

## 7 Matters arising from audit of Vote 25 Environment, Community and Local Government in relation to Water Services

### Commitments in relation to Irish Water

- 7.1 The Department of the Environment, Community and Local Government (the Department) incurred expenditure in 2013 of €241 million in relation to the water services investment programme. Under the programme, funding was provided by the Department to water services authorities for the provision of major water and waste water schemes to meet key environmental and economic objectives.
- 7.2 The 2012 appropriation account for Environment, Community and Local Government included outstanding commitments at the end of 2012 to a value of €340 million in respect of water projects under the programme.<sup>1</sup> The total cost of the programme from 2007 to 2013 was €2.9 billion.
- 7.3 Irish Water was established as a subsidiary company of Eriva (formerly Bord Gáis Éireann) under the Water Services Act 2013. With effect from 1 January 2014, Irish Water took on responsibility for water services from the local authorities and took over the assets and liabilities related to the authorities' water supply and discharge business. The legal transfer of contractual obligations to Irish Water from the local authorities was effected on 21 February 2014 and 25 April 2014 under orders made by the Minister for the Environment, Community and Local Government.<sup>2</sup>
- 7.4 As part of the transfer, Irish Water took over responsibility for all capital works funded by the Department under the programme. A provision of €6 million is included in the Department's 2014 estimate in respect of water quality which remains within the remit of the Department and some water sector reform programme costs.
- 7.5 Arising from the transfer of water services functions to Irish Water, the capital commitments previously funded by the Department under the Water Services Investment Programme became the responsibility of that company and, therefore, will not fall to be funded from the Department's Vote from 1 January 2014. With the approval of Government Accounting Section in the Department of Public Expenditure and Reform, the notes to the Department's appropriation account for 2013 do not include information on the water services commitments as at 31 December 2013.

<sup>1</sup> Under standard accounting policies for appropriation accounts, each department discloses details in a note to its appropriation account on the level of commitments outstanding at the year-end including details on any multi-annual capital commitments over €6,350,000. Due to the large number of capital projects funded by the Department, details are only provided in Vote 25 in respect of projects with an expected total cost of €12,697,000.

<sup>2</sup> S.I. No. 96/2014 – Water Services (No. 2) Act 2013 (Transfer of Other Liabilities) Order 2014. S.I. No. 188/2014 – Water Services (No. 2) Act 2013 (Transfer of Other Liabilities) Order (No 2) 2014.

## EU Penalties in relation to Control of Septic Tanks

- 7.6** EC Council Directive 75/442/EEC became European law in July 1975. This established a set of rules for waste management. All member states, including Ireland, were obliged to comply with the Directive within two years. The objective of the Directive was the protection of human health and of the environment against harmful effects caused by the collection, transport, treatment, storage and disposal of waste.

### *Compliance Proceedings by EU Commission*

- 7.7** The EU Commission issued a letter of formal notice to Ireland in December 2003 noting its concern at the absence of national legislation organising the management of domestic waste water disposed of through septic tanks and other individual waste water treatment systems.
- 7.8** In December 2004, the Commission notified Ireland of its conclusion that Ireland had infringed its obligation to fully and correctly transpose the requirements of Directive 75/442 and requested Ireland to rectify that infringement by February 2005.
- 7.9** In May 2008, the Commission brought an action against Ireland in the European Court of Justice (the Court) requesting the Court to declare that Ireland had not fully and correctly transposed the Directive (as amended) into its domestic legislation. The Commission also claimed that Ireland had
- failed to ensure that waste was recovered or disposed of without risk to water, air, soil, plants or animals
  - failed to take the measures necessary to prohibit the abandonment, dumping or uncontrolled disposal of waste
  - failed to implement a permit system for any installation or undertaking treating, storing or tipping waste.
- 7.10** In response, Ireland contended that
- Directive 75/442 did not apply to domestic waste waters disposed of through septic tanks and other individual waste water treatment systems
  - existing national legal instruments fully met the requirements of Directive 75/442.
- 7.11** A Court judgement in October 2009 found that
- Directive 75/442 did apply to domestic waste waters disposed of through septic tanks
  - while the powers of competent authorities (under Local Government Acts and Planning and Development Acts) were adequate, they did not provide for an appropriate system of inspection that would guarantee the level of protection required by Directive 75/442, and therefore, existing national legal instruments did not fully meet the requirements of Directive 75/442.
- 7.12** The Court found that, with the exception of County Cavan, Ireland had failed to fulfil all its obligations under Directive 75/442.<sup>1</sup>

<sup>1</sup> County Cavan had adopted Water Pollution (Wastewater Treatment Systems for Single Houses) Bye-Laws in 2004, which included a requirement for an inspection by a competent person at least every seven years.

101 Matters arising from audit of Vote 25 Environment, Community and Local Government in relation to Water Services

7.13 In November 2010, the Commission sent a letter of formal notice seeking observations from the State on the extent to which the October 2009 judgement had been complied with. The Commission was not satisfied with the replies, and in July 2011, it commenced a further Court action for the failure of Ireland to comply with the judgement. The Commission sought the imposition of a daily fine until compliance was achieved.

### ***Registration and Inspection Regime for Septic Tanks***

7.14 Legislation to comply with the Directive, the Water Services (Amendment) Act 2012, was passed by the Oireachtas in February 2012. The Act requires the registration of all septic tanks and the development of a risk-based national inspection plan for septic tanks by the Environmental Protection Agency (EPA).

7.15 After a public consultation process in March 2012, statutory instruments were signed in June 2012 to outline standards for the operation and maintenance of septic tanks, and their registration. All septic tanks were to be registered by 1 February 2013. A registration fee of €5 was set for the first three months of the registration period and a fee of €50 for registration thereafter.

