criminals entering the waste industry and using it to carry out illegal activities such as the dumping of waste at Mobuoy.

The key policy objective, driven by the European Commission, is to reduce waste including to landfill. This means that if criminals can enter the waste industry then it is easy to undercut legitimate operators by avoiding landfill tax and other costs by illegally disposing of waste.

The Fit and Proper Person Test is not sufficiently robust to screen out criminals thus allowing them the opportunity to obtain a licence or permit to run a waste facility. This would enable them to tender for waste contracts very competitively.

The deficiencies in the Waste Carrier Registration System and the inability of the regulator to track waste flows with any accuracy, makes it easy to move waste around including in and out of licensed facilities and to conceal where the waste finally ends up.

The ability to dig sand and gravel pits without first obtaining planning permission means a ready supply of ideal sites for the illegal disposal of waste, as was the case at Mobuoy.

If illegal dumping is discovered and the perpetrators caught, the current sentencing regime provides very little deterrent and even if the Proceeds of Crime Act can be used to increase the financial penalties, vast profits can still be made.

The lack of any effective sanction to make the polluter pay means that the State is likely to carry the cost of remediation or removal work. In the case of Mobuoy, this could be up to tens of millions of pounds. This shortfall in the legislation means that very few previously discovered illegal waste sites have been remediated or had the waste removed. Even with a risk based approach, the cost of dealing with this historic legacy could run into hundreds of millions of pounds and failure to do so risks infraction under the EU Waste Framework Directive.

A number of lessons can be learnt from what has happened at Mobuoy.

Criminality is widespread in the waste industry in Northern Ireland with at least some involvement by organised crime.

This is not unique to Northern Ireland. Waste crime including the use of legal sites to cover illegal activity is happening across the UK and Ireland.

The regulatory regime for waste has become very complicated and much of it is not working as intended.

There is a need to consider the entire waste system, in order to understand how criminals can exploit it and which waste flows are particularly vulnerable. Criminals will always seek out where easy money can be made.

The Regulatory Service in the NIEA needs to change in order to become more integrated and adaptive. Good intelligence will be vital in order to adopt the

appropriate style of regulation. In order to achieve this, sufficient resources must be deployed by the Department and it must be able to recruit and retain staff with the right aptitudes in order to ensure that waste regulation activity can match the scale of the challenge faced.

Dealing mainly with the consequences of waste crime is costly and unsustainable. A more efficient and effective strategy would be to prevent it in the first place through more rigorous and robust regulatory activity and by stopping criminals entering the waste industry.

The Duty of Care provisions, Fit and Proper Person Test and improving systems for monitoring waste flows, should all be strengthened. Consideration also needs to be given to limiting the number of waste authorisations and developing new waste infrastructure that is easier to regulate and monitor.

For all of this to happen will require strong leadership, a clear strategy and both structural and cultural change, as well as improvements to processes and systems. Some legislative changes may also be needed.

The NIEA cannot do this alone. It will need the support of the rest of the DOE including Planning, the Environmental Policy Division, the Police Service Northern Ireland (PSNI), other Enforcement Agencies, and the Judiciary.

Waste crime is not just damaging the environment; it is damaging the economy in Northern Ireland.

Currently the punishment does not fit the crime and the waste industry is extremely attractive and vulnerable to criminals who can make vast profits with relatively little risk.

1.0 INTRODUCTION

This review was commissioned by the then Minister of the Environment, Alex Attwood MLA on the 5th June 2013.

The Terms of Reference for the Review are as follows:-

This review will support the DoE's on-going work to create a waste sector in Northern Ireland that complies with the law, protects the environment and underpins resource efficiency by conducting a review into:

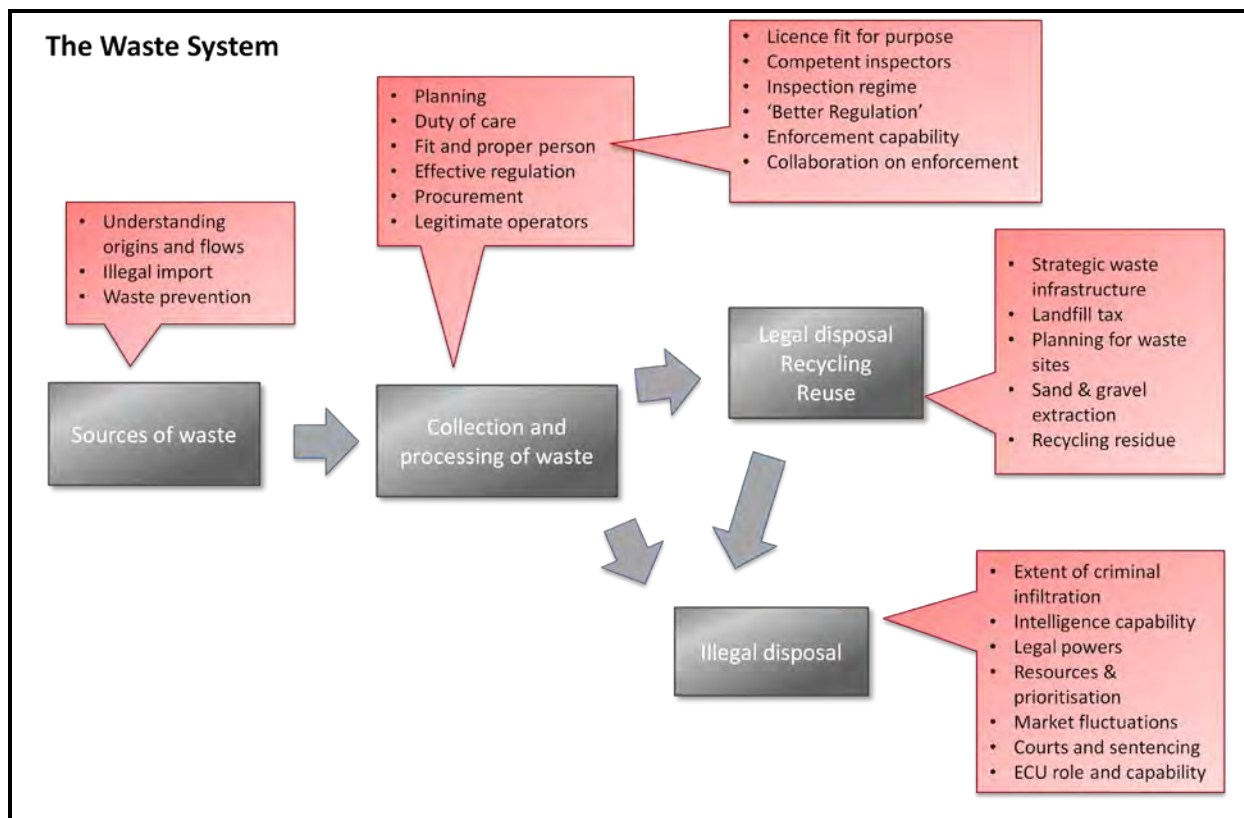
- what transpired in relation to the waste facility at the Campsie site and to identify any failures that might have occurred in the regulation of this site, in respect of any sectors of central Government;
- the external factors leading to the extensive illegal waste dumping at the Campsie site;
- the lessons this incident provides for the future development and administration of waste management, resource efficiency and enforcement programmes.

The Expert Reviewer will provide a report to the Minister for the Environment and the Chief Executive of the Northern Ireland Environment Agency no later than Thursday 31 October 2013. In addition, the reviewer should provide monthly updates and, if at any stage considers an issue to be of high significance, should advise the Minister and the Chief Executive. Whilst the report should focus on the incident in question, it is expected that it will be put into the context of the structures and arrangements for the management and disposal of waste in Northern Ireland.

It is important to note that a separate criminal investigation (Operation Sycamore) is ongoing and that until this investigation has concluded and the legal process that follows is completed, it will not be possible to know who carried out the illegal dumping of waste at Mobuoy.

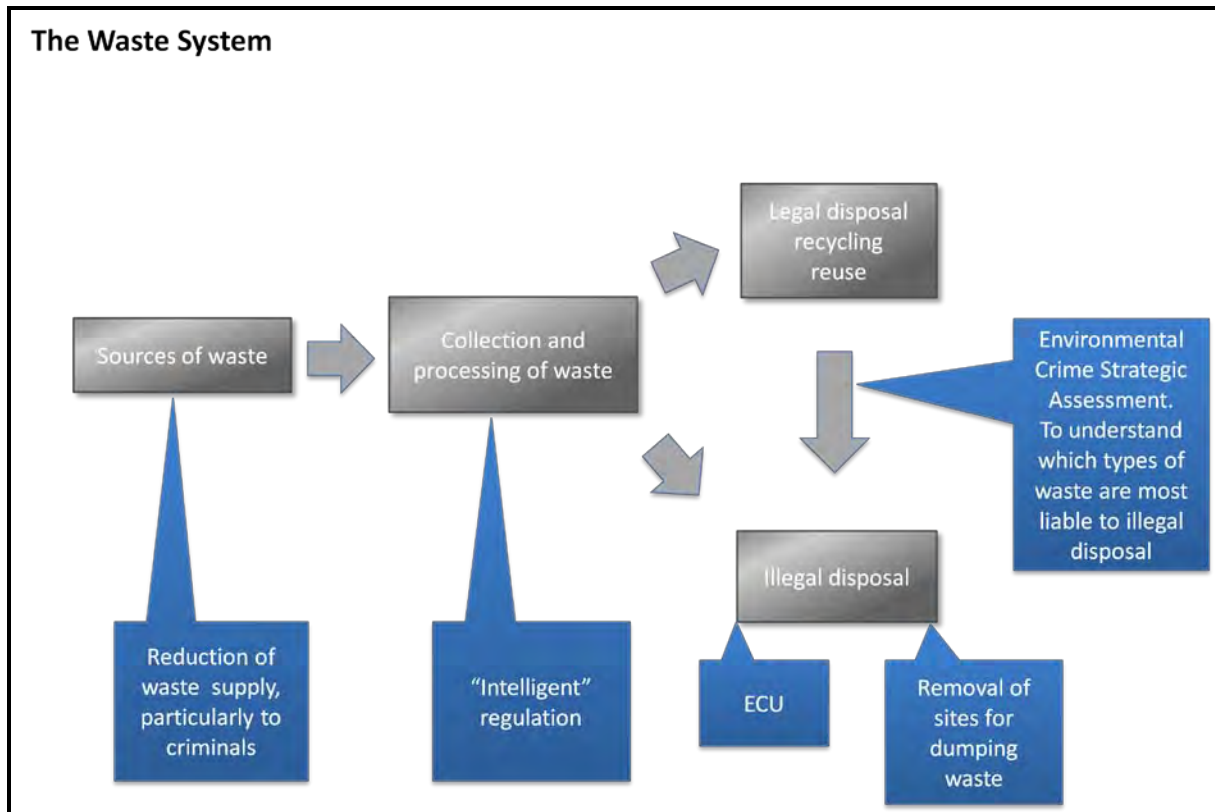
In carrying out this review, it rapidly became apparent that what has happened at Mobuoy needs to be seen in the context of the waste system as a whole. This system (see Fig 1) is fundamentally simple. Waste is produced, collected and processed, and then either disposed of legally or illegally.

Fig1



However, its management is extremely complex with many processes, drivers and different organisations involved. This review considers this system and suggests where key interventions might be made particularly in the context of combating criminality, (see Fig 2).

Fig 2



2.0 SITE DESCRIPTION AND HISTORY

Introduction

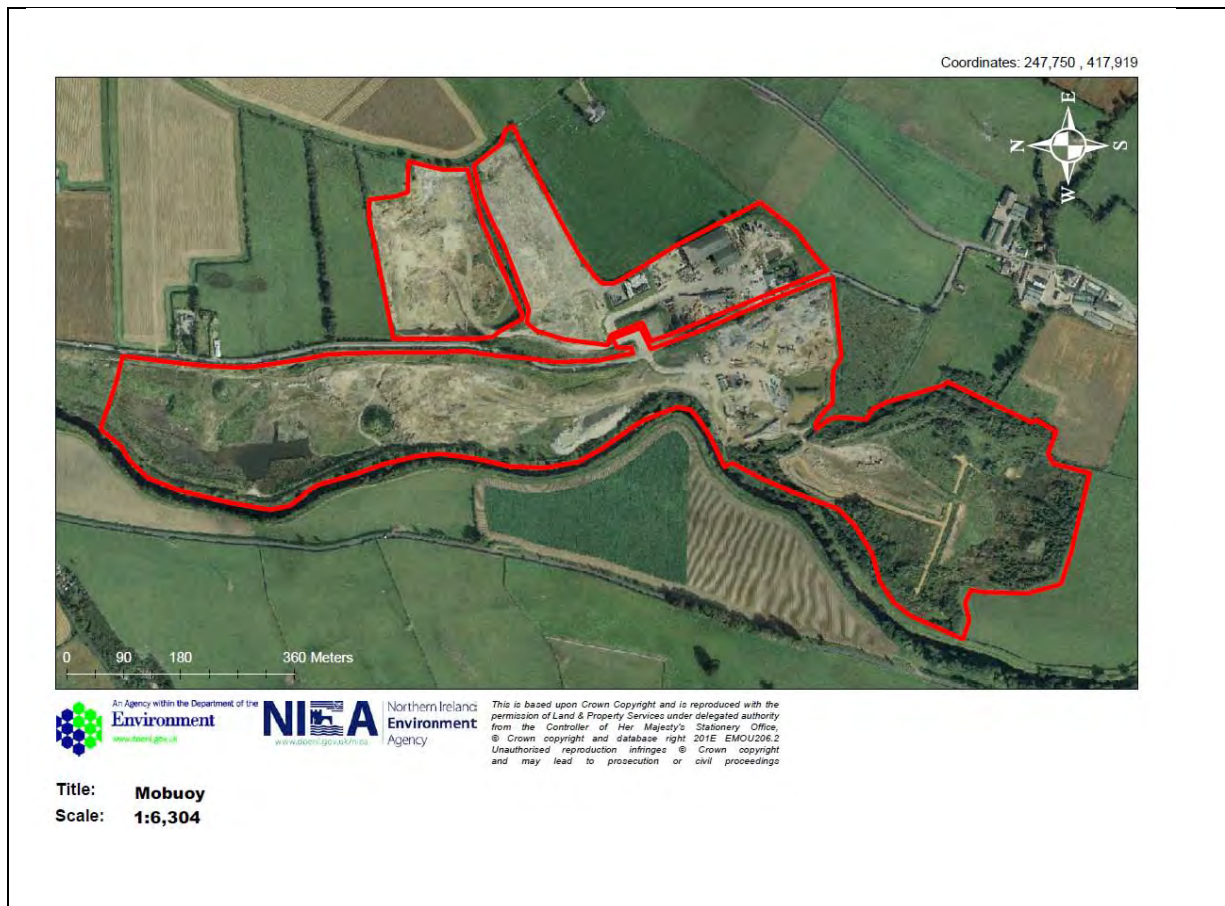
2.1 The site to which this review relates lies approximately 1.5 km west of the A514 Crescent Link ring road on the outskirts of Derry and about the same distance south of the main A2 Clooney Road (see Fig 3). Whilst the review may at times refer to particular parts of this area for specific purposes, for ease of reference the total area will be termed 'Mobuoy' or 'the site'.

Fig 3 Location



2.2 The total area now under investigation stretches to almost 1.4 km at its maximum length and varies in width from about 100m up to around 500m. It is adjacent to the east bank of the River Faughan and is almost all in the townland of Mobuoy (see Fig 4).

Fig 4 Aerial Photograph



2.3 A number of waste facilities have been created in this area. A landfill site owned and run by Derry City Council appears to date from 1980. In 1996, City and Industrial Waste Ltd (CIW) was granted a waste disposal licence to operate on this site. By 2004, a Materials Recycling Facility (MRF) had been created. Although a Closure Notice for the landfill site was issued in 2008, all the necessary requirements have still not been met.

2.4 Adjacent to the waste site, a sand and gravel business owned and operated by Campsie Sand and Gravel Ltd (CSG) has been in existence since 1993. The sand and gravel workings have gradually expanded and their full extent can be seen in an aerial photograph (Fig 4).

The History of Regulation at This Site

2.5 There are three elements in the regulatory history of this site: **development control** regulated by DOE Planning; **pollution control** originally regulated by Derry City Council (DCC), then the Environment and Heritage Service (EHS), and currently the Northern Ireland Environment Agency (NIEA); and finally **environmental health** regulated by DCC. Within each of these bodies, there are specialised teams, for example, separate Planning teams for mineral extraction and waste infrastructure and within NIEA, different teams covering closed landfills, waste transfer, contaminated land, groundwater and pollution response. In addition, the environs of the site are regulated by other NIEA teams. The Natural Heritage Directorate (NHD) regulates nature conservation and the Built Heritage Directorate, (BHD) is responsible for field monuments.

