

FOCUS ON: SCOTLAND



Scottish Waste Definitions

KENNY BOAG, Waste Policy Unit Manager, Scottish Environmental Protection Agency (SEPA) lays out the rules governing land remediation in Scotland

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 (the Directive). It sets out a common definition of waste across Europe. It controls recovery as well as the disposal of waste. The definition 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 I 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 regulatory control.

WHEN IS SOIL DISCARDED?

Soil may be discarded when it presents a risk to the environment or to human health in respect of the current or intended use of the land or where, although it presents no risk, it is surplus to requirements. The classification of materials, substances or products as waste is not intended to prevent beneficial re-use, but to ensure that the environment and human health are safeguarded.

Where contaminants in soil present a risk to the environment, or to the (current and/or future) users of the land, and the soils either need treating or removal from the site to address that risk, it is likely that soils are being discarded.

IS IT WASTE?

There is an increasing amount of caselaw to guide the decision as to whether something is waste. The meaning of the term "discard" is central to this determination. Member States must have regard to the essential objective of the Waste Framework Directive, which is to protect human health and the environment against the harmful effects caused by the collection, transport, treatment, storage and tipping of waste and consider the precautionary principle when implementing the requirements of the Directive. In practice, this means the scope of discard is broad and includes recovery operations. SEPA would also comment that action has not been taken based on the well-known Van der Walle judgement, particularly in light of the European Commission's proposal to revise the Waste Framework Directive and related EU legislation.

REMEDICATION LICENSING

The extent and standard of remediation will usually be subject to separate regulatory control, for example under Planning Control or Part IIA of the Environmental Protection Act 1990. The setting of remediation standards is a site-specific risk-assessment issue, taking into account the particular conditions applicable to the site and the proposed development (if any).

If soils require treatment to deal with unacceptable levels of contamination, it is likely, given the previous section, that this material

will be considered waste and fall within the ambit of Waste Framework Directive control. Therefore, remediation activities are governed by national legislation relating to waste management, as well as regulations protecting air and water quality from pollution. Regulatory controls apply to waste until it is fully recovered and has ceased to be a waste.

UNCONTAMINATED 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 that are 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 re-use 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 onsite without treatment, with similar provisos as **cont..**

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Demolition of poor housing stock in Ruchill

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. In these circumstances 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 to 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'.

HUB SITES

Some sites requiring remedial works are too small to accommodate treatment facilities and excavated soils requiring treatment may be taken to an offsite treatment facility. Offsite treatment facilities have become referred to as hub sites. There is no legal definition of a hub site that may be temporary and licensed via the mobile plant-licensing route, or permanent, and require a site licence or permit.

The position described above, which has allowed re-deposition under a mobile plant licence at the site of production and treatment, does not apply in these circumstances. Whether or not the output from these treatment facilities is still waste and subject to waste-management controls must be determined on a case-by-case basis. When making this determination, SEPA will give consideration to the general principles outlined above. Namely, certainty of use, the use of only the quantities required and specified in the planning consent and, most importantly, the removal of the risk to the environment and human health associated with the contaminants found in the soils.

CEASING TO BE WASTE

As stated above, regulatory controls apply to waste until it is fully recovered. Full or complete

recovery may, in certain circumstances, be considered to have been achieved when the treatment process is complete. This may be when the treated material is suitable for an agreed re-use without posing a risk to the environment or to current or future site users. Partially recovered waste must be used in compliance either with a waste-management licence or an exemption and is completely recovered when fully incorporated into the works in line with the general principles described above.

As discussed earlier, if further precautions are required to protect the environment or users of the site from harmful effects presented by residual contamination in treated soils, then the material will be considered to remain waste and the site will be subject to waste-management controls.

MOBILE PLANT LICENSING

Under Regulation 12 of the Waste Management Licensing Regulations 1994 as amended, it is possible to apply for a mobile plant licence for the treatment of waste soil and the treatment of contaminated material, substances or products for the purposes of remedial action with respect to land or the waste environment.

A mobile plant licence specifies the plant being used for the treatment and disposal of specified controlled waste and sets conditions governing the treatment activities. A single mobile plant licence can cover several pieces of mobile plant and types of treatment on a number of different sites at the same time. The operational details, to ensure compliance with conditions of the mobile plant licence, are laid out in a site-specific working plan. The working plan may refer to remediation standards but the mobile plant licence will not set the treatment standards.

Regulatory controls apply to waste until it is fully recovered and has ceased to be waste. For the purposes of licensing, SEPA has taken the view that the mobile plant licence will cover both the treatment and the re-deposition of treated soils where these activities are both undertaken on the site where the soil originated, and where the remediation requirements have been met.

This will not be the case where additional precautions are required to prevent the treated material presenting a continued risk to the environment or to human health, for example, if a capping layer or total encapsulation is required to prevent the treated material coming into contact with site users or to prevent mobilisation of contaminants in groundwater.

INTERACTION WITH PLANNING CONTROLS

The planning system administered by local authorities has a key role to play in addressing

land contamination and remediation. The risks associated with land affected by contaminants are a material planning consideration and are addressed by the planning authority in the preparation of development plans and in the determination of planning applications.

SEPA recognises that implementation of effective working practices to address the interaction between waste-management legislation and the legislation in place to deal with land contamination requires further discussion and agreement with the local authorities. Clarification of the processes, procedures and responsibilities with regard to remediation and re-use of soils will encourage the efficient use of resources whilst ensuring that adequate regulatory controls are in place to protect the environment and human health.

THE FUTURE

SEPA is committed to a regulatory position that is proportional to the environmental risk. SEPA's enforcement policy states that any enforcement action taken will be proportionate to the risks posed to the environment and the seriousness of the offence. As far as the law allows, SEPA will take into account the circumstances of the case and the attitude of the operator when considering action.

Several developments are likely to influence future policies with regard to remediation of land affected by contamination in Scotland, in line with those of England and Wales.

These include:

- The proposal, by the European Commission (EC), to revise the Framework Directive on Waste and other related European legislation in light of the Thematic Strategy on the Prevention and Recycling of Waste;
- The EC adopted a EU Soil Thematic Strategy (STS) on 22 September 2006 that consists of a Communication, a proposal for a Soil Framework Directive (SFD) and an impact assessment. The objective of the STS is to preserve soil functions, prevent soil degradation and to restore degraded soils to an appropriate standard;
- The Department for Environment, Food and Rural Affairs is rewriting its guidance on the definition of waste contained in Circular 10/94.

SEPA is committed 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 • info@eic-uk.co.uk