

## 1.0 Introduction

Attachment 4-3-5 contains the draft waste acceptance procedure for the Ringaskiddy facility. This is required under Section 4.3 of the licence application form and Section 4.3.4 of the guidance note from the EPA on the licence application form which requires a description of “how the requirements of ***Municipal Solid Waste – Pre-treatment and Residuals Management: An EPA Technical Guidance Document (EPA 2009)*** will be implemented.”

In the context of the pre-treatment and profiling of waste pertaining to this licence application, it is also necessary to highlight certain matters as there now exists a number of robust legislative requirements that must be complied with by waste collectors in the context of the separate collection of food waste, including:

- the European Union (Food Waste and Bio-waste) Regulations 2015;
- the Waste Management (Food Waste) Regulations 2009; and
- the Waste Management (Collection Permit) Regulations 2007 as amended by the Waste Management (Collection Permit) (Amendment) Regulations 2008 (‘Commercial Food Waste Regulations’).

These Regulations stipulate that authorised waste collectors shall ensure, as a minimum, provide or arrange for the provision of a separate collection service for food waste from households and shall include the direct provision of an approved waste receptacle.

The Regulations further provide that householders, as original producers of food waste arising as part of household waste, shall ensure that such waste is source segregated.

To this end, an increasing number of local authorities (including Kildare, Laois, Offaly, Kilkenny and Cork to name but a few) as part of their enforcement programme for ensuring compliance with the Household Food Waste and Bio-Waste Regulations 2015 have adopted bye-laws which allow for the imposition of a fixed payment in respect of a contravention of these bye-laws.

These bye-laws adopted to regulate and control the *Storage, Presentation and Segregation of Household and Commercial Waste* within the relevant local authorities functional areas have been adopted pursuant to Section 35(1) of the Waste Management Act 1996 (as amended) and Section 199(1) of the Local Government Act 2001 (as amended) and in accordance with Part 19 of the Local Government Act 2001 (as amended), will thus be of assistance in ensuring the effective segregation of household food waste at source and will

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assist local authorities in monitoring segregation of food waste by householders, thereby ensuring that these Regulations are properly adhered to.

With this legislative framework in mind, a waste to energy operator would therefore not be in a position to administer or oversee an obligation in the form of a licence condition with regard to pre-treatment that involves giving effect to the above regulations given that the responsibility in this regard can only be said to rest with third parties, to be precise householders and waste collectors.

In this regard, it is not permissible for the Environmental Protection Agency ('the Agency') to impose personal liability on an individual waste to energy facility for compliance by third parties with legislation concerning the management of waste. That follows from the decision of the Court of Justice in Case C-113/12 Brady.

As such, a licensee cannot engage in activity that entails a regulatory or enforcement function such as that which may only be carried out by the Agency pursuant to exact statutory powers. As in Brady, compliance with source separation is "exclusively" for third parties and requirements relating to the pre-treatment obligations of third parties can only properly be enforced pursuant to the aforementioned legislative framework.

Notwithstanding the foregoing, Indaver as a prospective licensee is keen to work with and assist the Agency with regard to the proper profiling of waste. To that end, Attachments 4-3-5-2 & 4-3-5-3 to this application describes relevant waste profiling and acceptance and handling procedures which will be instituted at the facility.

Prior to acceptance of waste at the facility a waste profiling and acceptance declaration will be completed per site/collection route by each collector and by representatives of the facility.

Inspection of first deliveries arriving at the facility will be carried out, taking into account the declaration, and the information gathered will be recorded and maintained at the facility as set out in the waste acceptance procedure.

Regular inspections will be carried out thereafter as set out in the waste handling procedures.

All information provided as part of the waste profiling, acceptance and handling process (including photographs) shall be recorded and maintained at the facility and shall be available for inspection by the Agency as deemed appropriate. Information shall be maintained solely for this purpose as enforcement or regulatory activity with regard to the pre-treatment of waste may only be carried out by the Agency pursuant to exact statutory powers.

Such procedures in combination with the attachment of conditions that are reasonable and practicable in nature and which are capable of being complied with will be adhered to in full and in turn this will assist the Agency with regard to ensuring that the above Regulations are complied with by relevant third parties.

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More generally, the Environmental Protection Agency Act 1992 as amended, imposes a positive duty on the Agency to ensure, in so far as is practicable, that a proper balance be achieved between the need to protect the environment (and the cost of such protection) and the need for infrastructural, economic and social progress and development.

Similarly, the attachment of licence conditions relating to the pre-treatment of waste that are proportionate and practicable in nature would accord fully with the Agency conducting its regulatory function in a fair, proportionate and transparent manner and which in turn accords with the Agency's Compliance and Enforcement Policy.

Consequently, the proposed draft waste acceptance procedure submitted as attachment 4-3-5 to this application refers to the waste profiling obligations of Indaver but does not detail how the enforcement of the pre-treatment guidelines is addressed.