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*(subject to editorial corrections)**

IN THE CROWN COURT SITTING AT BELFAST

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THE QUEEN

-v-

ACE BATES SKIP HIRE LIMITED
THOMAS BATES
GARY BATES

_____

KEEGAN J

Sentencing Remarks:

Introduction

[1] The defendants have each pleaded guilty to a number of offences on an amended indictment as follows. Ace Bates Skip Hire Limited has pleaded guilty to Count 16 namely the unlawful deposit of waste contrary to Article 4(1)(a) and Article 4(6) of the Waste and Contaminated Land (Northern Ireland) Order 1997 hereinafter referred to as 'the Order'. Ace Bates Skip Hire Limited has also pleaded guilty to Count 19 namely keeping controlled waste in a manner likely to cause pollution contrary to Article 4(1) (c) and Article 4(6) of the Order. The remaining counts have been left on the court books under the usual order.

[2] The second defendant Thomas Bates has pleaded guilty to one count namely Count 17 which is the unlawful deposit of waste, contrary to Article 4(1) (a) and Article 4(6) of the Order. The remaining counts in relation to Thomas Bates have been left on the court books under the usual order.

[3] The third defendant Gary Bates has pleaded guilty to one count namely Count 18 which is the unlawful deposit of waste contrary to Article 4(1) (a) and Article 4(6) of the Order. The remaining counts in relation to Gary Bates have been left on the court books under the usual order.

[4] These pleas were entered on 9 January 2015 at the earliest opportunity when Counts 16 to 19 were added to the Bill of Indictment and an amended Bill of

Indictment was submitted. An agreed basis of plea was provided to the court at that time which states the following:

> "(1) The accused Ace Bates Skip Hire, Thomas Bates and Gary Bates have pleaded guilty to Counts 16, 17 and 18 respectively – namely the unlawful deposit of waste contrary to Article 4(1)(a) and 4(6) of the Waste and Contaminated Land (Northern Ireland) Order 1997. The defendant company has also pleaded guilty to Count 19 to keeping controlled waste in a manner likely to cause pollution contrary to Article 4(1)(c) and 4(6) of the Waste and Contaminated Land (Northern Ireland) Order 1997 on the amended indictment. The remaining counts have been left on the court books under the usual order.
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> (2) Counts 16 to 18 relate to the waste deposit between 20 May 2007 and 23 August 2011 on land owned by Gary and Thomas Bates and also a portion of adjacent land owned by Mr Douglas Carson.
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> (3) Count 19 concerns only the company. It relates to observations by witnesses of fires burning on both the Bates land and that belonging to Mr Carson. This occurred principally between 26 May 2007 and 26 June 2007. Instances of actual pollution were identified on eight individual occasions when waste was burnt.
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> (4) The defendants Gary and Thomas Bates were at the material times the directors and sole shareholders of the company.
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> (5) The defendants, and each of them, accept that they caused, allowed or permitted waste to be deposited on land owned by Gary and Thomas Bates and on neighbouring land belonging to Douglas Carson between 20 May 2007 and 23 August 2011.
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> (6) The company had an exemption registered for part of the site owned by Gary and Thomas Bates between 7 March 2005 and 6 March 2008. It is common case that a large proportion of the material brought on to the site was placed immediately adjacent to the exempt area. A quantity of waste was brought on to the site prior to 20 May 2007.

(7) The material, the subject matter of the charges, was controlled waste. The total amount of waste deposited and the categorisation of the waste as either inert or non-inert material is not agreed.

(8) The determination of the amount of waste and its type have an impact upon the computation of the amount of benefit accruing to the defendants from the criminal conduct admitted by the pleas.

(9) It is agreed that the resolution of those disputed matters can be left to the confiscation hearing. The defendants and each of them accept that the findings of the confiscation hearing will inform the sentencing judge as to the basis of culpability.

(10) Expert evidence provided to the court establishes that the site is currently environmentally stable, notwithstanding the presence of controlled waste, with no appreciable contamination emanating from the site.

