

**Comhar Submission to the
Department of the Environment, Heritage and Local Government on
Consultation Paper on Regulation of the Waste Management Sector**

Comhar welcomes the opportunity to make a submission on the Department's Consultation Paper on Regulation of the Waste Management Sector. The Consultation Paper describes very clearly and concisely the evolution of the sector from the largely unregulated situation, focussed on lowest cost solutions, to one which is fully and properly regulated from an environmental perspective. The EPA has also recently highlighted these positive developments¹, for example:

- in the past 10 years over 100 unlined and unregulated dumps have been closed and replaced with 34 modern municipal waste sites.
- by achieving 34% recovery in 2004, the national target of 35% recycling of municipal waste by 2013 has almost been achieved.

The Consultation Paper draws attention to other significant changes including the growth and consolidation of the private sector; the private sector is now the dominant waste collector in at least 20 of the 34 local authority areas. At the same time local authorities continue to play a major role as both service providers and regulators.

Broadly speaking, environmental regulation of the waste sector is currently the responsibility of the local authorities and the EPA:

- Local authorities provide for waste management services in their functional areas in accordance with section 59 of the Waste Management Act 1996 (as amended) including the issue permits for waste recovery facilities below certain thresholds, and permitting of waste collection.
- The EPA licences waste disposal facilities, waste recovery operations above defined threshold, and undertakes enforcement activity generally through the operation of the Office of Environmental Enforcement.

The private sector waste management industry has highlighted the conflicting role of local authorities as both regulator and competitor in the market. Local authorities do not require waste collection permits or waste facility permits for their own activities, while retaining statutory responsibility for issuing collection permits and facility permits to the private sector. Additionally there have been calls to streamline and

¹ Environment in Focus 2006 – Environmental Indicators for Ireland – EPA, 2006

rationalise the present system of waste collection permits where some operators need to apply for 10 similar collection permits to operate nationally because of the regional structure to the permitting process.

The key question in the Consultation Paper is whether the waste management sector would benefit from a broader socio-economic regulatory framework, which would work better in the interests of both the service provider and the consumer.

Comhar would support changes to the regulatory framework which remove any perceived conflict in the role of local authorities as regulators and competitors in the market, as well as the streamlining and rationalisation of the waste collection permitting system.

Comhar suggests that rather than establishing a new independent regulatory authority, many of the issues could be resolved through reassignment of functions within the existing regulatory framework. The EPA could take on the permitting of all waste recovery facilities as well as waste collection permitting. Assigning these additional regulatory powers to the EPA, together with the necessary resources, would produce synergies with the Agency's existing functions in relation to waste licensing and enforcement, and state of the environment reporting. These additional functions could include:

- the issue, renewal, and revocation (where necessary) of waste collection permits centrally,
- the enforcement of waste collection permits,
- coordination of the scope and objectives of the regional waste management plans, and
- determination of waste movements.

Other regulatory functions outlined in the consultation paper, particularly in relation to market and competition issues, are more complex, i.e.:

- determination of an appropriate waste charging structure
- imposition of Public Service Obligations, and
- supervision of competitive tendering arrangements

Comhar supports the conclusion in the Indecon Review of Local Government Financing that the regulatory framework must protect consumer interests from being disadvantaged by excessive profit taking by private sector local monopolies in the provision of local services. In particular, any restructuring of the regulatory process must take account of persons of limited means (such as pensioners and the unemployed) who could face difficulties in paying for a waste collection service.

The Consultation Paper refers to the recent Competition Authority investigation of allegations of excessive pricing by a private sector company involved in household waste collection services. The Authority considered the option of a waste regulator as a means to achieve market reform but was not in favour of such a measure. It noted that there does not appear to be a practical working example of a waste regulator setting prices (as in the case of the energy regulator) and it perceived a number of difficulties with such a regulator for the waste sector. It would be difficult to set a

single State-wide price for household waste collection because the industry is characterised by widely varying cost conditions (due to different population density distributions, transport costs, recycling, and disposal arrangements) as well as different methods and frequency of collection etc. Further significant costs would likely arise in monitoring and policing the implementation of the system and consumers would have to pay for this regulatory function via their collection charges.

The Competition Authority has also suggested that competitive tendering for waste service contracts could result in significant savings for consumers. Competitive tendering for the waste market operates in a number of countries and studies of these markets report that there are significant cost savings achieved using this model. For example, in the Netherlands estimated cost savings of approx 15-20% arise from contracting out refuse collection. Competitive tendering can create more appropriate long term incentives for firms to control their cost bases, charge competitive prices and maintain an adequate quality of service.

Comhar believes that there is merit in providing for this approach in any revision to the regulatory arrangements. A key question, however, is whether local authorities should retain a central role here, consistent with their obligations under Section 59 of the Waste Management Act 1996, as amended, or whether the EPA, should take a lead role. If local authorities retain overall responsibility for the tendering process, conflicts of interest would remain where local authorities employ or retain a work force for waste collection, as acknowledged in the Consultation Paper. On balance, Comhar recommends that the EPA should take on the role of supervision of the competitive tendering arrangements.

Finally, Comhar recommends that the Department should undertake and publish a full Regulatory Impact Assessment in advance of the introduction of any new regulatory arrangements for the waste management sector.