

THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 426 JR]

BETWEEN

HENNESSY ECO LIMITED

APPLICANT

AND

CORK COUNTY COUNCIL

RESPONDENT

JUDGMENT of Ms. Justice Baker delivered on the 9th day of November, 2016.

1. The applicant seeks a declaration by way of judicial review in respect of events on 30th April, 2012 and 2nd May, 2012 when the respondent stopped and detained waste trucks and later confiscated waste material, including scrap metal and scrap vehicles being transported thereon. The applicant claims that the actions were *ultra vires* the power of the Council pursuant to s. 14 of the Waste Management Act 1996 ("the Act of 1996"). The applicant also claims that the detention and confiscation of the materials was not conducted in a procedurally fair way.

2. The application for judicial review is fully contested and the respondent pleads in defence both procedural and substantive matters.

3. Leave was granted by Peart J. on 14th May, 2012.

Background facts

4. The applicant is a limited liability company. It does not hold a waste collection permit, and a licence to transport the relevant waste material is held by James Hennessy, a director of the applicant company. Mr. Hennessy holds a waste permit from Offaly County Council issued on 11th March, 2009, which has been extended from time to time.

5. The respondent, by way of a procedural objection makes the argument that the applicant does not have *locus standi* or sufficient interest to bring the proceedings.

6. I propose to deal first with the question of standing.

Locus standi

7. The application is grounded on an affidavit of James Hennessy a director of the applicant company who says that he makes the affidavit "on his own behalf" and by way of verifying the matters set out in the statement of grounds. The statement of grounds pleads at para. E1 that the applicant company has a waste collection permit issued by Offaly County Council, which as explained, is not factually correct. The waste collection permit issued to James Hennessy t/a Hennessy Engineering is subject to Condition 19 thereof by which it is non-transferable. The applicant company holds no licence or permit.

8. The applicant says that the operation of the permit is not a factor in the proceedings, and that the claim is one brought by the owner and person entitled to possession of the impounded vehicles and their contents.

9. The statement of grounds pleads also that the applicant company is engaged in the business of buying metal and metal products and processing them for exportation to the Far East, and in the business of collecting and transporting scrap vehicles, "end of life vehicles" ("ELVs") to its site at Templemore, County Tipperary.

10. The claim is brought in respect of two incidents where agents of the respondent stopped and inspected waste trucks said to be owned by the applicant company.

11. The company was not named in the initiating letter from O'Connell & Clarke Solicitors sent on behalf of James Hennessy t/a Hennessy Engineering on 2nd May, 2012. The letter asked for reasons for the seizure of the vehicles and their contents and asserted that no statutory basis existed or had been invoked. Proceedings were threatened.

12. By motion dated 13th May, 2013 Cork County Council sought security for costs against the applicant company. This occurred after Anthony J. Fitzpatrick was appointed liquidator at a creditors' meeting on 25th October, 2012. Mr. Hennessy, on behalf of the applicant company resisted the application for costs on the grounds that the insolvency of the company had been brought about by the actions of the respondent.

13. The court hearing the application for security for costs did not enter into a consideration of whether the company was the proper applicant, although I note that the grounding affidavit of Hilary Beausang sworn on 10th May, 2013 avers that the County Council had a "*prima facie* defence" to the proceedings, presumably on the grounds that the standing defence would be raised.

14. Birmingham J. directed the applicant company to provide security for costs, and that explains some of the delay in the listing of the substantive application.

15. The applicant company says that the vehicles, which were stopped, were owned and registered to the applicant company, and the waste materials seized and confiscated were also owned by the company. There is no dispute with regard to those facts.

Decision on standing argument

16. The bare assertion in the grounding affidavit that the applicant company has a waste collection permit is incorrect. The applicant company does not hold a waste collection permit, but while transmission of the waste without a permit might amount to a criminal offence, it is not a matter in issue in these proceedings.

