## Changes to Landfill Tax – Navigating the Waste Permitting Minefield

HMRC announced that as of 1 April 2018 landfill tax would be payable on wastes deposited at illegal waste sites. This isn’t confined to fly tipping or illegal dumps but will also affect development sites that don’t have the appropriate exemption, environmental permit or Material Management Plan (MMP) in place at the time of the waste transfer.

It is estimated that waste crime accounts for around £604million in lost landfill tax, furthermore the Home Office has found that criminal networks are using illegal waste management operations, including running huge waste sites, as a cover for crimes such as money laundering, human trafficking, fraud and the supply of drugs and firearms.

Previously the responsibility for obtaining permits would usually fall on the operator of the facility, but under the new rules anyone who knowingly permits the waste activity will be liable for the tax charge under a joint and several liability basis. This could include anyone in the waste supply chain from site owners, landlords, clients, consultants and project managers through to hauliers and waste brokers.

HMRC will charge landfill tax at the full landfill tax rate, currently £91.35 per tonne even if the materials qualify for the lower rate. They will also be able to apply an additional fine up to 100% of the tax charge.

So, when do I need a permit? An easier question to answer is when don’t I need a permit. The Waste Framework directive defines waste as “any substance or object which the holder discards or intends or is required to discard”.

### In practical terms any soil or similar material that is excavated, exported from or imported to a site may be classified as a waste.

The following scenarios don’t require a permit as the material is not a WFD waste:

- Reuse of clean naturally occurring materials on the site of origin, provided that the soils are reused within 12 months;
- Import of quarried aggregates or soils.

For pretty much every other material movement activity associated with development some form of permit is required.

### Demolition

Starting with demolition a T5 exemption should be in place to cover the crushing and screening of demolition waste. A U1 exemption should cover the reuse of up to 5000 tonnes of demolition waste. For more than 5000 tonnes a Material Management Plan prepared in accordance with the Definition of Waste Code of Practice (DoW:CoP) and signed off by a Qualified Person should be in place.

All recycled aggregates should be manufactured under the appropriate WRAP Quality Protocol to demonstrate end of waste and allow re-use.

### Scenarios that require a permit

- Use of materials imported under a Secondary Use Agreement (SUA) that are from a known source and meet the requirements for SUA material.
- Use of material that is classified as waste from a permitted landfill or waste treatment facility.
- Use of materials that are not waste but are used for specific purposes, such as construction fill or landfill cover.
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### Reuse of Materials on the site of origin

A U1 exemption should be in place for small volumes of materials up to 1000 tonnes, only one exemption may be in place for a site and cannot be used more than once within a 3-year period.

Clean naturally occurring soils re-used on the site of origin do not require a permit as they are not a WFD waste. For all other soils that are not clean naturally occurring, including remediated soils and made ground an environmental permit or Material management Plan signed off by a Qualified Person should be in place prior to the start of the project.

The Material Management Plan assembles various lines of evidence including Site investigation reports, remediation strategy, planning consultations, volumetric calculations, contractual agreements, soil tracking plans and verification plan to demonstrate that soils are not waste. The MMP is signed off by an independent Qualified Person.

### Importation of materials from another site

Imported recycled aggregates should have supporting WRAP certification otherwise an Environmental Permit will be required.

The DoW:CoP also allows the direct transfer of clean naturally occurring materials between sites and the operation of a “Hub and Cluster” – A central treatment hub undertakes remediation of contaminated soils with soils received from one or more donor sites. Soils may be re-used at the hub site or sent to other receiving sites. This may work well where a number of sites are in close proximity and the remediation treatment can be concentrated at one location. An Environmental Permit will be required to cover the treatment facility.

The direct transfer of soils that are not clean naturally occurring materials is not covered under the DoW:CoP and requires an Environmental Permit.

A Waste Recovery Environmental Permit for permanent deposit of waste on land is required where made ground is imported as a general fill material. A Waste Recovery Permit this may take 13 weeks or more for the Environment Agency to approve. The EA will require a waste recovery plan that demonstrates that the project would still be viable if a non-waste material was used.

Other scenarios may include:
- Transfer of aggregates from another development requires an exemption (up to 5000 tonnes) or use of the CL:AIRE DoW:CoP
- Recycled aggregates should be WRAP compliant, or they will require an exemption or Environmental Permit

Material management must be planned in advance and the appropriate approvals put in place prior to the transfer. A verification report must be prepared at the end of the project to demonstrate that the project was completed in accordance with the MMP or permit conditions.

*BWB Consulting, April 2019.*

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