(11) If the court is considering a monetary penalty, the court is obliged to defer sentencing until after the confiscation hearing when the recoverable amount would be known. Section 163(2)(a) of the Proceeds of Crime Act requires the court to take account of the confiscation order before it imposes a fine on the defendant.

(12) At the confiscation hearing, the court may be required to hear evidence and determine the quantity of controlled waste on the site; when such waste was deposited; the categorisation of the waste as either inert or non-inert material; the relevance, if any, of the exemption referred to at paragraph 6 and the costs/tax liabilities flowing from any factual findings regarding these issues."

[5] The basis of plea was agreed some time ago and since then there has been further progress made in this case with the assistance of expert evidence. The complexion of the case has changed and that has led to a situation where an agreed amount for a confiscation order has been put before me and where the experts have largely agreed the issues that were outstanding in this case. I am grateful to all

counsel who appeared in this case for narrowing the issues and for presenting the agreed facts and sentencing principles to which I will now turn.

Background

[6] This case relates to three defendants however it is important to note that they are inextricably linked. The defendant company is a limited company which was incorporated on 13 July 1996. The activities of the company are the collection and treatment of waste. The second and third named defendants were directors of the company at the time of these offences. Thomas Bates was appointed as a director on 1 January 2003. Gary Bates was appointed as director on 30 July 1996.

[7] The offences relate to lands owned by Thomas and Gary Bates at 51 Ballyutoag Road, Belfast. I have visited the site with counsel for the purposes of this sentencing. The site is located in a rural setting with the surrounding land use consisting of agricultural fields and a small number of residential dwellings with associated farm buildings. In relation to this site, a planning application was made by the defendants for in-filling of the land on part of the site. This application for in-filling of land was made on the basis that the land would be reclaimed for agricultural purposes. The planning application was granted on 30 December 2003 and that permitted the deposition of soil, clay, bricks and blocks. The relevant exemption that was required as part of the Waste Management Licencing Regulations (Northern Ireland) 2003 to permit the spreading of controlled waste is called a paragraph 11 exemption. The exemption referred to permission for the in-filling of generally, but not exclusively, inert materials (soil, clay, stones, rocks, bricks, ceramics, ash etc) up to a level of 2 metres and a maximum volume of 20,000 tonnes in any one year. The exemption was granted from 7 March 2005 and appears to have been renewed for the year March 2006 to March 2007 and March 2007 to March 2008.

[8] At the date of these offences, part of the site at 51 Ballyutoag Road therefore comprised an exempt area where it was anticipated there would be in-filling. The adjoining land is owned by a Mr Douglas Carson and that was land for which there was no permission to deposit waste or in-fill. On 13 May 2007, Mr Carson employed a private investigator to observe and record activities that were taking place on his land due to concerns he had regarding unauthorised activities and encroachment. It is accepted that materials were deposited on Mr Carson's land during the relevant time. Save for the exemption which was obtained for in-filling at the site on 51 Ballyutoag Road, the site was not licenced to receive waste.

[9] It is important to note that the defendant company was issued with a waste management licence by the Northern Ireland Environment Agency (NIEA) on 20 November 2008 for a waste transfer station and materials recovery facility at land located at Duncrue Pass in Belfast. It seems clear that this is the base for the defendant company's business. As part and parcel of the waste management licence, a representative of the company had to demonstrate technical competence to

obtain a certificate. Thomas Bates was issued with the relevant certificate dated 10 October 2008 in relation to the management of waste management operations. It appears that the licence was thereafter transferred between other representatives of the company.

[10] Three counts in this case namely Counts 16, 17 and 18 specifically refer to the act of depositing waste on both the site at 51 Ballyutoag Road and lands owned by Douglas Carson. The defendants by virtue of their pleas have admitted their guilt in relation to these offences between the relevant dates of 20 May 2007 and 23 August 2011. The site has been the subject of scientific analysis by the NIEA as well as experts instructed on behalf of the defendants. There has been a comprehensive investigation of these offences including aerial photographs being taken and analysed. Scientific data has also been analysed and as a result certain propositions are accepted by all parties in the case.

