

Briefing note

The use of materials which may be classified as wastes for land remediation and construction projects

Introduction

This briefing note is relevant only to the proposed use of materials which are generated as part of a land remediation and/or construction project where it is proposed that contaminated or uncontaminated materials are excavated and re-used.

Prior to the implementation of The Environmental Permitting (England and Wales) Regulations 2010 exemptions from the requirement to hold a permit for the storage, deposit and re-use of wastes existed (notably Paragraph 9 and Paragraph 19 exemptions) which have been used widely in development projects. The 2010 regulations have revised the exemptions such that there are no longer exemptions equivalent to Paragraph 9 and Paragraph 19.

Assessment of the status of excavated materials as waste or not is the subject of difficult legislative interpretation.

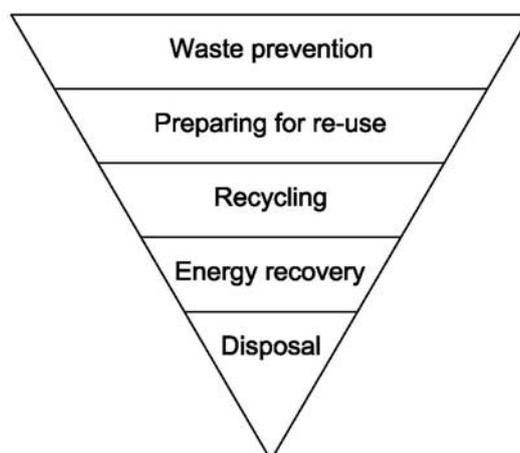
Article 1(1)(a) of the Waste Framework Directive defines “waste” as:-

‘...any substance or categories set out in Annex 1 which the holder discards or intends or is required to discard...’

In the view of the Environment Agency **contaminated** soil is waste when it is excavated or treated. Uncontaminated soil may not be waste if the holder of the material has a defined use for it and does not use it for its defined purpose in quantities greater than necessary.

The Waste Framework Directive puts forward the principles of the waste hierarchy which sets out the waste management options which must be applied in order to minimise effects on the environment.

The waste hierarchy:



If it is not possible to prevent the generation of wastes in a land remediation or development project then in accordance with the waste hierarchy the next option to be considered is re-use of the wastes. The status of materials as waste or not excavated at sites and subsequently used in construction has been the subject of much debate between industry and the regulators.

Consistent with the principles of the waste hierarchy and in the interests of 'Better Regulation' the Environment Agency has in conjunction with environmental body CL:AIRE endorsed a voluntary industry Code of Practice entitled:-

The Definition of Waste: Development Industry Code of Practice published by CL:AIRE on 11 September 2008.

The Code of Practice (CoP) sets out good practice for the development industry to use when

- Assessing whether materials are classified as waste or not
- Determining when treated waste can cease to be waste for a particular use

It is the responsibility of the holder of a material to determine whether that material is waste or not. The CoP assists the holder in the decision making process and demonstrates how the decision has been achieved.

There are 3 principles which must be addressed for the use of materials as non-waste.

1. Suitability for use without any further treatment
 - a. The CoP defines suitability for use such that the material must achieve the relevant chemical and geotechnical properties specified for the intended use. If any further treatment is necessary the materials will still be classified as waste.
2. Certainty of use
 - a. The holder of the material must be able to demonstrate that the material will actually be used and that the use is a certainty and not just a probability.
3. Quantity of material
 - a. No more material than is necessary to achieve the intended use should be used. If materials are used in quantities greater than intended this will comprise disposal and be the subject of waste legislation.

into account the CoP in deciding whether to regulate excavated materials to be used in development projects as waste.

The CoP specifies 3 basic elements to ensure that materials are dealt with using good practice:

1. A Materials Management Plan (MMP) must be developed and in place to cover the use of materials on a specific site.
2. The MMP must be based on an appropriate risk assessment that underpins the Remediation Strategy or Design Statement and which must conclude that the objectives of preventing harm to human health and pollution of the environment will be met if materials are used in the proposed manner.
3. Ensure that materials are treated and used as specified in the MMP and risk assessment.

To confirm that Steps 1 and 2 have been taken the CoP specifies that the relevant documents must be reviewed by a **Qualified Person**.

The Qualified Person must provide a declaration before excavation work is undertaken which confirms that materials are to be dealt with in accordance with the COP.

Qualified Persons must be registered with CL:AIRE. They must be independent i.e. not directly involved in the management or execution of a project, have relevant Chartered status, relevant academic qualifications and experience and must have attended a recognised training course on the CoP. MJCA has people who are registered with CL:AIRE who can provide the services of a Qualified Person.