Development Control

2.6 The earliest planning approval identified during this review, was for a Council refuse tip which appears to date from 1980 and the earliest application to extract sand and gravel was in 1993. The timeline provided by Planning from 2000 (when electronic recording commenced) to date, contains over 1000 entries relating to its regulation of activities on the Mobuoy site or in the adjacent areas. The bulk of these simply track the progress of correspondence or note consultations relating to a total of 27 planning applications received during this period.

2.7 Planning matters referred to EHS / NIEA for comment between 2003 and 2013 included 37 consultations relating to sand and gravel operations, waste or recycling operations and infrastructure.

Pollution Control

2.8 Derry City Council granted a Waste Disposal Licence to CIW on the 30th September 1996. This authorised the deposit, transfer or disposal, of specified

materials to 'the Council landfill site'. It is not specifically made clear as to which landfill site this applies, however, it is likely to be the landfill at Mobuoy.

2.9 In 2003, responsibility for regulation of waste transfer and disposal transferred to the Department of the Environment and its agency the then EHS. From this time onwards, the Council's responsibilities in respect of waste consisted of managing contracts for the collection of waste from city facilities and following up any complaints made to its Environmental Health Section about Mobuoy. The Council as a waste producer is responsible under the Duty of Care obligations to ensure any waste produced is handled safely and in accordance with the law.

2.10 Several parts of the NIEA had regulatory roles at Mobuoy, the most significant of these being in the Environmental Protection Directorate. The responsibility for waste licensing which initially transferred from the Council to the then EHS under the Waste Management Licensing Regulations (NI) 2003, is now within the remit of the Land and Resource Management unit (LRM) based in Belfast. Within this unit, different sections regulate different aspects of the waste sector. At Mobuoy, the relevant regulatory functions carried out by the NIEA were: waste management licensing and the regulation of Pollution Prevention and Control (PPC) waste, closed landfills and waste transfer.

2.11 A separate unit of the same Directorate, the Water Management Unit (WMU) based in Lisburn, has two functions relevant to this site under the Water (NI) Order 1999. Firstly, to regulate consents to discharge of any trade or sewage effluent including any potentially polluting matter from the Mobuoy premises into waterways or underground strata; and secondly to investigate water pollution incidents or breaches of consent or licence conditions at the site.

Environmental Health

2.12 Derry City Council, as the Local Authority regulator of environmental health, is responsible for this site and has carried out several inspections in response to complaints received.

Other Functions

2.13 The Natural Heritage Directorate is responsible for the declaration and monitoring of the River Faughan as an Area of Special Scientific Interest (ASSI) under the Environment (NI) Order 2002. The ASSI was declared because of the physical features of the river and its associated riverine flora and fauna and in particular the population of Atlantic salmon which is of international importance.

2.14 As part of the DOE, the NIEA is not a separate statutory consultee under the Planning (NI) Order 1991, but can comment on planning applications sent to it by DOE Planning as part of a service level agreement.

Compliance History

2.15 There is a long history of non-compliances and enforcement action at this site. These are outlined below for each regulatory regime. The lack of integration between these different regulatory regimes makes overall site management far more complex.

Development Control

2.16 DOE Planning has supplied a timeline which records a total of 18 enforcement cases between 2004 and 2013. Of these 9 relate to CIW and 9 to CSG.

Pollution Control

2.17 The site is regulated for both the management and transfer of waste and to ensure compliance with relevant water legislation.

Waste

2.18 The compliance history is extremely complicated and made more so by the fact that different teams record this information separately.

- 2.19 The PPC Waste team's records in respect to the landfill facility, which has existed on this site probably since 1980, are as follows. A Closed Landfill licence was initially issued in August 2008 with correspondence continuing about site and licence conditions right up to April 2013. PPC staff has carried out 10 inspections, resulting in 2 warning letters highlighting 5 compliance issues, a referral to Planning for unauthorised land-filling, and an instruction to CIW for no further material to be deposited.
- 2.20 A site history, compiled by the NIEA's Waste Management team, summarises details of 37 actions, events or correspondence between 2003 and May 2013 regarding Mobuoy. Most relate to non-compliant processes or materials, the presence of leachate and contaminants on the site and the closure of the original landfill site including planning enforcement notices.
- 2.21 Much of this site history relates to a Materials Recovery Facility licence (originally issued in November 2004), which was amended and reissued in May 2009. From then to date, there have been 42 inspection visits resulting in 9 warning letters, 17 notices, and 4 licence suspensions for a variety of non-compliance issues with its Waste Management Licence, mainly concerning the type, quantity and storage of this waste. Finally, the licence was revoked in June 2013.
- 2.22 In 2007, the Transfrontier Shipment of Waste Regulations 2007 were applied to the MRF. These Regulations implement the Waste Shipments Regulation (EC 1013/2006) adopted by the European Union to provide for the supervision and control of shipments of waste within, into and out of the European Community. The NIEA's team dealing with these Regulations has carried out a total of 10 inspections since then including 2 audits and 4 samplings resulting in 1 compliance issue.

Water

- 2.23 The Regulation Group which is part of WMU has provided a site history which dates back to 1982 and lists almost 160 actions and correspondence items relating to the site and surrounding area. This is supplemented by a list of about

a further 30 actions, incidents or correspondence items from the local (non-NIEA) Water Quality Inspector (WQI) dating back to 1998. The combined chronology is a complex summary of consents issued, samples taken, inspections carried out, complaints made, compliance issues, pollution incidents, enforcement actions (warnings, cautions and notices) and contacts with other teams.

Environmental Crime Unit (ECU)

2.24 The NIEA's Environmental Crime Unit (ECU), originally within LRM's waste management section, was set up to investigate and prosecute serious and persistent environmental crime. In December 2008, its staff and functions were devolved into a separate unit reporting directly to the Chief Executive. This team is not involved with the day to day regulation of the site, but a number of incidents, outlined below, have been referred to it:

- 2007 March: a report of effluent ponding prompted a request from WMU to the former ECU to check paperwork for taking liquid away by tanker.
- 2007 December to April 2008: reports of gas odours resulted in site visits by ECU Officers with detection equipment.
- 2009 April: referral from LRM to the ECU, WRM and the Planning Service about illegal land-filling in the area of the settlement lagoons.
- 2010 December: WMU and ECU collected samples as part of preparation of a prosecution file concerning water pollution.
- 2011 February: an anonymous report of waste being buried at night.
- 2011 June: legacy landfill information passed to LRM and the ECU by the WQI.
- 2011 December: a request from the WQI to the WMU to supply LRM and the ECU with an AMAP report on leachate.
- 2012 February: referral from Planning to the ECU led to the current investigation, Operation Sycamore.

Environmental Health

2.25 Derry City Council, prior to the 30th of November 2004, regulated the waste site through the City Inspectors Office under The Pollution Control and Local Government (NI) Order 1978 and more recently, as the Local Authority Environmental Health Regulator, carried out several inspections in response to complaints received. Covering the period 2006 to 2013, these related to noise from traffic on access roads, plant noise, odour, a fire on the site and a recent fly infestation. These complaints were referred to the NIEA mainly responsible for regulatory activity at the site.

Other Functions

2.26 Staff from two teams within the NHD, Conservation Science (CS) and Conservation Designations & Protection (CDP), visited the River Faughan and its immediate surroundings to survey and designate the River Faughan ASSI between 2006 and 2008. From declaration of the ASSI in 2008, annual site integrity monitoring of the river has been undertaken by the Natural Heritage Regional Operations team. As a result of this monitoring damage reports were produced, however following assessment, no incident to date has had a significant enough effect on the special scientific features to necessitate referral to the Public Prosecution Service.

Overall Conclusions on Site Regulation and Compliance

2.27 There has been considerable regulation of both the CIW and CSG sites and the regulatory history is extremely complex, with a number of different regulators and compounded by a number of transfers of responsibility.

2.28 There needed to be greater coordination of effort and communication between the different regulators.

2.29 Despite this level of regulatory activity and a number of reports of possible suspicious activity, the illegal dumping was not discovered until 2012.

2.30 There is a long history of non-compliances at the waste sites and more recently the MRF facility was considered to be amongst the more problematic that the NIEA deals with. Enforcement action was regularly taken but repeated non-compliances continued.

2.31 Similarly, CSG once it had obtained its initial planning permission carried out the rest of its activities without planning permission, applying for these retrospectively. This resulted in Planning taking enforcement action on a number of occasions. However, the fact that a sand and gravel working cannot be restored fully to its former state and that safeguards cannot be put in place if retrospective permission is granted, calls into question the relevant Planning policy in respect of such retrospective applications.

Complaints

2.32 In addition to the compliance history, a number of complaints have been made to NIEA, DCC and Planning. These demonstrate that there have been concerns about both the management of the waste facilities and the possibility of illegal practices at Mobuoy. The ECU has recorded 7 complaints dating back to June 2009 and LRM has 4 recorded complaints also dating back to June 2009. There were almost certainly previous complaints but no record of these has been found. As discussed later in Section 4, some of the responses to these complaints highlighted a lack of clarity of responsibility, inadequate systems and a failure to take sufficient action.

2.33 The most significant complaint identified which has yet to be verified and for which a formal record has not been found only came to light very late in this review. It was reportedly made by DCC in December 2007 to the NIEA and concerned noxious smells in the Mobuoy area. This incident is dealt with in Section 4.23 and if proven to be correct could have resulted in the much earlier discovery of illegally dumped waste.

2.34 During the course of this review, a number of verbal reports have been made that illegal dumping was taking place at Mobuoy for some considerable time and that various authorities were aware. However, these have not been

substantiated and therefore cannot be commented upon. It is recommended that any evidence that could help to identify who carried out the illegal dumping at Mobuoy should be passed to the NIEA's Environmental Crime Team. Overall, however, the level of concern raised by a number of individuals and organisations should have generated a greater level of response amongst those regulating this site.

Recent Events

2.35 In February 2012, the Planning officers reported suspicions of possible illegal infilling of waste in sand and gravel pits outside of the licensed site to the ECU.

- Since that date, the ECU has carried out a large number of intrusive surveys which has confirmed the presence of illegally deposited waste over an increasingly large area. To date, it is estimated that a total of 516,000 m³ of mixed and macerated waste has been deposited.
- In November 2012, two individuals were arrested and questioned.
- CIW's waste licence was revoked in June 2013 and the site was closed. Following this a Notice was issued to clear the site.
- A file is being prepared for submission to the Public Prosecution Service regarding a number of alleged criminal offences detected during the investigation. The file is expected to be submitted during November or early December 2013.
- A total of £600,000 has already been spent on removing waste from the licensed site.
- Further details are provided in Appendix 1 which outlines what has happened in Operation Sycamore.

3.0 WASTE LEGISLATION, POLICY AND POWERS

Introduction

- 3.1 The legislative and regulatory framework for waste in Northern Ireland is complex. The draft revised Northern Ireland Waste Management Strategy 2013 contains references to eight European Directives, 19 pieces of domestic waste legislation and 14 relevant Strategies, Plans and Programmes.
- 3.2 All those involved in the waste management and disposal industries, including the transport, recycling and disposal of waste, operate under some form of authorisation from the DOE. These authorisations include carrier registration for waste transport operators, waste licences for recycling operators and permits for landfill sites. There is also provision for exemptions from waste management licensing for operators involved in recycling or beneficial re-use of waste material in a manner which has little impact on the environment.
- 3.3 A summary of the key regulations relating to the management, transport, treatment and disposal of controlled waste in Northern Ireland has been produced by WRAP. This is an organisation set up in 2000 to help promote recycling and create a market for recycled materials and which is funded by all four Governments across the UK as well as by the EU, (see Appendix 2).
- 3.4 A number of pieces of this legislation are particularly relevant to what has happened at Mobuoy and each is considered below.

Duty of Care, Waste Carrier Registration, and Fit & Proper Person Test

- 3.5 **Waste Management, the Duty of Care – A Code of Practice** was issued by the Department of the Environment in accordance with **Article 5 (9) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (the 1997 Order)**. This Article imposes a duty of care on anyone who handles controlled waste.

- 3.6 The Duty of Care system was designed to be self regulating and to be based on good business practice. It was not designed to deal with the circumstance of a criminal operator and as such can be quite easily circumvented, particularly if the waste is given to an apparently legitimate licensed operator who subsequently disposes of that waste illegally. Whether, as stated in the Code of Practice, the obligations of a waste producer cease at the point their waste goes to a transfer station or materials recovery facility needs to be clarified.
- 3.7 At least part of the illegally dumped waste at Mobuoy is traceable to a large number of waste producers in Northern Ireland which clearly demonstrates that the Duty of Care system is not working.
- 3.8 There is also legislation designed to track waste flows from the producer to their final destination. **The Controlled Waste (Registration of Carriers and Seizure of Vehicles) (Northern Ireland) Regulations 1999** requires the DOE to establish and maintain a register of waste carriers and sets out the basis on which the registration system operates. Waste transfers are monitored by means of transfer notes for non-hazardous waste and consignment notes for hazardous waste under the Waste Carrier Registration system.
- 3.9 However, it is widely recognised that the transfer note system, including the use of season tickets, is open to abuse. In the case of Mobuoy, this system has clearly failed to work, as large amounts of illegally dumped waste are unaccounted for by the system.
- 3.10 It is planned to tighten this system up in the **Environmental Better Regulation Bill**. In future, it is proposed that transfer and consignment notes will need to be carried at all times and will specify their origin and destination. Through the workshop (see Section 4.83), it was also suggested that the use of season tickets should be discontinued or modified and this needs to be considered.
- 3.11 It is equally important to ensure that the Fit and Proper Person Test which enables Company Directors to hold waste management permits and licences is robust. There are three elements to this test:

1. Consideration of relevant convictions
2. Technical competency
3. Financial provision

3.12 Relevant Convictions – the policy on what is deemed a relevant conviction has recently been revised in Northern Ireland. It is now shorter, more concise and incorporates recent changes made by both the Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA). It considers more broadly an applicant's conduct but if they have no criminal record and no substantiated conduct issues, the policy does not allow for unofficial intelligence which might link them to criminal activity. However, it is unlikely that this revised policy will prevent criminals entering the waste industry in Northern Ireland.

3.13 Technical Competency – when **The Waste Management Licensing Regulations (Northern Ireland) 2003** were produced, the section on technical competency was copied, with little amendment from the 1994 GB legislation. This is now out of date and needs to be revised to take into account new technologies and activities. Furthermore, using organisations such as the Waste Management Industry, Training and Advisory Board (WAMITAB), the Chartered Institute of Waste Management (CIWM) and the Environmental Services Association (ESA)/EU Skills Scheme, the Environment Agency (EA) in England has required waste operators to refresh regularly their technical competency, develop tailored training courses and enabled companies to obtain Environmental Management System (EMS) competency. This good practice should be adopted and implemented in Northern Ireland. The provision by which waste operators can register with WAMITAB and then have two years to get qualified needs to be removed. Similarly, a number of old District Council licences, due to planning delays, have 'grandfather rights' Certificate of Technical Competence (CoTC). This is not adequate for the management of modern waste sites and is a practice which should be ended.

3.14 Financial Provision – DOE's Financial Provision Policy aims to ensure that waste companies in Northern Ireland have sufficient, specific resources available to address the environmental and human health impacts of their

waste activity. Financial provisions for non-landfill activities are required under the **1997 Order** and the **Pollution Prevention and Control Regulations (Northern Ireland) 2003 (PPC Regulations)**. For landfill activities, the requirement is made by the **Landfill Regulations (Northern Ireland) 2003** and the **PPC Regulations**. The DOE is required to enforce these financial provisions and requirements. Given the potential for waste companies to default and leave the State with huge liabilities, the Department is currently exploring how the financial provision for waste activities in Northern Ireland could be strengthened. In particular, it proposes to:

1. Explore the boundaries to allow both emergency and after care actions to be taken if appropriate and necessary.
2. Not issue new waste authorisations until acceptable financial provision is formally in place.
3. Carry out regular reviews of the adequacy of financial provision with a maximum interval of three years for all relevant authorisations.

As part of this process, similar financial provision measures in both the **Energy Act 2004 (and 2008 amendment)** and the **Coal Industry Act 1994** are being reviewed. Early indications are that the model for financial provision provided within the Energy Act is much stronger than that used for waste management in Northern Ireland. It contains a number of features and principles which could be adopted to strengthen the waste management financial provision, though these changes would require amendments to primary legislation.

New Powers

3.15 As described in Section 2, the MRF facility at Mobuoy has had a long history of non-compliances with its waste management licence. Key issues with respect to the regulation to the MRF facility were the storage of too much and the wrong sort of waste and the time taken by the site operator to address these issues.

