

Materials Management Seminar

CIWEM 4 April 2019

Landfill Tax and unauthorised sites

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Legislative background: Europe-UK-devolved

- Waste Framework Directive 2008/98/EC
- UK - EPA 1990 / EPR 2016 / Waste Regs 2011
- Finance Act 1996 / Landfill Tax Regs 1996
- **Finance Act 2018 / Landfill Tax (Miscellaneous Provisions) Regs 2018**
- **HMRC: Excise Notice LFT1: A general guide to Landfill Tax Aug 2018**
- England /N.Ireland (LFT)....Wales (LDT)....Scotland (SLfT)



Landfill tax rises for the development industry

- Landfill Tax introduced 1 October 1996
- Standard rate tax has increased from £7 per tonne to over £90
- 80% reduction in municipal waste to landfill

Date of change	Standard rate	Lower rate
Oct 1996	£7	£2
April 2006	£21	£2
April 2016	£84.40	£2.65
April 2019	£91.35	£2.90
April 2020	£94.15	£3



Increase in waste crime



- 1000 illegal wastes a year
- Fly-tipping to organised crime....waste is “the new narcotics”
- Example chemical company “zero waste”
- £1bn revenue lost ... HMRC on the case ...

**DOUBLE
TROUBLE**

Extending Landfill Tax to unauthorised sites

- Finance Act 2018 and Landfill Tax (Miscellaneous Provisions) Regs 2018
- Section 40(2) of the Finance Act 1996
- From **1 April 2018** - taxable disposal
 - Disposal of material as waste
 - Landfill site covered by a permit OR **Unauthorised waste site**
 - Disposals made prior to 1 April 2018 which are still on the site on 1 April 2018



Who is liable for LFT at an unauthorised site?

- **The person who actually makes the disposal**
- **Any person who knowingly causes or knowingly facilitates the disposal**
- Owner, occupier, person controlling the vehicle, person who facilitated the transport, party to contract of sale of waste, **person who took any action with a view to the disposal** (waste chain)
- **Personal liability for any company officer**
- Jointly and severally liable
- Focus on waste duty of care



Offences, penalties and other liabilities

- **Tax liability** - LFT (standard rate): records or estimated volume X 1.5
- **Interest** - from the date the tax was due
- **Additional civil penalty** - up to 100% of the LFT
- **Criminal offences**
 - (a) Magistrates Court - £20,000 or LFT x 3 and/or 6 months jail
 - (b) Crown Court – unlimited fine and/or up to 7 years in prison
- **Waste removal** - s59 EPA 1990 (removal of unlawfully deposited waste)
- **Environmental law offences** – s33, 34 EPA 1990 (duty of care), EPR 2016



The stakes are higher

- Powerday plc **fined £1,000,000 in 2016** for unconsented disposal of 17,500 tonnes of waste. Waste deposited with permission of the farm owner but not in accordance with env permit or registered exemption
- Liable for **£245,000 EA investigation costs** and waste removal costs
- **Additional liability if there was HMRC action - £3.3M plus interest**
- **Landfill tax - £1,650,000**
- **Civil penalty - £1,650,000**



Waste Enforcement (E&W) Regulations 2018

- Waste Removal Notice
 - (a) Occupier – s57ZB EPA 1990
 - (b) Owner – s57ZC EPA 1990
- Where occupier has failed to comply
- Restriction Notice – s109 EA 1995 – 72 hours
- Restriction Order – 6 months, option further 6 months
- Construction sites? – after 29 March 2018



Waste Duty of Care Code of Practice Nov 2018

- Duty of Care must be complied with during the complete journey until disposal
- Reasonable steps
- Every load of waste must be accompanied by a Waste Transfer Note (WTN)
- AWTNs / season ticket can allow multiple movements under certain conditions.
- All hauliers removing waste must be registered as a waste carrier
- Receiving site (e.g. landfill) must have an Environmental Permit or a current registered exemption
- Report suspected breaches to the EA

ENVIRONMENT AGENCY
CERTIFICATE OF REGISTRATION UNDER THE CONTROL OF POLLUTION (AMENDMENT) ACT 1990

Waste carrier
M & W Waste Services
11, South Road
Bristol, Bristol, Avon, BS10 7SE
Tel: 01274 440000 Fax: 01274 440000

Receiving site
M & W Waste
11, South Road
Bristol, Bristol, Avon, BS10 7SE
Tel: 01274 440000 Fax: 01274 440000

17 JAN 2006

ENVIRONMENT AGENCY
ACT 1990
RECYCLING FACILITY
mental Protection Act 1990,
and treatment of controlled
Recycling Ltd, Grove House,
ber 4528854, the said licence
see.

SCHEDULE 1 - SPECIFIED LAND

The licence relates to the land at Unit N1, Hallen Industrial Estate, Severn Road, Hallen, Bristol BS10 7SE Grid Reference ST 544 812 (hereinafter called "the site") shown edged red on Drawing Reference Number EUR/SP/1 dated 16/01/06, and attached to this licence.

FOR ENVIRONMENT AGENCY OFFICIAL USE ONLY

Signed *Pete G. Hart* Name Pete Hart
(Team Leader - Environment Management)

Dated 17 JANUARY 2006

YOUR ATTENTION IS DRAWN TO THE RIGHTS OF APPEAL DETAILED AT THE END OF THIS LICENCE

Environment Agency, North West Area, South West Region
(Rivers House, East Quay, Bridgwater, Somerset TA6 4YS)

Waste Transfer Notes

Waste (England and Wales) Regulations 2011

Must contain:

- A written description of the waste;
- European Waste Catalogue (EWC) code;
- Standard Industry Classification (SIC) code;
- Waste Hierarchy declaration;
- Waste Carrier's name and Licence Number;
- Full address of receiving site (i.e. landfill) and Environmental Permit / exemption number;
- Signature of the site representative and carrier; and
- Signature of the representative of the receiving site

Duty of care: waste transfer note *Keep this page and copy it for future use*

Section A – Description of waste
(Please write as clearly as possible)

A1 Please describe the waste being transferred

List of Waste Regulations codes

A2 How is the waste contained?
 Loose Bags SIP Drum
 Other

A3 How much waste? For example, number of sacks

Section B – Current holder of the waste – Transferor

B1 Full name

Contacting name and address

Postcode

B2 Are you:
 The holder of a pollution prevention and control licence
 Export from equipment to have a waste disposal management licence? Details, including registration number
 A registered waste carrier? Registration number

Is the importer of the waste? The waste disposal authority Licensed from equipment to export



Provide information to EA, Council and HMRC

- S108 Environment Act 1995
- Powers of entry, investigations, documents, sampling
- Require any person to provide information (if reasonable cause to believe they can give relevant information)
- £20k fine / 2 years imprisonment
- Waste Duty of Care COP - report suspected breaches
- Excise Notice LFT1 - Landfill tax civil penalty
- “We can reduce the amount of the (additional 100%) penalty depending on our view of how much assistance you give us”
- Duty of confidentiality v criminal enforcement action/ public interest



Not taxable disposals

- Use of material in construction which is compliant with planning
- Temporary storage: 1 year (disposal) or 3 years (recovery/treatment)
- Compliant with the following “authorisations” at the time of disposal
 - Waste exemption
 - EA regulatory position statement
 - **The Definition of Waste: Development Industry Code of Practice**



- The CoP does not change the statutory powers or duties of the EA