



Irish Waste Management Conference 2015

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A&L Goodbody



TFS – green waste classification issue

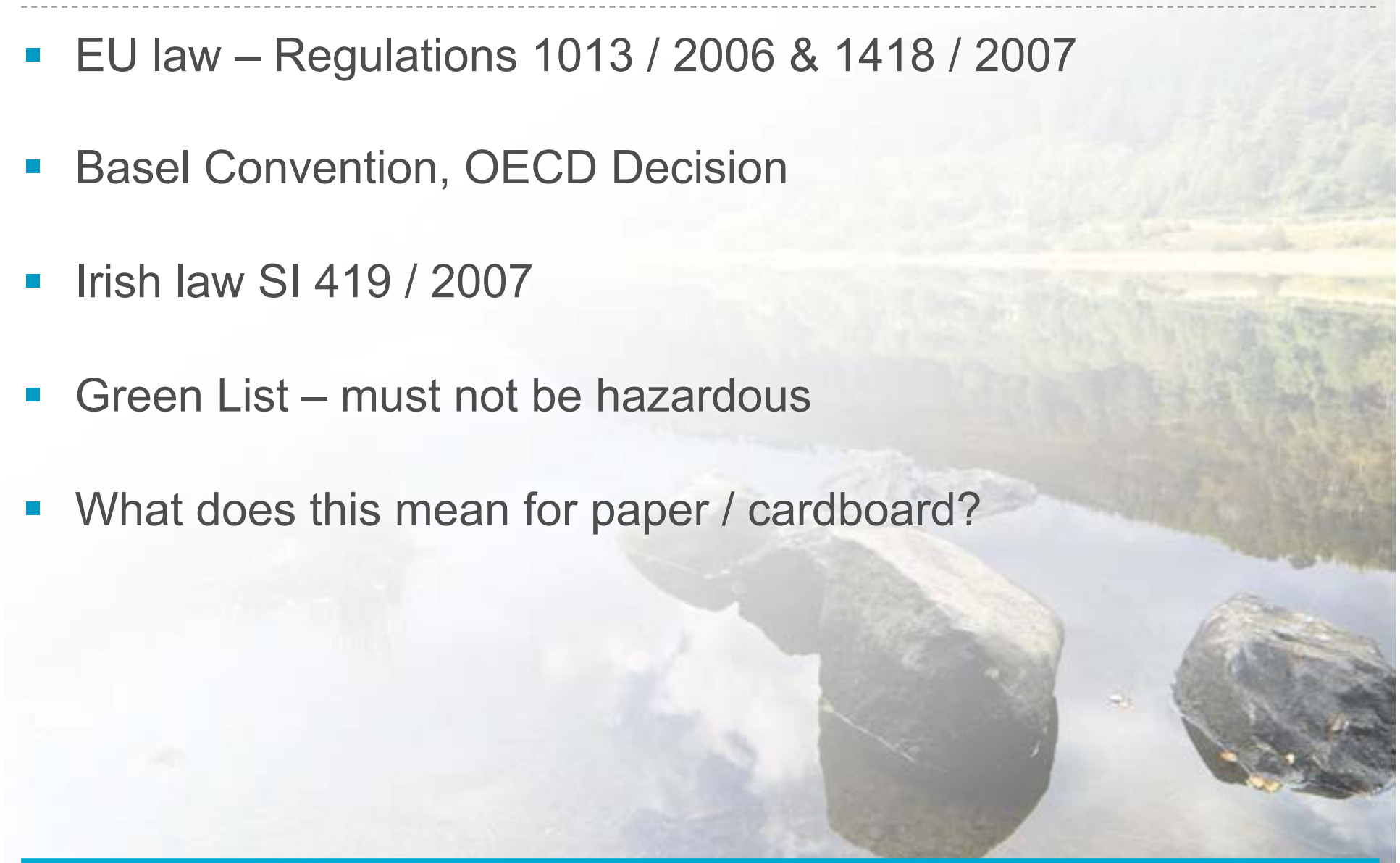
EPA Financial Provision

Waste Enforcement 2015

England and Wales / comparative analysis



TFS – green waste classification issue

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- EU law – Regulations 1013 / 2006 & 1418 / 2007
 - Basel Convention, OECD Decision
 - Irish law SI 419 / 2007
 - Green List – must not be hazardous
 - What does this mean for paper / cardboard?
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- A background image showing a wide river with large, dark, rounded rocks in the foreground. The river reflects the sky and the surrounding green hills. The image is slightly faded to allow the text to be read clearly.