- 3.16 It is therefore not surprising there is a view that additional powers are needed to revoke or suspend licences or permits on the basis of significant non-compliances. Currently under **Article 12 of the 1997 Order** a waste management licence can only be revoked when there is a risk of pollution to the environment, harm to human health, or detriment to the amenities of the locality. In the case of suspensions, the current tests (lack of technical competence, serious pollution of the environment or serious harm to human health) are seen by the regulator as being much too easy to challenge.
- 3.17 Similarly, a further option would be to extend powers to serve injunctions when there is a significant non-compliance issue such as the breach of **Article 27 Notices under the 1997 Order** to remove waste. Currently, the DoE has no powers under the 1997 Order to apply to the court for an injunction.
- 3.18 In addition, Stop Notices could be introduced to stop quickly an operator who is polluting. Otherwise considerable harm can be caused before a case comes to court. Stop Notices could also be used to address significant non-compliance with licence or permit conditions.
- 3.19 Additional powers and/or a policy change could also be considered to deal with situations where controlled waste has been illegally deposited, enforcement action is ongoing, and then applications for waste authorisations are made either by suspects or individuals/businesses linked to them.
- 3.20 Initial legal advice on these possible legislative changes concludes that they would represent a significant legislative and change programme which could take up to four years. The programme would require changes to both policy and subordinate legislation and would probably require a new Waste Bill for the more substantive amendments. The desirability, scope and remit of any such legislative and policy changes would be for the Environment Minister to consider in the first instance and then in consultation with his Ministerial colleagues.

3.21 Other proposals for possible additional powers could include:

- Inspectorate duties to be similar to those of police officers
- Unified powers of inspection, enforcement search and seizure across all environmental regulation.
- Police Officers to be authorised persons under all environmental legislation and statutory consultees for all environmental permits and applications.
- Strengthened and simplified powers of seizure, detention etc.
- Search warrants that follow the process laid down in PACE and can be executed by departmental officers.
- Greater powers for enforcement notices.
- Greater legal personal responsibility for Directors.
- The ability to refuse an application for a permit or licence where a site is operating illegally.
- Plainly written legislation.

3.22 Some existing powers contained within the 1997 Order also appear not to have been used at all, or under used (see Appendix 3). This appears, at least in part, to contradict the need for some of the additional powers proposed above in sections 3.16 to 3.19.

Recommendation

3.23 The need for additional powers should be reviewed in an integrated way. It is recommended that a Task and Finish Group be established within the Department to carry out a comprehensive review of both the effectiveness of existing statutory and regulatory powers and identify options for any further

powers considered necessary. This review exercise should include legal support and inputs from the Police Service. The review should start with where and why the current regulatory and enforcement regimes are weak or failing; evaluate whether powers already exist to address these weaknesses and if so how these might be applied; and finally, and only then, identify any proposals for new powers. This exercise should be carried out immediately and when completed its recommendations presented to the Environment Minister for consideration.

Other Legislative Issues

Exemptions

3.24 The legislation in relation to exemptions first came into force in GB in the early 1990s and was designed to apply to small scale activities posing low risk. At this time, waste was mostly going to landfill and recycling and recovery was minimal. By the time the legislation was introduced to Northern Ireland in 2004, the waste industry was changing with much greater levels of recycling and recovery. These are significant problems associated with exemptions. These include:-

3.25 Minimal regulatory control – Resources dictates that an exemption is inspected once a year or once every 3 years unless complaints, incidents or breaches are recorded. The less scrupulous operators take advantage of this. More and more resources are being taken up regulating exemptions which yield little income in fees which results in less time for regulating licensed and permitted sites.

3.26 Experience has shown that exemptions are not small scale and not low risk. Breaches frequently include excessive quantities of waste on unsuitable restricted sites, odorous waste, and noisy waste activities. All of which pose significant risk to the environment and harm to human health. For example:-

- A paragraph 12 exemption can permit the treatment of up to 228,800 tonnes of recyclates with minimal infrastructure, no management requirements and no prerequisite to have planning or a Water Discharge Consent in place.

- A paragraph 14 exemption can permit the manufacture of up to 182,000 tonnes of soil or soil substitutes with minimal infrastructure, no management requirements and no prerequisite to have planning or a Water Discharge Consent in place.

- A paragraph 18 exemption for beneficial use permits farmers to store an undefined number of tyres on their farm for an undefined period of time. It is estimated that there are approximately 4.4 million tyres on NI farms.

- A paragraph 19 exemption for relevant works permits an undefined quantity of construction and demolition waste for the purposes of infilling. Operators apply to infill many thousands of tonnes – avoiding all landfill controls and landfill taxes.

3.27 The wording of exemptions is very broad, vague and open to misinterpretation and excessively light touch compared to the conditions applied in a licence/permit. There is no Fit and Proper Person Test so the system can be abused by those with relevant convictions, Operators have no financial provision and some continually go into voluntary liquidation, leaving waste deposits and then move on to new sites. Some also totally ignore any form of technical competence/management of their site.

3.28 Action can and is taken to revoke exemptions, however, there is nothing to stop an operator submitting an application for an exemption once the revocation comes into effect and the whole cycle begins again.

Recommendation

3.29 This legislation has not been considered since its inception and it is strongly recommended that the exemptions system is thoroughly reviewed in line with changing legislation and waste trends with the aim of reducing abuse of the system.

Proceeds of Crime Act 2003 (POCA)

3.30 The Proceeds of Crime Regime has been used to good effect by the ECU when prosecuting cases on indictment at Crown Court Level. Since 2009, the DOE has made Confiscation Orders in 25 environmental crimes cases totalling £1,944,136. This can be compared to a total of £1,268,000 in fines imposed in 470 environmental crime cases between 2003 and 2013. The legislation means that the sanctions imposed against waste criminals has significantly greater impact than the fines normally imposed. However, in relation to the profits that can be made through waste crime, it is still not, in many cases, an effective deterrent.

Recommendations

3.31 It is recommended that the DOE continues to use POCA to increase the financial penalties for carrying out waste crime. In addition, the money laundering powers under POCA should be used to provide additional sentencing power.

3.32 However, whilst the large financial penalties which can be obtained under POCA are important, custodial sentences are also needed to give a clear message about the seriousness of this type of crime.

Polluter Pays

3.33 What is missing from the current sanctions to address waste crime is an effective mechanism to make the polluter pay. In the case of Mobuoy, the cost of removing the illegally dumped waste could cost up to tens of millions of pounds. This is not a new problem. An analysis in 2012 calculated that DOE had prosecuted 454 offenders for the dumping of illegal waste since 2003 but that none of this waste had been removed or remediated. Assuming that a risk assessment required the removal of waste from 100 of these sites, with an average volume of 10,000 m³ and a removal cost of £215/m³ (based on the repatriation of waste to the Republic of Ireland project) it would cost £250 million. Furthermore, failure to remove the waste could result in infraction costs if the UK was found to be failing in its duty under the EU Waste Framework Directive.

Recommendations

3.34 Unfortunately, this issue has not been addressed meaning that the legacy of illegally dumped waste and its associated costs continues to grow. It is recommended that this issue is now addressed as a matter of urgency starting with the adoption of a policy position followed by an action plan to address the problem of legacy sites. This plan should set out how the polluter pays principle could be incorporated into the waste legislation and how the legacy problem of illegal dumps should be risk assessed, funded and removed.

3.35 In the meantime, a possible mechanism to get the polluter to pay could be through the use of the Environmental Liability (Prevention and Remediation) Regulations (NI) 2009 (see Sections 3.39-3.40).

Civil Sanctions

3.36 The Macrory Report concluded that criminal sanctions are not always the most appropriate sanctions and that UK regulators needed a more flexible and proportionate toolkit. As a result in 2008, the UK Government introduced the

Regulatory Enforcement and Sanctions Act which conferred civil penalty powers on bodies such as the Environment Agency.

3.37 In Northern Ireland, in 2011, the Department of the Environment published a White Paper on Better Environmental Regulation setting out the Department's intention to review criminal sanctions and bring forward proposals to confer civil penalty powers onto the NIEA.

Recommendation

3.38 This has not yet happened and it is recommended that the Department identifies whether these sanctions are needed and if so how they might be applied.

The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009

3.39 These complex Regulations were relatively recently transposed into Northern Ireland law and have only so far been used to prevent damage to a protected habitat.

3.40 It is possible that these Regulations could be applied to Mobuoy in order to recover the costs of remediation and it is recommended that this is considered. However, it should be noted that the Regulations can only be used for matters that took place after their transposition in July 2009.

The Workshop & Increased Powers/Changes to Legislation

3.41 A number of suggestions were made at the workshop (see Appendix 4) for increased powers or changes to the legislation which have not already been considered above.

These included:-

- Integrating the Carrier Registration System with DVA/RTU freight and vehicle tax.
- Limiting the number of authorisations for waste transport, treatment and disposal.
- Reviewing the end of waste quality protocols.
- Harnessing powers in other relevant legislation – e.g. Planning Order.
- Making greater use of injunctions and disqualification of Directors.
- Obtaining greater regulatory controls on skip hire companies.
- Increasing landowner liability.

Recommendation

3.42 It is recommended that these suggestions are considered by the Task and Finish Group examining the need for additional powers (see Section 3.23)

Forthcoming Legislative Change

3.43 Following the Department of the Environment's Better Regulation White Paper 2011, a draft Environmental Better Regulation (Northern Ireland) Bill has recently been consulted upon. This Bill contains provisions to introduce an integrated permitting regime to replace the current array of environmental permits. The Department's current permitting arrangements fall under a range of separate regulatory regimes which are governed by over forty pieces of primary and subordinate legislation. The Bill will also seek to rationalise powers of entry. New Environmental Offences primary legislation is also planned.

3.44 As discussed in Section 2.15, there was a lack of integration between the different groups regulating the Mobuoy site. The introduction of an integrated permitting system would help address this issue.

4.0 REVIEW OF THE NIEA'S ORGANISATION AND SYSTEMS

Strategy

- 4.1 The First Northern Ireland Waste Management Strategy (2006-2020) entitled "Towards Resource Management" was produced by the DOE's Environment Policy Directorate (EPD) and was published in 2006.
- 4.2 In 2010, The Waste Programme Board, a non-statutory body, chaired by the Minister of the Environment, was set up. It in turn set up a Task Group in 2011 to reassess the 2006 Strategy in order to ensure that Northern Ireland could deliver the overarching aims of the revised EU Waste Framework Directive.
- 4.3 A revised Northern Ireland Waste Management Strategy, "Delivering Resource Efficiency" was produced and consulted upon in 2013. This Strategy moves the emphasis of waste management in Northern Ireland from resource management, with landfill diversion as the key driver, to resource efficiency.
- 4.4 Section 6 of the draft 2013 Waste Strategy covers better regulation and enforcement. Whilst recognising that "a significant amount of illegal activity in the waste sector over the past decade has involved organised crime", the section covering enforcement and tackling organised environmental crime is brief, given the likely scale of the problem.
- 4.5 The Department does not appear to have a formal process for evaluating the consequences of strategies and policies in terms of criminality. In addition, it is only very recently that two posts were created to develop operational policy and input to national strategy
- 4.6 The Police Service of Northern Ireland (PSNI) produced a Strategic Problem Profile for Environmental Crime in Northern Ireland in July 2012. This report analysed the scale and scope of environmental crime including waste crime in Northern Ireland and identified involvement by organised crime gangs, and the potential and emerging issues. It concluded that in Northern Ireland two main *modus operandi* are seen, the illegal dumping of waste product in registered

landfill sites and the illegal dumping of waste on unlicensed sites such as farmland. The PSNI is currently producing a Strategic Problem Profile which focuses solely on waste crime in Northern Ireland.

- 4.7 The Department's ECU has produced a strategy for its activities in 2013/14. It sets out the principles upon which and how the unit will act. It also shows how the Department will use the National Intelligence Model and outlines how the workload of the unit will be managed and prioritised. The ECU also has a balanced scorecard with detailed measures and targets.
- 4.8 There was no overall strategy for the regulation of City & Industrial Waste Ltd and the management of the Mobuoy site.

Conclusions

- 4.9 There is no overall strategy for preventing, deterring and combating waste crime in Northern Ireland.
- 4.10 Within the draft 2013 Waste Strategy, in terms of "better regulation" it was not clear where the balance lies between removing regulatory burden versus creating a more effective regulatory regime. Better regulation may not be the right approach if criminality is widespread in the Northern Ireland waste industry.
- 4.11 The scale of the illegal dumping of waste at the Mobuoy site must call into question the validity of some of the waste data in the draft 2013 Strategy (see Section 3) particularly in those sections relating to waste recycling and waste disposal.
- 4.12 There are insufficient resources deployed within the Department to develop operational policy and to input to strategic waste policies.

Recommendations

- 4.13 A separate and comprehensive strategy, with a detailed action plan, to prevent, deter and combat waste crime should be developed as soon as is practicable. The strategy should also encompass consideration of creating the right climate and incentives for legitimate waste operators. This strategy should be reviewed on an annual basis using an updated summary of intelligence concerning waste crime.
- 4.14 When the Department is developing new waste legislation and policies, these need to be 'crime-proofed' in order to understand fully how criminals might react to or exploit the proposed changes. This will require closer working between various branches within the Department.
- 4.15 There needs to be dedicated resource within the Department to develop operational policy and to input to strategic policy on waste and waste crime.
- 4.16 Problematic sites such as Mobuoy should be identified and action plans put in place to deal with them.
- 4.17 A new concept of 'intelligent regulation' should be considered. This would build on an earlier approach formalised in 1992 by I. Ayres and J. Braithwaite which suggested that regulators should adopt a differentiated enforcement strategy based on the behaviour and history of the businesses they deal with. However, in the case of Northern Ireland, where criminal infiltration into the waste sector may be significant, the regulatory approach needs to be supported by a structured intelligence framework. This should help establish who the regulator is dealing with and how they might be operating. The term 'intelligent' is used because it can cover both the use of intelligence and the necessary responsiveness to deal with a range of operators from the criminal who has no intention of compliance to the legitimate operator who is prepared to go beyond regulation

Leadership

- 4.18 City & Industrial Waste Ltd's Mobuoy site has been regulated by the Department through the EHS and subsequently the NIEA since December 2003. However, it has only been possible to interview those currently in leadership positions.
- 4.19 Four NIEA units have been involved with the regulation of this site and its environs. These are LRM, WMU, ECU and Conservation, Designations & Protection (CDP). These units have three separate reporting lines; LRM and WMU report to the Director of Environmental Protection, CDP to the Director of Natural Heritage and the ECU to the Chief Executive.
- 4.20 During the period July 2008 to August 2010, there was no permanent Director of Environment because of "acting up" arrangements in place to cover other senior vacancies. The post was filled on a permanent basis in August 2010.
- 4.21 For a period of 3 years (2009 - 2012), LRM had no permanent Head. A number of people acted up in rotation with a consequent lack of continuity of leadership.
- 4.22 In 2012, an individual was appointed to lead LRM.
- 4.23 An Environmental Crime Unit was formed in December 2008 and a person appointed to lead this unit in 2009. The Unit has grown substantially to a complement of 34 staff.
- 4.24 All of these teams are ultimately under the management of the Chief Executive of the NIEA who has been in post since 19th November 2012. All staff in the Department operate at all times under the direction and control of the Minister of the Environment and are managed under the oversight of the Departmental Board chaired by the Permanent Secretary. As noted above the Chief Executive of the NIEA has sanctioned a criminal investigation (Operation Sycamore), set up an NIEA Waste Task Force which he chairs, and helped commissioned this review.

Conclusions

- 4.25 The leadership of the ECU has been extremely proactive in developing both the capacity and capabilities of the Unit. An extremely positive relationship, including a strategic partnership, has been built with the PSNI. However, as discussed elsewhere in Section 4.36, the relationship with other parts of the NIEA is poor.
- 4.26 Since 2012, there have also been significant changes made to LRM, creating a number of new teams (Operational Policy Team, Waste Authorisations Team, Waste Authorisations Enforcement Team and an Information and Audit Team).
- 4.27 Leadership in LRM was lacking for a number of years prior to 2012 and one of the results of this was a failure to develop the necessary enforcement capability to deal effectively with non-compliance issues at regulated sites. A recent attempt was made to rectify this by the creation of a separate enforcement team within LRM but has failed due to recruitment and retention problems.
- 4.28 The WMU appears to be well led and its Inspectors appear comfortable and capable with taking the necessary enforcement action relevant to their area of responsibility.
- 4.29 However, overall there is a distinct lack of strategic leadership in dealing with illegal waste crime in Northern Ireland. To date, there has not been a thorough analysis of the problem or the production of a co-ordinated set of actions which will prevent, deter and combat waste crime.

