

Justice Committee

Environmental crime and serious organised crime

Written submission from the Northern Ireland Environment Agency

1. Background

1.1 In June 2013, I was asked by the then Minister for the Environment in Northern Ireland, Alex Attwood, to carry out a review into the circumstances surrounding a massive illegal dumping of waste into an area called Mobouy near Derry. I was also asked to set out the lessons learnt for the future regulation of waste industry in Northern Ireland. It is important to note that this review was entirely separate from a criminal investigation (Operation Sycamore) which is still ongoing.

1.2 A key question in my review was to gauge the extent of criminal infiltration into the waste industry in Northern Ireland and more specifically whether organised crime is involved.

1.3 Part of my review involved visits to all of the environmental agencies in the UK and Ireland (the Environment Agency (EA), Natural Resources Wales (NRW), the Scottish Environment Protection Agency (SEPA) and the Environment Protection Agency Ireland (Irish EPA). These visits confirmed that environmental crime including waste crime is a problem in all of the countries visited though the exact scale of waste crime and degree to which organised crime is involved was unclear. However, both from intelligence and the number of cases being uncovered the problem appears to be most serious in England and Scotland as well as in Northern Ireland.

1.4 In this submission, I will be limiting my comments to one form of environmental crime namely, waste crime, as being the most lucrative and damaging environmental crime which is particularly attractive to organised crime. A full transcript of my report can be seen using this link:

<http://www.doeni.gov.uk/niea/mills-review-december-2013.pdf>

2. issues

2.1 By its very nature, the extent of criminality is difficult to measure and that of organised crime even more difficult. Organised crime groups wherever possible will attempt to distance themselves from the activity on the ground. A recent Strategic Problem Profile specifically of waste crime in Northern Ireland produced by Police Service Northern Ireland (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 the proceeds of crime can be legitimised or can simply form an “add on” to a criminal enterprise.

2.2 Illegal waste activities can be extremely lucrative. It is estimated that in the case of the illegal dumping at Mobouy, the pecuniary advantage (the proportion of financial benefit connected with an advantage on others by operating illegally) was £41.8 million. The amount of landfill tax avoided was estimated to be a minimum of

£34.6m. This makes waste crime extremely profitable and it is not surprising that organised crime has been attracted to it around the UK, in Ireland and indeed in many parts of Europe.

2.3 In recent years, there are a number of examples where organised crime has used 'legitimate' licensed waste operations as cover for illegal activities. This both undercuts legitimate waste operators and can potentially push other previously compliant operators towards cutting corners or even criminality. If organised crime becomes well established in the waste industry, it can pose very significant economic challenges for the state through lost resource efficiency, foregone taxes and very significant clear up costs. Furthermore, it can pose problems for Local Authorities if their waste has fallen into the wrong hands and inadvertently public money has been used to fund illegal activity.

2.4 Whilst the potential profits for the criminals carrying out waste crime are high, the risks are low. 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". Whilst sentencing regimes elsewhere may be tougher, compared to other forms of organised crime, waste crime must appear an attractive option.

2.5 This raises the issue as to why the seriousness of waste crime is not yet fully recognised by the Judiciary in Northern Ireland, average fines during 2003-2010 in Northern Ireland having been low and significantly lower than those imposed in England and Wales. Furthermore, whilst custodial and suspended sentences are frequently used to sanction waste crime in England and Wales, these are rare in Northern Ireland. More recently, significant improvements in the use of the Proceeds of Crime Regime has enabled confiscation procedures resulting in significant financial penalties as a result of Confiscation Orders. Confiscation Orders made in 25 environmental crime cases totalled £1,944,136. However, organised criminals are skilled at protecting their assets and even when caught the fines are relatively insignificant when compared with the profits that can be realised.

2.6 The environmental and financial legacy from waste crime can be very significant. In the case of Mobouy, the exact cost of removing the illegally dumped waste are uncertain but could be tens of millions. Much of this cost could be borne by the State and failure to deal with illegally dumped waste could result in further infraction costs if the UK was found to be failing in its duty under the EU Waste Framework Directive. However, removal may not be the best environmental option, and even if it is, environmental damage may have been done with potentially long term consequences, eg, pollution to groundwaters.

2.7 Unlike many other forms of environmental crime, currently there is no effective mechanism to make the polluter pay. Thus whilst criminals responsible for waste crime may be prosecuted, the legacy of illegally dumped waste and its associated costs can continue to grow. Recently the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 were transposed into Northern

Ireland law but these are complex regulations, can only be used for matters that took place after their transposition in July 2009 and as yet are relatively untested.

2.8 Waste is no respecter of borders. It is currently illegally imported and exported within the UK and Ireland, as well as to Europe, Africa and the Far East. Criminals have become skilled at making it hard to identify where the waste comes from.

2.9 Lastly, preventing organised crime from infiltrating the waste industry requires making it difficult for criminals to enter the waste industry and/or to get hold of waste. Dealing with the consequences of the crime is both costly and time consuming. More resources need to be put into disrupting and deterring organised crime from getting into waste crime in the first place.

Chris Mills
Director of Resource Efficiency Division
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