



The Authoritative Voice of
Contaminated Land Management
from a Land Holders' Perspective

BREXIT: Understanding how the EU shapes the regulation of waste and contaminated soil in the UK – a consolidated view

Frank Evans

SAGTA Chairman & National Grid Property Head of Operations

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Outline of presentation

- How Brexit works (my brief version!)
- How EU has shaped UK waste regulation
- Industry's contribution - Development Code of Practice
- Case Study on Recovery of Waste
- Conclusions
 - Where we are
 - Opportunities
 - Risks

How Brexit works

- Great Repeal Bill
- Transfer EU law applicable in UK on Brexit day into domestic law
- Domestic courts not obliged to follow the judgements of the European Court of Justice
- 1990 Environmental Protection Act may need to be adapted after Brexit Day. s75 defines “Waste” by reference to the definition in the Waste Framework Directive.

Regulating waste soils: Key issues

Is it waste?
Definition of Waste

Applying the waste hierarchy

How waste is sampled?

How waste is characterised?

How waste is managed?

How can waste be treated and re-used?

How waste is accepted at Landfill

Key factor 1 - Definition of Waste

- Critical to defining the point that waste ceases to be waste
- Set out in Waste Framework Directive (2008/98/EC) and clarified by European Court of Justice judgements
- UK Guidance provided by DEFRA/Welsh Government and SEPA

Key Factor 2: Waste hierarchy

Waste legislation and policy of the EU Member States shall apply as a priority order the following waste management hierarchy



Key factor 3: Sampling Waste

- Waste sampling operation must be planned to ensure waste suitably characterised and classified
- Guidance included in British and European Standard (BS EN 14899:2005) and also in Technical Guidance WM3 (Appendix D)
- CEN (European Committee for Standardisation) – not direct EU organisation but linked - so Brexit affects relationship

Key factor 4: Characterisation

- Wastes needs to be classified
- Detailed Technical Guidance in WM3
- Waste classification code which draws from European Waste Catalogue (EWC).
2000/532/EC
- Hazardous waste aspects linked to Annex III of Framework Directive and update via 2014 EU updates

Key issue 5: Management of waste

- Duty of Care requirements
 - Correct On-site management
 - Transfer between sites
- UK Regulations and Codes of Practice



Environment Agency

Understand your duty of care

www.gov.uk/managing-your-waste-an-overview/duty-of-care



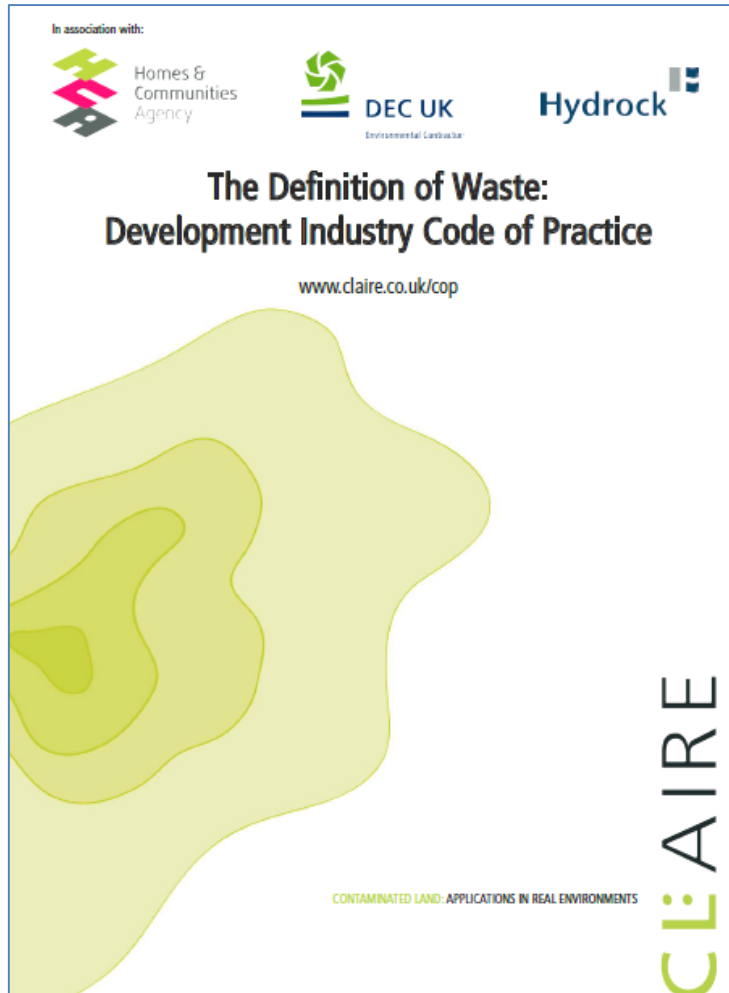
- Waste is classified
- Permit or exemption
- Waste storage
- Registered premises
- Moving waste



Key issue 6: Treatment of waste

- Generally, Standard Rules Permit: mobile plant for the treatment of soils and contaminated material, substances or products
- Waste recovery activity until they meet the end of waste test as per Directive (e.g. CL:AIRE Development Industry Code of Practice)
- Operational control, emissions and monitoring, information and records
- Deployment form (waste codes as per EWC)

Industry contribution



Development Code of Practice

- Collaboration between EA and industry
- Sets out good practice for the development industry
 - if materials are classified as waste or not and
 - determining when treated waste can cease to be waste for a particular use

Key issue 7: Acceptance at Landfill

- Landfill Directive sets rigorous standards to reduce both our reliance on landfill and the environmental impact of wastes disposed of by landfill
 - Banned wastes
 - Pre-treatment
 - WAC criteria



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How **waste is**
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ECJ Waste Judgements