- Issues arising re Irish paper exported
- Collected in co-mingled dry recyclable bins
- Processed in MRF's, transported to paper mills in EU and outside EU, required specification
- Shipped with Annex VII completed
- Netherlands have rejected shipments due to "*contamination*"
- TFS have prosecuted waste companies, and brokers

- What level of “*contamination*” is acceptable?
- Guidance says “*contamination*” if
 - » Makes waste more hazardous
 - » Move appropriate to re-classify
 - » Prevents recovery in an “*environmentally sound manner*”
- Criminal Offence, civil claims, reputational damage

- *Eska v. Secretary of State*, 20 May 2015
- Dutch Court, no appeal
- Some level of “*contamination*” clearly permissible
- There, 7% contaminants still allowed waste be classified as B3020
- Upheld Eska appeal



- In Commission v Belgium (Case C-2/90), the Court of Justice held that:

“It must... be concluded that waste, whether recyclable or not, is to be regarded as ‘goods’ the movement of which, in accordance with Article [28] of the Treaty, must in principle not be prevented.”

- The Court also recognised the economic dimension of waste in the *Mayer Parry* case (Case C-444/00). when it explained that:

“First, obstacles to trade could arise if different concepts of recycling were applied in the Member States, so that the same material or product could be regarded as recycled in one Member State - and would accordingly have ceased to be classified as packaging waste and been freed from all waste-specific controls - while that would not be the case in another Member State.” (para 78)

- IWMA / FEAD seeking clarification: TFS, EU Commission
- Practical steps in the meantime:-
 - » Comply with Licence and TFS
 - » Contract for “*environmentally sound recovery*”
 - » Use licensed brokers, consignors
 - » Keep records for 3 years
 - » Supervise inspections
 - » Engage expert assistance

EPA Financial Provision

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What is Financial Provision?

- The putting in place of an approved financial instrument or other provision

Who needs it?

- Licensees under the various EPA authorisation regimes (IED, IPC, waste & dumping at sea – so called ‘licenced activities’)

Why is it required?

- The EPA/the taxpayer should not have to pay for legacy liabilities

What is it for?

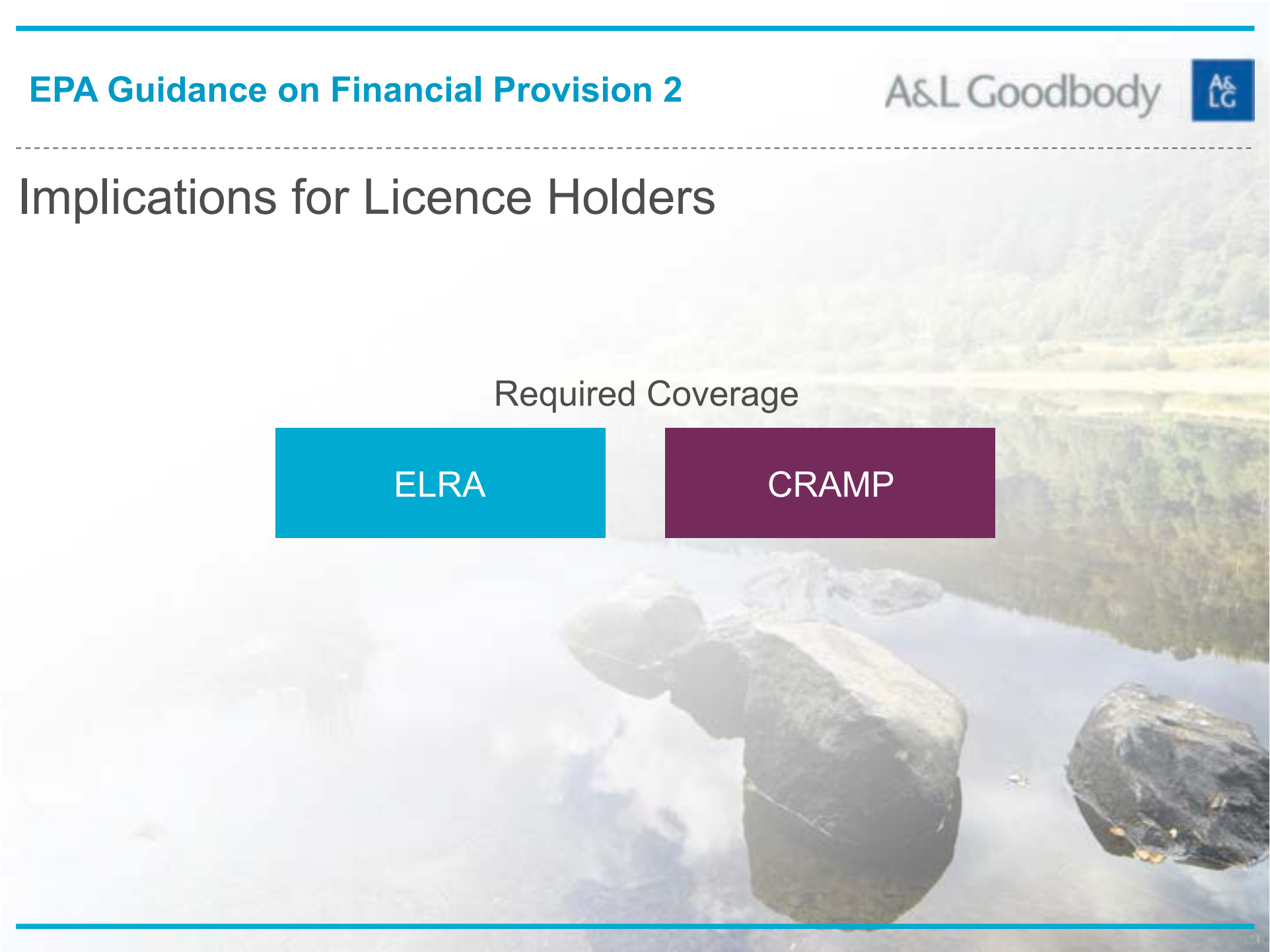
- To manage environmental liabilities from licenced activities:
 - › Arising from unforeseen ‘incidents’ (Environmental Liability Risk Assessment – “ELRA”)
 - › Arising from inevitable closure and site restoration (Closure Remediation & Aftercare Management Plan – “CRAMP”)

