

Agenda Item No:

NORTH LONDON WASTE AUTHORITY

REPORT TITLE:

LANDFILL ALLOWANCE TRADING SCHEME UPDATE

REPORT OF:

**HEAD OF WASTE STRATEGY AND
CONTRACTS**

FOR SUBMISSION TO:

AUTHORITY MEETING

DATE:

7 JULY 2004

SUMMARY OF REPORT

This report draws to the Authority's attention the key aspects of the Government's formal published response to the Landfill Allowance Trading Scheme consultation (to which the Authority formally approved its response in October 2003).

RECOMMENDATION

It is recommended that the Authority notes the report.

Signed by Head of Waste Strategy
& Contracts

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Date:.....

1.0 BACKGROUND.

- 1.1 The background to the Landfill Directive (Council Directive 99/31/EC) was set out in a report to the Authority on 1st October 2003, but is repeated in some detail here for the benefit of new Authority Members in Sections 1-2 of this report. The Directive will bring fundamental changes to municipal waste management services, and is the principal driving force behind most relevant legislation and the North London Joint Waste Strategy.
- 1.2 The Directive was ratified in April 1999 and has been gradually transposed into national legislation. The immediately relevant purposes of the Directive are threefold: -
 - To reduce as far as is possible the negative effects of landfilling waste on the environment and human health.
 - To ensure that common standards through regulatory control are applied across the European Union on all operations, environmental monitoring and long-term care after closure.
 - To reduce methane emissions from landfills by ensuring its collection, treatment and where possible its use as a gas as part of a recovery process to generate electricity.
- 1.3 The regulatory aspects of the Directive were considered by the Authority in January 2001 in the context of a response to an earlier consultation paper, and the concept of tradable allowances (called permits at the time) was considered and recommended by the Authority's Environment Committee in November 1999 in response to *Limiting Landfill*.
- 1.4 Following the overall responses to *Limiting Landfill* in which over 70% supported tradable allowances, the Government decided to use such tradable allowances to assist with the achievement of the Directive targets for the reduction of biodegradable municipal waste (BMW) sent to landfill on the grounds that compliance costs will be as low as possible, there will be less transfer of wealth out from local government, and administrative costs are likely to be lower than with alternative systems.
- 1.5 The reduction targets set by the Directive (after allowing for a four year derogation that the UK has taken up) are:
 - by 2009/10 to reduce the amount of BMW going to landfill to 75% of that produced in 1995;
 - by 2012/13 to 50% of the 1995 figure; and
 - by 2019/20 to 35% of the 1995 figure.

- 1.6 Whilst these targets apply to the UK as a whole, the devolved administrations for Scotland and Northern Ireland are free to choose if and how they will use tradable allowances, whilst Wales will use them, but has not yet decided what form they will take.
- 1.7 In March 2001 the Government published a further consultation paper that the Authority considered in July 2001. It made proposals for the design and nature of the permits, for the methods of allocating both permits and BMW landfill reduction targets, for the nature of the trading system and for the monitoring of that system, including a sanctions regime.
- 1.8 It described tradable landfill allowances as a flexible economic instrument that would both minimise costs and give local authorities the most freedom. The fact that waste disposal authorities (WDAs) would be trading meant to the Government that they would be sharing the overall cost of compliance with the Directive. Authorities that could divert more waste away from landfill (e.g. through greater recycling) would be able to trade their allowances to those WDAs that could not.
- 1.9 It explained how in any given period, a WDA would be able to landfill BMW up to the level of the allowances held. WDAs would need to ensure that they held sufficient allowances to cover the actual amount of BMW they intended to landfill over a given period. It could also comply by selling any surpluses, or by buying other WDA's surpluses to cover any shortfall of its own.
- 1.10 The paper proposed that WDAs would not have to trade allowances as long as they did not exceed their permitted amounts of BMW sent to landfill. WDAs would be free to meet their targets through diversion alone. Similarly, WDAs would be free to co-operate to meet their targets.
- 1.11 Although the allowances would only be issued to and held by WDAs, the Government also stated that there was a clear and important role for waste collection authorities (the Boroughs) to play in helping meet the Directive targets for their WDA and nationally. As outlined in *Waste Strategy 2000* the Government expected WDAs and WCAs to develop and maintain close and effective working relationships to deliver a fully integrated approach to waste management. Joint Municipal Wastes Management Strategies were seen as the key to this.
- 1.12 A key issue was the method by which the amount of allowances would be issued to each WDA in any one year. The Government proposed three alternative systems, and expressed a preference for a method which would have deprived the Authority from any benefit arising from past landfill diversion.

