Surplus soils : legislation and regulatory issues

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What We'll cover

- CL:AIRE Code of Practice–how it came about
- Legislation behind CL:AIRE
- Regulatory requirements for wastes
- Colleague Mark Adams-example of pitfalls

CL:AIRE code of practice

- CL:AIRE = Contaminated Land Applications in Real Environments
- Version 1 published in 2008
- Supported by a Position Statement from the EA
- Version 2 revised 2011
- 2018 revision underway

2018 – Revision - Work in Progress

- E&B National lead currently Jonathan Atkinson
- 2018 revision to reflect:
  - (i) Deposit for Recovery Appeal decision (Tarmac – Methley Quarry)
  - (ii) Landfill Tax legislation changes from 01/04/2018. Retrospective liability for landfill tax for illegal disposal

Code of Practice – definition of waste

For Development industry, developed by industry , working with Government and the regulator

Self regulation principle

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CoP – 3 Scenarios

- Use on site of origin
- Direct use on other site(s) “Direct transfer”
- Hub and Cluster arrangement

Definition of waste

- Waste Framework Directive 2008/98/EC
- Article 3 – “Waste”-Any substance or object which is discarded, intended to be discarded or required to be discarded
- Article 2 - Excluded from scope of waste-soil and naturally occurring material generated by construction, certain to be used in natural state for construction at site where excavated
- Also excluded - land (in situ) and unexcavated contaminated soils and buildings permanently connected with the land
- Excavation material or buildings can still be discarded
- Case by case decisions

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Excluded from waste

- Article 2 (b) ; land in situ, including unexcavated contaminated soil and buildings permanently connected with the land

- Article 2 (c) uncontaminated soil and other naturally occurring material generated by construction certain to be used for construction in its natural state on the site from which it was excavated

Certain to be used for construction

- Suitable for the proposed use
- No further treatment required (except normal engineering practice)
- Uses minimum amount of material but no more
- Without harm to human health or environment

use in construction

- “construction” means the carrying on of building or engineering work which includes the repair, alteration, maintenance or improvement of an existing work and preparatory or landscaping works”

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Needing treatment to make suitable

- If material needs treatment to change physical or chemical characteristics to make suitable for use (except normal engineering practice) this indicates treatment of waste.
- Treatment of waste needs environmental permit or registered exemption from permit
- Examples - size reduction, screening, bioremediation, soil washing

Site of origin scenario

- On site material, certain to be used in construction, without further treatment not normally required to be discarded
- Material needing treatment (eg size reduction, decontamination) will be waste until treated to make suitable
- Waste treatments need permit /registered waste exemption
- Once treated can be considered end of waste when certain to be used
- CoP details engineering treatments (eg compaction/consolidation, placing below cover layers) not considered waste treatment

Direct transfer scenario

- Builds on Waste Framework Directive exclusion
- Soil or other naturally occurring material only
- Surplus on one site, suitable and needed at another site
- Moves as non waste provided it meets certain use
- Construction use only, not benefit to agriculture

Hub and cluster arrangement

- Unsuitable material as waste sent for treatment at hub with permit
- Treated waste made suitable for use and needed
- End of waste when suitable and certain to use again in construction
- Return to site of origin or for use at another cluster site
- Hub and cluster sites are all identified at time
- Treatment residues-unsuitable for use or not needed = waste

Requirements for wastes

- Keeping , treating , using or disposing of waste needs environmental permit or waste exemption
- Duty of care applies to any waste
- Proper characterisation and description
- Specific documentation for hazardous wastes
- Record keeping

Duty of care for waste

- Applies to everyone in the chain
- Hand waste only to an authorised person:
  - Registered carrier or broker or dealer
  - Holder of environmental permit or waste exemption
- Provide a written description-type, quantity, handling requirements, confirm waste hierarchy
- Prevent the escape of waste
- Prevent anyone else committing an offence under Sect 33 Environmental Protection Act 1990 – eg breaching condition of permit or waste exemption

Classifying & describing waste

- Use WM3 technical guidance to classify and describe all wastes, hazardous* or non hazardous

- If classifying as non hazardous mirror entry

(eg 170504 soil and stones other than 170503*)

have supporting evidence to show assessed against all appropriate hazardous properties inline with WM3

Hazardous waste

- Hazardous Waste (England & Wales) Regulations 2005 (as amended)
- Consignment note required for any movement hazardous waste between premises
- Consignee return sent back to producer
- Ban on mixing hazardous with non hazardous waste

Duty of Care - information

- Defra Code of Practice is statutory guidance
- EA public registers to check registered Carriers, Brokers, Dealers. EA environmental permits and waste exemptions
- Local authority public register for Part B crusher permits or T7 waste exemption

Permitting possibilities

- Mobile permits – EA or Local Authority (Part B)
  - Only at place where waste produced or to be used
  - Short term deployments only – no test of planning suitability

- Site based permits
  - Permanent deposits on land
  - Longer term deployments or import treat and export hubs
  - Planning test of suitable location

- Permanent deposits on land must meet the recovery test

Alternative to CL:AIRE

- Voluntary approach to CL:AIRE

- If not using CL:AIRE, direct transfers need regulatory controls:
  - U1 waste exemption use of waste in construction (no exemption for use in land reclamation)
  - Mobile plant deployments – land spreading for agricultural benefit or land reclamation or ecological improvement
  - Site based permits-deposit for recovery (use for construction or land reclamation or improving after use of land)
  - Landfill permits –disposal not recovery-last resort under hierarchy