

# Oaktree Update

Oaktree Environmental's client newsletter - July 2012



## Welcome to Oaktree Update! Landfill Tax Special

There can't be many people in the waste industry that haven't been affected by or at least heard about the recent landfill tax fiasco and it has certainly monopolised my time since 18 May when the first HMRC briefing was issued. So the purpose of this newsletter is to present a no-nonsense summary of landfill tax legislation with the addition of answers to the questions clients have asked over the last 2 months.

You may also receive this newsletter by email and due to demand we will be producing a paper and electronic version in coming months as clients have requested both. If you wish to be added to the mailing list or have a subject you want to cover please email [news@oaktree-environmental.co.uk](mailto:news@oaktree-environmental.co.uk).

I look forward to hearing from you and if you have time please come to the RWM this year for some free advice over a brew at stand number 17C19. If you don't make the exhibition please feel free to call or email me for advice or assistance.

### Marco Muia (Managing Director)

01606 558833 / 07767 761252

[marco@oaktree-environmental.co.uk](mailto:marco@oaktree-environmental.co.uk)

---

## **LANDFILL TAX - THE FACTS**

HMRC issued their infamous brief 15/12 to give clarity landfill tax rate issues and in the process effectively banned trommel fines from landfill, which I am sure was not their intention but nevertheless it happened. A second briefing (18/12) was issued and was further updated by interim guidance on 3 July.

There are two key pieces of secondary legislation for landfill tax, namely *The Landfill Tax (Prescribed Landfill Site Activities) Order 2009* and *The Landfill Tax (Qualifying Material) Order 2011 [QMO2011]*. The first sets out the prescribed activities and uses of material at a landfill site that are taxable.

The following uses of waste at a landfill site are taxable:

- (a) as daily cover;
- (b) to create or maintain a temporary haul road;
- (c) to create or maintain a temporary hard standing;
- (d) to create or maintain a cell bund;
- (e) to create or maintain a temporary screening bund;
- (f) placed against the drainage layer/ liner of the disposal area to prevent damage to that layer or liner;
- (g) for restoration that is not pre-notified; and;
- (h) the temporary storage of ashes (including pulverised fuel and furnace bottom ash).

---

Oaktree Environmental Ltd – Waste, Planning and Environmental Consultants

Tel: 01606 558833 Fax: 01606 861182 Email: [sales@oaktree-environmental.co.uk](mailto:sales@oaktree-environmental.co.uk)

The following uses of waste at a landfill site are not taxable i.e. prescribed activities:

- (a) as an engineered liner or cap;
- (b) to create or maintain a permanent site road;
- (c) to create or maintain a permanent hard standing;
- (d) to create or maintain an engineered cell bund;
- (e) to create or maintain a screening bund for the life of the site; and;
- (f) for restoration in line with the planning consent and permit.

Once you have established whether tax is chargeable on an activity you then have to establish which rate of tax applies, the lower rate at £2.50 per tonne or the higher rate at £64.00 per tonne. To do that you need to read the QMO2011, which sets out which materials qualify for the lower rate and it also makes no reference to the words 'inert' or 'inactive' which have been prevalent in both the tax and environmental legislation in recent years. The answers to the questions below will hopefully be of assistance – if in doubt please call us.

**Q: What materials are listed in the Qualifying Materials Order?**

A: Naturally occurring rocks and soils, ceramic or concrete materials, processed or prepared minerals, furnace slags, ash, low activity inorganic compounds, calcium sulphate, calcium hydroxide and brine.

**Q: Does lower rate tax have to be inert (using the Landfill Directive Definition)?**

A: No. The issue at hand has nothing to do with the definition of inert waste. Paragraph 3.2 of LFT1 notes that *"The only determining factor as to whether waste is lower rated is whether it is listed in the Landfill Tax (Qualifying Material) Order 2011. Whether or not waste is considered to be inert for environmental protection purposes is not relevant to matters of tax liability. Equally, the fact that waste is listed in the Landfill Tax (Qualifying Material) Order 2011 does not mean that the waste is inert for environmental protection purposes."*

**Q: Where can I access the main guidance document LFT 1?**

A: On HMRC's website. Just Google 'LFT1' and it will be the first hit.

**Q: If I use trommel fines as daily cover what specification does it have to meet?**

A: Trommel fines are likely to be used as daily cover, temporary screening bunds and non-notified restoration material, all of which attract lower rate tax if the fines are fit for the purpose. Use of fines to create or maintain a screening bund for the life of the site or for restoration in line with the planning consent and permit does not attract the tax. Paragraph 3.3 of LFT does allow some 'contamination' and uses the following words, which are lacking in commentary on trommel fines as an example, but which we hope to see in the promised update due in the Autumn:

*"you may ignore the presence of an incidental amount of standard rated waste in a mainly lower rated load, and treat the whole load as taxable at the lower rate. For example, we would accept as qualifying for the lower rate:*

Oaktree Environmental Ltd – Waste, Planning and Environmental Consultants

Tel: 01606 558833 Fax: 01606 861182 Email: sales@oaktree-environmental.co.uk

- a load of bricks, stone and concrete from the demolition of a building that has small pieces of wood in it and small quantities of plaster attached to bricks as it would have not been feasible for a contractor to separate them
- a load of sub-soil that contains small quantities of grass".