- 1.13 Finally, the consultation paper advised that the powers necessary to establish the tradable allowance system would require primary legislation and that its introduction was therefore subject to the availability of parliamentary time.
- 1.14 The Authority response with a checklist of outcomes was attached as Appendix 1 to the 1st October 2003 report.

2 THE AUGUST 2003 LANDFILL ALLOWANCE TRADING SCHEME CONSULTATION

- 2.1 The key issue within the consultation paper was the choice of method for the initial allocation of allowances and the allocation of the targets in 2010 and future years.
- 2.2 The Government was now advocating that allowances be allocated at a level as close as possible to each WDAs current BMW landfill levels. Each WDA's target in 2010 would be based on its percentage contribution to the total current waste arisings, applied to the total amount of BMW that England can landfill in 2010 and subsequent target years. Interim allocations were to be made by drawing a line between each WDA's first year allocation to their first target year allocation, and then to subsequent target year allocations, with the shape of this line being a subject of the consultation.
- 2.3 The proposed approach of fixing each WDA's allocation of allowances right through to 2020 from the very beginning was acknowledged not to take into account any changes in a WDA's landfill or waste arisings between now and 2020. It did however provide certainty, and thereby assist service and facility planning.
- 2.4 The Government was still allowing a WDA to "bank" any unused allowances from one year for use in a later year, but proposed to restrict to 5% the amount of allowances a WDA could "borrow" from its next year allocation in order to meet an immediate shortfall. No banking or borrowing will be allowed across target years, as this could lead to the amount of BMW physically landfilled exceeding that permitted by the Directive in a target year.
- 2.5 The Environment Agency will provide and maintain an electronic register of all allowances issued, traded and held. The Government consulted on levels of access and what information should be provided when to the EA.

- 2.6 The Government proposed an approach whereby the demonstrable diversion of BMW by a WDA can be used to adjust the percentage of its municipal waste that is calculated to be biodegradable, thereby requiring that WDA to use fewer tradable allowances for the tonnage of residual municipal waste it sends to landfill sites. This Authority recommended this in its previous consultation response in July 2001.
- 2.7 A system of financial penalties was proposed by the Government to discourage WDAs from landfilling more BMW than they are allowed to, by levying direct fines and/or by passing down at least a proportion of any fines imposed on the UK by the European Court of Justice (maximum of £0.5m per day) to “offending” WDAs and to discourage the various participants from breaching any other requirements of the scheme such as the provision of information to the Environment Agency.
- 2.8 Throughout the above, the Government was expecting WDAs and WCAs to work closely together to discuss the most effective diversion strategy for their area, to plan and agree how to achieve the most sustainable management of the diverted waste and to plan the necessary management, service and facility infrastructure to achieve the necessary diversion.
- 2.9 To this end the Government was legislating to require the preparation of a Joint Municipal Waste Management Strategy for each WDA area, and to give WDAs the power to direct a WCA to deliver waste in a separated form. This latter power would be exercisable only to meet statutory obligations and only after consultation with the WCA. WDAs would however have to pay the WCAs additional costs, and would also be able to make similar payments to other WCAs not acting under a formal direction.