[11] In relation to the charges of depositing waste there are three issues to consider. These are the volume of waste deposited, the location of the deposits and the composition of the waste. The first issue is to determine the volume of waste deposited during the indictment period. It has been agreed that the quantity of waste deposited on the lands belonging to Douglas Carson during the indictment period was 1985.5 metres cubed or 1985.5 tonnes applying an agreed conversion rate.

[12] Between the experts, it was not possible to agree the quantity of waste deposited on the site at 51 Ballyutoag Road during the period on the indictment. The prosecution expert arrived at an amount of 27,159 metres cubed/tonnes. The defence experts arrived at a figure of 13,246 metres cubed/tonnes and the defence contend that some 260 metres cubed for material was removed by the company from the site and transferred to the Duncrue site. On any reading these are significant figures in terms of tonnage.

[13] The timeframe during which the waste was deposited is also subject to some dispute. The defence experts contend that this deposition had ceased in May 2008. The prosecution experts formed the view that deposits had predominantly ceased from mid-2009. It follows that there was a period of deposit in the region of 1 to 2 years. However a significant amount of waste was noted to be moved from the site on 23 August 2011.

[14] The location of the waste deposited during the indictment period has been subject to expert analysis. The waste deposited on the defendants' land was to the west/south west of the site. It is significant to note that this area is adjacent to the exempt area with the distance from the boundary ranging from 0 to 185 metres. A small proportion of waste was also deposited on the lands belonging to Douglas Carson. This land is some 200 metres away from the exempt area. I have seen a useful map of the relevant area which includes shading to show the area affected by deposition during the charge period which is outside the exemption, the area

affected by deposition during the charge period which is inside the exemption and the area affected by deposition during the charge period which is on the third party lands. I was referred to some issues in relation to the folio boundary between the defendants' lands and Mr Carson's lands but it appears clear that there cannot have been any doubt about the fact that deposits were made on Mr Carson's lands. In relation to the lands owned by Thomas and Gary Bates there are materials deposited outside the exemption area and inside the exemption area shown on the map.

[15] The nature of the waste deposited during the indictment period has also been subject to comprehensive expert study. In particular the NIEA undertook scientific exploration by way of excavating trial pits to determine the nature of the waste deposited. The defence experts also dug a number of trial pits in this area. There does not seem to be a dispute between the parties in relation to the overall effect of the scientific excavations. In particular I was referred to the data analysed by defence experts Terra consult who commented in their report dated 7 April 2016 that the trial pitting investigation of the deposit materials recorded a mixture of soils, sand, stones, bricks, concrete, cobbles, ceramics and ash with some occasional admixture of non-conforming materials namely plastics, metals, wire cable, wood and glass at some trial pit locations. They opined that the proportion of non-conforming materials from visual inspection is de minimus. It was concluded that the results of the analysis demonstrated that 94% of the made ground identified in the trial pits should be classified as inert under EWC codes and that due to the inert nature of the fill material it is unlikely that these materials would cause pollution. The prosecution referred to these matters when opening the case.

[16] In terms of the history regarding the one count which relates to keeping controlled waste in a manner likely to cause pollution of the environment or harm to human health, it should be noted that this relates to the company only. It follows observations by witnesses of fires burning on both the site at 15 Ballyutoag Road and the land belonging to Mr Carson. These observations of fires occurred principally between 26 May 2007 and 26 June 2007 although there was evidence of fires on two occasions subsequent to that on 28 January 2008 and 14 June 2011. It follows from this that instances of actual pollution were identified on eight individual occasions when waste was burnt. The circumstances of this can be summarised as follows.

[17] A fire was witnessed on the site on 27 May 2007 from at some point between mid-night and 1.00 am. The witness described the size of the fire as considerable with black smoke billowing into the air for at least three hours.

[18] On 29 May 2007, 4 June 2007 and 8 June 2007 a witness witnessed further fires at the same site. The timing of the fires is not given but there are descriptions given of what appear to be a large fire and another witness did take a photograph of the fire which appears to be of building type waste.