Recommendations

- 4.30 It is recommended that the outcome of creating a waste sector in Northern Ireland that complies with the law, protects the environment and underpins resource efficiency, is made a corporate priority for the Department.
- 4.31 A single Executive Director should be responsible for delivering this outcome. LRM, the ECU and the new Intelligence Unit (see section 4.41) should all form part of this new Directorate. It is critically important to ensure that those

appointed to the key leadership posts within this new Directorate are of the right calibre.

Structures

- 4.32 The officers regulating and enforcing at this site sit within 3 separate units (LRM, WMU, and ECU). This has led to the lack of a joined up approach and overview.
- 4.33 Whilst the LRM and ECU teams are based in Belfast, the WMU team is located in Lisburn and the Regional Operations Team (ROT), who carry out water quality sampling, is based in Derry. Furthermore, in this case, the local ROT whilst working on behalf of NIEA, are actually employed by Omagh District Council.
- 4.34 There are many other parts of NIEA organisation which have had direct or indirect involvement in the regulation of City & Industrial Waste Ltd Camspie Sand & Gravel and the surrounding environs. These include NIEA staff from the Conservation, Designations and Protections Unit (part of the Natural Heritage Directorate), NIEA staff inputting to the Planning Service and Minerals Unit and staff in the Environment Policy Division (EPD) who work on legislation, strategy and policy relating to the management and disposal of waste.
- 4.35 The ECU has developed a close working relationship particularly with the Police Service Northern Ireland (PSNI) but also other Government Enforcement Agencies such as HM Revenue and Customs (HMRC), the Serious and Organised Crime Agency (SOCA), the Social Security Agency (SSA) and the Department of Justice (DOJ).
- 4.36 The structural separation of the ECU from LRM in December 2008 appears to have led to a division between the two sections. In particular, a lack of communication and trust was cited as a major problem by a number of officers in both units. Attempts have been made to improve this through the creation of contact points; however, this appears to have provided only a partial solution.

Conclusions

- 4.37 The current structures within the NIEA do not facilitate a joined up approach to the regulation of waste sites such as Mobuoy. Communications and closer working between the NIEA and both the EPD and Planning could also be improved.
- 4.38 The system of inspections involving a number of different officers, inspecting the site for different purposes, most of whom are based in Belfast or Lisburn 1½ to 2 hours from this site, is an inefficient use of the total resource.
- 4.39 The creation of a separate ECU has led to enforcement being seen as a separate activity from regulation and to the loss of a common outcome for these two units. ECU appears to be focussed on combating criminality whilst LRM sees its key role as protecting the environment.

Recommendations

- 4.40 A number of recommendations which are relevant to structure are made in other sections:
- Create a dedicated resource within LRM and ECU to develop operational policy and input to strategic policy (Section 4.15).
 - Place the ECU, LRM and Intelligence Unit under one Director (Section 4.31).
 - Lead Inspectors for all major waste sites (Section 4.56).
 - Phase out the LRM Enforcement Team (Section 4.57).
 - Consider the employment of in-house legal expertise and sharing a Waste Industry Analyst with sister Agencies (Section 6.49).
- 4.41 Within the new Directorate responsible for waste regulation and enforcement, a new Intelligence Unit should be created. It would gather and analyse intelligence both from within and outside the NIEA on behalf of both LRM and the ECU. Whilst a large part of this intelligence might be used to combat criminality, the Unit should also have a role in aiding legitimate waste operators

and promoting good practice. The Intelligence Unit could also help prioritise and track enforcement activity as well as audit regulatory standards.

4.42 With the probable introduction of integrated permitting, consideration should be given as to whether WMU should be included in the same Directorate as LRM, ECU and the Intelligence Unit. It also needs to be decided whether the inspection regimes of LRM and WMU should, as is currently the case, remain separate or whether they should be integrated.

Clarity of Responsibility

4.43 Each section (LRM, WMU and ECU) was clear about its specific responsibilities in relation to regulating City & Industrial Waste Ltd. However, there was no mechanism for a lead person to take an overview of the overall regulation of this site.

4.44 Enforcement appears to be seen in LRM as a separate process from regulation. This doesn't appear to be the case in WMU. For a considerable period of time (2008 – 2012), escalation of lower level enforcement (i.e. that not dealt with by ECU) was extremely limited in LRM. An initiative to fill this gap was started in 2012 by the creation of a separate Enforcement Team in LRM. Originally designed to have 6 staff, recruitment and retention problems now mean that only 2 staff members remain.

4.45 LRM officers took the view that their duties related to activities strictly within the boundaries of the licensed sites and did not generally investigate or report activities that might have taken place outside of these boundaries.

4.46 The ECU has produced a document which sets out the type and scale of enforcement cases it will deal with. However, inevitably resource constraints mean that the ECU must prioritise and will not be able to deal with all cases. It is not entirely clear what happens to incidents which are not prioritised for investigation.

4.47 There were a number of occasions where reports of possible illegal activity at Mobuoy were reported which highlighted a lack of clarity of responsibility,

inadequate systems and a failure to take sufficient action. Three incidents are described below to illustrate these shortcomings.

4.48 The first incident was reported to have taken place on 7th December 2007, when a member of the ECU stated having made a site visit to Mobuoy to check out a complaint of noxious smells which it is believed was reported by Derry City Council. A further site visit was made on 20th April 2008. Two gas tests were carried out in an area outside of the licensed site where subsequently waste was found to have been illegally dumped. The readings were high and, in the opinion of the officer concerned, confirmed the presence of landfill gas which it was concluded could only be caused by degrading organic material. The officer brought this matter to the attention of the line manager and recalls suggesting an intrusive survey. However, for reasons unknown to the officer, the investigation was not progressed beyond this initial site investigation. At the beginning of 2009, the officer concerned moved to another section of the ECU. However, the validity of this report has been questioned by a senior staff member in the ECU and no Incident Report has been located to confirm it.

4.49 The second incident occurred on 15th December 2008, when the Loughs Agency wrote to the NIEA to pass on the concern of the River Faughan Anglers' Association that there was 'the possibility of some material outside of the disposal category which may be being shredded and disposed of on site'. A further letter from the Loughs Agency dated 27th April 2009, stated 'it would appear that the Agency did not receive a response and I would be grateful for an indication if the Northern Ireland Environment Agency is in a position to respond to this correspondence'.

4.50 The final incident took place in April 2009, when illegal dumping of material was discovered by the NIEA mainly within the boundary of the licensed site but also slightly extending beyond it. This incident was reported by an LRM officer to the ECU, WMU and the Planning Service.

Conclusions

- 4.51 No mechanism was put in place to provide overall accountability for the regulation of this site.
- 4.52 This lack of any overall accountability could explain the failure to deal fully with the incident described in Section 4.50 above. Whilst all parties took some action concerning this incident, no one followed through to complete the necessary enforcement action.
- 4.53 With respect to the Loughs Agency letters, no record of these having been received by the NIEA has been found so it is not possible to take the matter further. It is not clear whether this is a systems failure or whether the letters never reached their destination.
- 4.54 In the case of the incident described in Section 4.48, if the incident as described is confirmed, and if further action had taken place, then illegal dumping could have been detected four years earlier than it was. However, this incident requires further and detailed investigation (see Section 4.60)
- 4.55 When the ECU was formed in 2008, an artificial boundary was created between the regulation of waste sites and enforcement activity. As a result, LRM neither had the culture nor the resources to escalate lower level enforcement activity. This aided the site operator to get away with repeated periods of non-compliance on the licensed site and perhaps could have made it easier for illegal activity to be carried out elsewhere.

Recommendations

- 4.56 Every major waste site should have a Lead Inspector who has overall accountability for that site. If that Lead Inspector leaves, there should be a formal handover process to the next accountable officer.
- 4.57 There should be no separate Enforcement Team in LRM. Instead, all Inspectors should be capable of carrying out the necessary enforcement work to ensure site compliance and should be selected and trained accordingly.

4.58 With respect to enforcement, the relative roles of LRM, WMU and the ECU should be reviewed with the aim of establishing absolute clarity as to who is responsible for what and how matters are passed from one unit to another and are recorded and accounted for.

4.59 All cases where enforcement action is started should be logged and reviewed on a regular basis by an Enforcement Panel. Any cases that are not progressed should be formally closed down with a written record as to why no further action was proposed or possible.

4.60 With respect to the incident outlined in Section 4.48, an independent investigation is required to establish the facts.

Aptitudes, Skills, Culture and Conduct

4.61 The staff from the ECU, LRM, WMU, and CPD Units interviewed for this review come from a wide range of backgrounds and possess a diversity of qualifications, skills and experiences.

4.62 However, a key issue is that, whilst many NIEA Inspectors are excellent regulators carrying out a very difficult task, some do not possess the necessary aptitudes (assertive and not afraid of conflict, a knowledge of the businesses and processes they regulate, observant and able to ask the right questions, and a knowledge of the law and its application). This appears to be widely recognised and to a large extent can be caused by the processes used to appoint individuals to these posts.

4.63 For regulatory roles, this recruitment process is not sufficiently flexible or targeted to ensure that people with the right aptitude are selected. This issue has already been recognised in recruitment to the ECU and a more targeted approach has been adopted.

4.64 A further issue is the time taken to fill posts which has resulted in large numbers of unfilled posts. Currently a recruitment process for 20 new posts in LRM has involved the interviewing of over 600 applicants and is taking many

months to complete. In addition, there is almost a 50% vacancy rate in LRM at the present time imposing severe work pressures on the remaining staff.

- 4.65 As a result, vacancies are often covered by contract staff who may be employed on a temporary basis for a number of years. A total of 4 years in the case of one person interviewed.
- 4.66 Most Inspectors in LRM or WMU received no formal induction or training on starting their jobs. In the majority of cases, their training was 'on the job' supplemented by ad hoc courses when time and funding permitted.
- 4.67 The 'silo' culture was referred to by a number of staff interviewed. In relation to regulation of the Mobuoy site, this led to different Inspectors only looking to their area of responsibility, within the so called "red" line, and being unaware of anything else happening either on the site or on its vicinity.
- 4.68 Across all units decision making often appeared to be passed to a higher level suggesting a lack of empowerment of front line staff.
- 4.69 During the course of this review, a large number of staff from the NIEA, EPD and Planning have been interviewed. All have been extremely helpful and there was no evidence of any attempt to withhold information or of wilful wrong doing.

Conclusions

- 4.70 It seems to be widely recognised within the NIEA that not all of the officers employed to be regulators have the right aptitudes, skills, knowledge and experience to carry out their role effectively.
- 4.71 Ensuring that people with the right aptitudes are appointed to regulatory roles is not aided by the nature of the recruitment processes followed and there is also a lack of formal training and ongoing development.
- 4.72 The culture in the ECU is different to that of LRM. The ECU is focussed on combating criminality, uses the National Intelligence Model (NIM) to inform all of activities and generally adopts a disciplined approach to its work. It is

protective about sharing intelligence. LRM is more focussed on environmental protection and its work is driven by ensuring compliance with licences, permits and working plans. Both access to and input to the intelligence system appears rare in LRM.

4.73 The time taken to recruit is also an issue and this is having a direct effect on NIEA's ability to have sufficient staff of the right calibre to regulate NI's waste industry. Retaining good staff was also cited as an issue and this can cause a lack of continuity in the regulation of sites such as Mobuoy.

4.74 There is no formal induction, structured training, professional development or career planning in LRM and WMU with consequences for the consistency and standards of regulation and the retention of staff.

4.75 As stated in 4.72, there are significant cultural differences between LRM and ECU, however all units appeared to work mainly within their own silo and key decision making appeared to be taken only at senior level.

4.76 Neither this review nor the criminal investigation (Operation Sycamore) has detected any covering up or collusion by Government employees with respect to the illegal dumping at Mobuoy. However, given the extremely large amount of money involved and the possibility of intimidation, this cannot be ruled out.

Recommendations

4.77 It is critical to change the recruitment process for regulator posts. Any new process must facilitate the selection of people with the right aptitudes for a regulatory role.

4.78 All regulatory officers should receive structured initial training. NIEA should consider the type of programme that all Environment Officers in the Environment Agency undertake before becoming operational.

4.79 A Technical Development Framework should be drawn up and used to guide on-going training and professional development.

- 4.80 All officers in the new Directorate should receive basic training on the use of intelligence systems. The requirement for regular inputting of intelligence should form part of everyone's job description.
- 4.81 Consideration should be given to creating a career structure for regulators within the Department. This should include the opportunity to move freely between LRM, the ECU and the new Intelligence Unit, as well as EPD and WMU.
- 4.82 It is recommended that the official internal whistleblower system is actively promoted to ensure that anyone who believes that another staff member is acting improperly or failing to carry out their duties properly can report the matter in a confidential manner. In addition, there is a structured mechanism to investigate allegations made against staff by members of the public or those who are regulated. This is to ensure both proper accountability of Government employees and to protect staff from spurious allegations.

Workshop

- 4.83 A one day workshop was arranged to bring together representatives from the key relevant regulatory, enforcement and policy development teams within the Environment and Marine Group (EMG). The workshop was chaired by the Chief Executive of this group within DOE.

The overall aim of the event was to evaluate, in the light of Mobuoy, the role of different units in meeting a common outcome, defined as "creating a waste sector in Northern Ireland that complies with the law, protects the environment and underpins resource efficiency." The workshop was also a vehicle for those involved in the regulation and enforcement of the waste industry to generate ideas and proposals for improving the current systems.

A synopsis of the workshop is given in Appendix 4 but in summary, the need for change was widely recognised amongst attendees, given the significance of the Mobuoy incident.

It was reassuring to find that many of the key outputs from the workshop, the problems identified and the measures proposed to address them, echo and validate some of the conclusions reached elsewhere in this review.

5.0 EXTERNAL FACTORS RELEVANT TO THE MOBUOY INCIDENT

Introduction

5.1 The second Term of Reference was to review some of the external factors relevant to the extensive illegal waste dumping at Mobuoy.

5.2 A number of different factors were considered. These included:-

- The supply of waste to the site and monitoring of waste flows more generally.
- Derry City Council's past and present involvement with the site.
- The extent of criminal infiltration into waste management in Northern Ireland.
- The need for and benefits of new strategic waste infrastructure.
- Sand and gravel pits and the Planning regime that governs these.

5.3 Meetings were held with DOE Planning staff, Derry City Council, the Quarry Products Association and the River Faughan Anglers Ltd.

Waste flows

5.4 There are three sources of information for non-hazardous waste flows in Northern Ireland, all stemming from different components of the Waste and Contaminated Land (NI) Order 1997. These are Waste Transfer Notes, Licensed Site returns and audits of Local Authority waste data. All waste flow information is self declared.

5.5 The most fundamental of these is the Waste Transfer Note (WTN) which must be issued when waste changes ownership; i.e. the 'transfer' element applies to

the owner, not the location of the waste. All controlled waste needs a WTN and it is an offence not to be able to produce such a note on request from the regulator. However, these notes are not submitted to the regulator but must be held by the issuer for two years. There are around half a million produced in NI alone every year, and the resource available to audit these is currently extremely limited.

- 5.6 The enabling legislation does not compel the issuer to record the quantity as a tonnage (e.g. 'lorry loads' or 'bags' is enough) and the notes do not record the source of the waste by Standard Industrial Classification (SIC) code as is mandatory in England and Wales. A new electronic recording system (EDOC) is in the late stages of development by the NIEA and should be operational by early 2014, but it will not address these weaknesses.
- 5.7 Licensed sites, including MRFs, landfills as well as some exempted sites, are required to make quarterly summarised returns to NIEA of the weight or volume of materials stored or moved from one authorised site to another. Description of the materials involved is achieved using European Waste Classification (EWC) codes. These returns are emailed to the Agency where they are recorded on a central database. However, since not all licence conditions are available on a database, it is not as straightforward as it should be to compare them with the returns. Furthermore, as only District Council areas rather than site licences (and registration of carrier licence numbers) are requested, the fine detail of waste flows is difficult to discern.
- 5.8 Sites are routinely inspected to ensure compliance with licence conditions. Visits are usually unannounced. LRM also carries out a more rigorous audit of the site at least once every two years to check each condition in detail. The operators are given some notice of these to enable them to have all the paperwork ready for viewing. Exempt sites are only visited at time of application and renewal.
- 5.9 All 26 Councils supply quarterly returns on what waste they collect and where it was sent for various purposes. They submit their returns to WasteDataFlow, the web based system for municipal waste data reporting used by UK Local Authorities to Government. The system went live on 30 April 2004 in England

and Wales. Northern Ireland commenced reporting in April 2005 and Scotland in 2006. WasteDataFlow was developed to replace a number of the traditional municipal waste management surveys, providing a single comprehensive data return point to monitor progress against national targets and more frequent monitoring of progress against Article 5 of the Landfill Directive. All councils in NI have their returns audited in depth approximately every 6th quarter by NIEA.