3 GOVERNMENT RESPONSE TO ITS CONSULTATION ON THE LANDFILL ALLOWANCE TRADING SCHEME IN 2003.

- 3.1 In October 2003 the Waste and Emissions Trading Act was passed, containing the enabling legislation for the Landfill Allowance Trading Scheme (*inter alia*).
- 3.2 In April 2004 the DEFRA published a report on the outcome of the Landfill Allowance Trading Scheme consultation of the year before. A checklist of the Authority’s October 2003 response to the Government and the Government’s April 2004 response to all consultees is attached as Appendix 1 to this report.

- 3.3 The principal outcomes are:
- 3.3.1 the deferral of the scheme start date until April 2005, which gives the Government and WDAs more time for preparation;
 - 3.3.2 the decision to use a mass balance approach to the initial allocation and the on-going monitoring of the biodegradable content of the municipal waste stream, which means initial allocations will follow the amount of biodegradable municipal waste (BMW) that was landfilled in 2001/02, rather than the amount of municipal waste (which is what the Authority had expected);
 - 3.3.3 interim targets have been set using a back-end loaded trajectory, which means those WDAs who have to reduce their landfilling of BMW by 2009/10 will have longer to commission new services and facilities than if interim targets had been set on a straight line; and
 - 3.3.4 the agreement of various trading rules, reporting obligations and penalties for failure that will govern the technical operation of the scheme, and which threaten WDAs with penalties of £200 per tonne.
- 3.4 The Government has also issued an “estimator” programme for the allocation of landfill allowances, but states it cannot be relied upon, as only the Government’s own final calculations will count.
- 3.5 The real detail will become clear once the promised roadshows have taken place and the regulations are issued, at which point a further report will be brought to the Authority.
- 3.6 The Authority will then need to assess its situation in light of the loss of capacity at the Edmonton energy-from-waste plant during the improvement works for the Waste Incineration Directive up until December 2005 and then consider its trading strategy for the future. It is unclear at present whether the combination of these works and the mass-balance method of initial allocations will leave the Authority with a shortfall in the first year of the scheme, principally due to continuing uncertainty about the allocation.
- 3.7 This may include selling or banking any surpluses that may arise before 2009/10 and planning the development of facilities to ensure compliance with the more difficult 2012/13 target, just before the end of the Main Waste Disposal Contract. It will also include consideration of the mechanisms by which the Authority will trade.
- 3.8 Further implications are possible, as indicated in consultation responses, for the way in which collection services are run and for commercial waste collections in particular, although the Government believes our concerns may be overly cautious on the latter point.

- 3.9 Where these matters affect services of our constituent boroughs, they must be considered by the Strategy Implementation Board that is to be established to oversee the successful implementation of the (currently draft) North London Joint Waste Strategy, and clearly written into the Strategy Implementation Plan.

4 RECOMMENDATION

- 4.1 The Authority is recommended to note this report.

5 COMMENTS OF THE FINANCE OFFICER

- 5.1 Although the Authority's initial view has been that the combined effect of recycling, composting and use of the Edmonton energy-from-waste facility should obviate the need for the Authority to buy allowances before 2010, it will be necessary to review the position in the light of the allowances that are due to be announced later this year. It is hoped that the Authority will have further information by the time of the next meeting.

6 COMMENTS OF THE LEGAL ADVISER

- 6.1 The Waste and Emissions Trading Act provides the framework for the a Landfill Allowance Trading Scheme designed to implement Article 5(2) of the Landfill Directive and the apportionment of UK landfill targets to each country of the UK. The Act has now received Royal Assent but the relevant provisions are not yet in force. The Secretary of State will issue most of the legislation under delegated authority.
- 6.3 Further advice will follow as the regulations and formal guidance are issued by the Secretary of State.

Local Government Act 1972 – Access to information

Documents used: - Authority Reports on Landfill Directive, July 2001 and on DEFRA Tradable Landfill Allowances Consultation, October 2003

DEFRA publication "Landfill Allowance Trading Scheme Consultation Outcome", April 2004

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