17. Paragraph 3 of the statement of opposition puts the applicant on strict proof that the applicant company is engaged in the waste

business, that it is the owner or operator of the vehicles, and is engaged in the business of buying, collecting and processing metal and scrap metal.

18. It is unclear to me what it means to put an applicant "on strict proof" of a matter contained in affidavit evidence. The statement of opposition does not perform the function of a defence in plenary proceedings, and in the absence of evidence to contradict or rebut the averments on affidavit of the applicant company that it operated the metal business and is the registered owner of the vehicles which were seized, the evidence on which I may determine this matter is uncontroverted. No notice to cross-examine the deponent of the affidavit has been served and the assertions of ownership of the vehicles and of the waste, and that the applicant operates a waste business stands therefore un-contradicted.

19. In *Dublin City Council & Quinn v. The Standards and Public Office Commission* [2014] IEHC 89, Hedigan J. dismissed the application of the first applicant for judicial review where no evidence been put before the court to support the proposition on which the applicants relied to establish their standing to challenge the report of the respondent, and that "not one single affidavit of a Councillor on DCC or any other local authority has been produced to back the applicant's claim".

20. Implicit in this finding by Hedigan J. is that uncontroverted affidavit evidence could suffice to establish a factual basis on which standing could be established.

21. I accept the argument by counsel for the respondent that the judgment of Hedigan J. is authority for a proposition that it is not sufficient that a party seeking judicial review to make a bald assertion of interest, and evidence sufficient to support the claim must be adduced. The Rules of the Superior Courts provide for the bringing of an application grounded on affidavit evidence. But as no contrary averment or evidence is provided, the evidence grounding the application must be treated as being uncontroverted.

22. The declaration sought relates to the power of the local authority to seize the vehicles and their contents, and I am satisfied in the circumstances that the operation of the business of collecting and transporting waste is a trading activity of the company, and the affidavit evidence contains uncontroverted assertions that the company was the owner or operator of the trucks and the waste material. I am satisfied in those circumstances that sufficient *locus standi* has been shown by the applicant and that it meets the tests explained by the Supreme Court in *Construction Industry Federation v. Dublin City Council* [2005] IESC 16, [2005] 2 I.R. 496 that the applicant can show damage to itself, and had a "personal or direct interest", or "sufficient interest" in the outcome of the application to establish standing, and an "essential property interest" in the goods and vehicles as described by O'Caoimh J. in *Ballintubber Heights Limited v. The Lord Mayor Aldermen and Burgesses of the City of Cork* (unreported, High Court, 21st June, 2002).

23. For completeness, I consider that, as the application for leave was made ex parte, it cannot be said that the order giving leave amounts to a determination that the applicant has met the standing requirement, or that a presumption must exist that standing has been established. The order granting leave made no finding with regard to standing.

24. For all of these reasons I refuse to dismiss the application on the procedural grounds that the applicant company has not established standing to bring the claim.

The liquidation

25. The company is in a creditors' voluntary winding-up and the liquidator Anthony Fitzpatrick has consented in writing to the proceedings been maintained. No legal impediment exists to the continuation of the proceedings, and the practical consequence for the respondent has been dealt with by provision of security for costs.

26. I reject the assertion of the respondent that the act of the liquidator in consenting to the proceedings may be scrutinised by the court in the manner suggested and that his consent cannot be considered valid in the absence of evidence that the continuation of the proceedings was considered by a general meeting of the company, or was believed to be for the benefit of the company. No authority has been offered in support of the proposition. Under s. 627(1) of the Companies Act 2014 a liquidator may bring or defend any proceedings or action in the name of or on behalf of the company, and *ipso facto* may consent to these being continued or commenced. Should the company succeed in this review, the benefit of the litigation will enure to the benefit of the liquidation.