5.10 The only readily available source of information on waste flows to and from any individual waste facility is the database maintained by LRM containing the returns which are self-declared quarterly by site operators. These returns date from 2008, but the data is so coarse-grained that it is of relatively limited value for analysis. The data indicates tonnages moved between one Council area and another or moved out of Northern Ireland by that facility. In the case of Mobuoy, 10 Council areas are listed as supplying or receiving material. In the 4 year period for which returns are available the total amount noted as received is just over 280,000 tonnes and the total removed about 265,000 tonnes. Deeper scrutiny is beyond the scope of this review but is likely to be part of the criminal investigation

5.11 It is not possible to disclose information about supply of waste to the illegal site as this is still subject to investigation.

Conclusions

5.12 Waste flow data production in Northern Ireland has arrived at its current state through a sequence of legislative developments each contributing something different to the 1997 Order. As a result, it is complex, piecemeal and uncoordinated. Also, in the case of WTNs, returns are not made directly to the regulator and information is easily falsified or fabricated if desired.

5.13 The regulatory body does not have robust data on waste arisings, cannot predict destinations, accurately compile non-Council recycling figures or significantly, become aware of early indications of illegality. While the new EDOC system should facilitate better analysis, its value in contributing the

necessary data to the necessary quality is open to question since it remains voluntary and still does not explicitly require source or weight information.

5.14 The plethora of WTNs, season tickets and exemptions makes it almost impossible to gather and evaluate them. This is particularly challenging in the context of enforcement cases when offences are tightly time bound.

5.15 In summary, whilst there is potentially a great deal of information produced, much of it is neither easily accessible to the regulator nor readily analysable.

Recommendations

5.16 A mandatory electronic system for tracking waste transfer notes that is fit for purpose should be created. This should include a requirement for recording SIC code and weight.

5.17 All site operators of exempt sites should report on a quarterly basis.

5.18 Data on materials meeting quality protocols should be recorded quarterly to address a current information gap.

5.19 An early review should be carried out to ascertain what management information is required by the DOE to enable the desired outcome of a resource efficient Northern Ireland. There is also an urgent need to overhaul the NIEA's waste data collection processes and systems.

Derry City Council

5.20 The Mobuoy site is located within the Derry City Council Local Authority area. The Council licensed the site up until the 30th of November 2004 when responsibility for licensing and regulation transferred to the Department. Council's Environmental Health Department has responded when requested to complaints from local residents regarding noise, flies, odours, pests, fires etc. The Council had also issued several waste contracts to CIW over recent years.

5.21 Following an anonymous complaint in 2008 to the Council concerning the quantities of waste being stored at CIW's Mobuoy site, the Council commissioned an independent investigation report by Scott Wilson engineers. The complainant alleged that operations at the facility were in breach of CIW's waste management licence. It was further alleged that material collected from the Council's recycling sites was not being recycled. The investigation included consultation with the NIEA and Planning Service and whilst the report determined that breaches of the waste management licence had occurred, it stated that the NIEA were aware of and working with the Company to address these. The report concluded that the issues investigated at the site were 'one off' and short term and the operator was taking action in conjunction with the NIEA to rectify these. In addition, an audit of CIW completed by NIEA indicated that data provided on waste recycling at the site, including the percentage of waste being recycled, was in the main correct.

5.22 Investigations by NIEA in 2009 did, however, conclude that CIW was in breach of the waste storage conditions in its site waste management licence and the operator was served with a notice requiring compliance. Subsequent site inspections carried out by NIEA resulted in enforcement notices detailing breaches of waste management licence conditions being sent to CIW in 2011 and in 2012. Remedial actions were undertaken by the company to address these breaches. DOE Planning also issued a number of enforcement notices to CIW in 2010. These related to unauthorised building work and the use of land for deposition of controlled waste.

5.23 The Council confirmed that its waste contracts include a number of safeguards to ensure that waste contractors will handle waste legitimately. Contracts include detailed contractor requirements covering:

- Processing and transfer of materials to end markets.
- Recording of information relating to contracted materials.
- Compliance with legislation.
- Supply of services.

- 5.24 The Council further confirmed that it had taken a range of actions to exercise its duty of care with respect to the waste sent to the Mobuoy site. These included controls at the procurement stage and on a day to day operational basis. Council wastes delivered to the site were weighed both on entry and exit and details were checked, recorded and retained by the Council. Details of waste containers leaving the Council's recycling centres were recorded and a series of actions were initiated to ascertain the final destination of wastes inputted into the facility. The Council secured, checked and retained details and copies of associated service provider agreements as part of the procurement process. The Council reports that copy documentation has been audited by NIEA officials and no substantial data issues have been identified.
- 5.25 The Council stated its view that the current Duty of Care Regulations are sufficient but it proposed that waste producers and carriers should be subject to regular inspections. Treatment facilities should also undertake and provide details of 'whole of facility' audits so that waste inputs can be reconciled against outputs.

Criminal Infiltration into Waste Management in Northern Ireland

- 5.26 The answer to this question is critically important in order to understand what might be needed to deliver the outcome of a waste sector that complies with the law, protects the environment and underpins resource efficiency in Northern Ireland
- 5.27 In the Draft 2013 Waste Strategy, it is recognised that "a significant amount of illegal activity in the waste sector over the past decade has involved organised crime". The PSNI in their Strategic Problem Profile for Environmental Crime in Northern Ireland (July 2012) also identified involvement by organised crime gangs. The Serious Organised Crime Agency (SOCA) defines organised crime as "those involved, normally working with others, in continuing serious criminal activities for substantial profit, whether based in the UK or elsewhere."

- 5.28 Most recently, a Strategic Problem Profile specifically of Waste Crime in Northern Ireland has been produced by the PSNI. This identifies links between some waste operators and other types of organised crime and concludes that the waste industry can provide a means whereby proceeds of crime can be legitimised or can simply form an “add on” to a criminal enterprise.
- 5.29 By its very nature, the extent of the criminality is difficult to measure and though it certainly exists, the extent of involvement in the waste industry by organised crime in Northern Ireland is not known. However, the extent of criminal involvement can in part be measured by the number of successful prosecutions and these have totalled 161 since the creation of the ECU in 2009. Furthermore, the ECU states “that it can be said with confidence that criminality conducted for financial gain, but not necessarily connected to organised crime groups, is extremely common within the sector and is evidenced in illegal disposal of waste, as well as the illegal management of scrap cars, tyres and metal”.
- 5.30 Whatever the full extent, as Mobuoy has demonstrated, this type of crime has serious consequences both to the environment and in terms of cost to the State. It is therefore important to take the necessary measures to disrupt, deter and combat waste crime wherever possible.

Recommendation

- 5.31 It is recommended that adequate resource is put into the continued gathering and analysis of intelligence on waste crime in collaboration with the PSNI. This will be a key role for the new Intelligence Unit.

Strategic Waste Infrastructure

- 5.32 The targets set by the EU Landfill Directive require a reduction in the amount of Biodegradable Municipal Waste (BMW) sent to landfill to 50% of 1995 levels by 2013 and to 35% by 2020. Failure to meet these targets would mean Northern Ireland not contributing proportionately to the UK’s overall diversion obligation.

The diversion of waste away from landfill will require the development of significant new waste management infrastructure.

5.33 In April 2005, the Department established a Waste Infrastructure Task Force to examine the complex and interrelated issues surrounding the procurement of waste management facilities. The aim of the Task Force was to facilitate delivery of the waste infrastructure necessary to enable Northern Ireland to meet national and European waste management targets up to the year 2020. Its work addressed three key questions:

- Who should procure the infrastructure?
- Which facilities need to be procured?
- How should they be procured and funded?

5.34 The Strategic Waste Infrastructure Programme (SWIP) was approved by the Northern Ireland Executive in 2008. This approval made available a revenue stream to District Councils to support the procurement of new waste infrastructure facilities for the purposes of promoting more sustainable waste management practices and enabling NI-wide compliance with EU Landfill Directive targets.

5.35 The primary objective of the programme has been to support the development of an integrated network of facilities for the recycling, recovery and disposal of waste within Northern Ireland by the three Waste Management Groups (WMGs).

5.36 The three WMGs are: arc21, Southern Waste Management Partnership (SWaMP2008) and the North West Region Waste Management Group (NWRWMG). Under current arrangements, each of the 26 District Councils has statutory responsibility for the collection and disposal of municipal waste. The three Waste Management Groups are responsible for drawing up Waste Management Plans on behalf of their constituent District Councils and, to varying degrees, for procuring infrastructure on the Councils' behalf.

5.37 The Gateway Review carried out in October 2011 concluded, however, that the Programme was too focused on delivering three separate Waste Management

Group projects and recommended adopting a more holistic approach to programme delivery.

5.38 An update of the Department's 2010 NI-wide analysis of landfill diversion requirements was commissioned in October 2011 to inform this new holistic approach. It confirmed that provision of public sector treatment capacity of between 116,000 and 142,000 tonnes per annum will be sufficient to enable NI to comply with its 2020 landfill diversion targets. A revised Programme Plan which takes these factors into account has been adopted by the Department to drive delivery of the Programme aim.

5.39 In a written statement in October 2012, the Minister for the Environment advised the Assembly that the SWAMP procurement exercise was being terminated as the result of a legal challenge. The other procurements continue to be progressed by the WMGs on behalf of their constituent councils, but no final decisions have been reached in either case.

5.40 The availability of new strategic waste infrastructure could be extremely important in helping to ensure that waste could be monitored more closely and be more tightly regulated. In the case of gasification and energy from waste plants, it is easier to ensure that waste only enters the facility. However, this is dependent on these facilities being run by legitimate operators who ensure that only the correct sort of waste is allowed in. Facilities such as MRFs are more difficult to monitor and control as waste flows both in and out.

5.41 In addition, if the total number of waste facilities and carriers were limited to those needed for Northern Ireland's waste needs, greater degrees of control could be exerted.

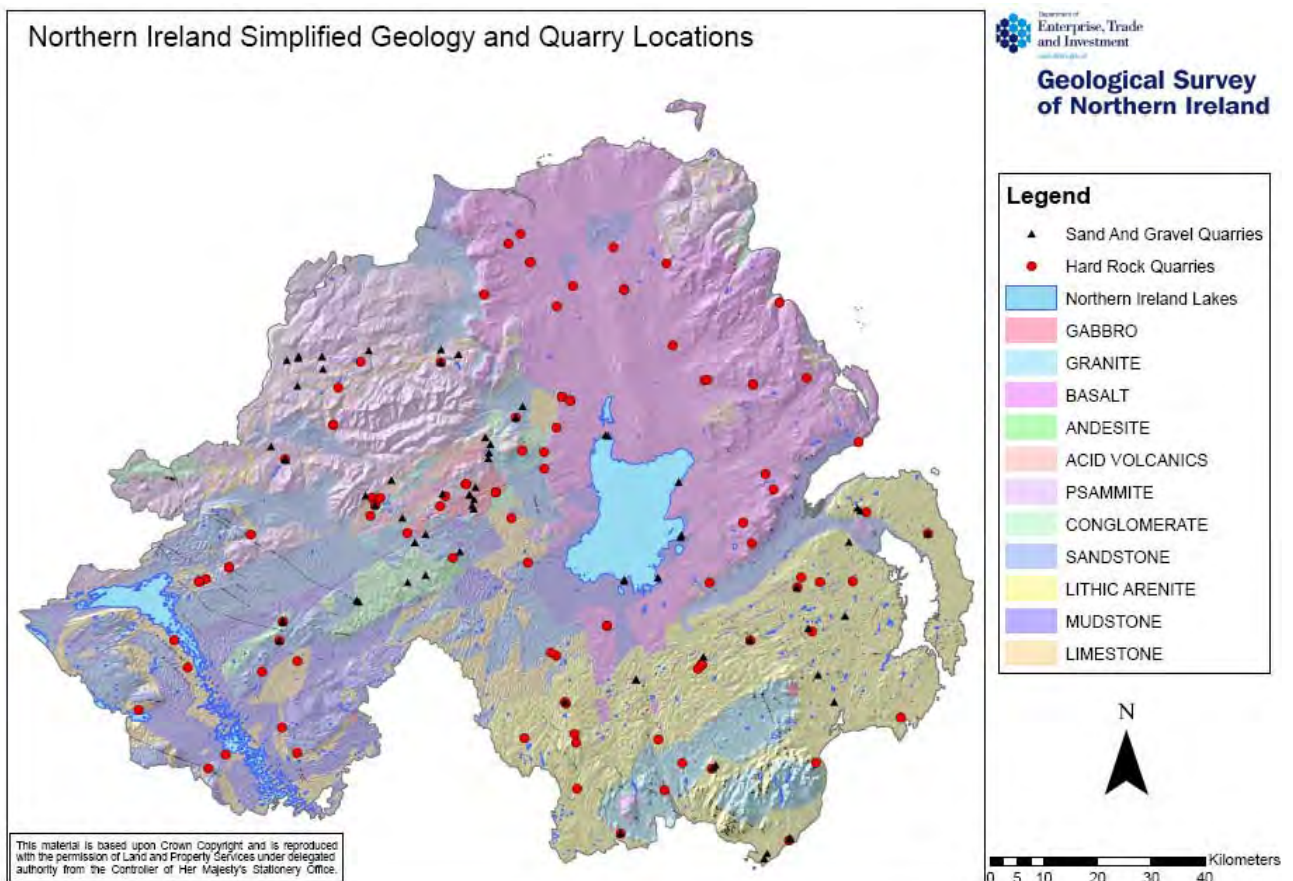
Recommendation

5.42 Restricting the number and type of waste authorisations and creating new waste infrastructure that can be more easily regulated and monitored, could be an effective way of preventing waste getting into the hands of criminals. It is therefore recommended that these matters are given urgent consideration.

The Role of Sand and Gravel Pits As Receptors For Illegal Waste and the Planning Regime That Governs These

5.43 Whilst annual figures may fluctuate in response to demand, sand and gravel production in Northern Ireland employs on average around 3-400 people. Pre-recession output peaked at over 8 million tonnes in 2007 but this had dropped to just under 5 million tonnes by 2010 with a market value of about £23m. Of this, about 20-25% is extracted from Lough Neagh with the majority of the remainder (55-60%) coming from counties Tyrone and Londonderry (see Fig 5). There are currently around 60 pits operating legally in Northern Ireland, with about half of these in Tyrone.

Fig 5



The Planning regime with respect to mineral extraction

5.44 The Regional Development Strategy refers to the need to:

“use minerals for economic development in a sustainable manner and in a way which assesses the need to exploit the mineral resource against the need to protect and conserve environmental resources”

5.45 Planning Policy Statements (PPS) contain policies on land-use and other planning matters that apply to the whole of Northern Ireland. These set out the main planning considerations that the Department takes into account in assessing proposals for various forms of development. PPSs are gradually replacing the policy provisions of the Planning Strategy for Rural Northern Ireland published in September 1993. However, ‘minerals’ are not yet covered by a PPS and current policy is still as outlined in the Planning Strategy, which contains eight policies relevant to mineral applications.

5.46 Below this strategic level, mineral planning policy at local level is guided by Development Plans in the form of Area Plans, Local Plans or Subject Plans. Further supplementary planning guidance is provided in Development Control Advice Notes (DCAN) of which DCAN 10: Environmental Impact Assessment is of particular importance to the extractive industries.

The Department of Enterprise, Trade and Investment (DETI)

5.47 DETI is responsible for administering The Mineral Development Act (Northern Ireland) 1969 which vested *most* minerals in the Department. It grants prospecting and mining licences for exploration and development of minerals. However, exceptions to the 1969 Act include among others, ‘common’ substances including crushed rock, sand and gravel and brick clays. While DETI is responsible for the annual collection of statistics from mines and quarries on output, value and numbers employed, regulation of sand and gravel operations therefore remains with Planning Service.

Planning Policy Statement (PPS) 9: The Enforcement of Planning Control

5.48 This Planning Policy Statement sets out the general policy approach that the Department will follow in taking enforcement action against unauthorised development in Northern Ireland. This is significant in the context of Mobuoy given that the series of sand and gravel pits were dug without planning permission by CSG and provided the receptacles for the illegal waste.

5.49 DOE Planning stated that they took a 'positive approach' to such matters, quoting, for example, not jeopardising employment, and considered that their approach was consistent with their enforcement policy. In effect, retrospective applications are treated exactly the same as a brand new case. The new Planning Bill could raise fees for retrospective applications; however, this is unlikely to be a deterrent in cases such as this.

5.50 In the case of extensive sand and gravel workings, it would not be possible to restore a site to its original state and this policy affords no opportunity to safeguard environmentally sensitive sites. This is considered to be a major loophole which has been exploited, as at Mobuoy and elsewhere.

