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LATS Guidance on reporting, notices and penalties October 2008 v3

Guidance for the Landfill Allowances and Trading Scheme

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The Landfill Allowances and Trading Scheme (LATS)

Waste Disposal and Unitary Authorities (WDAs) are required to provide quarterly returns to us within three months of the end of each quarter. This gives WDAs sufficient time to collect data from contractors and submit returns to us.

We rely on the receipt of prompt and accurate data to provide each WDA with a predicted outturn. A predicted outturn is the mass balance calculation, which indicates the performance of authorities in relation to their allowance allocations. From 2007/8 onwards, we will provide predicted out turns to a WDA using a forecasting tool to help inform final year predictions.

Landfill operators receiving municipal waste are required to provide an annual return to us within three months of the end of the scheme year. We need this data as part of our audit role to compare what WDAs report as being sent to landfill.

Reporting – Local Authorities

Defra and the Environment Agency (EA) wish **all local authorities** to report using WasteDataFlow (WDF), which is an online system. (www.wastedataflow.org)

The reporting deadlines for WDAs are set out in the LATS Regulations 2004:

WDAs must submit a return containing the information contained in Regulations 11(1) and (2). In order to satisfy this requirement WDAs must:

- achieve a level that we consider as **prompt** reporting, the data which WDAs submit must reach level 30 in WDF; and
 - to achieve a level that we consider as **accurate** reporting, the data must reach level 35. Enviro Consulting Ltd currently work with authorities to independently quality assure the data so that it reaches this level.

The data quality control process for LATS requires senior managers within each authority to authorise release of data. When released it is termed level 30. WDAs must authorise data to level 30 in WDF by each reporting deadline to meet their statutory reporting requirements under LATS. We consider this to be **prompt** reporting.

The next step in quality control of the data, is independent validation by Enviro Consulting Ltd. This is vital for maintaining consistency across all 394 authorities in England. During this process errors are resolved and data moves from level 30 within WDF to level 35. Enviro Consulting Ltd currently work with authorities to independently quality assure the data so that it reaches level 35 within WDF. We consider this to be **accurate** reporting.

Table 1 (All Local Authorities need to read this table)

	Data period	Reporting deadline	Validation deadline	L35 roll-down request deadline
Quarter 1	1 April 2008– 30 June 2008	30 Sept 2008	31 October 2008	14 November 2008
Quarter 2	1 July 2008 – 30 September 2008	31 December 2008	31 January 2009	13 February 2009
Quarter 3	1 October 2008– 31 December 2008	31 March 2009	30 April 2009	15 May 2009
Quarter 4	1 January 2009– 31 March 2009	30 June 2009	31 July 2009	31 July 2009*

* Please note that a roll-down of Q4 data is only available to authorities achieving early validation e.g. has reached level 35 before 30 July 2009.

Level 35 roll-downs

An Authority:

- **Local Authorities will only be permitted to change up to two quarters of data in one scheme / financial year**
- **A quarters data may only be changed once**
- **Must contact Enviro to make a formal request to change level 35 data**
- **Must complete all the relevant information on the proforma, which then goes to The Agency and Defra for consideration**
- **Must meet the strict deadlines to request changes for Q1, Q2, Q3 or Q4 data as given in table 1 above.**
- **Any requests for Q4 changes will not be considered if received after the Q4 deadline in table 1 above.**

Reporting - Landfill Operators

Reporting deadlines for landfill operators are set out in the LATS Regulations 2004. They are required to provide an annual return of municipal waste being landfilled (data period from 1 April – 31 March) reported by 30 June

Landfill operators must send data from 1 April – 31 March electronically to us by 30 June. The data must be submitted in the agreed format and be prompt and accurate.

These returns will include information about all municipal waste landfilled at their site and any pre-treatment which took place on site before landfilling.

Each different type of municipal waste must be described and coded using the European Waste Catalogue (EWC). This replaces the current UK Waste Classification codes.

Please go to our website for more information on how to send us data and the format we require.

<http://www.environment-agency.gov.uk/business/1745440/444663/landfill/1764524/1693182/986852/1102546/1847979/?lang=e>

This can be found at:

The Environment Agency/waste/local authorities/landfill allowances schemes

Serving Notices – Local Authorities

So that we can audit the diversion of municipal waste away from landfill, we have to be satisfied that treatment or recovery is being carried out at suitably licensed facilities. If municipal waste is exported for reprocessing then it has to be done in accordance with the law. To check that diversion is legitimate we require WDAs to report the final destination of municipal waste, whether UK or worldwide.

To check that diversion is accurate, we require WDAs to report on the reject rates from various stages of reprocessing and reuse. We are particularly concerned at the widespread variability in the reject rates reported for waste going through Material Reclamation Facilities (MRFs).

