

**The Irish Waste Management Conference 2017**

**Waste enforcement and the Ferry Case Study**

Alison Fanagan, A&L Goodbody

Tuesday 28 November  
2017 Carton House Hotel

**Is our waste enforcement  
regime adequate?**

**1996**

**Section 32**  
– “environmental  
pollution”

**Section 39**

**Section 57 /  
Section 58  
remedies**

# Key Cases

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**Fenton**

**Scully**

**Swalcliffe**

**Neiphin**

**Clean  
Build**

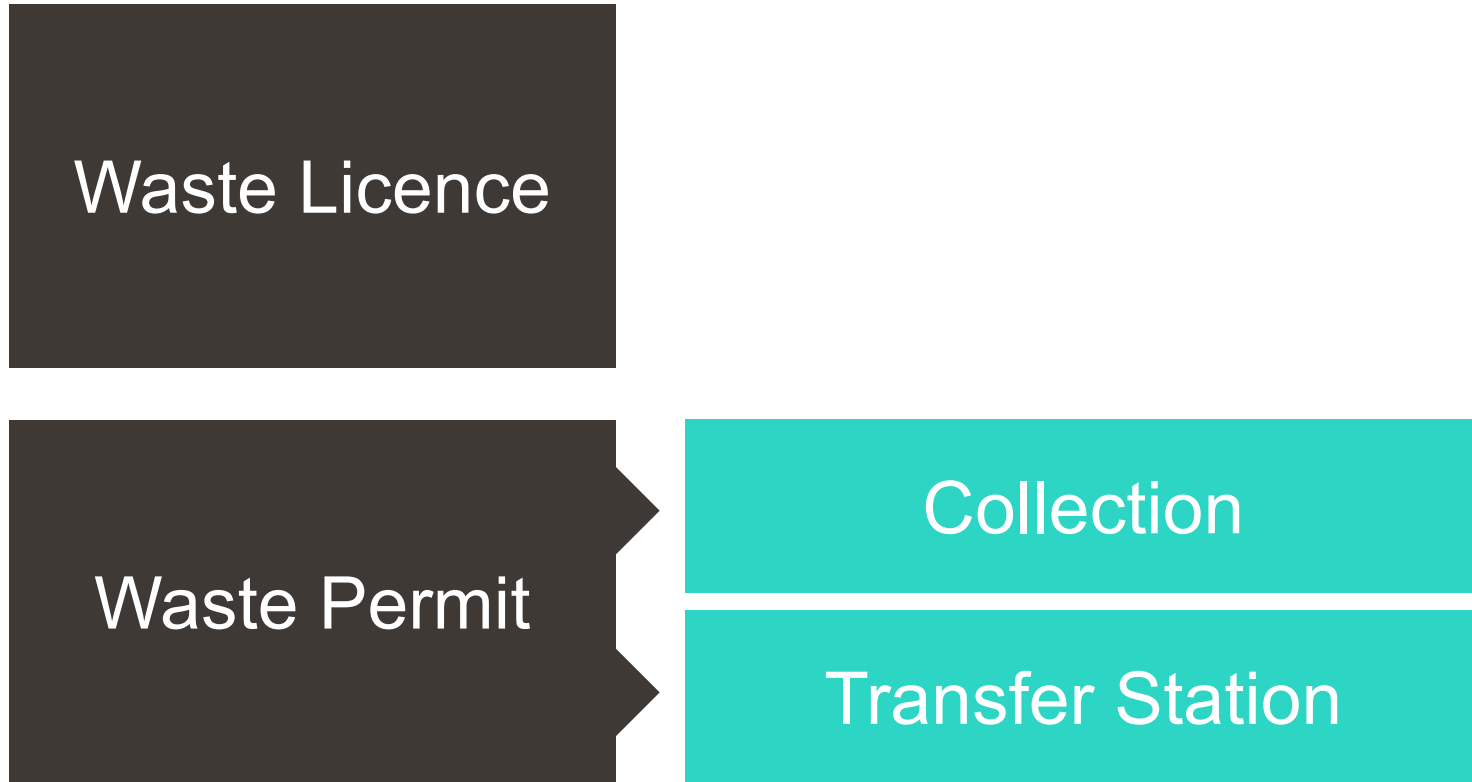
**Brownfield**

Waste Licence

Waste Permit

Collection

Transfer Station



## Key elements of permit

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Fit & Proper  
Person

Conditions

AER

Protect against environmental pollution

Secure Clean-up

Equity for competitors



- Rossbracken, Letterkenny, Co. Donegal. Owned by James Ferry, 11 acres
- Isle Burn River, part of Lough Swilly SAC
- Nov. 2012 Permit granted to Ferry's Refuse Collection Limited
- Major employer – c.60 employees (c.40% of market c.11,000 homes & 500 businesses)

## Licence History – Ferry (cont'd)

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- Waste Convictions:
  - » 2000: Multiple charges for breaches of waste regulations in 1999. Conviction
  - » 2005: Burial of household waste. 2 Convictions.
    - Fine & costs: €10,500 + 6 months suspended sentence.
  - » 2013: Dumping of waste. Removal ordered.
    - Three day trial, Letterkenny District Court, 12 charges.
    - Fine/costs & suspended sentence
  - » Media reports of Ferry querying identity of “informer,” and employee claiming was paid to dump by competitor

- Permit refused by NWCPO – 1<sup>st</sup> refusal of its kind: July 2014
- Appealed - lost
- New Permit – Ferry’s Refuse Recycling Limited - June 2015
- “Effective control?” Same premises, staff, trucks.
- Related persons: Daughter & Partner

## Waste Facility Permit Regime

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- No AER's required to be published
- Weighed in, Weighed out?
- Revenue owed €275k, 2014 (VAT)
