

## Definition of Waste: Development Industry Code of Practice (V2)

### Purpose of this note

CL:AIRE (Contaminated Land: Applications in Real Environments) published the Definition of Waste: Development Industry Code of Practice (the Code of Practice) in 2008. At the same time we published this position statement setting out how we would take account of the code when we take our waste regulatory decisions in England and Wales. This updated version is being published at the same time as version 2 of the Code of Practice.

### Issue

Excavated material generated by the development of land may be waste and subject to waste regulatory controls which ensure that waste does not harm human health or the environment.

Whether or not a substance or material is waste is ultimately a question for the courts. It depends on whether the holder of a substance or material is discarding it or intends to or is required to discard it. This must be considered in the light of all the specific circumstances of each case.

The Code of Practice sets out good practice for the development industry to use when:

- assessing if materials are classified as waste or not
- determining when treated waste can cease to be waste for a particular use.

It also describes an auditable system to demonstrate that the code has been adhered to on a site by site basis. It applies to both uncontaminated and contaminated<sup>1</sup> material from man made and natural sources excavated:

- for use on the site from which it has been excavated, either without treatment or after on-site treatment<sup>2</sup>, in the development of that land
- for use in the development of land other than the site from which the material has been excavated, following treatment at an authorised treatment Hub within a defined Cluster<sup>3</sup> agreed with us, and used in the development of land at a site within the Cluster.

<sup>1</sup> The need to distinguish between “contaminated” and “uncontaminated” soils is no longer considered necessary. We accept that these are self defining terms on a site specific basis having regard to the risk assessment (e.g. some soil may not be considered contaminated for a given land use, but would be for a more sensitive land use, on the same site)

<sup>2</sup> The fact that the material has to be treated indicates that it is a waste i.e. it is not suitable for use until it is treated.

<sup>3</sup> In a Cluster project specified sites share a temporary treatment facility known as a hub. The question of whether or not any material is waste has to be made on a case by case basis and therefore each Cluster project will need to be considered individually and agreed with us. Treated soils are returned to the cluster sites.

The updated Code of Practice also applies to the re-use of “clean naturally occurring soil and mineral materials” in the development of land other than the site from which the materials have been excavated.

This position does not apply to the following activities which will remain subject to waste regulatory control:

- contaminated materials that go off site for direct use at another site as we consider such materials to be waste
- wastes that go to and from Fixed Soil Treatment Facilities unless it operates and material originates and is used within a defined Cluster
- the control of landspreading<sup>4</sup> activities
- the management of extractive wastes within the scope of Mining Waste Directive.

### **Our position**

We want to encourage the appropriate remediation of brownfield land and the use of Cluster projects, and reduce the amount of material that is sent for disposal. We believe that a Better Regulation approach enables us to target our resources at sites and activities that pose the highest risk to the environment including poor performers and illegal operators.

We will therefore take account of the Code of Practice in deciding whether to regulate excavated materials to be used in development projects as waste. If materials are dealt with in accordance with the Code of Practice we consider that those materials are unlikely to be waste at the point when they are to be used for the purpose of land development. This may be because the materials were never discarded in the first place, or because they have been submitted to a recovery operation and have been completely recovered so that they have ceased to be waste.

When the declaration is provided to us by the Qualified Person demonstrating that the materials are to be dealt with in accordance with the Code of Practice we will take the view that the materials on the site where they are to be used will not be waste. To ensure that human health and the environment continue to be protected we will be undertaking a random audit of a number of the decisions made by the Qualified Persons working with the Code of Practice.

The success of this approach requires a high level of professional integrity by those involved. If we subsequently find the Code of Practice is being used improperly so that human health or the environment is being put at risk we will withdraw this position. If that happens we will revert to requiring our input into case by case decision making.

### **Further advice**

Appendix 1 brings all of the aspects of waste management and land contamination together to provide some context and clarity for customers.

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<sup>4</sup> The spreading of waste soil, dredgings or other materials on existing agricultural land for agricultural or ecological benefit is regarded as a distinct land treatment operation subject to separate legislative control i.e. permit or exemption

CL:AIRE (Contaminated Land: Applications in Real Environments). CLAIRE is an independent not-for-profit organisation established in 1999 to stimulate the regeneration of contaminated land in the UK by raising awareness of, and confidence in, practical and sustainable remediation technologies. Further advice on the application of the Code of Practice can be found on: <http://www.claire.co.uk/>

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## Appendix 1 - Development of Land and Waste Regulation – The big picture

### Key issues

We want the land development industry to use sustainable waste management practices paying a high regard to protecting the environment and health and that this is seen as an issue to strive for continual improvement.

### Our role

We are the authority responsible for enforcing waste management legislation in England and Wales. It is the responsibility of the holder of material that has been excavated to decide whether or not they are handling waste and conform to the requirements of waste legislation. Where there is a disagreement as to whether or not excavated material is waste it is ultimately a matter for the courts to decide.

### Sustainable Waste Management in Land Development

Material may need to be managed because:-

1. The Local Planning Authority might suspect that the site being developed has been subject to previous contaminative uses and may require investigation and remediation (see [Planning Policy Statement 23](#))
2. Voluntary remediation may be proposed at a site as part of the management of liabilities or as a result of a pollution incident
3. Remediation is required under Part IIA EPA1990 or WRA1991.

Management of material at the site should be undertaken in accordance with the sustainable waste management principles of (in order of preference) waste reduction, re-use, recovery and finally, disposal. Construction projects in **England** worth more than £300,000 must have a [site waste management plan](#) (SWMP) which outlines ways that waste can be reduced and site-gained materials can be reused or recycled as part of the project. This does not apply to Wales, though SWMPs are being promoted as an example of best practice in the construction industry.