Substantive claim

27. The basis of the substantive claim may be briefly stated. It is claimed that the stopping and detaining of the trucks by the Council on the two dates was in breach of the powers of the Council contained in s.14 of the Act of 1996. It is further contended that the Council had no power to detain and later confiscate the contents of the truck, and that the subsequent action by the agents of the Council show that the detention and confiscation was done not on account of any apprehension which might have founded the authority under s. 14 of the Act, but rather because of failure to produce the logbooks or vehicle registration certificates for the scrap vehicles or ELVs.

28. The Act of 1996 transposes the Waste Framework Directive and other European Community Directives listed in a Table contained in s. 2 of the Act.

29. Section 14 of the Act as amended provides as follows:

"An authorised person may, for any purpose connected with this Act—

(a) at all reasonable times, or at any time if he or she has reasonable grounds for believing that there may be a risk of environmental pollution arising from the carrying on of an activity at the premises or that such pollution is occurring, enter any premises and bring thereon such other persons (including members of the Garda Síochána) or equipment as he or she may consider necessary for the purpose, and

(b) at any time halt (if necessary) and board any vehicle and have it taken, or require the driver of the vehicle to take it, to a place designated by the authorised person, and such a vehicle may be detained at that place by the authorised person for such period as he or she may consider necessary for the purpose."

The amended s. 14(1)(b) was substituted by s. 24 of the Protection of the Environment Act 2003.

30. The Council relies on the power created by s. 14(1)(b) as conferring upon it the power exercised on the two occasions in respect of which this application is brought.

31. The Council relies on three affidavits of Nicholas Bond, head of waste enforcement, an affidavit of Coleman Kelly, an affidavit of Francis O'Dwyer and an affidavit of Stephen O'Sullivan, the last three deponents being enforcement officers of Cork County Council directly involved with the incidents complained of or other incidents in which the Hennessy entities were involved. This evidence is not denied in any replying affidavit sworn for or on behalf of the applicant and the evidence must stand.

The first incident: 30th April, 2012

32. Coleman Kelly, enforcement officer gives evidence on affidavit that in the course of his engagement with a multi-agency checkpoint on 30th April, 2012 around 3.45pm at Ahamilla, Clonakilty, Co. Cork, a truck bearing the name "Hennessy Engineering", registration number 01 TN 3618 was stopped by the gardaí and he, Stephen O'Sullivan and Daniel O'Shea, all members of the enforcement department of Cork County Council were present. Mr. Kelly says he showed his authorisation to the driver and explained the purpose of the inspection. He says he observed what he considered to be ELVs and scrap metal on board two trailers. He identifies ELVs as hazardous waste as defined by Directive 91/689/EEC and he exhibits the catalogue of hazardous waste risk prepared by the Environmental Protection Agency pursuant to its statutory power under the Act of 1996.

33. He says that the driver failed to produce a waste collection book in breach of condition 4.4 of the waste permit and failed to produce logbooks or vehicle registration certificates for the ELVs being transported, a breach of condition 6.5.6. He noted that number plates were not evident on the ELVs and that the waste was mixed, at least on one trailer. The segregation of waste is a condition imposed by the waste permit, and conditions 2.17, which requires segregation at source, and 6.5.4, which prohibits the collection of mixed waste, are both identified. Photographs are exhibited.

34. Mr. Kelly says that he formed the opinion that waste was being handled and/or transported in such a manner as to constitute a risk of environmental pollution. He says that in the exercise of his powers as an authorised officer, he cautioned the driver and impounded the vehicle and its contents. He directed the driver to an authorised facility at Dublin Hill, Co. Cork. The vehicle and its contents were there impounded.

35. Mr. Kelly says that while at the checkpoint he spoke by phone to James Hennessy and to Pat Lalor, a person he knew from previous contacts to be employed by, or to have a management role in, James Hennessy t/a Hennessy Engineering, or a Hennessy entity. He says that he informed them that the vehicle 01 TN 3618 and its contents were impounded due to non-compliance with the waste collection permit including conditions 4.4 and 6.5.4 and that logbooks would need to be produced to secure release of the ELVs. Later in the day, Mr. Kelly made a telephone call to Pat Lalor and requested a copy of the waste collection dockets and the logbooks and/or vehicle registration certificates of the ELVs in lieu thereof. For reasons relating to Mr. Lalor's professional commitments it was not possible to arrange a meeting, but Mr. Kelly agreed to release the waste truck but not its contents, which he did on 1st May, 2012. At the date of the swearing of his affidavit on 17th July, 2012, Mr. Kelly says that he had still not received the logbooks or vehicle registration certificates in respect of the ELVs, and they remain in a waste storage facility in the control of the respondent.

