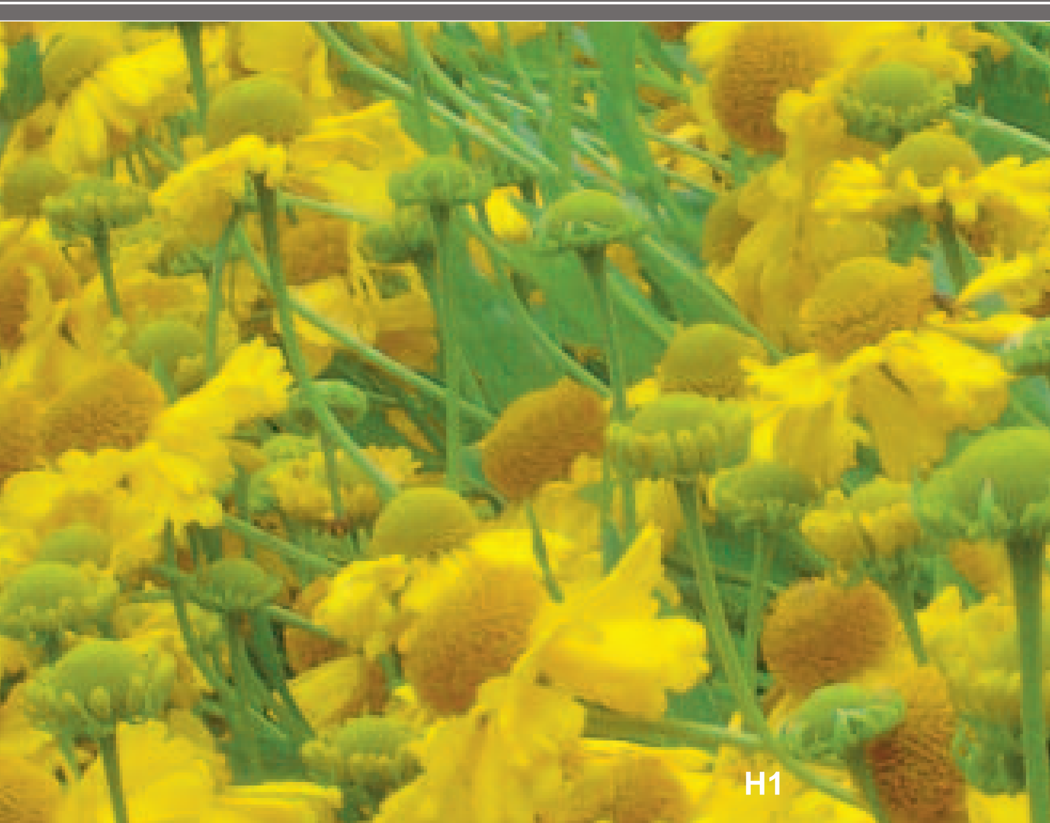
ENTRUST

H - The Benefit Rules

The Regulations covering the restriction of benefit under the Landfill Communities Fund and Contributing Third Parties



Landfill Communities Fund

April 2011

H) The Benefit Rules

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1 Who is prohibited from benefit under the Landfill Communities Fund (LCF)?

1.1 The Landfill Tax Regulations governing the LCF prohibit benefit to a number of different stakeholders. As detailed below, 'benefit' can refer to the contributing Landfill Operator (LO) or the Contributing Third Party (CTP) and on a project level this can include individuals or groups such as contractors or the landowner of a project who stands to benefit from the project going ahead.

2 The Governing Regulations

2.1 What the regulations say:

> 33 (1) A body is eligible to be approved if –
> (e) it is precluded from applying any of its funds for the benefit of any of the persons –
>
> (i) who have made qualifying contributions to it, or
>
> (ii) who were a Contributing Third Party in relation to such contributions,
>
> except that such persons may benefit where they belong to a class of persons that benefits generally.
>
> 33A (1) An approved body shall –
>
> (c) not apply any of its funds for the benefit of any of the persons who have made qualifying contributions to it or who were Contributing Third Parties in relation to such contributions (except to the extent that they benefit by virtue of belonging to a class of persons that benefits generally).