Recommendations

5.51 It is recommended that changes are made to Planning Policy Statement (PPS) 9 in order to no longer allow the granting of retrospective planning permission for sand and gravel workings.

5.52 A significant issue is how any changes in policy might be enforced, as the current allocation of 4 enforcement officers to deal with over 400 minerals cases does not appear to be sufficient.

Meeting with Quarry Products Association

5.53 A meeting was held on 3rd September 2013 with Gordon Best, Regional Director of the Quarry Products Association in Northern Ireland,

5.54 The issue of retrospective planning permission was discussed and Mr Best stated that retrospective permissions were not generally supported by legitimate operators. Mr Best went on to suggest that retrospective planning permission should not be allowed for new facilities and where it is granted should incur higher fees. He pointed out that the slowness of the determination process did not help to ensure that operators always apply for planning permission first. He also made clear that the industry would like a single regulator.

Sentencing

5.55 Since its formation in 2009, the NIEA's Environment Crime Unit has obtained 161 waste crime convictions and a total of £430,300 in fines. In addition, using the Proceeds of Crime Act, Confiscation Orders made in 25 environmental crime cases totalled £1,944,136. LRM's Enforcement Team which was only set up in the middle of 2012 has obtained a further 6 convictions resulting in fines of £23,000.

5.56 There was widespread feedback that sentencing for those convicted of waste crime was too lenient to provide an effect deterrent. In addition, it was considered critical that the Sentencing Guidelines issued by the Judicial Studies Board in 2012 need to be followed.

5.57 Professor Sharon Turner and Ciara Brennan have recently produced a summary of an ongoing research project at Queens University Belfast, titled "Sentencing Environmental Crime in Northern Ireland" and with their permission, some of their findings are summarised in the box below.

5.58 The purpose of this project is to understand the dynamics of the sanctioning experience in Northern Ireland and in particular to assist:

- Developing a more complete understanding of the quality of environmental justice

being delivered in Northern Ireland – in particular to understand the extent to which the foundational ‘polluter pays’ and prevention principles are implemented through the enforcement and sanctioning of environmental offences in this jurisdiction.

- Evaluating the nature and quality of the deterrent provided by the present sanctioning system in Northern Ireland.
- Evaluating the most appropriate strategies for reform – and in particular to understand the likely outcome of importing the reform agenda developed in England and Wales.

5.59 The report deals with both water and waste offences.

5.60 The report stresses the relatively recent change in responsibility for waste management and enforcement, from Local Authorities to the NIEA which took place in 2003.

5.61 During the initial period following conferral of regulatory responsibility to the DOE (2003-2004), the majority of the few early prosecutions focussed on the illegal transport of waste across the border from the Republic of Ireland under Article 38(i) of the 1997 Order.

5.62 Since then, the focus has shifted to the prosecution of offences under Article 4(i) of the 1997 Order i.e. breaches of the prohibition on the unauthorised harmful deposit, treatment or disposal of waste. Only a small number of prosecutions has been taken under Article 5 (breach of the duty of care provision) and even fewer (13 in total) under Article 4 (6) (for the disposal of waste in breach of a waste management licence).

5.63 The NIEA’s prosecution strategy has been to focus significantly on waste offences committed by illegitimate operators, particularly highly profitable waste dumping carried out on a commercial scale by organised criminals.

5.64 Trials for waste offences have been heard both summarily at Magistrate’s Courts and on indictment at Crown Court level. A major advantage of achieving conviction on indictment is enablement of the DOE to seek access to confiscation procedures under

the Proceeds of Crime Regime.

5.65 At Magistrate's Court level, between 2003-2010, the vast majority of cases resulted in conviction and the imposition of a fine, however, 55% of these fines were less than £1000 and although District Judges have the power to impose custodial sentences, prison sentences have been imposed only twice during this period.

5.66 The significance of such low sentencing is even more pronounced given that the Waste (Amendment) (NI) Order 2007 and the Serious Crime Act 2007 gave clear legislative signals to Northern Ireland courts at all levels to take waste crime seriously.

5.67 The average fine imposed during 2003-2010 in Northern Ireland was significantly lower than those imposed in England and Wales. Furthermore in England & Wales custodial and suspended sentences are frequently used to sanction waste crime.

5.68 The overall conclusions of this study which covers both water and waste offences are that:

- Although sentencing levels in Northern Ireland have followed a gradual upwards trend, the average fines imposed still fall far short of those imposed in other parts of the UK.
- The incidence of very low fines certainly suggest that the present sanctioning regime creates very little if any meaningful deterrent to pollution in Northern Ireland. Indeed sanctions are so low for pollution offences that there is arguably an incentive not to comply.
- The consequence of inappropriate sanctioning forces regulators to carry out heightened levels of regulatory activity and this is borne out by the relatively high prosecution rate in Northern Ireland compared to the rest of the UK, in the context of water pollution.
- The proposed introduction of civil penalties could alleviate the problem but this could cause NIEA to focus on the cheaper and faster sanctioning tool and abandon the criminal justice system altogether.

Recommendations

- 5.69 Professor Turner's findings need to be fully considered by the Department of the Environment (DOE) and it is recommended that options are explored with the Department of Justice (DOJ) to raise the profile of waste crime with the Judiciary and to find ways of increasing the sanctions to at least the level imposed for similar cases in England and Wales.
- 5.70 Once the full costs of the illegal dumping at Mobuoy are recognised, this should raise the profile of waste crime in Northern Ireland very considerably. This case should be used to publicise widely the seriousness of waste crime and that it doesn't only harm the environment but also has very significant financial implications for the state.
- 5.71 In particular, it will be important to raise the general public's awareness about this type of crime and to explain how the costs of it will have an effect on society as a whole. Public support could influence the views of the judiciary and of the DOE's role in regulating the waste industry.

Meeting with River Faughan Anglers Ltd

- 5.72 A meeting was held with the River Faughan Anglers Ltd (RFA) on 15th October 2013 to discuss their concerns about what has happened at Mobuoy. They provided a statement to the review which is summarised in the box below.

5.73 The RFA claim that the DOE, contrary to published statements, was aware of problems at the Mobuoy site as far back as July 2009 and chose not to act on concerns raised. RFA further claims that the DOE has demonstrated that it fails to understand its obligations under the EC Habitats Directive.

5.74 The RFA details concerns that the DOE, in denying awareness of illegal land-filling activity at Mobuoy prior to Spring 2012, is attempting to 'cover up' institutionalised and systematic failings in the planning system that allowed illegal activity to continue at

Mobuoy and potentially elsewhere in Northern Ireland. The statement goes on to contend that enforcement action at the site was only initiated long after environmental harm had been caused.

5.75 RFA notes that there are several unauthorised mineral extraction sites at Mobuoy with retrospective planning permission dating back to 2000. Some of these are already exhausted and it is RFA understanding that these unauthorised quarries have been turned into illegal landfill at the site.

5.76 To support the contention that DOE was aware of risks from illegal land-filling at Mobuoy since 2009, and possibly earlier, RFA references retrospective planning application A/2009/0400/F for mineral extraction at Mobuoy immediately adjoining part of the illegal landfill site. It claims that extracts from this file provide clear evidence that the DOE was aware of the existence and risks from the illegal land-filling since 2009. An associated DOE letter from January 2010 highlighting serious environmental concerns is also referenced.

5.77 RFA questions why the DOE could permit unauthorised extraction to continue adjacent to the landfill in light of concerns expressed by competent authorities and also considering that the River Faughan is designated as an ASSI and SAC. RFA further believes that:

- A DOE decision to grant permission to withdraw the application following a 'deemed refusal' under the EIA Regulations 1999 is not permissible in law and;
- The DOE actions violate the precautionary principle enshrined in the Habitats and EIA Directives.

5.78 RFA notes that two enforcement notices requiring the removal of controlled waste from the Mobuoy site were served by DOE on CIW on 27 July 2010. This is seen as further evidence that DOE was aware of illegal activity at the site at the time. RFA goes on to claim that DOE operated an 'after the event' regularisation policy whereby persistent breaches of planning control by CIW over a number of years were regularised by submitting retrospective planning applications. This allowed unauthorised extraction to cause environmental harm and threaten the River Faughan. RFA also claims that DOE has permitted unauthorised development to continue in the absence of environmental information required by other competent authorities.

5.79 Based on the above, the RFA statement lists a series of questions arising from the DOE actions. It concludes that illegal land-filling at Mobuoy 'has been enabled by a DOE custom of not taking formal enforcement action against unauthorised minerals extraction, or placing enforcement action on hold when retrospective planning applications are received.'

5.80 RFA questions the capability and credibility of DOE as a regulator based on claims made and evidence presented in its statement. It states that regulators who are complicit in allowing environmental harm are reluctant to enforce due to the adverse attention that this would attract. An independent environmental regulator for Northern Ireland is seen as one way of strengthening regulation in this area. The statement concludes by suggesting that the public should be concerned that 'institutionalised neglect' of this nature may not be confined to the Faughan Valley.

5.81 The questions referred to in Section 5.77 which related to planning matters were sent on 18th October 2013 to DOE Planning and its response is given in the box below. In addition, issues concerning the planning legislation relating to the extraction of the sand and gravel, one of the matters of key concern to the Faughan Anglers, are examined in sections 5.43 - 5.52.

5.82 In response to the submission of a statement by RFA, the Department has written to them to provide clarification in relation to its knowledge of activity at Mobuoy prior to Spring 2012. The Department would strongly deny that it is attempting to "cover up" what has happened at Mobuoy and has provided as part of the investigation a detailed timeline of planning history on the site and has files available for inspection. In addition, the Department would dispute that it operated an "after the event" regularisation policy. The Department has a range of approaches in relation to enforcement as set out in Planning Policy Statement 9. These range from the submission of an application through to formal enforcement action. It should be noted that any individual can submit a valid planning application at any time which the Department has a statutory duty to determine. In relation to the matters raised relating

to application A/2009/0400/F the Department has provided a full response to RFA to clarify the position on this case, including that it is regarded as deemed refused due to the applicant failing to submit the further environmental information required.

6.0 VISITS TO OTHER AGENCIES

Purpose of the Visits

- 6.1 As part of this review, visits were made to Natural Resources Wales (NRW), the Environment Agency (EA), the Scottish Environment Protection Agency (SEPA) and the Environmental Protection Agency Ireland (Irish EPA).
- 6.2 The purpose of these visits was to understand whether these Agencies were experiencing a similar problem of criminals including organised crime infiltrating their waste management system, and if so, how it was being tackled.

Scale of the Problem

- 6.3 Environmental Crime which includes waste crime is a problem in all of the countries we visited. However, the infiltration of organised crime into particularly waste crime was considered to be a much bigger problem in England and Scotland than in Wales and the Republic of Ireland.
- 6.4 The exact scale of waste crime and the degree to which organised crime is involved is unclear. However, both from intelligence and cases being uncovered, there is a serious problem in England and Scotland and the EA and SEPA are struggling to resource the cases that they are uncovering. In England, there are now over 230 staff involved with tackling environmental crime and in Scotland, as a result of recent serious cases, SEPA is proposing to create a Waste Crime Team to target serious and serial criminality. Having lost the support of the EA's National Crime Team, NRW is considering what it might need moving forward. The Irish EPA only cited one case where they had found substantive illegal activity occurring on a licensed site. There is however some evidence of smaller-scale illegal activity becoming more prevalent in Ireland.

Structure and Resources of the Agencies Visited

- 6.5 **Environment Agency (EA)** – has a National Environment Crime Team (NECT) comprised of 39 staff, (19 on the core structure supplemented by contractors on temporary contracts), who focus on serious organised crime, international and cross-boundary investigations and provide support to the Area Environmental Crime Teams. In addition, there is a National Intelligence Team of 5 Intelligence Officers and 13 Researchers and Analysts which was established to oversee the collection and analysis of intelligence and information in support of the NECT. There are also some Regional Crime Analysts. Each of the 16 Areas has Environmental Crime Teams with a total of 180 staff. These teams deal with all forms of environmental crime although waste is the major part of their workload. The Agency has teams of in-house lawyers.
- 6.6 **National Resources Wales (NRW)** - structures are in transition and an Enforcement Transition Project Team is developing the future shape for enforcement which meets the needs of NRW. NRW is a new organisation which brings together the former EA Wales, Countryside Council for Wales, the Forestry Commission Wales as well as the Marine licensing role from Welsh Government. There are presently three area based Environmental Crime teams which lead on complex case work and support 17 Environment Management teams who lead on regulation of major waste sites. Within these teams, there are Senior Environment Officers who specialise in waste and support the regulation of problematic sites and waste streams. There is a Wales wide support team which provides intelligence management and technical advice to operational teams as well as a team of in-house lawyers who provide advisory and prosecution services. There are also 5 seconded Police officers supporting a range of NRW functions (2 on waste work). Area Crime Groups meet monthly to share intelligence and determine priorities including the setting up of specific investigations. Local Enforcement panels also meet monthly to assess the consistency and performance of enforcement activities. A newly established Wales Enforcement Panel has been established to provide strategic direction and governance.

- 6.7 **Scottish Environmental Protection Agency (SEPA)** – operates with 18 Regional Operations Teams which are responsible for the regulation and enforcement of waste sites in their respective geographical areas. The Enforcement Support Team provides support to the regional teams regarding enforcement. SEPA is proposing to create a Waste Crime Team to target serious waste crime. SEPA also has specialist Environmental Prosecutors allocated to enforcement cases. A National Tasking structure will emerge following the formation of the waste crime team.
- 6.8 **Environmental Protection Agency Ireland (Irish EPA)** – has thematic units for air, water and waste which are based centrally and which set the national priorities for enforcement. In addition, there are 5 regional teams who carry out the inspection of major waste sites (over 100,000 tonnes per annum). Local Authorities regulate waste facilities below this threshold and the EPA operates the Network of Ireland's Compliance and Enforcement, (NIECE), whereby enforcement efforts are planned and discussed. The EPA regional inspection teams also create temporary teams to deal with specific incidents. The Department of the Environment leads on waste policy and in 2012 recommended that a review of national waste enforcement structures be undertaken. The Irish EPA has its own legal unit and liaises closely with An Garda Síochána on waste crime. There is an Environmental Enforcement Network but no structured intelligence framework.

Key Issues

Policy towards zero waste

- 6.9 The key policy objective, driven by Europe, is to reduce waste, including to landfill. It was reported by all that we visited that this policy, whilst undoubtedly correct in principle, is causing problems in practice because criminals are finding ways to profit by it. Waste criminals can make large profits by undercutting legitimate operators through the avoidance of costs such as Landfill Tax and VAT payments, infrastructure establishment, third party disposal tax and meeting adequate financial provision and producer

responsibility compliance charges. There was a consensus that more and early consideration needs to be made by policy makers as to how certain policies might be exploited by criminals. Certain aspects of waste management such as Producer Responsibility, the handling of Waste Electrical and Electronic Equipment and Refuse Derived Fuel were identified as being particularly vulnerable to criminality.

Structures & Resources

6.10 As outlined above, resources are a major issue for all of the Agencies dealing with serious waste crime. Investigations are often complex and lengthy and extremely resource intensive. Both the EA's National Crime Team and SEPA's Enforcement Support Team have grown rapidly in line with an increased workload and both Agencies are considering what is the best model with which to move forward. Options include to continue to grow in-house or as in certain other parts of Europe, for the Police to lead on tackling organised crime involvement in environmental crime. The Irish EPA and Local Authorities charged with waste enforcement have not been able to recruit any new staff or replace existing since 2008 and this is resulting in a backlog of licence applications and reviews.

Ensuring waste doesn't get into the wrong hands

6.11 This was an issue for all Agencies. All considered that the Duty of Care system and application of the Fit and Proper Persons Test to be largely ineffective. Exemptions were also widely cited as a way by which criminals could circumvent the law particularly as these do not require any Fit and Proper Person Test. Of particular concern to the Irish EPA are the implications of waste site abandonment and the long term costs of their management.

Understanding and tracking waste flows

6.12 This was highlighted as an issue by all agencies. There are a number of initiatives being taken to both understand better the various waste flows and to devise more effective ways to track these (see Section 6.35). This is however an area where all agencies could usefully work together on what is a common challenge (see Section 6.53).

Culture and skills

6.13 Both the EA and SEPA recognise that the development of specialised environmental crime teams can create cultural challenges. The focus on criminality, the disciplines and confidentiality required to deal with it can create a divide between these teams and the other regulators. The ability to share information and secure areas can all too easily result in an ‘us and them’ situation.

6.14 The EA talked about “daring to share” in relation to the need to keep regulatory staff informed about what is happening. Both SEPA and the EA identified the challenge of ensuring regulatory staff to input intelligence as part of their regular duties. There were also some concerns raised, that at times, the regulation of licensed sites lacked sufficient rigour and discipline.