The second incident: 2nd May, 2012

36. The second incident happened also in the course of a multi-agency inspection on 2nd May, 2012 at 12.30pm at Roskeen, Mallow, Co. Cork. Stephen O'Sullivan an authorised officer was in attendance with Mr. Colman Kelly and about to set up a checkpoint with the gardaí and custom officers, when he observed a scrap collection truck registration number 02 TN 3644 parked at the side of the road. Mr. O'Sullivan requested the waste collection docket book, but while this was produced, the relevant entries were not completed as is required by conditions 4.3 and 4.4 of the waste permit. No ELVs were being carried on this vehicle and the waste on board was a mixture of metals including corrugated sheet metal and metal trays. Photographs are exhibited. The driver was escorted to Mallow Civic Amenity Centre, a designated collection facility.

37. Mr. O'Sullivan avers on affidavit that the absence of collection docket books made it impossible for him to ascertain the provenance of the load and he was therefore unable to ascertain whether some or all of the waste was hazardous. In the absence of evidence enabling him to know the origin, control or traceability of the waste, he avers on affidavit that he formed the view that the waste was being handled and/or transported in such a manner as to constitute a risk of environmental pollution.

38. The affidavit of Coleman Kelly, sworn on 17th July, 2012, confirms this evidence. As I have noted, the evidence is not contradicted.

The end-of- life vehicles

39. Five of the six ELVs detained after the first incident have not been released to the applicant or to any person who has claimed title to them. Enquiry made to the Motor Taxation Office showed that these ELVs did not appear to be registered. The sixth was registered to a person with an address in Skibbereen, Co. Cork. That person confirmed to Mr. Kelly that he had owned the vehicle registration 97 KE 1745 but had "given it to a friend for scrap", and that he would on request give his friend the logbook.

40. With regard to the other five vehicles, Mr. Kelly says that he spoke to another gentleman in Skibbereen, who had been the owner of, or who had transferred possession of the ELVs to the driver of the vehicle on 30th April, 2012, without paperwork. That gentleman says that he had later given logbooks or vehicle registration certificates to Mr. Lalor.

41. No logbooks or vehicle registration certificates were ever produced to Mr. Kelly.

The first ground of review: the actions were ultra vires

42. The applicant argues that the power under s. 14(1)(b) of the Act of 1996 is a power of investigation only, and enables an authorised person to stop, board and temporarily detain a vehicle for the purposes of the Act, but confers no power of permanent detention or confiscation. It is argued that the Council exceeded this power by detaining or destroying the contents of the trucks. It is also argued that the correspondence between the parties, and the evidence on affidavit, identifies the true basis and purpose of the detention as arising from the failure of the drivers of the vehicles to produce logbooks or vehicle registration certificates for the ELVs or in the case of the materials seized on the second date, failing to produce a waste collection docket.

43. The affidavit evidence contains several references to the fact that the reason the vehicles were directed to the relevant waste collection facility was the failure to produce logbooks for the ELVs in the first case, or waste collection dockets for the loads. This is apparent from a number of paragraphs in the affidavit of Colman Kelly, particularly paras. 17, 18, 21 and his final paragraph which it is convenient to quote in full:

"Thus it follows from the above that if insofar as the Applicant and/or Hennessy is the owner and/or is entitled to reclaim the ELVs they are merely required to produce the logbook/registration certificates. It is therefore entirely their responsibility to adduce the same. The production of completed waste collection docket(s) for the dates 30/04/2012 and

02/05/2012 would also suffice as per my phone calls and emails."

