



Local Authority Enforcement Audit Report

Kerry County Council

Date of audit 12 03 2024 Audit report Ref: LAET 2024/04/08

PURPOSE OF AUDIT

This audit was carried out in accordance with **Section 63(2)** of the **Environmental Protection Agency (EPA) Acts 1992 & 2003** and aims to assess the performance by the local authority of its statutory functions in relation to environmental protection. This report contains advice and recommendations for the local authority in accordance with **Section 63(3)(a) of the EPA Acts 1992 & 2003**.

1. SUMMARY OF FINDINGS

Observations were raised in relation to:

- Environmental Complaints Handling; and
- Progress with the National Enforcement Priorities (NEPs) 2022-2024 in the areas of waste, water and air/noise.

Actions in relation to the above are required to be taken, as specified in the report.

Local authorities are expected to meet the required standard in 100% of the NEPs by the end of the 2022 – 2024 three-year cycle. Kerry County Council scored 'Limited' for 5% of the NEPs and 'Moderate' for 30% of the NEPs under the local authority performance framework for 2022. The 2023 NEP progress report is currently being reviewed by the Agency. The local authority must focus on the following four work areas which did not meet the required standard in 2021, 2022 and were impacted in 2023:

- Household & Commercial Waste;
- Producer Responsibility Initiatives (PRI);
- Pressures from Agriculture (Farm Yards); and
- Pressures from Agriculture (Farmland).

Kerry County Council stated that lack of resources has impacted on the performance by the Council of its statutory environmental protection functions in 2021, 2022 and 2023. These positions were filled in 2023/2024, with the exception of a sanction for agriculture and a staff member for water services. Kerry County Council should, therefore, continue to review the staff resources in its environmental section and ensure that this vital work is appropriately prioritised and that adequate resources are deployed to deliver its statutory functions in environmental protection.

2. SCOPE OF AUDIT & ATTENDEES

The scope of the audit included a review of Kerry County Council’s enforcement plan under Recommendation 2001/331/EC providing for minimum criteria for environmental inspections (RMCEI), environmental complaint handling, progress in relation to the National Enforcement Priorities (NEPs) under the Local Authority Performance Framework, and resources. During the audit a number of local authority staff were interviewed in relation to statutory environmental functions, NEPs, complaints and RMCEI inspection plans.

Representing the Council:

<u>Name</u>	<u>Position</u>
Paul Neary	Acting Director of Service and Section Head
Mick Boyce	Senior Executive Engineer and RMCEI Co-Ordinator
Liam Brosnan	Administrative Officer and Complaints Coordinator
Mark O’Sullivan	Executive Environmental Officer
Patrick Lenihan	Assistant Scientist
David Lenihan	Senior Executive Chemist
Brian Lennon	Senior Executive Engineer, Water Services

Representing the Environmental Protection Agency:

Tom Wallace	Inspector II
Aoife Loughnane	Inspector I
Michael Martin	Inspector I

3. AUDIT OBSERVATIONS & RECOMMENDATIONS

3.1 Environmental Complaints Handling

Observations:

- Kerry County Council has a comprehensive complaints management system in place. Some minor elements were identified by the audit team around consistently uploading electronic documents and recording the source of complaints, such as from the EPA. Kerry County Council stated that the number of complaints reported in their RMCEI data returns represents the number of cases/sites as opposed to the number of individual complaints received, with an instance where one complaint was reported in NEMIS for 2023 which correlated to over 100 complaints received and investigated throughout the year at one authorised facility. Kerry County Council stated that the complaints management will be moved to the NEMIS system in 2024, once this facility is available on the system.

Table 1: Sample complaints reviewed				
	Reference	Subject	Finding	Action
1.	COM017206	Odour/Light Pollution	Complaint was investigated appropriately, and remedial action was undertaken by the facility. Kerry County Council closed out the complaint following confirmation from the complainant that the issues had not reoccurred after a period of time.	In the case of complaints referred to the local authority by the EPA, ensure the source of the complaint is recorded as such.
2.	COM018348	Waste	Complaint was investigated appropriately. Site was cleared.	No further action required

			Record of the clean-up waste collection docket was available during the audit.	
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Actions Required:

1. Kerry County Council are reminded to adhere to the complaints handling procedure/guidance which is in place and to consistently record the data, such as the electronic upload of documents, recording where the complaint was received from and tracking that complaints received from all sources are uploaded onto the system. The complaint definitions set out by NEMIS/RMCEI should be used consistently.

3.2 Waste National Enforcement Priorities

Observations:

- Kerry County Council scored ‘Limited’ for the Producer Responsibility Initiative (PRI) waste NEP in 2021 and 2022, with no inspections carried out in this area in 2022, and confirmed during the audit that a new resource was active in this area for the second half of 2023. Not all planned inspections were carried out under the PRIs in 2023, however there was a focus on Suspected Major Packaging Producers and relevant facilities under the Tyre Regulations. Kerry County Council stated that further activity is planned under WEEE, Suspected Major Packaging producers and the Deposit Return Scheme Regulations for 2024.
- Kerry County Council scored ‘Moderate’ for the Household and Commercial waste NEPs in 2021 and 2022, with no Commercial Food Waste inspections carried out during this period. Commercial waste inspections were carried out in late 2023, so the outcome from this activity is not yet known. For households a high rate of brown bin availability was reported for the county, but a lower rate of brown bin presentation was noted. The planned detection and follow up in this area, including the planned establishment of a register under Section 34C of the Waste Management Act in 2024, are noted. Annual return validation of the permitted facilities is ongoing to close out 2023 and then to follow up on 2024. Kerry County Council stated that this area will continue to be a focus to determine if there is further action required.
- The reporting of RMCEI data and the NEP progress reports should clearly outline the activity taken in the different waste sectors. For End-of-Life Vehicles, the NEP Progress Report stated that all authorised treatment facilities were inspected multiple times during 2023. The frequency of inspections was not captured in the NEP progress report or the RMCEI data. The compliance in the authorised sector should be reported and compared to previous years to demonstrate where improvement has been achieved, or where compliance has been maintained.

