

# The Landfill Allowance Scheme (Northern Ireland) Regulations 2004

## Late Returns Penalty Guidance for District Councils & Landfill Operators

Version 2 February 2010

## **Contents**

Introduction – The Landfill Allowances Scheme (Northern Ireland) Regulations 2004	1
Reporting – District Councils	2
Serving Notices – District Councils	3
Penalties – District Councils	4
Reconciling allowances – District Councils	5
Reporting – Landfill Operators	6
Serving Notices – Landfill Operators	6
Enforcement Action – Landfill Operators	7

## **Introduction - The Landfill Allowances Scheme (Northern Ireland) Regulations 2004**

**Under the Landfill Allowances Scheme (NI) Regulations 2004 (NILAS) District Councils are required to provide quarterly returns to the Monitoring Authority, currently the Northern Ireland Environment Agency (NIEA), within two months of the end of each quarter.** This gives District Councils sufficient time to collect data from contractors and submit returns to NIEA.

NIEA rely on the prompt receipt of comprehensive and accurate data to issue quarterly reports which provide each District Council with an indication as to how many landfill allowances they have utilised for the quarter. This is calculated using the mass balance calculation, which indicates the performance of authorities in relation to their allowance allocations.

All District Councils must have regard to any guidance issued by the Department in relation to waste that has a biodegradable component as per NILAS Regulation 22.

This is currently the 5<sup>th</sup> such document issued by NIEA, the others being:

- Landfill Allowances Borrowing Request Form (NILAS002)
- Landfill Allowances Transfer Request Form (NILAS003)
- Monitoring Guidance for District Councils
- Guide to the Regulation of Outputs from the Composting and Mechanical Biological Treatment of Waste

all of which are available at

<http://www.ni-environment.gov.uk/waste-home/waste-guidance.htm>

**Landfill operators receiving municipal waste are required under the NILAS regulations to provide quarterly returns to NIEA within two months of the end of each quarter.** NIEA require the prompt return of comprehensive and accurate data to ensure the quantities and type of waste reported as sent to landfill by District Councils is correct.

## **Reporting – District Councils**

All District Councils must report data using WasteDataFlow (WDF), which is a national online reporting system. ([www.wastedataflow.org](http://www.wastedataflow.org))

The information required to be reported by the District Councils is detailed in NILAS Regulation 10(1)-(4) whilst the reporting deadlines are set out in Table 1 as per NILAS Regulation 10(5)

In order to satisfy NILAS Regulation 10 District Councils need to report their information / records as **comprehensively, accurately** and **promptly** as possible in WDF. In order to fulfil these requirements the Monitoring Authority (NIEA) consider that District Councils must:

- ensure their WDF data has reached level 35 by the submission deadline date (see Table 1)
- respond to NIEA validation requests to explain / revise their WDF data within 5 days of being notified\*
- ensure their WDF data regains / remains at level 35 following NIEA validation. This validation process must be completed within 4 weeks of the submission deadline date to allow the prompt production of quarterly reports.

The data quality control process for NILAS requires competent staff within each district council to authorise release of data. The data should only be released after the data has been quality assured by the authorised person to ensure these requirements are met.

\* Guidance on how to submit data in the correct format can be found in

- Monitoring Guidance for District Councils – click on link below

[http://www.ni-environment.gov.uk/nilas\\_guidance\\_to\\_dcs\\_august\\_2008.pdf](http://www.ni-environment.gov.uk/nilas_guidance_to_dcs_august_2008.pdf)

**Table 1: District Council WDF & Landfill Operator Return Submission & Completed Validation Deadlines**

Quarter	Period in scheme year	Return MUST be submitted to NIEA by	Return MUST have completed NIEA validation by
1	1 <sup>st</sup> April – 30 <sup>th</sup> June	31 <sup>st</sup> August	28 <sup>th</sup> September
2	1 <sup>st</sup> July – 30 <sup>th</sup> September	30 <sup>th</sup> November	28 <sup>th</sup> December
3	1 <sup>st</sup> October – 31 <sup>st</sup> December	28 <sup>th</sup> February	28 <sup>th</sup> March
4	1 <sup>st</sup> January – 31 <sup>st</sup> March	31 <sup>st</sup> May	28 <sup>th</sup> June

## **Serving Notices – District Councils**

**NIEA will serve a formal notice on a District Council where their data has not been submitted by the deadlines in Table 1 above. Failing to comply with this notice within 5 working days may make an authority liable to a penalty from the Department.**

We need to ensure that diversion of waste away from landfill is legitimate and that collected municipal waste is accurately reported for NILAS. So that NIEA can audit the diversion of municipal waste away from landfill, NIEA must be satisfied that treatment or recovery is being carried out at suitably licensed facilities. Municipal waste exported for reprocessing must comply with the Transfrontier Shipment Regulations. To check that diversion is legitimate NIEA require District Councils to report the final destination of municipal waste, whether UK or worldwide.

To check that diversion is accurate, NIEA require district councils to report on the reject rates from various stages of reprocessing and reuse. NIEA are particularly

concerned at the widespread variability in the reject rates reported for waste going through Material Reclamation Facilities (MRFs).