44. Mr. Kelly offers two alternative means by which the ELVs or scrap vehicles could be returned to their owner: production of some documentary proof of ownership, or proof that the waste materials were being collected in pursuance of an agreement.

45. This is apparent too from other evidence. The affidavit of Stephen O'Sullivan describes an earlier incident where a member of staff of Hennessy Metals produced logbooks for three ELVs, which had been impounded in February, 2012, and the scrap vehicles were released.

46. An affidavit of Francis O'Dwyer details a number of incidents between 2011 and 2012 where ELVs or other waste material were temporarily detained pending production of vehicle registration certificates or other paperwork. He gives evidence with regard to an incident on 20th September, 2011, when he advised the driver of a Hennessy truck that a completed waste collection docket was required for all future waste collected, and that details of the waste producer or the origin of the waste was also required. In the case of scrap vehicles, he says he informed the driver that vehicle registration documentation "etc." was required.

47. Nicholas Bond in his affidavit of 17th July, 2012 also avers to the fact that ELVs will be returned on production of logbooks or vehicle registration certificates demonstrating proof of ownership.

48. These examples are given by way of illustration of the approach of the Council that documentation showing control and traceability of waste is viewed as one element of the enforcement of environmental protection.

49. Conditions 4.3 and 4.4 of the waste permit require the maintenance and compiling of specified records for the collection of waste and the list of identified matters is described as a "minimum" requirement. The conditions require that the load being transported be identified by description.

50. The applicant claims that the true purpose for which the vehicles were stopped and the waste materials present thereon impounded and confiscated, was primarily or exclusively concerned with ownership of the vehicles. The applicant argues that if the true purpose for which the vehicles are now being detained is linked to the production of the logbooks, that the true purpose for which they were originally impounded related to the requirement of proof of ownership and not to matters of environmental concern. It is said in those circumstances that the Council was not exercising its power under s. 14(1)(b) as no power exists in the Act to detain, impound or confiscate vehicles on account of absence of documentary evidence of title or right to possession.

51. The Council argues that s. 14 of the Act gives it wide powers, to be construed in the context of the European Directive, and must be interpreted in a way to achieve its objectives. In *Wicklow County Council v. Fenton & Ors. (No. 2)* [2002] IEHC 102, [2002] 4 I.R. 44 O'Sullivan J. stated:

"The purpose of the Act of 1996 and of the underlying directives is, *inter alia*, to control and prevent environmental pollution due to the production, handling, recovery and disposal of waste including hazardous waste. Where environmental pollution occurs or is likely to occur, a person who causes it can be made the subject of an order. In interpreting the Act of 1996, I must apply the teleological principle with the result that the Act must be interpreted in a way which achieves these objectives rather than otherwise."

52. The Council argues that s. 14(1) empowers an authorised person "for any purpose connected with the Act" to do certain matters, and that the powers are discretionary and unqualified.

53. It is argued that the exercise of the power under s. 14(1)(b) is not constrained by the preamble to s. 14(1)(a), and that the power under s. 14(1)(b) permits the halting and detention of vehicles without the need to establish reasonable grounds of a risk of environmental pollution.

54. I agree that on a reading of the legislation, the power in 14(1)(b) is one that may be exercised for any purpose connected with the Act, and does not require the person engaging the power to have reasonable grounds for believing that there may be a risk of environmental pollution. That is not to say that the section may be interpreted in a way that permits an authorised person to detain a vehicle without having a basis on which he or she believes that a purpose of the Act would be furthered by his action. This view is consistent with the general approach to statutory interpretation that imports an obligation on the part of statutory bodies to engage their powers *intra vires* and in a proportionate and constitutional manner. A person detaining a vehicle may do so lawfully only for a purpose concerned with environmental protection or the prevention of the environmental pollution.

