

Waste Management Acts and The Irish Constitution

Introduction

Article 28A “Local Government” (Section 1) of the Constitution of the Republic of Ireland states that

“The State recognises the role of local government in providing a forum for the democratic representation of local communities, in exercising and performing at local level powers and functions conferred by law and in promoting by its initiatives the interests of such communities.”

Section 22(10) of the Waste Management Act 1996 initially stated that

“ The making, review, variation or replacement of a waste management plan shall be a reserved function.”

However, in 2001, the Waste Management Act was amended (Waste Management (Amendment Act) 2001). Section 22.10 of the Waste Management Act 1996 was replaced with four sections, 22(10), 22(10A), 22(10B) and 22(10C). Each of these sections is now far longer and more complex than the original Section 22(10).

However, the important part of the amendment is Section 22(10)(a), which now reads as follows

“On and from the passing of the Waste Management (Amendment) Act, 2001, but without prejudice to paragraph (c), the duties of a local authority under this section with respect to the making of a waste management plan shall be carried out by the manager of the authority and, accordingly, the making of such a plan shall be an executive function.”

What does this all mean?

Initially (i.e. prior to 2001), the following were the duties were the duties of the County Councils and the County Borough Corporations (CBCs)

County councils and CBCs were responsible for -

- Waste management planning in relation to non-hazardous,
- Authorisation of commercial waste collection activities,
- Control of waste movements,
- Ensuring that adequate arrangements exist in their area for the collection, recovery and disposal for household waste, and
- Making byelaws in relation to the manner in which waste is presented for collection,

and for day to day supervision of waste activities generally within their functional areas.

Thus, it was the responsibility of the locally elected County Councilors to decide and control the planning of waste management facilities, including **Super-dumps** and **Incinerators**. Thus it was the people that we elected (as citizens of Ireland) that decided where these sites were situated.

What changed?

In 2001, the waste management act was amended. It changed several aspects of the act, but the biggest change is that it is now the responsibility of the **unelected** County Manager to decide on the planning of waste management facilities.

Thus the people that we voted into our County Council have no say over where the super-dumps and incinerators are placed.

What has this got to do with the Constitution?

As outlined above, the constitution states (in Article 28A) that the State must recognise the role of Local Government in decisions affecting local communities – including the placement of waste management facilities.

The Waste Management (Amendment) Act 2001 fails to follow this, and is therefore in direct breach of the Irish Constitution.

Our Constitution also says (Article 14 Section 4)

“1° The Oireachtas shall not enact any law which is in any respect repugnant to this Constitution or any provision thereof.

2° Every law enacted by the Oireachtas which is in any respect repugnant to this Constitution or to any provision thereof, shall, but to the extent only of such repugnancy, be invalid.”

This means that the Waste Management (Amendment) Act 2001 is in fact invalid, and therefore the decision of the placement of super-dumps does not lie solely with the County Manager.

The only problem is getting the courts to realize that this is the case.

Where have our Councilors failed us?

It was our representatives that voted the Waste Management (Amendment) Act 2001 through. It increasingly seems that they did this so they could hold their hands up and say “We had no control over that decision”.

The five County Councilors of the Ballinasloe Area of Galway have agreed (on the Keith Finnegan Show, Galway Bay FM) to pay the cost of the challenge. They did this prior to the last local elections. We have to keep pressure on them to pay the money they promised.

Already they are trying to back out.

**Thank you,
Ann Marie Kelly**