

FOCUS ON: SCOTLAND

IMAGE: © Bart Coenders



Scottish Waste Review and Update

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This article provides information on current work being undertaken by SEPA, in relation to contaminated land and waste regulation, as well as a quick overview of key points regarding the regulation of waste.

It is designed as an update to the article in last year's EIC Yearbook written by Kenny Boag, Waste Policy Unit Manager at SEPA, which provided a comprehensive overview of the rules governing land remediation in Scotland. Kenny's article can be found at <http://www.eic-yearbook.co.uk/scotland.htm>

DEFINITION OF WASTE

The definition of what is waste and the basic rules of how it must be dealt with are set out in the EU Waste Framework Directive (75/442 EEC as amended by 91/156 EEC). It sets out a common definition of waste across Europe and controls recovery as well as the disposal of waste. The definition of waste given in Article 1 of the Directive is: "Waste shall mean any substance or object which the holder discards or intends or is required to discard." Annex 1 further specifies category Q15: "Contaminated materials, substances or products resulting from remedial action with respect to land." Therefore, where these substances are discarded during site development, their recovery and/or disposal are subject to Waste Framework Directive (WFD) regulatory control.

However, interpretation of the definition of waste is ultimately for the Courts, either within the UK or at European level, to decide. Case law in itself is not a

subject for the fainthearted and, as such, SEPA has developed two pieces of guidance which attempt to explain the relevant decisions in clear English.

IS IT WASTE? – UNDERSTANDING THE DEFINITION OF WASTE

This document sets out a framework of factors to be considered in establishing whether a particular substance or object is likely to fall within the scope of the definition of waste in the WFD. It is not a substitute for legal or policy advice, but provides a useful overview of the subject which is split into the following sections:

- What is waste?
- When does waste cease to be waste?
- When may waste be considered to be fully recovered?

It also provides some practical examples of considerations when assessing whether something is waste, and some practical examples of waste scenarios.

SUPPLEMENTARY GUIDANCE – 'IS IT WASTE?: DETERMINING WHEN A WASTE OIL HAS BEEN FULLY RECOVERED'

This guidance provides an example methodology for demonstrating that a waste has been fully recovered to the extent that it has ceased to be waste for a particular proposed use. Whilst the focus in the document is in relation to waste oil, the methodology is transferable to most waste-recovery scenarios. It shows that demonstrating that a waste has been fully recovered can be considered in three main steps. The

purpose must be to demonstrate that the end-of-waste criteria set out in SEPA's 'Is It Waste' guidance, has been met for each proposed use.

These two documents are recommended reading for anyone involved in waste and can be found at:

<http://www.sepa.org.uk/guidance/index.htm#waste>

It should be noted that SEPA intends to review these documents on a regular basis to ensure that they are reflective of the most current legal decisions. Furthermore, contact should always be made with SEPA as decisions will always be made on a case-by-case basis.

WASTE GUIDANCE FOR CONTAMINATED-LAND REMEDIATION

Further to the general waste guidance noted above, SEPA is currently developing waste guidance specific to the licensing of contaminated-land remediation, which will be developed for both SEPA staff and external practitioners. The aim of this will be to produce, a simple document giving specific information and practical examples to aid decision making. Specific areas of work will include discussions on:

- when material on a contaminated-land site will be deemed to be waste;
- when dealing with waste – what licences are required in Scotland for specific types of treatment and what the general requirements of these licences are?
- address the question of what controls will likely apply to the subsequent use of the material, either on-site or off-site; **cont..**

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- provide information on construction/remedial activities which are not subject to waste regulatory controls.

SEPA intends working with key stakeholders to develop this guidance to ensure that it is relevant to today's contaminated-land practitioners.

UNCONTAMINATED SOILS

It is appropriate at this juncture to reiterate the legal position in relation to uncontaminated and contaminated soils.

Uncontaminated soils which are required for onsite engineering works in accordance with planning consent are unlikely to be subject to waste-management controls, that is to say:

- they can be used without treatment to address any contamination risk;
- their use is certain;
- only the necessary quantity is used.

Uncontaminated soils surplus to site-profiling requirements, will be considered waste once they are excavated in accordance with site plans. These soils are unlikely to present a risk to the environment, and may be suitable for reuse offsite under the terms of one of the exemptions listed in Schedule 3 of the Waste Management Licensing Regulations 1994 as amended.

CONTAMINATED SOILS

It is possible, although unlikely, that contaminated soils may be considered suitable for use on-site

without treatment, with similar provisos as those described for uncontaminated soils above. In that they are certain to be used and only the quantity required and specified under the planning consent are used, it can be argued that the soils have not been discarded and are not waste. However, their use in these circumstances must not result in any risk to the environment or harm to human health. Soils that require treatment to address an unacceptable risk to the environment or human health will fall within waste-management controls and be subject to licensing or permitting requirements. The main regulatory method for licensing treatment of contaminated material in Scotland is termed a 'mobile plant licence'.

It is envisioned that the guidance referenced above will clarify this issue by providing specific advice.

MOBILE PLANT LICENSING

On 6 April 2008, the Environmental Permitting (England and Wales) Regulations 2007 (EPR) came into force in England and Wales. On this date all Waste Management Licences (WMLs) in England and Wales became Environmental Permits. There is no such change in Scotland and so the Waste Management Licensing regime remains in place.

Mobile plant licences have been able to move across the border and be recognised by either SEPA or the Environment Agency (EA) for a number of years. This changed on 6 April 2008 as EPR will only apply to England and Wales and no EPR permit is going to be effective in Scotland and no Waste Management Licence will be valid in England or Wales.

As an interim position, both SEPA and the EA have committed to continue to allow the cross-border use of licensed/permitted mobile plant until 1 April 2009 where the activity is covered by a valid Waste Management Licence/Environmental Permit and the necessary site-specific working plan/deployment form is submitted to the relevant authority. As such, there will be no noticeable change for operators.

The relevant authorities north and south of the border are currently investigating a permanent solution to this issue.

BETTER WASTE REGULATION CONSULTATION

The Better Waste Regulation consultation was issued jointly by the Scottish Government and the SEPA in 2007. Its purpose was to seek views on the current legislative and regulatory system that surrounds waste with regard to how and where they can be further improved.

Those participating in the consultation represented a wide range of organisations and individuals and included a number of individuals and organisations involved in land development and contaminated-land remediation.

In response to the issues raised within, and as a result of these issues, the Scottish Government and SEPA are developing a detailed action plan which will be published early in 2008. Contributions to this process have driven the current target of providing the guidance noted above and SEPA looks forward to working with the land-remediation sector to progress the sustainable use of soils and a risk-based regulatory control framework.



EIC's Scottish Land Remediation Conference – September 2007: the leading conference on land remediation in Scotland.
For information on attending, contact EIC on T: 020 7935 1675; E: info@eic-uk.co.uk