7.16 Following a public consultation process in October 2012, the EPA developed an inspection plan. The EPA's inspection plan was based on a risk model, which was developed in conjunction with the Geological Survey of Ireland and other external expertise. The plan identified areas of priority using a specifically designed method to rank areas by the risk posed by domestic waste water to both human health and the environment. The priority areas were based on levels of risk to sensitive water receptors, for example, drinking water sources, bathing waters, or pearl mussel beds. The plan set out minimum inspection levels for each local authority. The plan required a minimum of 1,000 septic tank inspections to be carried out across all local authorities in the twelve months commencing July 2013.

### ***Imposition of Fine***

7.17 The Court published its ruling on the enforcement proceedings in December 2012. It found that Ireland had not complied with the requirements of the 2009 judgement by the expiry of the time limit set in the November 2010 notice. Also, it was found that the inspection plan required by the 2012 Act had not been adopted and submitted to the Minister for the Environment, Community and Local Government.

7.18 The Commission had proposed that Ireland pay a fine of €4,771 for each day between the date of the 2009 judgement and the date the Court gave its ruling on the 2011 proceedings. The Commission sought a further fine of €26,173 to be levied for each day between the date of that ruling and the date of full compliance. The total penalty proposed by the Commission was €6.86 million.

7.19 The Court considered the efforts made by Ireland to comply with the 2009 judgement and the impact of the economic crisis and imposed a lower lump sum penalty of €2 million, which is €1,744 for each day between the date of the 2009 judgement and the date of its ruling on the 2011 proceedings. The Court also imposed a daily penalty of €12,000 from the date of its ruling (19 December 2012) to the date of full compliance. The total penalty imposed by the Court eventually amounted to €2.648 million.

**7.20** The EU Commission subsequently concluded that Ireland had complied with the relevant judgement from 12 February 2013, when the EPA submitted their inspection plan to the Minister. On 19 February 2013, the EPA launched the national inspection plan for domestic waste water treatment systems.

**7.21** In March 2013, the Department paid the fine imposed by the Court to the EU Commission.

### ***Completeness of Registration***

**7.22** The 2011 census reported that there were almost 500,000 septic tanks and individual waste water treatment systems in Ireland at that time. By February 2013, when the EPA national inspection plan was launched, 410,000 households had registered their systems, with 447,000 households having done so by 3 September 2013. The first cycle of the plan covered the period from 1 July 2013 to 30 June 2014.

**7.23** The Department stated that the Local Government Management Agency, which manages the domestic waste water treatment system register on a shared service basis on behalf of the local authorities, has advised that the number of systems registered as at 31 July 2014 was 450,620. Based on census 2011 information, this suggests a registration compliance rate of over 90%.

### **Outcome of Inspections**

**7.24** In an interim review of the national inspection plan published by the EPA in April 2014, for the period between 1 July 2013 to 28 February 2014, the main findings were that

- local authorities in 22 counties had commenced inspections
- 423 full inspections were carried out in the period
- 199 systems passed and 224 failed i.e. a compliance rate for finalised inspections of 47%
- Carlow, Limerick, Louth, Meath and Westmeath had completed their allocation for the year by the end of February 2014.

**7.25** The EPA interim report contains a breakdown, by county, of inspections that have taken place and the number of non-compliant treatment systems for which advisory notices were issued. The review indicated that of the 224 failures, the most common problems found were owners not properly operating or maintaining their treatment systems, including not having their systems de-sludged at appropriate intervals. Inspections have also identified a number of instances of leakages and surface ponding of effluent and other problems causing a risk to human health or the environment. The review reported that in 138 cases (33% of completed inspections), it was the opinion of the inspector that the system constituted or was likely to constitute a risk to human health or the environment. The Department has stated that all failures revealed through inspection will involve a risk to human health or the environment to a greater or lesser degree and when making or reviewing the plan, the EPA is required to have regard to risks or potential risks to human health and the environment. However, the Department is not in a position to comment regarding the seriousness or extent of those risks or of the seriousness of those systems which have failed inspections.

103 Matters arising from audit of Vote 25 Environment, Community and Local Government in relation to Water Services

**7.26** The EPA report also states that local authorities that have completed their allocation of inspections under the inspection plan should continue to carry out inspections under the plan as they see fit, as further inspections will be required under future cycles of the plan. The EPA subsequently informed the local authorities that a further 500 inspections should be carried out during the period July to December 2014.

**7.27** The Department has stated that it does not have any direct role in monitoring the implementation of the EPA's plan by the local authorities. However, the Department stated that the EPA has advised it that inspections have now commenced in all counties and that it intends to carry out a review of the first year's operation of the inspection plan shortly. The Department understands that a public consultation regarding this review will be carried out in September 2014 with the aim of developing a new inspection plan for the five years commencing in January 2015. The Department stated that the number of inspections to be carried out under the new plan is a matter for the EPA.

## **Conclusions**

**7.28** A fine of €2.648 million was charged to the appropriation account of the Department in 2013 for non-compliance by Ireland with part of the EU Directive dealing with domestic disposal of waste water through septic tanks or other individual systems. The EU Commission had warned Ireland of the potential breach in 2003.

**7.29** Under the Water Services (Amendment) Act 2012, all septic tanks must be registered with local authorities. The Department estimates that at the end of July 2014 over 90% of systems had registered.

**7.30** The results of the first round of risk-based inspections revealed a significant failure rate of systems at over half of those inspected. While all failures represent a potential risk to human health or to the environment, care must be taken in interpreting the results of the initial inspections, as the inspection plan was based on prioritising higher risk areas. In order to establish the overall level of compliance across the State, inspection of a random sample of systems would need to be undertaken.