[19] On the night of 16/17 June 2007 and the following morning, a witness saw further burning and took two photographs of that the same morning. On 13 June

2007 an NIEA officer attended the site at 20.15 hours and took photographs of burning. This is described as between 15 and 10 metres with three separate piles of waste on fire and the fourth smouldering. The witness noted that a variety of waste was being burnt including polystyrene, wood, fibre board, paper, metal products, green waste, plastics and tyres. On 27 June 2007 a witness reports further burning at the site although no time was specified. On 29 January 2008 an NIEA officer attended the site at 17.20 hours and noted an acrid smelling smoke coming from a fire on the site. The witness could see smoke and sparks from a fire at the rear of a large earthen embankment. He climbed the embankment to see a large bonfire some 4 metres by 20 metres containing burning waste materials which appeared to be wood and laminated sheeting. He took photographs which have been exhibited. On 14 June 2011 a witness attended the site and noticed that there was a fire alight with materials burning including fabrics, insulation material, woods, metals and carpet underlay, tyre wires, a sealant tube and clothing.

[20] Mr Murphy QC on behalf of the prosecution in opening this case referred to the fact that the expert evidence establishes that the site is currently environmentally stable, notwithstanding the presence of controlled waste, and Mr Murphy accepted that there was no appreciable contamination emanating from the site. Mr Murphy also confirmed that the defendants had co-operated with the investigation of these offences.

The circumstances of the defendants

Ace Bates Skip Hire Limited

[21] The company has been in existence for almost 20 years. Gary and Thomas Bates were directors until they resigned on 17 October 2013 at which John Boyd Carson and David Bates became directors. The most recent accounts show a turnover of just over £2m a year and a profit before tax of £354,752. I was told that the company employs 33 employees at present and that the usual number of employees at any one time is 30. I was told by Ms McDermott QC for the first defendant that the company has a reputable accountant and that there were no issues noted as regards tax or VAT affairs save the issues that arise from these offences. Ms McDermott asserted that since January 2015 when the pleas were entered in this case, the company had suffered reputational damage as a result of the publicity associated with the case. Some evidence was provided to me in terms of contracts that were not renewed. Notwithstanding this, the company continues to trade from its base at Duncrue Street, Belfast and remains a small company in profit.

[22] It is important to note that the company has one previous conviction for keeping controlled waste. This is a conviction dated 10 March 2005 and it appears that it relates to the same area at Ballyutoag Road. The conviction is also for the same type of offence as that with which the company is currently charged under the Order. This offence appears to have arisen as a result of a visit when an officer of the Department of the Environment saw an area close to the road which appeared to be

in the process of being in-filled with construction and demolition type waste. This waste included wood, plastic, metal, green waste, household items including a television, cooker, bicycle, pram, gas cylinder, carpets and a mattress. The depth of the material appeared to be approximately 4 metres. Another area of the site was noted to have wood, cardboard, plastic and metal items sitting on the ground beside a pit that was approximately 40 metres long. This pit contained water and construction waste including wood, plastics, metal and rubble some of which appeared partially burnt. A separate pit had been dug behind another section of the bank and more waste material consisting of wood, metal, plastic and general construction type waste had been deposited both inside and alongside it. This material was later confirmed by the same officer of the Department of Environment as having been removed from the site. The defendant company was convicted of this charge and was fined £300.

[23] Ms McDermott stressed that this was a small family company which had a good reputation for business. She pointed to the fact that the company had co-operated at all times with investigations. She pointed to a memorandum of understanding whereby the company will in future cooperate to ensure environmental compliance. She indicated an intention on the part of the company to upgrade plant and equipment to undertake a recycling business. Ms McDermott reminded me of the facts of this case in terms of the exempt area on the site. She referred to a difficulty which was not appreciated by the Agency in relation to paragraph 11 exemptions. She also referred to the fact that this case had taken a long time to investigate both before and indeed even since the date of plea. Ms McDermott pointed to some difficulties in terms of the investigation given that documentation was mislaid.

