



SPECIALIST IN LAND CONDITION

*Dealing with
site arisings*

(DI)DoWCoP – How did we get here?

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RSK

The Issue of Waste

Waste Management Licensing Regulations – 1994

Introduced the WFD definition of Waste

“Anything you intend to or are required to discard”

RSK

What would you call this?

*Dealing with
site arisings*




What would you call this?

*Dealing with
site arisings*



This is good
quality
engineering
material!

What would you call this?



Actually, it's
PROBABLY waste!

This is good
quality
engineering
material!


How about this?

*Dealing with
site arisings*



How about this?

*Dealing with
site arisings*



This is useful
backfill material!

How about this?



What does this all mean?

In 2004 HBF produced Figures:

UK construction is likely to be undertaking in excess of 70,000 activities each year that should either be controlled by a Waste Management License or an exemption

Consequently

Probably every developer is working illegally

What does this all mean?

And should be in Jail?



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2004 Cabinet Office

Established the Remediation License Task Force

Agenda Items:

1. Permitting of Site Remediation Activities
2. Dual regulation of material movements under planning and waste permitting

HBF Proposal

“Utilising the Planning Consent as the Waste Directive Permit”

Opinion from DE Manley QC

“There is no reason at all, in the context of housing led regeneration schemes, to believe that the planning officer could not properly deal with the issues governed by the site license/permit under the existing regime.”

General agreement from Task Force members but . .

ODPM concerned about additional burden that could be placed on the planning system.

Task Force Alternative to HBF

EA charged with reviewing the existing waste legislation

Consultation group set up with HBF and Second Site Property to explore the options

To deal with material management on greenfield and brownfield sites

EA officers and lawyers engaged in process.

The Definition of Waste: developing greenfield and brownfield sites

“The Environment Agency has reconsidered its position on the regulatory controls that apply to development on contaminated sites as a result of the work that has been done through the Remediation Licensing Task Force. We had stated that contaminated soils become waste when they are excavated and their treatment and/or redeposit must always be covered by a WFD permit”

“We accept the principle that contaminated soils not requiring treatment or containment could be considered suitable for use in the same way as uncontaminated soils, provided that there is no risk of pollution.”

“In all cases we would need to be satisfied that such works can be carried out without the contaminants in the materials posing a risk to the environment. As part of this assessment, we may be able to take into consideration the extent and effect of planning controls -”

Required Tests

"...we may not consider it discarded, provided

- i. they are suitable for that use and require no further treatment
- ii. only the quantity necessary for the specified works is used (otherwise it becomes a disposal activity), and
- iii. their use is not a mere possibility but a certainty"

BUT

"Further work needs to be done with industry and the Planning Authorities to determine how this could work in practice"

CL:AIRE

CLG and EA concluded that CL:AIRE was best placed to take the initiative forward and link the EA tests into the planning regime

Steering Group established to develop (DI)DoWCoP

Points to Note

The 2006 EA guidance does not:

1. make any distinction between “*contaminated soils*” and materials deposited (under a permit or not)
2. Provide any definition of a landfill or former landfill and how this might differ from uncontaminated/contaminated soils on a brownfield site

NPPF Definition of Brownfield for Registers

“previously developed land that local planning authorities consider to be appropriate for residential development, having regard to criteria (in the regulations)”. The suggestion is that this does not include former landfills

And now

Response from Molcom Lythgo (EA) to SiLC (October 2021):

“Our approach towards the development of historic landfills has not changed but we recognised there was a need to provide additional internal guidance on the subject to improve consistency in our decisions. We would hope to be able to share our revised guidance with industry in due course”