We will serve a formal notice on a WDA if it fails to provide sufficient information on:

- **the final destination of municipal waste, or**
- **the reject rate at any stage during reprocessing/ reuse.**

We will also serve a notice on any WDA or Unitary Authority where their (or their constituents) data has not been validated by the deadlines given above. Failing to comply with a notice will make an authority liable to a penalty from Defra.

The notice will request the WDA to provide the information within 15 working days. A WDA will be required to provide an evidence trail of where and how the information has been gathered.

A formal notice may be served on a WDA even after data has reached level 35 within WDF.

Penalties - Local Authorities

Within one month of the reporting deadlines, WDAs will automatically be reminded of their statutory requirements by the WDF system.

For a WDA failing to report prompt data, Defra will send a provisional warning letter following the quarterly reporting deadline which will say that they will be penalised x GBP unless they:

- provide the required data within 10 working days, or
- make a sufficiently robust representation to Defra within 10 working days as to why they have not provided the data.

Depending on the outcome of any representations by WDAs, Defra will issue a final formal penalty letter to any WDAs that has not reported data.

The penalty will depend on the number of reporting requirements that have been breached and a penalty of £1000 will be imposed for each requirement.

Details of Defra penalty guidance are available at www.defra.gov.uk/environment/waste/localauth/lats/pdf/lats-penaltiesguidance0612.pdf

Defra also have powers to suspend a WDA from banking, borrowing and transferring landfill allowances if a WDA has breached any requirement of the Regulations.

Reconciling allowances – Local Authorities

The LATS year ends on 30 September, at which point all trading and borrowing of allowances for that year stops.

During September WDAs must decide whether or not they need to:

- buy or borrow ¹additional allowances, or
- sell surplus allowances, or
- bank ² surplus allowances for use in the following year.

In order to help WDAs make this decision, we will provide a draft reconciliation figure where prompt and accurate data are available. This will be done for each WDA by 31 August. The draft reconciliation figure compares the actual BMW landfilled for each authority against its allowance allocations. Provision of this figure is not an opportunity to change reported data.

Any WDA that does not have a complete³ set of quarterly data at level 30 by 30 June and level 35 by 31 July may not receive a reconciliation figure.

It is in the waste disposal authorities' interests to make robust arrangements for reporting complete data for the relevant scheme year to inform trading decisions and avoid incurring penalties.

There is no provision within the Landfill Allowances and Trading Scheme (England) Regulations 2004 (LATS regulations) for a WDA to dispute or appeal the reconciliation figure.

Serving Notices - Landfill Operators

So that we can complete our audit role, we require accurate and prompt data from landfill operators receiving municipal waste. If the data supplied by a landfill operator is incomplete or we require further information then we can serve a notice on the landfill operator to produce necessary records. The notice will require the landfill operator to provide the information within 15 working days. Failure to provide this information will result in us taking enforcement action. We also have powers of entry to find inspect and copy records.

¹ Allowances can only be borrowed in certain scheme years. Allowances cannot be borrowed into or out of target years. Target years are 2009/10, 2012/13 and 2019/20

² Allowances can only be banked in certain scheme years. Allowances cannot be banked into or out of target years. Target years are 2009/10, 2012/13 and 2019/20

³ Complete data means that it is both prompt and accurate. In two tier areas this refers to a complete set of quarterly data for all constituent WCAs in addition to quarterly data from the WDA

Enforcement Action – Landfill Operators

In June, we will automatically remind landfill operators of their statutory requirements by sending an email to them.

If a landfill operator fails to report promptly and accurately, we will send a warning letter . This will be sent in 7 working days after the reporting deadline and will tell the operator that they will be liable to enforcement action unless they:

- provide the required data within 10 working days, or
- make a sufficiently robust representation to the Agency within 10 working days as to why they have not provided the data .

After 10 working days, depending on the outcome of any representations by landfill operators, we will begin enforcement action against any landfill operator that has not reported data in a prompt and accurate manner.

Summary of Key Points

- a) The annual reconciliation figure is a guide for WDAs to indicate whether or not they need to buy or borrow additional allowances to meet their annual allowance allocation. There is no opportunity to change reported data after the individual level 35 roll-back deadlines and 31 July for Q4 data.
- b) There is no provision within the LATS regulations for a WDA to dispute or appeal the reconciliation figure.
- c) The **mass balance calculation** will be available to WDAs online (in WasteDataFlow) during this year, so that authorities can get a indication of their performance whenever required.
- d) Enforcement action taken against a landfill operator will be in accordance with our enforcement and prosecution policy.
- e) WDAs can be penalised for failing to report promptly and for non-compliance with a formal notice.