Gary Bates

[24] Ms Smyth BL adopted Ms McDermott's submissions on behalf of Gary Bates. In addition she referred to the fact that Gary Bates is 44 years of age. He has five children aged between 22 and 7 by virtue of a long term relationship. He left school without qualifications and worked hard to establish the business with his brother. Ms Smyth stressed that her client recognised the deficiencies in his management which had led to these offences. He expressed remorse and assured the court through counsel that there would not be a repeat of this type of offence. I was told that Mr Gary Bates takes £500 net per week as drawings from the company.

Thomas Bates

[25] Mr Campbell BL on behalf of Thomas Bates pointed out that he along with the other defendants should be given credit for the early plea. His client I was told is 46 years of age with six children whose wife died in 2010 and Mr Thomas Bates has struggled with some health problems of his own since 2014. Mr Campbell referred to his client's hard work which resulted in him building up the company from nothing. Mr Thomas Bates also takes £500 a week net drawings.

Sentencing principles

[26] All counsel assisted me greatly by presenting agreed sentencing principles which I can summarise as follows. Firstly it was agreed that this case could be distinguished from previous recent authority in Northern Ireland namely the case of The Queen v John Paul Braniff 2016 NICA 9. The decision in Braniff is significant in terms of setting a clear guideline as to the seriousness of these types of offences which offend against the environment. In that decision the Northern Ireland Court of Appeal referred to the Sentencing Council Guidelines for England and Wales. Reference is made to the Guidelines in terms of issues of culpability and harm. The court stated as follows:

> "Culpability was assessed in particular by reference to the state of mind of the offender with deliberate conduct at the top followed by recklessness and negligence. In respect of harm, dangerous or hazardous materials having an adverse effect on air or water quality, amenity value or property were at the top and there was a recognition that the risk of harm should be taken into account although that was generally not as serious as a demonstration of harm that had in fact occurred. The custody threshold was crossed where there was deliberate conduct causing significant adverse effects or damage to air, water quality, amenity value or property, significant adverse effects or damage to health and quality of life, animal health or flora or a risk of more serious harm."

[27] The prosecution in opening the case to me accepted that on the facts of this case the actions of the defendants were not deliberate and as such the custody threshold was not crossed. Secondly counsel referred me to the Sentencing Council Guidelines for England and Wales, whose principles, whilst not binding upon the courts in Northern Ireland do assist me in determining issues of culpability and harm. Applying these principles all counsel suggested that this case came within either the reckless or negligence category in terms of culpability. As regards the harm category, all counsel submitted that this case came within category 3 harm namely minor, localised adverse effect or damage to air or water quality, amenity value or property, minor adverse effect on human health or quality of life, animal health or flora, low costs incurred through clean-up, site restoration or animal rehabilitation, limited interference with or undermining of other lawful activities or regulatory regime due to the offence, risk of category 2 harm. Counsel referred me to these Guidelines in relation to the sentencing of a company such as this and the sentencing of individuals. Counsel did refer to the Guidelines in terms of the range of monetary penalties for these offences however I do not consider myself restricted by those provisions in terms of sentencing tariffs.

[28] I was also referred by counsel to the relevant authorities in relation to the making of a confiscation order. The issue of confiscation is agreed in this case and counsel submitted that I should deal with my sentence in the following order. Firstly I should consider the order for confiscation. Secondly I should consider costs under the order for confiscation. Thirdly I should consider the appropriate sentences for the four counts on the indictment.

Confiscation

[29] Mr Murphy outlined the position to me in relation to the application for a confiscation order. He submitted that the parties have agreed a joint benefit figure of £200,000 and a joint recoverable amount of £200,000. However the court must be satisfied that the agreement is in accordance with the legislative framework set out in the Proceeds of Crime Act 2002 in accordance with R v Atkinson [1993] 14 Cr. App. R. (S) 182. Mr Murphy referred me to the leading authority of R v May [2008] UKHL 28 which summarises the steps that must be undertaken when considering the proceeds of crime legislation as follows and poses three questions that the court must ask in determining whether a confiscation order should be made and to what extent. These are:

Has the defendant benefited from relevant criminal conduct?

If so, what is the value of the benefit the defendant has so obtained?