55. In the present case, however, I do not need to consider the nature of any limitation on the power of an authorised person to detain a vehicle under s. 14(1)(b), as the uncontroverted evidence is that the relevant persons did form a reasonable belief that there was a risk of environmental pollution, and they explained the reason for their action in each case, *inter alia* that they were not satisfied that the waste was being collected in accordance with the conditions of a waste permit and also were concerned for reasons of the absence of traceability and the non segregation of the waste that there was a risk of environmental pollution.

56. The test for the engagement of the power under s. 14(b) is met if an authorised officer "considers" that a purpose of the Act is thereby furthered. Clarke J. in *Tristor v. Minister for the Environment* [2010] IEHC 397 said at paras. 5.3 and 5.4 the following:

"5.3 However, it seems to me that counsel for the Minister was correct when he argued that the use of the word "considers" in s. 31 is decisive. The section does not require that there be a breach of the Act. Rather, the section requires that the Minister consider that there be a breach of the Act.

5.4 If the Act were differently worded so that it was necessary that there be a breach before the Minister could issue a direction, then there might well be an argument in favour of Tristor's proposition. However, it seems to me that, on the plain wording of the Act, the Minister is entitled to form a view (within the bounds of the section) that the conditions necessary for the exercise of a discretion under s. 31 exist. That ministerial view is, of course, subject to judicial review. In coming to that view the Minister must take into account all proper factors and exclude from his consideration any factors which are irrelevant. In addition, the view which the Minister ultimately forms must be rationally based on the materials available to the Minister at the time. However, subject to those limitations the Minister is entitled to come to a view, and if he does so, then it can properly be said that he "considers" that a relevant failure of compliance has occurred such as entitles the Minister to exercise his jurisdiction under the section."

57. The relevant authorised officers have in each case identified the basis on which they considered that there might be a breach of

the Act, and there is no requirement as a matter of law that they know that a breach of the Act has been established before the power can be exercised. This is consistent with the purpose of s. 14 as an investigative tool.

58. I consider in the circumstances that the argument by the applicant that there was no "consideration" of any risk of environmental pollution by the authorised officers of the Council not to be correct and the evidence before me points to the opposite conclusion.

59. Furthermore, no admissible evidence has been presented to contradict the evidence of the authorised officers Stephen O'Sullivan and Coleman Kelly. The only evidence adduced by the applicant is that of James Hennessy who was not present when the vehicles were halted or inspected, and any evidence adduced by him is hearsay and not admissible to challenge the averments of the persons actually present whose evidence I consider to be uncontroverted.

60. In this I am persuaded by the judgment of Carroll J. in *Gavin v. The Criminal Injuries Compensation Tribunal* [1997] 1 I.R. 132 where she refused to admit further affidavit evidence from a person who was not present for the deliberations of the respondent in respect of which the application was brought.

61. The Act of 1996 is complex legislation enacted to deal with waste management and the long title describes it as "an Act to make provision in relation to the prevention, management and control of waste". Under the Act a person is prohibited from holding or carrying waste other than in accordance with the conditions of a waste collection permit or other relevant authorisation. Section 34(1)(a) of the Act (as amended) provides as follows:

"Subject to paragraph (b), a person other than a local authority shall not, for the purposes of reward, with a view to profit or otherwise in the course of business, collect waste, on or after such date as may be prescribed, save under and in accordance with a permit (in this Act referred to as a "waste collection permit") granted by the local authority in whose functional area the waste is collected."

62. Section 32(1)(b) provides that a person "should not hold, transport, recover or dispose of waste, or treat waste in a manner that causes or is likely to cause environmental pollution". This is a broad prohibition and enables a suitably experienced and knowledgeable authorised officer to apprehend the risk of environmental pollution in the transportation or holding of waste.

63. The Act gives wide powers of enforcement in regard to the apprehension and prevention of environmental pollution. These powers include the power to detain material or goods when a breach of any one of these provisions is apprehended.