3.1 Contributors

3.1.1 An Environmental Body's (EBs) contributors are defined as follows:

- LOs who contributed LCF monies to it directly;
- LOs who contributed LCF monies to another EB, from whom that money has now been received (transferred); and
- Individuals or organisations that voluntarily pay the LO up to 10% of the qualifying contribution, to make it 'cost neutral' to the LO ('CTPs').

3.1.2 Once an LO or CTP has been a contributor to an EB, it will always be regarded as a contributor. An EB must consider whether any of its projects, at any time, benefit these individuals or organisations however long ago their donation was made.

3.2 Definition of a 'Contributing Third Party'

3.2.1 A CTP is the individual(s), organisation or group of organisations that voluntarily pay the LO to mitigate the loss as explained in the paragraph below.

3.2.2 The LO does not receive the same reduction on their tax bill as the amount they contribute to the LCF. For each contribution given to an EB, the LO receives tax relief of 90%. This means the LO is left with a 10% cost of each contribution they make.

3.2.3 In some cases the LO will absorb this loss themselves. Otherwise, and often with the major contributors to the LCF (for whom the 10% difference can be a significant amount of money), the LO requires a CTP to provide the 10% to make the transaction 'cost neutral'. Often the LO or Distributive Environmental Bodies (DEBs) requires the CTP to be paid before LCF monies are given to a project.

3.2.4 This CTP then provides the required amount to the LO, covering the whole cost, or contributing towards the cost of LCF involvement.

3.2.5 If a LO requires a CTP to provide funds before releasing any LCF monies there are three requirements to be followed:

- The CTP amount cannot be previously obtained LCF monies. LCF monies cannot be used to provide the CTP amount. Organisations involved should be able to demonstrate clearly that the money being provided is not derived from LCF funds.

  If the CTP is enrolled as an EB, extra care must be taken to ensure that the amount being sent to the LO is distinct from the LCF activities, whether through separate accounting or proof of origin via non LCF funding.

- The CTP amount should pass directly to the relevant LO to avoid any confusion with LCF monies.

- The CTP cannot derive a unique benefit from the project going ahead. As is outlined below, the definition of 'benefit' can have a very wide application, so it is unlikely that an EB can be the CTP.

3.3 What counts as a benefit to a LO or CTP?

A benefit is any material or financial advantage, asset, gain or benefit in kind.

3.3.1 The basic 'no benefit' rule

If an organisation wishes to enrol as an EB, its internal rules must preclude it from using its funds for the benefit of contributors. Once enrolled, EBs must not use their funds to uniquely benefit their contributors. ENTRUST interprets the term 'funds' to mean all of an EB's money, not just LCF monies.

3.3.2 Funds can be used to benefit 'a class of persons that benefits generally'

A class of persons is a group with a common function. If a contributor derives benefit as part of a class, ENTRUST aims to ensure that the benefit is not disproportionately in favour of the contributor. Ideally, the benefit should be shared equally amongst all the beneficiaries. If there were a small group of beneficiaries, ENTRUST might consider that the benefits were specific to that group rather than of a general nature.

3.4 Benefit Examples

Example 1 – Shared Benefit and the 'village hall principle'

A village hall is run by a management committee, which is not an enrolled EB. The hall has a number of user groups from the local community. The management committee approach an EB to fund work to repair the hall roof. In this case the village hall committee could provide the CTP payment, as there are many users of the village hall and therefore the benefit is widely and generally shared. However if the management committee had use of the hall on preferential terms (such as access outside normal hours) there could be a benefit contrary to the Regulations.

Example 2 – Unique benefit

A not-for-profit community centre employs a private catering contractor to undertake catering services on the site. The community hall wishes to expand its kitchen facilities. The catering contractor wishes to be the CTP but this will be interpreted as a unique benefit as resulting from the project they will experience an increase in business due to the improvements the project will provide.

4 Indirect financial benefit

4.1 An enrolled EB must not support or carry out works that are a condition of a contributor's contract, statutory duty or planning consent. Nor must it provide a market, commercial or other financial advantage to a contributor.

> Example
>
> An EBs project restores a landfill site by planting grass and trees. When the landfill site was first being planned, the local authority placed planning conditions on the LO to restore the trees and grass. By the EB undertaking the planting it is relinquishing the LO of the need to and this benefits the LO as the LO does not now need to fund this work. The contributor would be considered as having derived a unique benefit from the EBs activities and expenditure therefore was non-compliant.