What sum is recoverable from the defendant?

[30] Where issues of criminal lifestyle arise the questions must be modified. These are separate questions calling for separate answers, and the questions and answers must not be elided. Mr Murphy referred me to the main statutory provisions. He submitted in his argument that in the instant case, the defendants have committed an offence over a period of at least six months and they have benefited from the conduct which constitutes an offence in excess of £5,000 in accordance with sub-section 2(c) and 4 of the legislation. If the court agrees with this assessment then it must find that the defendants have a criminal lifestyle in accordance with Section 156(4). The court must therefore determine if the defendants have benefited from their general criminal conduct.

[31] Mr Murphy referred me to the assumptions which are contained in Section 160 of the legislation. He submitted that in the current case the prosecution did not invite the court to apply the assumptions on the basis there would be a serious risk of injustice if the assumptions were made. He said that the reason for this is that the relevant period during which the assumptions would apply is from 12 February 2008 to 12 February 2014 as can be seen from the agreed principles in the plea. One of the issues discussed between the experts was that the deposition may well have ceased on the land at some time between May 2008 to mid-2009. Mr Murphy

therefore submitted that the criminal conduct alleged for the purposes of calculating benefit, ceased at a very early stage during the relevant period. The defendant company, with Thomas Bates and Gary Bates acting as directors, continued to trade legitimately and thus incurred expenditure as well as receiving income. Consequently the prosecution did not dispute that the very vast majority of the income and expenditure during the relevant period arose from legitimate trading of the business.

[32] The prosecution therefore accepted that it would be incorrect to assume that expenditure incurred in the relevant period or any property received by the defendants in the relevant period was a result of general criminal conduct. Furthermore the agreed confiscation order in the sum of £200,000 is intended to encompass any benefit that was obtained at the very outset of this relevant period in criminal conduct. The prosecution case in relation to the confiscation is based on the pecuniary advantage obtained from the avoidance of landfill tax and VAT. The agreed sum takes into account the observations of both prosecution and defence experts following a large number of expert meetings and the consideration of a significant number of reports. The sum of £200,000 has been agreed by the parties as meeting the criminal conduct to which the defendants have pleaded guilty.

[33] I was reminded by Mr Murphy that, as the three defendants had jointly obtained the benefit of £200,000 through their criminal conduct, in accordance with the case of R v Ahmad, R v Fields [2015] AC 299, where defendants have jointly obtained a benefit through criminal conduct, they are each separately liable for the whole amount of the benefit. Confiscation orders must be made against each of them for the whole of the benefit. However each order could only be enforced to the extent that the sum had not been recovered in satisfaction of another confiscation order made in respect of the same joint benefit. Consequently, the prosecution invited me to make a confiscation order for the benefit of £200,000 in relation to each defendant and with a recoverable amount of £200,000 for each defendant, however it will not be enforced to the extent that a sum has been recovered by way of satisfaction of another confiscation order made in relation to the same joint benefit. This is because the defendants are jointly and severally liable for the sum of £200,000.

[34] I approve this agreement and I make a confiscation order in the terms sought by the prosecution and agreed by the defence as set out above. Further there has been agreement that the defendants should pay the costs associated with the NIEA and the PPS prosecution at an agreed amount of £100,000, one third of the said amount, £33,333, to be payable by each defendant. The prosecution agreed that the sum is payable within 12 months from the date of the confiscation order. This order is subject to the enforcement provisions set out at Section 2 of the Costs and Criminal Cases Act (Northern Ireland) 1968.

[35] Payment of the confiscation order is to be in accordance with the provisions of the Proceeds of Crime Act 2002 as amended by the Serious Crime Act 2015.

[36] I note that in an agreement in relation to the confiscation order that the defendants Thomas Bates and Gary Bates undertake not to act as directors of the defendant company or any other company involved in the management of waste for a period of three years from the date hereof. Furthermore the defendants Thomas Bates and Gary Bates agree not to undertake or attempt to undertake the role of a technically competent person in relation to any waste management licence for a period of three years from the date hereof. If these undertakings are breached the NIEA will seek, through the Director of Public Prosecutions, to apply for a serious crime prevention order. The relevant date of the agreement in relation to these matters is 15 April 2016.