64. For these reasons, I am satisfied that the action of detaining the trucks and their contents was done in connection with a purpose of the Act of 1996, and that s. 14 was lawfully engaged.

Destruction of scrap vehicles

65. The primary focus of the applicant is the continued detention, or what is called confiscation, not of the trucks, which were released in a short time, but of the waste material being transported thereon. The respondent relies on a number of statutory provisions as giving it power to detain and if necessary dispose of the materials

66. Regulations made pursuant to the Act include the Waste Management (End-of-Life Vehicles) Regulations 2006, S.I. 282 of 2006. Regulation 25 requires information to be provided by the registered owner of an ELV to facilitate the owner or operator of an authorised treatment facility, and this is of particular importance in regard to the first incident the subject matter of the present proceedings.

67. Section 14(5) of the Act provides as follows:

"(5) (a) An authorised person who, having entered any premises or boarded any vehicle, pursuant to this section, considers that waste thereon or therein is such, or is being handled or transported in such manner, as to constitute a risk of environmental pollution, may direct the holder of such waste to take such measures as are considered by that authorised person to be necessary to remove that risk, including the disposal of the waste, in such manner and place and within such period as the authorised person may specify.

(b) If a holder of waste fails to comply with a direction of an authorised person under this subsection, the authorised person may do all things as are necessary to ensure that the direction is carried out and the costs incurred by him or her in doing any such thing shall be recoverable from the holder of the waste by him or her, or the person by whom he or she was appointed, as a simple contract debt in any court of competent jurisdiction."

68. The power there conferred enables an authorised person having boarded a vehicle to direct the holder of the waste to take certain measures and direct the disposal of the waste in the manner or place as may be specified. That section is broad enough in my view to permit the agents of the Council to direct the disposal of the contents of the trucks, or to direct that the material be taken to designated holding centres. It also permits the Council to direct the holder of the waste to dispose of the waste, and to return the waste to a person who can show a right to possession. The class of measures in respect of which directions may be given is not identified, and I consider that the agents of the Council have power to direct such measures as may be considered necessary.

69. Section 14(4) permits an authorised person to direct that anything on a vehicle "shall be left undisturbed" for such period. That power has been engaged and the waste remains undisturbed and in the designated waste collection facilities since the waste was detained.

70. The Council has much broader power under s. 56 of the Act, and provides an express power to dispose of waste as follows:

"56.—(1) Where it appears to a local authority that measures are required to be taken in order to prevent or limit environmental pollution in its functional area caused, or likely to be caused, by the holding, recovery or disposal of waste, the local authority may take such steps, carry out such operations, recover or dispose of, or arrange for the recovery or disposal of, such waste or give such assistance as it considers necessary to prevent or limit such pollution or to mitigate or remedy the effects on the environment of any such activity.

71. The evidence before me points to various breaches of the conditions of the waste collection permit. ELVs are classified as hazardous waste and the conditions of the permit prohibit the mixing of that waste with other waste. The Act identifies the relevance and importance placed on the traceability of waste, as the ability to identify the source, the journey the waste takes to its ultimate collection point, and the manner in which that journey is engaged are all matters in respect of which environmental concerns are

expressed to exist.

72. ELVs are specifically classified as hazardous waste. That this is so may be self-evident as the vehicles are likely to contain oil, diesel, petrol, coolant etc., any of which could give rise to environmental concerns. Article 26 of S.I. 282 of 2006 requires the registered owner, on the deposit of an ELV to provide documentation showing proof of ownership to the owner or operator of the waste facility to which it is transported.

73. Further, s. 14(4)(f) confers express powers on the enforcement agency to require the production of documents and record as follows:

“Whenever an authorised person enters any premises or boards any vehicle, pursuant to this section, the authorised person may therein, as appropriate—

(f) require the production of and inspect such records and documents, and take copies of or extracts from, or take away if considered necessary for the purposes of inspection or examination, any such records or documents,

as the authorised person, having regard to all the circumstances, considers necessary for the purposes of exercising any power conferred on him or her by or under this Act.