Documents to be reviewed include;

- The Materials Management Plan
- The Risk assessment
- The Remediation Strategy and Design Statement
- Correspondence and documentation relating to the development and how it relates to the use of materials
 - Environment Agency
 - Local Authority
 - Other relevant regulatory bodies e.g. Defra, Natural England, Countryside Council for Wales
- Planning consent (if required) and relevant correspondence

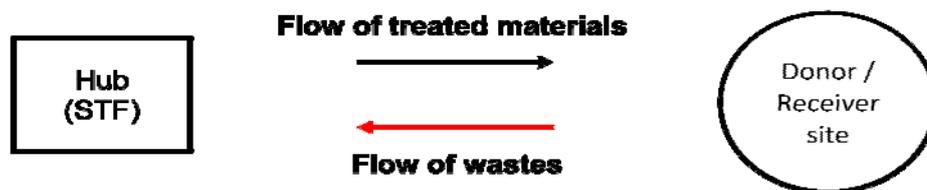
Following satisfactory review of the documentation the Qualifying Person will sign a declaration. The declaration must be submitted to the Environment Agency. Provided that the materials are to be dealt with in accordance with the MMP and the risk assessment the Environment Agency will take the view that the materials on the site where they are to be used will not be waste.

During the works to be undertaken as specified in the MMP it is likely that materials proposed for re-use may not meet the necessary specifications hence it is necessary to incorporate in the MMP contingency arrangements for these materials. These may include arrangements for off-site disposal, additional treatment requirements and management of additional stockpiles. As work progresses any changes to the MMP should be documented and records of waste movements recorded including those arising unexpectedly during the works.

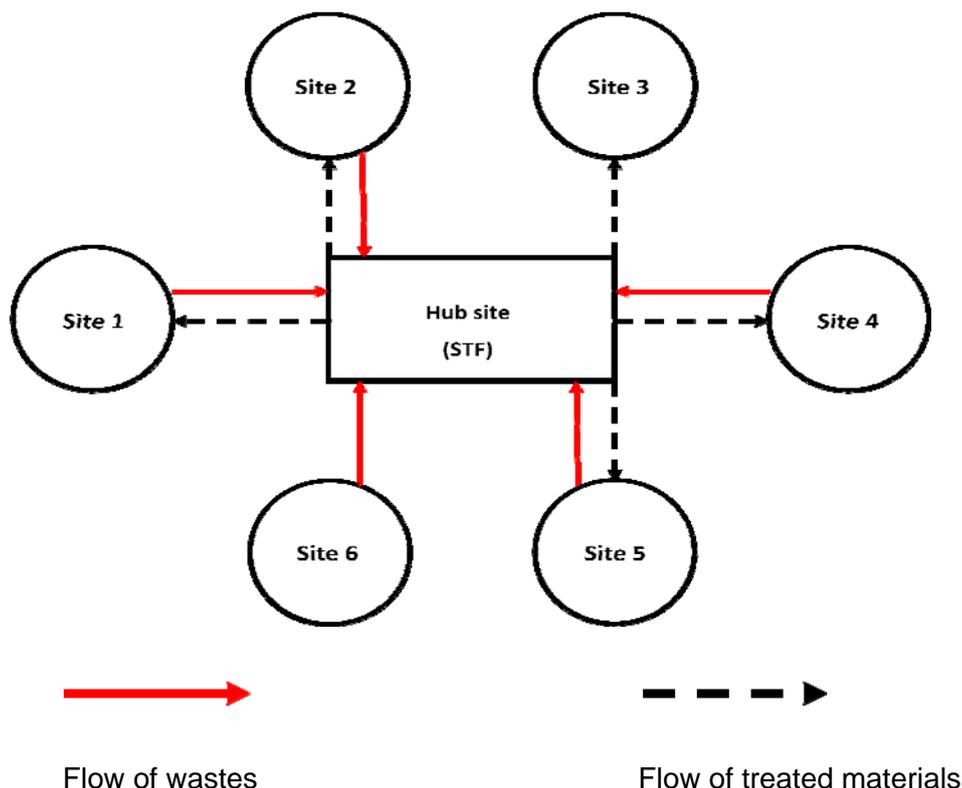
Hub and Cluster projects

Contaminated land which is excavated at a development site may require treatment prior to re-use. This typically is undertaken at a mobile soil treatment facility which will be the subject of an Environmental Permit. The soil treatment facility (the hub) may be located at the development site or at another site (cluster site). The CoP provides for the treatment of contaminated materials from more than one site which may then be returned to any of the sites defined in the hub and cluster arrangement. The CoP for hub and cluster projects is not relevant currently for fixed soil treatment facilities.

Simple Hub and Cluster



Potential flow of waste at a six cluster site:



Cluster sites can be a Donor site, a Receiver site or both.

The wastes returned to each cluster site may arise at other sites in the cluster prior to treatment. Only the quantities of wastes that have been defined in the MMP for each site in the cluster may be sent from the hub site to a cluster site.

Following treatment at the Hub site under the conditions of an Environmental Permit the definitive point for when wastes have "ceased to be waste" is when the materials have been loaded onto the vehicle with delivery notes in the cab. Legally binding contracts must be in place between the hub site and cluster sites.