6.15 SEPA considered that whilst its training on legislation was good, skills training is relatively weak. Also getting the right mix of knowledge, skills and aptitude is difficult. The EA and NRW have a structured initial training programme and a skills competency framework in place for regulatory staff.

Powers

6.16 All Agencies had serious concerns about the effectiveness of the Duty of Care legislation and the Fit & Proper Person test. NRW would welcome increased powers to revoke authorisations; SEPA expressed concern about the use of exemptions to facilitate criminal activity and expressed a desire to see the

introduction of more flexible permits which could be modified in line with changes to the business these applied to. SEPA has been closely engaged with the Scottish Government on the development of the Regulatory Reform Bill.

Sentencing

6.17 NRW questioned both whether sentencing is at the right level and whether sentences are being consistently applied in line with the sentencing guidelines.

6.18 All of the Agencies considered that given the profitability of waste crime, the level of fines generally imposed by the courts would be unlikely to deter criminals. Indeed, It was felt that these low fines and rare custodial sentences are attracting organised crime to the waste industry. It is only the application of the Proceeds of Crime Act that is beginning to really impact on those caught and prosecuted.

Communications

6.19 The issue of communicating the seriousness of waste crime not just in terms of damaging the environment but in financial and social costs was of concern to all Agencies. In one case, it was questioned whether the seriousness was even fully recognised within their own organisation. A key audience is the judiciary and most agencies have previously made attempts to provide information and evidence about the seriousness of these offences to them.

Good Practices and Ideas

Structures and Resources

6.20 All of the other Agencies operated geographically based Regulatory teams, however, the EA and NRW also apply the concept of “one, few, many” to determine the most efficient delivery model. For example, inspection of sites is

delivered many times through area based inspections whilst permitting is a national service carried out once in Wales and through 3 regional hubs in England.

- 6.21 All of the other Agencies have access to in-house legal expertise though Counsels may be contracted in for complex cases. This has enabled detailed knowledge of and expertise in the waste legislation to be built up.
- 6.22 NRW has Area Crime Groups which assess how to prioritise and resource enforcement activity. These groups foster a one team approach, share intelligence and aim to make optimum use of the resources available.
- 6.23 All of the Agencies have close working relationships with their Police Forces and other law enforcement agencies. In Scotland, the Scottish Government is proposing to set up a Crime Interoperability Centre or Crime Campus where initially, SEPA staff will be co-located with Police Scotland in order to share information and co-ordinate activities. Other agencies may join later.
- 6.24 All Agencies recognise the importance of the working relationship between themselves and the Local Authorities. NRW ensures that one officer deals with all landfill sites in a particular Local Authority area. In Scotland, all Local Authorities have dedicated Police Liaison Officers.
- 6.25 All of the Agencies use multi-disciplinary teams to carry out major investigations and operational regulatory staff are regularly included in these teams.

Processes, Systems and Approaches

- 6.26 NRW is planning and carrying out its waste regulation role on the basis of achieving specified outcomes through Directorate Delivery Plans. It is also aiming to ensure that the wider socio-economic outcomes set by Welsh Government are taken into account.
- 6.27 In Wales, England and Scotland, the Area Environmental Crime Teams, the National Crime Teams and the Intelligence Support Unit are set up to provide a support service to Operational Teams. It is up to the relevant Operational

Team to decide when to call in these more specialised teams to help deal with complex cases or those involving criminality.

- 6.28 In England and Scotland, examples were cited as to how efforts are made to break down potential barriers between environmental crime teams and operational units. Initiatives included, incorporating operational staff as part of the teams dealing with major investigations; the SEPA Intelligence Unit regularly spending time with operational teams and also developing an “I” or intelligence briefing system; the National Crime Team in England, after one major investigation, inviting all staff to visit the incident room to discuss the work that had been carried out there. In England, Wales and Scotland operational staff are encouraged to input to the intelligence gathering system.
- 6.29 A number of systems have been utilised or developed to aid Environmental Crime Teams to carry out their work. In England, the National Crime Team uses PowerCase a system very similar to HOLMES 2 (the Home Office Large Major Enquiry System) which was originally created to help law organisations manage crime investigations. SEPA is developing an in-house crime investigation management system
- 6.30 In Scotland, SEPA staff were trained to design their own intelligence system I Base 2. The Enforcement Support Team uses this system to manage all intelligence on behalf of the Agency. It is compatible with other systems within the Agency and can draw on all registration databases.
- 6.31 A risk based approach to regulation in England and Wales has been carried out for some considerable time through the application of OPRA (Operational Risk Appraisal) though this has recently been updated. Ireland operates its own risk-based approach based on the OPRA model. In Scotland, DREAM (the Dynamic Regulatory Effort Assessment Model) has been developed. This new risk assessment system is used to determine inspection frequency. The output from DREAM is fewer, more targeted inspections designed to concentrate on sites of higher risk and also non-compliant/failing sites. DREAM is also helping SEPA to move from identifying purely non-compliance to identifying the root cause of these non-compliances. NIEA staff have already discussed these risk

based approaches with colleagues in the development of their own risk based approach to investigations, the Risk Assessment Model (RAM).

6.32 The prioritisation of workload was discussed with all of the other Agencies. In the case of England and Scotland, in particular, available resources do not match potential workload for waste crime, so prioritisation is key.

6.33 In England, the National Enforcement Service's Environmental Crime Strategic Assessment is used to help prioritise the Environment Agency's enforcement activity and illegal waste sites are identified as one of the largest quantifiable problems. In Wales, the Area Crime Groups determine when a major investigation is necessary and in the Republic of Ireland, a Legal Cases Steering Committee is used to decide which cases to take forward.

6.34 Raising awareness and understanding about the seriousness of environmental and particularly waste crime was seen as a priority by all Agencies. Target audiences need to include the public, Local Authorities, the Police and the Judiciary. SEPA is producing a Communications Strategy, and the possibility of putting greater emphasis on environmental crime into the basic training of the Police was discussed. The Irish EPA has had a Dumping Hotline since 2007 which has now been broadened out to include all environmental complaints. It has recently developed an I-phone application for this service. The EPA also meets each year with the Irish Waste Management Association to discuss what the key issues are and what the Agency will focus on during the coming year. They also organise an annual environmental law seminar with Irish Centre for European Law – a recent conference discussed the judicial role in implementation and enforcement of EU environmental law.

6.35 All Agencies were concerned to improve their knowledge of waste flows. NRW is carrying out a whole system review broken down into waste sectors. SEPA is also carrying out a data and evidence project on waste flows. The Irish EPA is concentrating on carrying out mass balance exercises at its major waste sites.

6.36 In Scotland and the Republic of Ireland, targets are set for the time taken to complete case files for criminal prosecutions into waste crime. SEPA has a key

performance indicator of a 6 month turnaround for prosecution files. The Irish EPA sets a target time of 4 months from date of offence to Board approval to take a prosecution. Average delivery time is tracked and there is an internal league table.

6.37 The Irish EPA has been trained by the Garda on the preparation of prosecution files and to cut the time needed to prepare these. A multi-disciplinary team ensures that the files concentrate on the key offences and legal advice is sought early in the process to ensure that the focus is maintained only on those matters which have greatest likelihood of success.

Powers

6.38 In Scotland, the Regulatory Reform Bill will introduce a new regime for environmental regulation. This Bill would allow SEPA to impose fixed and variable monetary penalties, publicise the criminal activities of non-compliant operators as well as to recover the costs incurred throughout investigation and enforcement processes. The Scottish Environmental Crime Task Force (ECTF) has stressed the need to provide a requirement to reveal all criminal offences as part of an operator “fit-and-proper-person” test.

6.39 In Ireland, An Garda Siochana has full powers for the enforcement of waste legislation and the Irish EPA has specific powers to serve injunctions to prevent environmental damage under its Waste Management Act 1996.

Recruitment, Training and Skills

6.40 Environment Officers in NRW may be trained for a particular specialism, for example regulating waste or water; however, they all have a core competency of incident management and can be called upon for this purpose when required.

- 6.41 Both the EA and NRW have a structured induction training programme for Environment Officers and have developed a Technical Competency Development Framework.
- 6.42 The EA has the capability to apply a Market Forces Factor in order to recruit rare skills that are in short supply and which command premium salaries.
- 6.43 SEPA has attempted, as yet unsuccessfully, to recruit a Waste Industry Analyst to understand better the waste markets to forecast future trends. It was agreed that the joint funding of such a post between Agencies should be explored as the information and analysis provided would be mutually beneficial.
- 6.44 The Irish EPA, through its enforcement network NIECE, ensures that capacity is built and maintained in all those involved in waste enforcement.

Conclusions and Recommendations

- 6.45 These visits confirmed that what has happened at Mobuoy, other than in terms of scale, is not unique. The large profits and often low sentences mean that criminals are attracted to waste crime throughout the United Kingdom. There are other examples of legal waste sites being used as cover for the illegal dumping of waste in England and Scotland.
- 6.46 Furthermore, all of the countries visited are facing a common set of issues (see Sections 6.9 to 6.19) in addressing waste crime.
- 6.47 There is much that can be learnt from sharing information about the way in which the different Agencies are addressing these issues and these visits were extremely valuable. As waste crime crosses national borders it is recommended that more formal mechanisms for ongoing liaison and sharing of good practice are considered.
- 6.48 The relationship between the Environmental Crime Teams and Operational Teams is particularly important to the successful combating of waste crime. It is recommended that the NIEA adopts good practice outlined in:

Section 6.25 Working to common outcomes.

Section 6.28 Breaking down potential barriers.

Section 6.27 The involvement of operational staff in major investigations.

6.49 It is also recommended that the DOE considers the employment of in-house legal expertise, widely adopted by the other Agencies, and the possible sharing of a Waste Industry Analyst with SEPA and other Agencies.

6.50 It is recommended that the DOE considers how the other Agencies operate their regulatory teams particularly in relation to local delivery and efficiency (e.g. the 'one, few, many' model adopted by EA and NRW).

6.51 Within the NIEA, it is recommended that LRM should review how it prioritises inspections and should look again to the OPRA and DREAM models to see if these could help NIEA target inspections more effectively on non-compliant and failing waste sites.

6.52 The other Agencies operate a number of systems designed to manage investigations and gather intelligence. These include PowerCase and I Base 2. NIEA staff are already considering what could be learnt from these other systems which could be of further use.

6.53 Lastly, there are a number of areas where it could be beneficial for all the Agencies to work together on sharing good practice and developing new approaches. These include:-

Section 6.33 The prioritisation of investigations.

Section 6.34 Raising awareness and understanding of waste crime.

Section 6.35 Developing better systems to monitor waste flows.

Sections 6.38 & 39 Creating new powers and the application of existing powers to combat waste crime.

Sections 6.40 to 6.44 The recruitment, training and ongoing professional development of regulatory and enforcement staff.

European context

6.54 It was felt important to consider briefly the European context. Environmental, including waste, crime is not just a problem across the UK and Ireland. The NIEA already has links into a number of European organisations and initiatives some of which are described below. It will be important going forward that these contacts are maintained and where necessary strengthened.

Environmental Crime Directive

6.55 Environmental crime causes significant damage to the environment in Europe and very often has a cross border aspect. Because perpetrators perceive the opportunity for very high profits associated with relatively low risks of detection, such crime is a serious and growing problem. The Directive lists several types of environmental offences including specifically the illegal shipment or dumping of waste. The intention is that even though Member States remain free in the choice of instruments for the implementation of the Directive, penalties should be effective, dissuasive and proportionate.

Europol

6.56 The Europol EU Serious and Organised Crime Threat Assessment (2013) identifies two emerging threats, one of which is illicit waste trafficking. It is considered that the current economic crisis is driving companies to cut costs and that this is encouraging illicit waste trafficking and disposal, usually offered by organised crime groups. It is already known that waste is trafficked internally within the EU on land routes, whilst the well-developed port infrastructure in Europe facilitates the illegal export of hazardous waste to developing countries, especially to Africa and Asia.

EU Network for the Implementation and Enforcement of Environmental Law (IMPEL)

6.57 NIEA staff are active members of the IMPEL network, the objective of which is to create the necessary impetus in the European Union to ensure more effective application of environmental legislation. The core of IMPEL activities

concern awareness raising, capacity building, peer review, exchange of information and experiences on implementation. It also supports collaboration on international enforcement as well as promoting the practicability of European environmental legislation. NIEA will look to incorporate recommendations from IMPEL projects into the Regulatory Reform programme.

The LIFE+ Programme

6.58 The LIFE programme is the EU's funding instrument for the environment with a general objective of updating and developing environmental policy and legislation by co-financing pilot or demonstration projects with European added value. NIEA is participating in a bid to develop and apply innovative systems, ways of working, collaboration and direct intervention to tackle illegal waste management. If the bid is successful, the focus of the project will be on waste crime issues associated with "challenging" waste streams that attract illegal activity. That is, waste streams that are of low value or quality, that are expensive to recover or dispose of, or where infrastructure does not exist to support their treatment in accordance with the waste hierarchy.

OVERALL CONCLUSIONS

Waste Crime is not new to Northern Ireland. The NIEA's Environmental Crime Unit has successfully taken 161 convictions since its formation in 2009.

However, the incident at Mobuoy is on a scale not previously encountered. The amount of waste currently estimated to have been illegally deposited is 516,000 tonnes. Given the sheer volume of this waste at least some of it could have been transported in from outside Northern Ireland. Whether or not this is the case may be determined by the criminal investigation.

The dumping of the waste took place on and around a licensed MRF facility owned and operated by City & Industrial Waste Ltd with the waste being deposited partly in a closed landfill site but mainly in a series of sand and gravel workings excavated by Campsie Sand and Gravel Ltd.

The illegal dumping appears to have been highly organised and took place over a number of years, and has the hallmarks of organised crime involvement.

A Strategic Problem Profile of Waste Crime in Northern Ireland recently undertaken by the PSNI has identified links between some waste operators and other types of organised crime and concludes that the waste industry can provide a means whereby proceeds of crime can be legitimised or is simply an "add on" to criminal enterprise.

A similar pattern of organised crime involvement is occurring in both the English and Scottish waste industries as are instances of legal waste management sites being used as a cover for illegal activity.

At this stage, it is not possible to confirm who carried out the illegal dumping of waste at Mobuoy. A criminal investigation (Operation Sycamore) is underway and in November 2012, two suspects were arrested and questioned.

There has been a long history of non-compliance at the MRF. Its regulation was characterised by a lack of any overall plan or strategy to deal with what the regulators considered a problematic site; a lack of an integrated approach to its

regulation; a lack of clarity of responsibility and on occasions the failure to take sufficient action in relation to the complaints which could have led to earlier detection of illegal waste.

DOE Planning also had a pivotal role to play in the authorisation of both the MRF facility and Campsie Sand and Gravel Ltd. A key issue being that Campsie Sand & Gravel was able to dig extensive pits without first obtaining planning permission and then to apply for retrospective permission. The ability to do this provided the receptacles which enabled the subsequent illegal dumping of the waste in such a vast quantity.

The cause of the illegal dumping of waste of Mobuoy is rooted in the fact that criminals and organised crime view waste management as a highly lucrative way to make money. An estimate of the tax evaded due to the illegal dumping at Mobuoy is a minimum of £34.6 million. Ineffective legislation, perceived weak regulation and low sentences, particularly when compared with other forms of crime, mean the risks are low and profits are high.

The key policy driver to reduce waste in Northern Ireland and across Europe is achieved mainly through landfill tax. However, the use of lowest cost tenders would make it easy for criminals posing as legitimate waste contractors to undercut legitimate businesses and could result in public and private sector money inadvertently funding criminal activity.

The Duty of Care legislation can be easily circumvented and the Waste Carrier Registration System is currently open to abuse. Coupled with the weaknesses in the Fit & Proper Person Test required to obtain a waste management licence or permit, it is relatively easy for waste to fall into the hands of criminals.

Limiting the total number of waste authorisations and creating new waste infrastructure which is easier to regulate and control could make it more difficult for criminals to infiltrate the waste industry.

Some argue that greater powers are necessary to close down waste operators for non-compliance and to disrupt and deter criminal activity. However, it is not clear whether existing powers are being utilised fully.

Since its formation in 2009, the NIEA's Environmental Crime Unit has grown its capability and had considerable success. It has obtained 161 convictions and a total of £430,300 in fines. In addition, using the Proceeds of Crime Act, Confiscation Orders made in 25 environmental crime cases totalled £1,944,136.