**NIEA may serve a formal notice on a District Council where it fails to provide sufficient or accurate information to enable us to confirm diversion. Failing to comply with this notice within 5 working days may make an authority liable to a penalty from the Department.**

## **Penalties – District Councils**

One week prior to the reporting deadlines District Councils will be reminded, by the Monitoring Authority-NIEA, of their statutory requirements to submit data on time.

NIEA will issue a formal notice where a return has not been received on time and / or may issue a notice where there is a failure to provide sufficient or accurate information. If any District Council fails to comply with a formal notice within its 5 working day deadline, NIEA will inform the Allocating Authority that these District Councils have failed to comply with their statutory reporting requirements.

Within 5 working days of receiving this information the Allocating Authority will send a letter to the Chief Executive Officers of any non-compliant District Councils. This letter will inform them of the Department's intention to impose a penalty on their District Council and request them to either:

- I. provide the required data within 10 working days, or
- II. make a written representation as to why they have been unable to provide the required data within 10 working days.

Depending on the representations received, the Allocating Authority will issue a final formal letter to the District Councils stating that as they have neither reported the required data nor provided a satisfactory explanation for not reporting it, that consequently financial penalties will be imposed.

The total financial penalty will depend on the number of reporting requirements that have been breached. As there are five requirements with a penalty of £1000 each, a maximum of £5000 per quarter could be payable by District Councils that fail to report promptly.

The Department also have powers to suspend a District Council from borrowing and transferring landfill allowances if it has breached any requirement of the Regulations.

## **Reconciling allowances – District Councils**

By the 30<sup>th</sup> September District Councils must decide for the previous scheme year whether or not they need to:

- borrow additional allowances, noting that allowances cannot be borrowed immediately preceding or during target years i.e. 2009/10, 2012/13 and 2019/20), or
- seek a transfer of allowances from another district council.

In order to help the councils make this decision, NIEA will provide a draft reconciliation figure for the previous scheme year by 31<sup>st</sup> August provided all data has been comprehensively, accurately and promptly reported. The draft reconciliation figure compares the actual BMW landfilled for each authority against its allowance allocations.

**NIEA may not be able to supply a draft reconciliation figure to any District Council which does not have all four quarters of WDF data for the previous scheme year at level 35 by 28<sup>th</sup> June.**

During the period between the draft reconciliation and issue of the final reconciliation NIEA may conduct audits which may result in changes to the previously reported data.

District Councils should note that there is no provision within the NILAS regulations to dispute or appeal either the draft or final reconciliation figures.

## **Reporting - Landfill Operators**

The information required to be reported by the Landfill operators is detailed in NILAS Regulation 11(1)-(3) whilst the reporting deadlines are set out in Table 1 as per NILAS Regulation 11(4)

In order to satisfy NILAS Regulation 11 Landfill Operators need to report their information / records as **comprehensively, accurately** and **promptly** as possible. In order to fulfil these requirements the Monitoring Authority-NIEA consider that Landfill Operators must:

- ensure their return(s) has reached NIEA by the submission deadline date (see Table 1)
- respond to NIEA validation requests to explain / revise their data within 5 days of being notified\*
- This validation process must be completed within 4 weeks of the submission deadline date to allow comparison with the District Councils quarterly data submitted via WasteDataFlow.

These returns should 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).

\*Guidance on how to submit data in the correct format can be found in

- Guidance for Landfill Operators – click on link below

<http://www.ni-environment.gov.uk/guidanceforlandfilloperators.pdf>

## **Serving Notices - Landfill Operators**

**NIEA will serve a formal notice on a Landfill Operator where their data has not been submitted by the deadlines in Table 1 above. Failing to comply with this notice within 5 working days may make the operator liable to enforcement action which may result in prosecution by the Department.**

So that NIEA can compare the municipal waste reported by the District Councils and complete landfill site audits, NIEA require the comprehensive, accurate and prompt supply of data from landfill operators receiving municipal waste. If the data supplied by a landfill operator is incomplete or NIEA require further information then NIEA can serve a notice on the landfill operator to produce necessary records. NIEA also have powers of entry to find, inspect and copy relevant records.

**NIEA may serve a formal notice on a Landfill Operator where it fails to provide sufficient or accurate information. Failing to comply with this notice within 20 working days may make an operator liable to enforcement action which may result in prosecution by the Department.**

## **Enforcement Action – Landfill Operators**

One week prior to the reporting deadlines Landfill Operators will be reminded, by the Monitoring Authority-NIEA, of their statutory requirements to submit data on time.

NIEA will issue a formal notice where a return has not been received on time and / or may issue a notice where there is a failure to provide sufficient or accurate information. If any Landfill Operator fails to comply with a formal notice within its deadline, NIEA will send a letter to the named license holder of any non-compliant sites. This letter will inform them that are liable to enforcement action which may result in a prosecution and request them to either:

- I. to provide the required data within 10 working days, or
- II. to make a written representation as to why they have been unable to provide the required data within 10 working days.

Depending on the representations received, NIEA will issue a final formal letter to the Landfill Operators stating that as they have neither reported the required data nor provided a satisfactory explanation for not reporting it, that consequently enforcement action will now commence.