Actions Required:

1. The planned activity under the PRIs for 2024 should be completed, in particular under WEEE, Suspected Major Packaging producers and the Deposit Return Scheme Regulations for 2024. The compliance in these areas should be identified and actions should be taken as needed to improve registration and compliance with the schemes.
2. Focussed activity in the household and commercial waste area is required. Areas of low brown bin uptake/use should be identified and enforcement actions taken as required. The continued focus on the annual return validation of the permitted facilities and collectors in your catchment is noted.
3. Ensure all enforcement activity is clearly captured in the RMCEI data and the NEP progress reports.

3.3 Water National Enforcement Priorities

Observations:

- In 2022 the number of planned farm inspections carried out was inadequate when compared to the number of waterbodies at risk from agricultural pressures in the county. Inspections were undertaken on foot of complaints received. This remained the case for 2023 with no pre-planned Good Agricultural Practices (GAP) Regulations inspections carried out, however, further resourcing has now been assigned to this area for 2024 and the EPA expects that Directors of Services will ensure those resources are used effectively to achieve the aims of the National Agricultural Inspections Programme (NAIP), carry out agricultural inspections and implement associated actions.
- The Section 4 Discharge Licence Register was examined during the audit. There are over 120 Section 4 licences on the register, however the Council confirmed that a large number of these licences are currently inactive.
There are two rivers in Kerry where Section 4 discharges are identified as significant pressures on the receiving waters:
 - Emlagh_010 (IE_SW_22E010400): organic pollution & sediment.
 - Gweestin_040 (IE_SW_22G061200): nutrient pollution

Two Section 4 licences, Ref. No's W104 (housing development) and W41 (clothing products), discharge into these receiving waters. Both licences are ranked as Risk Category A. Kerry County Council committed to carrying out a detailed inspection of both discharges to investigate their current status.

- The Private Water Supplies Register is maintained by the Council's Water Services Section. A Compliance Monitoring Programme is in place for the 2024 sampling year. Hard copies of the register and monitoring programme were examined during the audit. The register is updated on an ad-hoc basis as the Water Services Section become aware of unregistered supplies. It was not clear if the data in the register was accurate and being kept up-to-date for each private water supply, in particular:
 - (i) population served;
 - (ii) volume of water supplied per day;
 - (iii) type of treatment in place; and
 - (iv) source of the water supply.

The hardcopy version of the 2024 Compliance Monitoring Programme does not identify:

- (i) the number of samples to be taken for Group A and Group B parameters for the small private supplies;
- (ii) pre-determined sampling locations that are representative of the water supply and equally distributed throughout the supply and the sampling year, as required under Regulation 13 of the European Union (Drinking Water) Regulations 2023 (S.I. 99 of 2023).

Actions Required:

1. Kerry County Council shall effectively use the assigned resources to achieve the aims of the NAIP farm inspection plan. The farm inspection tracker should be maintained throughout the year, to assist in reporting. Kerry County Council are reminded to seek sanction for the new post of agriculture inspector recently notified to them by the DHLGH.
2. Prioritise the monitoring and inspection of the Section 4 discharge licences that are a significant pressure on water quality. In particular review the Emlagh_010 and Gweestin_040 Rivers, having regard to the identification of Section 4 discharges as a significant pressure on these receiving waters. Provide an update on the compliance status of the Section 4 discharges into these rivers and identify whether any follow-up action is needed to enforce compliance with the licence conditions and emission limit values.

3. Ensure the Private Water Supplies Register contains the data specified in Regulation 14(5) of the 2023 Drinking Water Regulations. The register should be kept up-to-date and the data entered into the EPA's database, EDEN, must be accurate and updated annually.
4. Ensure that the Private Supplies Compliance Monitoring Programme identifies the number of samples to be taken for Group A and Group B parameters for the small private supplies, and includes pre-determined sampling locations that are representative of the water supply and equally distributed throughout the supply and the sampling year.

3.4 Air and Noise National Enforcement Priorities

Observations:

- Kerry County Council confirmed that inspections re-commenced in 2023 under the Solvents, Deco Paints & Petroleum Vapours Regulations, following the allocation of staff resources to these work areas. An ongoing investigation into complaints regarding an authorised site has led to a substantial increase in inspections at this Air Pollution licensed site in 2023.
- In 2023, Kerry County Council carried out 43 inspections of sites licensed under the Air Pollution Act, compared to only 4 inspections the previous year. The reason for this increase was the large number of odour complaints received by the Council in relation to one licensed facility, a bitumen plant, which commenced operation in early 2023. Kerry County Council has an ongoing investigation into this matter.

Actions Required:

1. Take necessary measures to improve performance under the Ongoing Air & Noise Enforcement Work NEP.


4 Follow-up actions

Kerry County Council shall take action to address the observations raised in this report and submit a report to the EPA within **2 months** from the date of issue of this report. The report should provide details of the actions taken (or planned) to address the various recommendations, including timeframes where appropriate. These actions may be checked and verified by the EPA during future audits/inspections. This report is issued without prejudice to the right of the EPA to take any further action which it may in future decide is appropriate, whether under Section 63 of the EPA Acts 1992 and 2003 or otherwise. This audit report will be published on the EPA's website, www.epa.ie, following the deadline for the local authority response to the report.

Report prepared by:


Thomas Wallace

Reviewed by:


Valerie Doyle

Date: 08/04/2024

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