**Q: What is an 'incidental' amount of standard rated waste in trommel fines?**

A: Don't forget that LFT1 is the guidance landfill operators have to follow and it is their decision process that leads to them accepting your fines that has to be justified to HMRC. There is no definition of 'incidental' but Paragraph 3.3 of LFT1 finishes by stating:

*"It is not possible for us to advise you on every disposal. It is your responsibility to decide whether a particular load disposed of at your site contains a reasonable incidental amount of standard rated waste - you need to satisfy yourself that the load contains only a small quantity of such waste. The difficulty in separating the standard rated components from the lower rated waste is a factor that you can take into account, but this cannot be used to justify applying the lower rate of tax if the standard rated waste is more than a small amount of the total load. You will need to justify your decisions to us."*

HMRC also state that:

*"The waste transfer documentation must accurately record the composition of the waste consignment, setting out specifically which qualifying material(s), or mix of qualifying materials, are contained in the load or consignment. For loads or consignments of 'trommel fines' or 'fines' the documentation must clearly state from which qualifying materials, or mix of qualifying materials, the fines that go into the trommel were derived (other wastes that were filtered out before the waste goes into the trommel should be ignored)."*

**Q: How do I produce trommel fines that pass the 'incidental' test?**

A: This has yet to be set in stone and I doubt that a longstanding definition of 'incidental' will be issued in the short term as every operation is different. In my view all sites should keep their fines as clean as possible by segregating any wastes that have an impact on their quality i.e. most of you already segregate plasterboard but other visible contaminants need to be reduced as well. Batch processing waste is one answer but not everyone has the space to do it. Simply putting everything through a trommel together converts an awful lot of clean material into mixed fines that may not comply. The latest position from HMRC is that:

*"For loads or consignments of materials which are commonly referred to as 'trommel fines' or 'fines', the lower rate will apply only where the fines that come out of the trommel/automated process constitute those materials or a mix of those materials included within the 2011 Order. By a mix of materials we mean a mix of qualifying materials from different Groups within the 2011 Order."*

**Q: What should I put on my transfer note?**

A: Use the EWC code 19 12 12 and refer to the waste as '**trommel fines derived from naturally occurring subsoil and stones arising from processing construction and demolition waste**' or similar.

Oaktree Environmental Ltd – Waste, Planning and Environmental Consultants

Tel: 01606 558833 Fax: 01606 861182 Email: sales@oaktree-environmental.co.uk

There should be no need to refer to the incidental material allowed by LFT1 as the material is properly described from an environmental legislation and duty of care point of view.

In summary, trommel fines should be charged at the lower rate of landfill tax when disposed of to landfill if they are properly described and do not contain more than an incidental amount of standard rated waste. Whilst the transfer note is required to contain the necessary description there is nothing to stop you agreeing further evidence with the landfill, such as taking photographs or samples for visual inspection to help justify the lower rate tax. After all, it is the landfill operator's decision and they have to justify the rate they charge their customers to HMRC.

It is clear that the use of trommel fines to dispose of larger quantities of standard rated waste by the few is no longer acceptable and despite the 'clarification' causing immense difficulties for the industry the final interpretation of the QMO2011 is closer to how it was written. That is not a satisfactory position and I would like to see trommel fines defined in the order with a description that is widely agreed but does not encourage avoidance. I would also urge HMRC officers to visit transfer stations to gain a more detailed understanding of the process that generates the fines.

HMRC will be producing further guidance on the definition of "naturally occurring", more objective guidance on what is 'incidental' and guidance for the use of lower rated waste for filling existing or former quarries.

Enjoy the show.

We look forward to seeing you at RWM this year and we'll be posting news on Twitter @WasteChat and writing as Enviroman in The Skip Hire Magazine as normal.



Marco Muia	Managing Director	07767 761252	marco@oaktree-environmental.co.uk
Jane Muia	Director/ Co. Secretary	07771 568067	jane@oaktree-environmental.co.uk
Richard Sims	Director	07886 564606	richard@oaktree-environmental.co.uk

*Oaktree Environmental Ltd* – Waste, Planning and Environmental Consultants  
Tel: 01606 558833 Fax: 01606 861182 Email: sales@oaktree-environmental.co.uk