Implications for Licence Holders

Required Coverage

ELRA

CRAMP



Types of Financial Provision

Instrument	Conditions	Liabilities Covered
Secured Fund	First ranking fixed charge in favour of the EPA	Suitable for all liabilities
On Demand Performance Bond	Perpetual & on-demand. Legal opinion required if the surety is outside the jurisdiction	Suitable for all liabilities
Parent Company Guarantee	Legal opinion required if the surety is outside the jurisdiction	Suitable for all liabilities, subject to EPA approval
Charge on the Property	Only 30% of a property's value may be utilised	Suitable for all liabilities, but only accepted as partial fulfilment (more liquid assets are also required)
Insurance	Policy wording must be acceptable to the EPA	Not suitable for CRAMP

Draft Guidance Document -v- Final Guidance Document

Charge on property as financial provision extended somewhat

Bond now suitable for all liabilities

Insurance no longer limited to sites with an RBME risk rating of B or C

Parent Company guarantee will no longer survive licence transfer or surrender

Waste Enforcement 2015

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EPA PROSECUTIONS 2015

The following is a list of prosecutions taken this year to date.

Reg. No.	Respondents	Hearing Date	Total Fines & Costs Imposed
W0257-01	<u>Country Clean Recycling</u>	9 Jan 2015	€21,545.50
P0057-02	<u>Kingspan Insulation Limited</u>	28 Jan 2015	€11,099.19
W0205-01	<u>Greyhound Recycling and Recovery</u>	2 Feb 2015	€23,373.39
WO208-01	<u>Oxigen Environmental</u>	6 May 2015	€18,000.00

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Reg. No.	Respondents	Hearing Date	Total Fines & Costs Imposed
PO378-02	<u>Quinn Cement Limited</u>	21 May 2015	€7569.79
PO799-01	<u>Glanbia Foods Society Ltd</u>	15 Sept 2015	€6511.86
WO152-03	<u>Oxigen Environmental Limited</u>	30 Sept 2015	€25,000
N/A	<u>Eye Spy CCTV Limited</u>	30 Sept 2015	€25,512.89
N/A	<u>Jenzsoph Ltd</u>	27 Oct 2015	€20,000,000

DPP v. Cavan Co.Co. & Oxigen Environmental, Court of Appeal, June 2015

- Judge reviewed sentencing in environmental cases generally
- Fines reduced from €260k and €760k to €50k each
- Reduction on the basis of proportionality and no profit made

*England and Wales /
comparative analysis*

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- Proceeds of Crime legislation used regularly
- Legislation for enhanced enforcement, due early 2016
 - » Permit suspension
 - » Injunction availability
 - » Prohibition on access
 - » Removal of pollution

- **Waste disposal or recovery?**

- » *R (La Farge Aggregates Ltd) v. Secretary for State* (August 2015)
- » JR of EA decision
- » A3 (15) WFD
- » PP condition to reinstate
- » Upheld EA decision – disposal operation

- **Largest ever administrative sanction**

- » Hipp UK Ltd, (October 2015)
- » Stg£415,000 plus EA costs
- » Packaging waste breaches



THANK YOU



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