5 Intellectual property

5.1 Where an EB supports a project that has developed new or existing Intellectual Property Rights (IPR), or an innovative methodology, that methodology or IPR must not benefit the contributor unless a wide audience generally enjoys the benefit.

> Example
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> Under Object A, a LO provides LCF monies to an EB to allow the pilot of a new method of pest control on landfill sites in order to remediate land which can not currently be used due to a ceased activity. The method proves to be a success and very beneficial to the contributing landfill site. ENTRUST would ensure that the results of the LCF funded pilot study are widely disseminated and available to all to remove any commercial advantage the contributor may gain.

6 Benefit from assets

6.1 Capital assets paid for by an EB should not be used for a contributors benefit or given to the contributor, unless the contributor pays the open market rate for them.

6.2 If a project involves providing a contributor with an intangible asset such as staff training, the contributor must pay the market price for it. Where a project has the effect of increasing the value of adjacent land owned by a contributor, the contributor would need to pay the enhanced element of the land value to the EB so that no benefit could be inferred.

> Example
>
> A LO provides LCF monies to an EB to allow the development of a new composting technology, including the installation of a composter on the landfill site. The new composter is found to be successful. At the end of the trial, the ownership of the composter cannot simply revert to the LO. The asset must be independently valued before purchase to ensure that the LO has not benefited uniquely from the project going ahead.

7 Income generated from a project

7.1 When an EB engages a contributor to undertake project works (please see below about making payments to contributors), the EB must ensure that any income from the project is returned to the EB. This money must be used on further LCF projects. The contributor must in no circumstances retain it.

7.2 An EB proposing to ask a contributor to undertake works on a project is advised to discuss this first with ENTRUST Compliance Department.

8 Making payments to contributors at prime cost

8.1 Under certain circumstances, an EB may be able to make payments to its contributors without it being construed as a benefit. This is usually only acceptable in very straightforward and transparent cases.

8.2 Contributors may provide goods or services to EBs in return for payment only when:

- It is clear that payment merely passes through the contributors hands as reimbursement for additional direct costs incurred solely in providing those goods and services (for example if the contributor incurs expenditure for goods or services, pays the providers, then passes the invoices to the EB for reimbursement); and
- The payment is at ‘prime cost’ and there is no possible element of profit or other commercial benefit.

8.3 **Prime cost = direct material + direct labour + direct expenses**

Prime cost excludes any contribution to profit. It also excludes any contribution to ‘fixed costs’ i.e. costs incurred whether or not the goods and services were provided to the EB. Fixed costs include overheads and administration. Fixed costs may also include direct labour, unless the labour was employed exclusively to provide goods or services and would not otherwise have been a cost to the contributor.

8.4 ENTRUST strongly recommends that EBs involved agree a formula for establishing prime cost before funding any project that involves payments to a contributor and this is discussed with ENTRUST.

9 Transparent accounting

9.1 Accounting arrangements when the contributor is involved in the project must be transparent. ENTRUST would need to see the budget and accounts of the contributor to ensure they had not received a benefit. In some cases, therefore, EBs may need to obtain agreements from contributors that they will disclose relevant management accounts to ENTRUST to demonstrate that no improper benefit has arisen.

9.2 ENTRUST recognises that arrangements for transparency can occasionally cause practical difficulties when small payments are involved. EBs who face genuine difficulties in meeting the obligations described here should contact ENTRUST's Compliance Department as soon as they come to light.

10 Publicity

10.1 Simply acknowledging the support of your contributors on plaques, in publications and so on is not regarded as a benefit.

11 Monitoring unique benefit to Contributing Third Parties

11.1 As benefit can have a very wide application, and an EB can have many CTPs which have contributed to it, assessing unique benefit may be difficult. With this in mind, the following measures can be undertaken by EBs to increase assurance that there is no unique benefit to CTPs:

- A signed declaration from the project applicant that there will be no unique benefit;
- Internal EB checks to determine if there is a direct link between the project and the CTP which could result in unique benefit;
- Internal EB checks cross referencing registers of CTPs;
- Checks of invoices and payment claims against listings of CTPs; and
- A signed declaration from the CTP stating that they will have no unique benefit.

This list is not exhaustive and there may be other measures which are suitable for the EB to undertake to ensure that CTPs do not receive a benefit from the projects which the EB registers.

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