- Shapes the 'definition of waste' and thus how soil is considered
- ECJ decisions not related to soil but effect how soils is considered
 - 2002 Palin Granite: *timing of storage of quarried stone, intent to discard*
 - 2003 Mayer Parry: *Reprocessing of metal packaging waste, recycling*

Recovery of waste: a case study



source: <http://esi-consulting.co.uk/esi-webinar-summary-long-road-recovery-recovery-waste-land/>



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Summary of Judgement

- Quarry restoration works
- Operator applied to EA for Standard Rules Permit to use inert waste as backfill
- RGN13 approach
- Refused since not recovery
- Successfully appealed
- Use of waste material would replace other materials in accordance with the definition of recovery

Judgement comment on EU law

- 49 sections. Sections 4 – 19 covered the legal framework based in EU legislation and ECJ judgements
- Highlighted the difference between recitals to the WFD which do not fully correspond with recitals of the previous directive in replaced
- Challenge - distinguishing between Recovery or Disposal operations

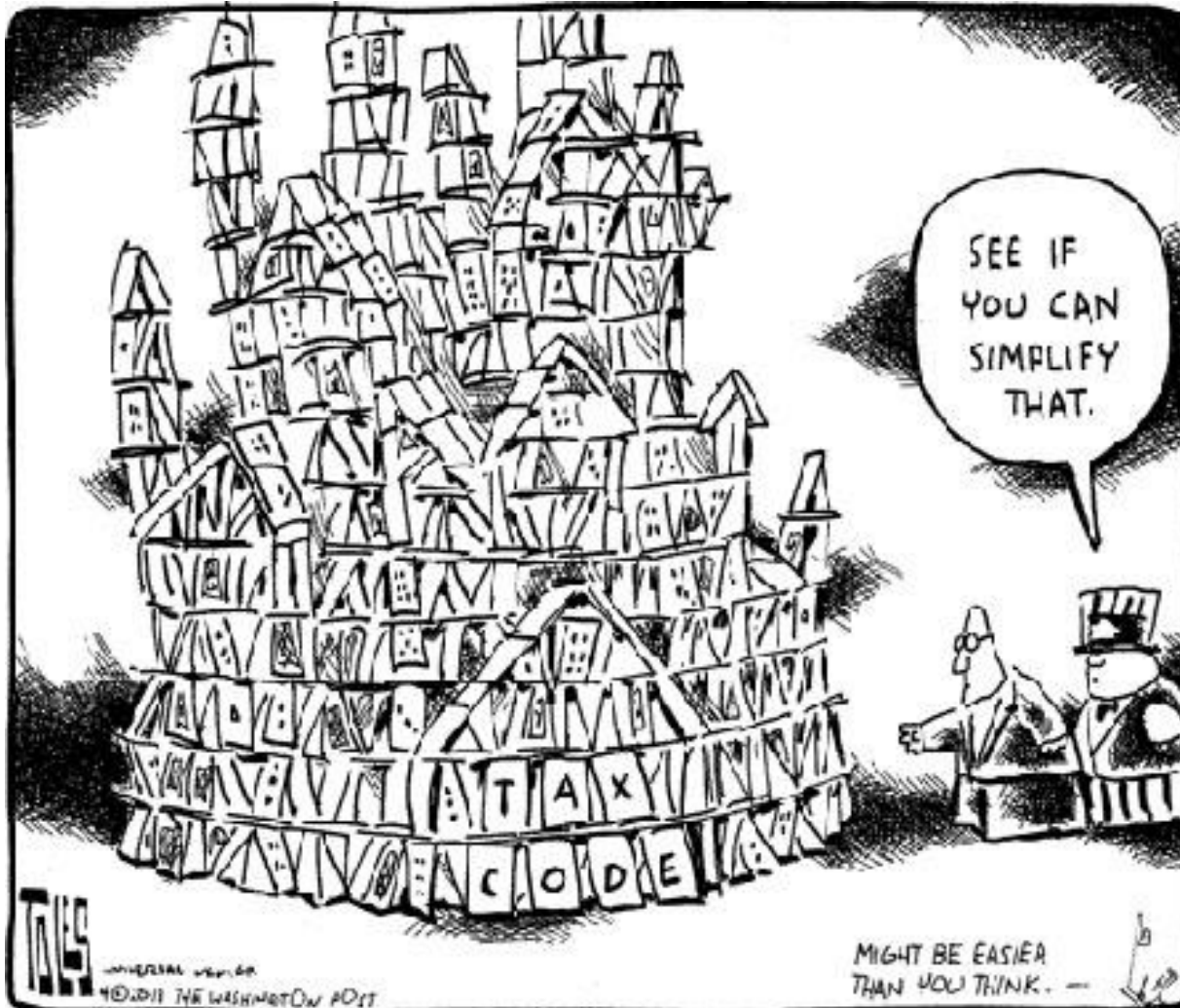
Revisions to 'RGN13'

- How to apply for a waste recovery permit to permanently deposit waste (Oct-16)
- Waste recovery plan must show if you couldn't use waste, you do same work with non-waste, 3 ways to prove
 - Demonstrate financial gain using non-waste
 - Evidence of funding to use non-waste
 - Evidence of obligation to the work



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...in summary



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Conclusions

- **Current status:**
 - UK waste regulation largely set by EU law and ECJ
 - Supports sustainable way of working
 - Vulnerable to ECJ case law amendments
 - Understanding Definition of Waste aspects is a challenge
- **Brexit opportunities?**
 - More clarity and consistency on 'Definition of Waste'
 - Landfill Directive WAC
 - Industry contribution going forward
- **Brexit risks?**
 - Complex interactions between regulated aspects
 - Relationship with CEN relevant



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Thank you for listening

Frank.Evans@nationalgrid.com



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