- Donegal Co Co sued for €320k in unpaid landfill fees, January 2015
- Donegal Co Co pursued unpaid fine/costs €42k, February 2015

- Complaints made early 2015, 2016
- Trial holes dug by Donegal County Council / Section 14 powers
- Nothing Found
- EPA & IWMA action, April & July 2016
- WERLA (Connaught/Ulster) assisted Donegal Co Co, 2016/2017

Wall 50m3 area, 6m high wall

Built September 2014











Wall 50m3 area, 6m high wall

Built September 2014



Proximity to  
SAC

Volume of  
Material

Volume of  
Trucks / Skip  
lorries

- Toxic leachate
- Landfill Gas
  - » Environmental Pollution
- RPS and Blue Rock engaged by Donegal Co Co
- Site inspections, November 2016 and January 2017

2014











2014



2015









2015



# Scrap Heap – Area # 2

A&L Goodbody











# Scrap Heap – Area # 2

A&L Goodbody



## Peninsula Area – Area #3

A&L Goodbody







## Peninsula Area – Area #3

A&L Goodbody



# Roles and Responsibilities

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**Department**

**EPA**

**Donegal Co Co**

**WERLA**



- 6 April 2017, application to the High Court.
- Section 57 – injunction, affidavits
- Closure – 25 April 2017
- Clean Up – 28,000-36,000 tonnes of illegal waste buried
- Cost - €4.5m – to €5.8m plus €400k to remove baled waste
- Next Steps: Return to court and show clean up underway by July 2017

- Barrett J: “ A disgrace to the people of Donegal”: 28 July 2017  
Case: “*The most revolting to come before me on the bench to date.*”

- Finances – total debts claimed of €1.5m
- Net Closing In . . . “attachment & committal”
- 2 Fires at the site, fire services impeded and water supply cut off, July & August 2017 (Previous fire 2013)



- Contempt found: “a constant, deliberate and wilful refusal to comply with the court order”
- Arrest and detention ordered, 22 August 2017
- Mr Ferry left court, hasn't been located yet
- Clean up Orders made November 2017

Permitting regime

Role of the WERLA

Time of the essence

Environmental protection and level playing field

# Q&A



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