### Reduce waste generated

Reduce the generation of waste materials, perhaps by reviewing the layout of the development, ensuring that land use is related to the contamination identified or encountered and appropriate levels of site investigation to characterise and delineate contamination on site have been undertaken.

### Re-use excavated material

In certain circumstances, excavated material re-used in the development of land may not be waste, and hence not subject to waste regulatory control, provided that the aims and objectives of the Waste Framework Directive are not undermined and that its use will not harm human health or the environment.

We consider this may be the case for excavated material used on the site where it was produced or at other sites when;

- it is used in appropriate amounts
- it is suitable for that use directly without treatment
- its use will not cause harm to human health or the environment.

The [Model Procedures for the Management of Land Contamination](#) provides the framework for deciding whether use of material is suitable for its intended use without harm to human health or the environment on the site being redeveloped.

The [Verification Report](#), produced on completion of the development, will show that the material has been properly and suitably used and causes no harm to human health or the environment. If this can not be shown, we may conclude that the material is being discarded as waste and will take appropriate action.

The voluntary Code of Practice (CoP) ([Definition of Waste: Development Industry Code of Practice](#)) produced by industry provides a framework for determining whether or not excavated material used in land development is waste. It prescribes the circumstances under which re-use can be considered and the circumstances under which waste can be considered to have been recovered. It also describes an auditable system to demonstrate that the Code of Practice has been adhered to on a site by site basis.

This (Definition of Waste) position statement explains how we will take account of the Code of Practice when considering the need for an environmental permit to control the redeposit of excavated materials. When considering development activities we will apply modern risk based regulatory practices, focusing our effort on bad practice and on those activities that present the greatest threat to environment or health. We will be open, responsive, seek feedback and review our positions to ensure we react to technological advancement and change in the sector.

### **Recover material**

Where the materials cannot be used directly without treatment then recovery options should be considered. We encourage the use of on-site treatment technologies and have issued a series of [remediation position statements](#) covering each of the main technologies, explaining how we apply the regulations.

In certain circumstances, segregation and sorting at the source may be sufficient treatment to produce a suitable material. Treatment of excavated material will normally require a [Mobile Treatment Permit](#) (MTL). The MTL will control the operations and emissions from the recovery activity. Operating under a MTL does not infer that the remediation processes used will be suitable for meeting any remediation objectives specified. These issues should be considered by the developer/consultant and by the relevant regulatory body and set out in the site Remediation Strategy which sets out the remediation options to reduce or control the risks from pollution linkages associated with the site as a whole. Further guidance on this topic can be found in the [Model Procedures for the Management of Contaminated Land](#).

Material may cease to be waste after treatment if the requirements of the CoP are followed. This only applies to material excavated and treated on the site where it is to be used and to CLUSTER projects. The redeposit of material that remains a waste requires a permit, or an exemption or may be done under an enforcement position (see our [remediation position statements](#) for further detail).

Aggregates from recovered inert waste produced in accordance with the [WRAP - Quality Protocol for the production of aggregates from inert waste](#), are not likely to be waste. A recent [WRAP report](#) on developing a Quality protocol for contaminated soils concluded that it would be difficult to produce a generic standard to ensure that all potential receptors and any receiving site are adequately protected and that we should support the development of an alternative Code of Practice. The CL:AIRE CoP is the outcome of this work.

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## Dispose of material

This is the final option where excavated material has to be disposed of at an appropriately permitted facility. Before any decision can be made on the disposal option one has to adequately describe and classify the waste material. In particular one has to establish whether the waste material is a Hazardous Waste (see "[Framework for the Classification of Contaminated Soils as Hazardous Waste](#)"). In the case of inert or hazardous waste destined for landfill, only those materials within the numerical limits of the prescribed [Waste Acceptance Criteria](#) can be accepted.

Most waste materials must be treated before being landfilled. In certain circumstances, segregation at source may be considered as adequate pre-treatment and excavated material may not have to be treated any further prior to landfill. We have produced a factsheet ([factsheet on contaminated soils](#)) which explains more about these requirements.

Any movement of waste material from site to site will be subjected to control under [Duty of Care](#) and the developer may need to register as a hazardous waste producer if the material is hazardous waste.

## References

- The Environmental Protection Act 1990
- The Environment Act 1995
- Environmental Permitting (England and Wales) Regulations 2010
- Definition of Waste Position Statement
- The Contaminated Land (England) Regulations 2006 (as amended), The Contaminated Land (Wales) Regulations 2006, DETR Circular 01/2006 & The National Assembly for Wales Guidance on the Remediation of Contaminated Land. Environment Agency Policies and Process Documentation on Part 2A
- Town & Country Planning Act 1990 & Planning & Policy Statement 23
- Water Resources Act (1991), The Anti-Pollution (Works Notices) Regulations 1999 (as amended)
- Environment Agency Groundwater Protection Policy and Practice
- Environment Agency Enforcement & Prosecution Policy
- Environment Agency: Guidance on the Enforcement and Prosecution Policy
- DTI Site Waste Management Plans – Guidance for Construction Contractors and Clients
- CL:AIRE Definition of Waste: Development Industry Code of Practice
- Environment Agency: Contaminated Land Report 11 – Model Procedures for the Management of Land Contamination
- WRAP The Quality Protocol – The production of aggregates from inert waste
- Environment Agency: Hazardous Waste. Interpretation of the definition and classification of Hazardous Waste - Technical Guidance WM2

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