

Nobel House
17 Smith Square
London SW1P 3JR

Telephone 08459 335577
00 44 207238 6951

Email david.miliband@defra.gsi.gov.uk

Website www.defra.gov.uk

SOUTH GLOS COUNCIL
STREETCARE
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Department for Environment
Food and Rural Affairs



From the Secretary of State
The Rt Hon David Miliband MP

Steve Evans and David Turner
West of England Partnership
c/o South Gloucestershire Council
Broad Lane Offices
Engine Common
Yate
South Gloucestershire
BS37 7PN

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2 June 2007

Thank you for your letter of 9 February on behalf of the West of England Project Board for Waste Strategy and Planning (the Project Board).

You asked me to consider waiving or delaying imposition of Landfill Allowances Trading Scheme (LATS) penalties in return for the Board agreeing a programme to deliver the local alternatives to landfill, as part of a Local or a Multi Area Agreement. Defra's Director of Sustainable Consumption and Production and Waste, Neil Thornton, and the Head of the Local Authority Waste Performance Team, Martin Meadows, discussed your proposal with you at the Government Office South West Waste roundtable on 16 May.

I recognise the progress the Project Board is making with planning landfill diversion in your region. I welcome the partnership approach you are taking and I have previously acknowledged the quality of the Board's joint waste strategy. Your Waste Infrastructure Delivery Programme transactor and Government Office South West officials are impressed with the progress the partnership is making with consultation on sites and preferred technology for delivering landfill diversion. It is important that this good progress is maintained so that timely decisions are made to ensure delivery of necessary and appropriate infrastructure.

You say that even with best endeavors you cannot achieve alternative provision before 2012/13 and that the constituent authorities of the West of England Partnership face LATS penalties from 2009/10 onwards. This is one of the situations that the flexibility built into LATS is intended to help with. Waste disposal authorities facing a shortfall in allowances in any scheme year may buy allowances from authorities with a surplus to ensure that they hold sufficient allowances to avoid penalties. LATS is not intended to penalise local authorities. The penalties provided by the scheme are intended as an incentive for authorities to use the trading element of LATS, where appropriate.



You ask that I consider an agreement with the West of England partnership to delay imposition of penalties, providing the partnership delivers diversion infrastructure according to previously agreed milestones. I cannot agree to this for two reasons.

Firstly it would be unfair to other local authorities that have invested early in diversion infrastructure with the knowledge that they will be able to sell surplus allowances to authorities in deficit. By agreeing to delay or waive penalties for one authority that held insufficient allowances I would in effect be expecting authorities with surplus allowances to subsidise or compensate the authority in deficit. This would be at odds with a principle aim of LATS to distribute the costs of meeting national landfill directive targets across local government to deliver landfill diversion at a lower total cost than a system of fixed targets.

Secondly there is a fixed total number of allowances available nationally in any scheme year. This is constrained by the obligatory limit on the total amount of biodegradable waste that can be landfilled in a landfill directive target (2010, 2013 and 2020). I could only allow an authority to exceed the limit without the requirement to purchase necessary allowances if I were simultaneously to remove equivalent allowances from another authority or from the system as a whole. This again would be unfair to authorities that have already commissioned diversion infrastructure or purchased the necessary allowances to ensure they meet their limits.

LATS is working. Waste disposal authorities in England landfilled an estimated 12.4 million tonnes of biodegradable municipal waste (BMW) in 2005/06. That's an estimated reduction of 1.5 million tonnes BMW from 2004/05. A further reduction of 1.2 million tonnes BMW is needed in England by 2009/10.

Ten authorities used the flexibility of LATS to borrow allowances from their own accounts in future years or purchased allowances from other authorities to ensure they complied with their limits in 2005/06. A market has developed in allowances up to 2008/09. I am aware of some local authorities that are currently planning to sell or purchase allowances for scheme years 2009/10 and beyond. It is in the hands of local authorities – including the constituent authorities of the Project Board – to develop a market for 2009/10 and beyond.

I am cautiously optimistic that England as a whole will meet the first landfill directive target, providing local authorities deliver planned increases in recycling and landfill diversion. If this is the case there will be sufficient allowances available in 2009/10 to ensure that no authority faces penalties. It is fair and reasonable that if necessary, the constituent authorities should purchase the right to landfill BMW from other authorities until the time the Project Board has planned infrastructure in place and working. The authorities in the partnership may then be in a position to sell surplus allowances to authorities in deficit, so being able to take advantage of the trading system.

I launched the revised national waste strategy on 24 May. This sets out a framework of national targets, policies and measures to support diversion of BMW from landfill.

You say in your letter that officers have told you that all penalties collected will be distributed to waste disposal authorities to meet the national need. You are concerned that this provides an incentive to authorities that are further behind than the West of England partnership or lacking commitment. This is not the case.

During passage of LATS legislation through Parliament, the Government agreed that penalties would be returned to local government as a whole, not individual WDAs, subject to a fair and practical process being agreed. So far there has not been a need to return penalties because no penalties have been imposed. Indeed, if LATS works properly, there should never be a need because local authorities will always have the opportunity to purchase required allowances. It is our intention that any mechanism for returning penalties to local government does not benefit those authorities that have paid penalties; otherwise this would reduce the incentive to comply with the scheme.

To conclude, I welcome the commitment that the West of England Board is making to deliver landfill diversion capacity for your region. I urge the Project Board to continue its efforts to make timely decisions and commission necessary infrastructure – including an interim solution within your overall strategy – that will optimise waste performance until the long-term solution is operational.

In summary I cannot agree to your proposal to delay or waive penalties between 2009/10 and 2012/13 because it would undermine the credibility and stability of LATS; it would be unfair to local government in general and in particular local authorities planning to sell allowances; and it would put UK efforts to comply with the EU landfill directive at risk.

I am copying this letter to Steve Webb MP, further to Ben Bradshaw's letter to him of 17 April.

us.



DAVID MILIBAND