74. I consider that as the legislation positions the keeping and production of documentation and records firmly within the management and control of waste and the prevention of environmental pollution, the absence of documentation and records is not to be regarded as a mere formality, or a matter of administrative and not substantive importance. The power to detain and dispose of waste under the Act is exercisable for the purpose of limiting or preventing environmental pollution and may in my view be exercised when the matter giving rise to concern is the absence of documentation or records.

75. Therefore, I reject the argument of the applicant that the shortcomings identified are merely “documentary shortcomings” if by this is suggested that the breaches in respect of which the actions were taken were “mere formalities”.

76. The respondent has given the applicant the option of producing logbooks or waste permit dockets. At least five of the ELVs were not registered, but that of itself did not prevent the release of that material to the applicant, provided some documentary evidence was available to identify the source of the waste and how and by what means it came into the possession of the applicant.

77. It seems to me to be within jurisdiction for the Council to retain, or if necessary to dispose of, waste material in circumstances where evidence of the right to possession has not been established. The purpose behind the legislation, and the express requirement in the conditions in the waste collection permit, that documents of ownership be carried with ELVs is intended to provide sufficient information to the local authority to enable it to, *inter alia*, understand the source of the waste and to thereby make a considered judgment as to the proper means by which it is to be disposed, and whether the person carrying the waste is entitled to carry it on foot of the power created by the permit.

78. I reject this ground of review.

Alleged failure to give reasons

79. The other ground of challenge in the proceedings is the claim that the agents of the respondent failed to give reasons or explanations for its actions in detaining the vehicles and their contents.

80. Counsel for the respondent makes the argument that as there is no express requirement that the Council should give reasons to take action under s. 14 of the Act that no duty can be said to arise. It is argued that the exercise of the power conferred on the Council by the section cannot be described as an administrative decision in which fairness of process is to be imported.

81. I will leave over to another case the question of whether fair procedures are to be imported, as I am of the view that reasons were given to the drivers of the trucks on each of the two occasions, 30th April, 2012 and 2nd May, 2012. In that regard I must also note that neither driver has sworn an affidavit, and the uncontroverted evidence from Coleman Kelly and Stephen O’Sullivan sets out details of what explanations were given and what requirements were made of the drivers, and later to officers or agents of the applicant company.

82. It has been made clear in correspondence that the ELVs will be released on production of a logbook or other proof of ownership. The applicant, or James Hennessey, or the persons employed by him or the company, have been informed at various times since 2011 that logbooks for scrap vehicles were required to be kept on the waste carrier because in the absence of such the facility receiving the waste could not accept it.

83. There is also exhibited a letter from the Council, of 4th May, 2012 to the solicitors for the applicant written in response to her letter seeking an explanation. This letter was detailed and set out the various alleged breaches of the conditions of the waste collection permit. It also identified the statutory basis on which the actions of the Council were taken.

84. The history of engagement between the Council and the Hennessey entities outlined in some detail in the replying affidavits from the Council shows to my satisfaction that specific concerns have been raised by agents of the Council in respect of the transportation of waste, the performance of the conditions under which the waste management permit was issued, and the initiating letter of 2nd May, 2012 from the solicitors for the applicant mentioned these incidents. The events of 30th April, 2012 and 2nd May, 2012 must be seen in the context of this history, and the explanations and discussions had with drivers or other employees or officers of the Hennessey entities regarding the management of waste products.

85. I am satisfied that the applicant knew the reason for which the vehicles and their contents were stopped, inspected and retained, and no absence of reasons or fairness is shown.

86. The applicant has asserted both in correspondence and in the affidavit evidence that it, or the Hennessey entities, have been “singled out” and that the number of occasions on which vehicles belonging to one or other has been stopped is disproportionate. Of itself that is not a matter in respect of which the judicial review is brought, and leave was not granted to challenge the actions on this basis.

Conclusion

87. For the reasons stated I propose refusing the relief sought.