However, given the very considerable profits that can be made these levels of fines are unlikely to deter criminals and organised crime. Furthermore, putting more and more resources into conducting extremely lengthy and complex investigations is not a sustainable way forward. Particularly as when cases come to court, the sentences do not reflect the seriousness of the crime and the costs imposed both on the environment and society. Initial findings from a recent study about sentencing for environmental crime in Northern Ireland carried out by Professor Sharon Turner and Ciara Brennan of Queens' University Belfast, concluded that "the incidence of very low fines suggests that the present sanctioning regime creates little if any deterrent to pollution in Northern Ireland. Indeed, sanctions are so low for pollution offences that there is arguably an incentive not to comply"

A key element missing from the current sanctions to prevent waste crime is a mechanism to make the polluter pay despite the fact that this is a key principle stated in the DOE's Enforcement Policy. In the case of Mobuoy, the cost of removing the illegally dumped waste could be up to tens of millions of pounds.

A previous analysis of 454 offences involving the illegal dumping of waste concluded that probably none of this waste had been removed or remediated. The long term legacy of this could cost the State hundreds of millions of pounds and could result in infraction costs if the UK was found to be failing in its duty under the EU Waste Framework Directive.

The final conclusion is that to achieve the outcome of a waste sector that complies with the law, protects the environment and underpins resource efficiency will require a step change and an approach that considers the entire waste system.

However, with limited resources, there is a need to produce a clear strategy which identifies where the most effective interventions should be made and initially these will need to focus on combating waste crime. The key interventions are:-

- To find more effective ways of preventing waste falling into the hands of criminals by reducing the overall production of waste through greater resource efficiency, by limiting the number of waste authorisations and by creating new waste infrastructure which is easier to regulate and to monitor.
- To create a more robust regulatory service and regime which is designed to deal with criminality at all levels.
- To further develop the intelligence framework and ensure that the joint enforcement capability of Northern Ireland's enforcement agencies is capable of deterring, disrupting and combating waste crime.
- To control and monitor potential sites for dumping waste.
- To ensure that sentencing is set at a level to provide a greater deterrent to carrying out waste crime and introduce an effective mechanism into the waste legislation to make the polluter pay.

KEY RECOMMENDATIONS

The DOE should make the outcome of a waste sector that complies with the law, protects the environment and underpins resource efficiency, a priority.

Develop a comprehensive strategy, with a detailed action plan, to achieve this outcome, which initially focuses on preventing waste crime.

Create a new single Directorate within NIEA to bring together the existing regulatory and enforcement teams along with a new Intelligence Unit to achieve this outcome.

Adopt and develop the concept of “intelligent regulation” in order to be sufficiently adaptive to deal with a range of operators, from the criminal to the compliant.

Change the current appointment and recruitment processes to allow the targeted recruitment and appointment of staff with the right aptitudes, skills and experience to carry out regulatory work. This should be supported by structured training, professional development and a defined career structure.

Review in an integrated way the need for additional powers to carry out this work by means of a Task and Finish Group and involving all relevant DOE units including Planning with legal support and input from the PSNI.

Make it harder for waste to fall into the hands of criminal operators by strengthening the Duty of Care provisions, Fit & Proper Person Test and systems for monitoring and analysing waste flows.

Limit the number of waste authorisations to the number necessary to meet Northern Ireland's projected waste needs and create the necessary new strategic waste infrastructure which can be more easily regulated and monitored.

Make changes to the current planning enforcement policy to no longer allow the granting of retrospective planning permission for sand and gravel workings.

Work through the Department of Justice to persuade the Judiciary of the seriousness of waste crime not just to the environment but to the economy of Northern Ireland, and to encourage them to ensure that sentencing for these offences is comparable to that of the rest of the UK.

Create a new sanction in the legislation to make the polluter pay to remediate or remove illegally deposited waste.

Ensure that the DOE works more closely with other Government Departments and Agencies in Northern Ireland, with the other Environment Agencies in the UK and Ireland and through relevant European organisations and initiatives, in order to combat waste crime and create a resource efficient Northern Ireland.

APPENDIX 1

Operation Sycamore Brief

1. Officers from the Environmental Crime Unit carried out intrusive inspections of a sand and gravel quarry on the eastern side of the Mobuoy Road, County Londonderry between June and August 2012. The inspections were carried out following concerns being raised that waste might be buried on this site.
2. Immediately adjacent to this area of sand and gravel is a closed landfill site and adjacent to this is a large waste transfer station.
3. Following the intrusive inspection a large amount of controlled waste was detected and the site was significantly larger than any previously encountered in Northern Ireland. Part of the site was under water and it was not possible to determine whether waste was present here, however it is highly likely that it has also been subject to illegal waste deposit.
4. The waste concerned was composed largely of plastics and other degradable material. (The waste is similar in nature to that which is destined for recycling and residue from a recycling process). It had gone through a sorting or treatment process prior to being deposited on the site.
5. It was clear that this was a highly organised industrial scale operation and that the layers of polluting waste had been alternated with layers of a mixture of clay, sand and stones.
6. Officers encountered gas bubbling up through the areas covered by water and significant quantities of leachate were found in a number of the trial pits. The capping layer was minimal.
7. In November 2012 two individuals were arrested and questioned, premises were searched and a quantity of material was seized. In the period following this, a number of individuals and company representatives were interviewed as part of the investigation.
8. Officers carried out further intrusive inspections in April 2013 on land on the Western side of the Mobouy Road following suspicion that this land may also contain illegally deposited waste

9. As a result of the intrusive inspection, further significant waste deposits were found to be being kept on this site. The waste was similar in nature to that already discovered on the other side of the road.
10. Once again officers encountered gas bubbling up through the areas covered by water and significant quantities of leachate were found in a number of the trial pits.
11. On 13th May 2013 further questioning took place with respect to the waste found on the western side of the Mobuoy Road.
12. Analysis of the information from the very limited documentation has provided a date which shows that waste was placed on the site as recently as August 2012. This means that the site had been accepting waste even after the inspection of the site on the eastern side on Mobuoy Road.
13. It is likely that the combined sites on either side of the Mobuoy Road discovered at this stage contain a minimum of 516,000 tonnes of waste
14. Throughout the investigation the ECU was given significant support by PSNI.
15. In May 2013, further inspections under warrant took place involving a number of land folios owned by the waste management company. These comprised a licensed waste management facility on the Mobuoy Road, a closed landfill site and a further licensed waste management facility at Londonderry Port.
16. The individual site reports are separate however briefly, the following information is relevant:
 - 16.1 The closed landfill site. This site was required to close in 2007. The site has been in-filled post closure with non-hazardous waste including trommel fines, plastics and unidentifiable biodegradable waste. Leachate is escaping from the sides of the closed landfill. A layer of polluting waste exceeding four metres in depth has been placed over the existing closed landfill.
 - 16.2 The Materials Recovery Facility. Baled waste had been stored outside the licensed area. Many of these bales had split open and the waste was open to the environment. A statutory notice issued some months ago requiring bales of waste to be removed had not been complied with.
 - 16.3 Further waste had been land-filled beneath the baled waste. Further polluting waste had been disposed of by surface landfill within the licensed area in an area licensed to store inert waste from construction and demolition.

16.4 At the southern end of the licensed site and immediately outside the licensed area further waste had been land-filled. This consisted of trommel fines and waste which had not been processed. Bunds at the southern perimeter of the site had been constructed with waste which is biodegradable and polluting in nature.

17. Londonderry Port. Baled waste is being stored in the site. The site was operating contrary to a number of licence conditions and is close to the maximum permitted amount of waste able to be stored.

18. Statutory notices. The licence for the MRF was revoked in June 2013 and statutory notices issued requiring the removal of the waste to landfill. Further notices under the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 have been issued to both landowners. To date none of the notices have been complied with.

19. On 4th July 2013 a further intrusive inspection took place on land to the west of Mobyoy Road. Further significant deposits of polluting waste were found.

20. On 26th July 2013 a number of premises were subject to search and seizure under the authority of warrants issued under the Proceeds of Crime Act 2002.

21. On 3^{1st} July and 5th August and 3rd October 2013 further interviews under caution took place.

22. A file is being prepared for submission to the Public Prosecution Service regarding a number of alleged criminal offences detected during the investigation – the file is expected to be submitted during November or early December 2013.

APPENDIX 2

Summary of the Key Regulations relating to the management, transport, treatment and disposal of controlled waste in Northern Ireland produced by WRAP

Key Regulations

There are a number of regulations relating to the management, transport, treatment and disposal of controlled waste. These regulations apply to construction and demolition waste.

In Northern Ireland, waste is regulated through primary legislation (e.g. the Waste & Contaminated Land Order 1997 as amended) and secondary regulations (e.g. the Waste Management Licensing regulations (Northern Ireland) 2003 and amendments (The Waste Management Licensing (Amendment) Regulations (Northern Ireland) 2009 No.76). The primary legislation implements various European Directives, including the Waste Framework Directive.

Please refer to the Northern Ireland Environment Agency, the agency within the DOE regulating waste, for a complete overview of the regulations and to the OPSI (Office of Public Sector Information) for the complete text.

- Waste & Contaminated Land Order 1997 and amendments
- Pollution and Prevention Controls Regulations (Northern Ireland) 2003
- Landfill Regulations (Northern Ireland) 2003 and amendments
- Waste Management Licensing Regulations (Northern Ireland) 2003 and amendments
- Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 and amendments
- The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010

Waste & Contaminated Land Order 1997 and amendments

The Waste & Contaminated Land Order 1997 (SI No. 2778 (N.I. 19)) implements the EC Waste Framework Directive in Northern Ireland. It provides the basis for licensing controls and other provisions aimed at ensuring that waste handling, disposal and recovery options do not harm the environment, such as waste management licensing, duty of care, registration of carriers, hazardous waste and producer responsibility.

The provisions of the Order have been implemented through secondary legislation such as the Waste Management Licensing Regulations and the Controlled Waste regulations, which include Duty of Care and Registration of Carriers.

The Order was amended in 2007 (SI 2007 No. 611 (N.I. 3) to introduce new powers to the waste enforcing authorities to combat fly-tipping. It also gives power to the

Department of the Environment for making regulations on Site Waste Management Plans.

Pollution and Prevention Controls Regulations (Northern Ireland) 2003

The Pollution Prevention and Control Regulations (Northern Ireland) 2003 (SR 2003 No. 46), implement the EU Integrated Pollution Prevention and Control (IPPC) Directive in Northern Ireland. The regulations introduce a permitting regime whereby operators of certain installations or mobile plants (as defined) must obtain a permit from the environmental regulator and comply with the conditions in that permit.

The Pollution Prevention and Control (PPC) regime regulates, within other businesses, waste management activities, including landfill sites and aggregates recycling operations. Each type of activity is classified as requiring a Part A, Part B or Part C permit.

PPC Part A permits control a broad range of environmental impacts including:

- emissions to air, land and water
- energy efficiency
- waste reduction
- raw materials consumption
- noise, vibration and heat
- accident prevention
- the condition of your site

PPC Part B and Part C, in Northern Ireland control emissions to air only.

The Industrial Pollution and Radiochemical Inspectorate (IPRI), part of the Northern Ireland Environment Agency (NIEA), regulates Part A and Part B sites, while district councils regulate Part C sites.

More information is available from the Northern Ireland Environment Agency.

Landfill Regulations (Northern Ireland) 2003 and amendments

The Landfill Regulations implement the Landfill Directive (Council Directive 1999/31/EC), which aims to prevent, or to reduce as far as possible, the negative environmental effects of landfill. More information on the classification of landfills and Waste Acceptance Criteria can be found in The Landfill Regulations and the Waste Acceptance Criteria page. Information on taxation can be found in the Landfill Tax page.

From 30 October 2007, new rules apply for non-hazardous waste:

- liquid wastes are banned from landfills*
- waste must be treated before it can be land-filled*

Waste Management Licensing Regulations (Northern Ireland) 2003 and amendments

These regulations [The Waste Management Licensing Regulations (Northern Ireland) 2003] and amendments [The Waste Management Licensing (Amendment) Regulations (Northern Ireland) 2009 No.76] set out the procedure for obtaining a licence. They provide for exemptions for permitting for the reuse, disposal, storage and recovery of types of waste referred to in the European Waste Catalogue together with exemptions from the permitting requirements of the Waste Framework Directive and the Hazardous Waste Directive. Further information can be found in the Licensing and Exemptions page.

Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 and amendments

Anyone who produces, imports, carries, keeps, treats or disposes of controlled waste from business or industry or acts as a waste broker in this respect has a duty to ensure that any waste produced is handled safely and in accordance with the law. A summary of the obligations can be found on the Duty of Care page. A code of practice on the "Waste Management - The Duty of Care" is available from the Northern Ireland Environment Agency.

The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010

The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010 come into operation on 1st April 2010. The Regulations transposed the EC Mining Waste Directive and is implemented through the Northern Ireland Planning System. The main requirement of the Regulations is the development of a site waste management plan. For more details, visit the Northern Ireland Planning Service website.

APPENDIX 3

Existing powers not used or under used under the Waste and Contaminated Land (NI) Order 1997

- **Article 3** – fit and proper person – not used to the full extent that it could be.
- **Article 4 (11)** – Court required to consider financial benefit accrued in consequence of the offence – not happening.
- **Article 4(A)** provision for fixed penalty notices for deposit of waste without a licence – would be useful when waste exceeds boundary or amounts in a minor way for regulated facilities – not suitable for serious crime – not used at all.
- **Article 5** – Duty of Care – powers to issue notices requiring information to be produced etc.
- **Article 5 (A)** – fixed penalty for failing to provide documents – never used.
- **Article 5 B and C** – enforcement costs – not used this as yet.
- **Article 5E** – power to seize vehicles – hasn't been able to be used as enabling regulations required. These are expected November 2013.
- **Article 8 (1)** – enables application forms for licences to be made and accompanied by such information as the Dept reasonably requires – could be used to gain more assurance for applications.
- **Article 8 (4)** – enables the Dept to refuse an application for a licence if refusal is necessary for the purpose of preventing pollution of the environment or harm to human health – this is in addition to the fit and proper person test.
- **Article 10** – enables DOE to modify the conditions of a licence which is in force if desirable and unlikely to require unreasonable expense – could be used as further tool to control activities on regulated sites and to vary old licenses issued by Councils which are not fit for purpose.
- **Article 12** – suspension of licences – possible and could be used more often when more waste than licence allows is found on site in order to compel operator to come back into compliance before they can receive any more waste.
- **Article 12 (4)** – revocation of waste licenses.
- **Article 16** – supervision of licensed activities. Many aspects e.g. carrying out emergency works, recouping costs from licence holder, notices to gain compliance – and ability to revoke the licence if the notices are not complied with.
- **Article 18** – offence of making false declaration – no prosecutions under this as far as is known.

- **Article 30** – gives rise to the subsidiary Hazardous Waste Regulations – fixed penalty system not used to date.
- **Article 38** – carrier registration – no routine regulatory activity.
- **Article 39** – revocation of carrier registration – currently transport of waste is facilitating crime.
- **PART III** – is not in force and applies to creation of a contaminated land regime. In NI the only way contaminated land is managed is via planning process. This creates a driver for those who illegally deposit waste to seek to have it dealt with as contaminated land which is a less onerous regime than that designed for illegal waste and the enforcement under planning legislation is not as robust either legislatively or in practice.

APPENDIX 4

Key issues and proposals identified in the workshop, by theme

Waste strategy

- It is important that the new Waste Strategy is effectively implemented.
- There is a need for tighter controls on waste transport and facilities and closer engagement with the Judiciary.
- Increasing public awareness of waste crime activity and introducing civil sanctions would act as a deterrent.
- Potential for misuse of end of waste quality protocols should be addressed.
[N.I. Authorities should not normally accept waste from outside the region.]

Waste infrastructure

- A single Waste Authority could be valuable and there is a need to improve waste data collection and analysis.

Powers

- Available powers should be more widely and effectively used and there is a need to be better at dealing with appeals.
- Unified powers for environmental offences would be valuable as would changes to the Fit and Proper Persons test allowing non-environmental criminal activity to be taken into consideration.
- Stronger regulation of skip companies could also help to address current problems.

Site Regulation

Other ideas highlighted at the workshop included

- Development of a voluntary waste operator charter mark would help to reduce illegal activity.

- Waste licences should be more difficult to secure and should involve PSNI and DVA consultation, financial bonds and photo identification on licences.
- Tighter and more targeted controls on waste in operators' possession
- More focus on the overall waste system and flows rather than the current site focussed approach.
- NIEA regulatory teams need to communicate better and work collaboratively to target identified waste streams.
- Integrated permits requiring environmental management systems for sites would help to reduce on-site waste.
- A penalty points system for regulatory breaches would support stronger enforcement.
- Increased landowner liability would also help to reduce illegal activity on site.

These and other policy and legislative options identified should be considered as part of the wider review of the Department's waste management strategy and policy, with options and recommendations presented to the Environment Minister for initial consideration. Further development of specific policy proposals would then be developed in consultation with other Ministers as appropriate and the NI Assembly.

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River Faughan Anglers Ltd
Quarry Products Association

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