Sentences for the counts on the indictment

[37] In relation to the four counts on the indictment, having considered all of the circumstances of the case I sentence the defendants as follows:

Ace Bates Skip Hire Limited

[38] In relation to culpability, I accept the prosecution case that the defendant's conduct was not deliberate but I consider that it was reckless in the sense that it was a failure by the organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence. I consider that this case extends beyond negligence. I accept the agreed categorisation of the harm as a category 3 type case under the English Guidelines.

[39] Having assessed culpability and harm, I must consider the particular circumstances of the case to set an appropriate sentence. I take into account aggravating factors. In this regard I take into account the fact that this company has one previous conviction for a similar offence. I understand that the penalty imposed was not a significant amount. However it seems to me that there has been a heightened awareness and a growing appreciation of environmental issues since that time. The previous offence occurred within a short enough timeframe prior to the present offences to warn the company as to the type of behaviour that was not appropriate. The previous offence relates to the same area which is the subject matter of this case. Also, in relation to this case, the depositing of waste was not a one off event. I understand that there was an exemption for infilling to part of the site but that does not excuse the offending behaviour. I cannot ignore the fact that there was a large amount of material deposited albeit over a period of time less than was first thought. Similarly, whilst the harm is categorised as minor it was not an isolated occurrence and there were adverse effects. In relation to the pollution offence, there were a series of significant fires on the land which will have caused pollution to the local area. In my view these are serious environmental offences.

[40] I have also considered some factors in the defendant's favour. It was thought that the criminal behaviour would lead to a confiscation order much in excess of that

now agreed. Considerable work and effort has been undertaken by the experts and counsel in this case to arrive at a fair figure in terms of confiscation. The site is now safe and I note the memorandum of agreement which has been signed by the defendant company whereby it will co-operate with the NIEA in the future in relation to ensuring that offences of this nature do not occur again. There have been delays in the investigation which have been beyond the control of the defendant due to the loss of documentation. I note that the offences were not admitted at interview however I consider that I should give the defendant company credit for the guilty plea and its cooperation with the investigation.

[41] The appropriate sentence in the circumstances of this case is by way of a monetary penalty. In setting the amount I note the sum agreed for the confiscation order and the costs liability that the company has as a result of the criminal activity. I have considered the financial circumstances of the company. I also consider that sentences for this type of environmental crime should have a deterrent effect.

[42] Having balanced all of the above factors, I now step back and consider what financial penalty is appropriate in this case. There are two distinct offences which require separate consideration. I then have to determine whether the total sentence I intend to impose is just and proportionate to the offending behaviour. I have allowed a third discount for the guilty plea on both counts. I therefore consider that a fine for each of the two offences that the company is charged with is a sum of £20,000. I sentence Ace Bates Skip Hire Limited to a fine of £20,000 on both Counts 16 and 19. That amounts to a total fine of £40,000 which I consider appropriate in all the circumstances of this case. I will allow the company six months to pay the fines.

Thomas Bates and Gary Bates

[43] In sentencing these two individuals I bear in mind that this is a family company and I do not wish to impose what would in effect be a double punishment. I consider that the individuals have been punished by the significant financial penalties levelled against their company. As I have said, I intend the fines to act as a deterrent and I consider them to represent punishment for these offences. I consider that the company should bear the bulk of the responsibility.

[44] I accept the personal mitigating circumstances of each of the two individuals. I will accept at face value that both are committed to avoiding a repeat of these offences. I therefore consider that a fine of £1,000 is appropriate against each individual defendant. As with the company, I have allowed a third discount for the guilty pleas. So the fine on each of the counts namely Counts 17 and 18 will be £1,000 against each defendant. I note that both defendants have agreed not to be directors for a period of time and that they have signed a memorandum of understanding which sets out their appreciation of environmental waste issues and their on-going commitment to compliance. I will hear counsel as to whether I should make any ancillary orders in relation to this issue or any other matters.