

Materials Management Seminar Summary

4th March 2019



This event was kindly sponsored by Mills and Reeve, Hydrock, i2 Analytical and Vertase FLI, allowing CIWEM to make it free for attendees. The event was organised with our Contaminated Land Specialist Panel. We are grateful for their input and for the contributions of our five speakers.

If you are interested in the work of the Panel or getting involved with the wider network please see the [Contaminated Land Network Page](#) of our website.

This written summary is accompanied by a recording for four of the presentations and slides from all five speakers, which can be viewed online [here](#).

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Keith Davidson- Landfill Tax and Unauthorised Sites

Mills & Reeve

Regulations

Waste legislation is mostly derived from the European Union under the Waste Framework Directive, and implemented in the UK by the Environmental Permit Regulations 2016 and the Waste Regulations 2011. The Finance Act and Landfill Tax Regulations, which first came into force in 1996 and updated in 2018, have been very successful as an economic instrument, and have significantly reduced waste sent to landfill through increasing costs. The EA has made prosecuting offenders a priority and allocated extra funding to it, and HMRC has also focused on it to raise revenues. However, despite this success, the regulations have also caused an increase in waste crime and illegal tipping, particularly by organised crime gangs.

Liability

Until the Landfill Tax Regulations were reformed in 2018, they only applied to sites permitted by the EA and therefore not to unauthorised waste sites. The revisions now extend to unauthorised sites and have widened the definition about who is liable for waste deposited at them, to include the person who makes the disposal, any person who knowingly causes or facilitates disposal, and any person who took any action with a view to the disposal. Essentially the liability extends to anybody in the waste chain. The legal presumption is that you could be held liable unless you can prove that you are not, which is why adhering to the waste duty of care and thorough Materials Management Plans are so important.

Penalties

There is now a whole raft of penalties that should be taken seriously, as they can total huge sums when applied to the large quantities of waste potentially involved. As well as Landfill Tax liability, interest is applied, civil penalty charges, waste removal costs and criminal charges can apply. These potential huge penalties mean that developers, landlords, construction companies and waste removal contractors should focus on the Duty of Care through a thorough Materials Management Plan, to avoid the possibility of being held liable for a waste crime. The EA also encourages reporting of known breaches, and can reduce penalties as a result of assistance given to their investigation.

Exemptions

The extent of Landfill Tax liability means that there are also a wide range of exemptions, applied to the use of material in construction which is compliant with planning, temporary storage, and waste compliant with current waste exemptions, EA position statements and definitions of waste. Complying with the Landfill Tax regulations through thorough waste planning means that activities are exempt and Landfill Tax liabilities can be avoided.

Karen Andrews- The Definition of Waste Code of Practice

Environment Agency

The aim of the Definition of Waste Code of Practice (DoWCoP) is to ensure that waste does not cause harm to humans or the environment. Management and remediation of excavated waste in line with DoWCoP is important in adhering to sustainable and circular economy principles.

DoWCoP covers excavated material generated by development of land and applies to both greenfield and brownfield sites. A single site may need more than one declaration depending on site conditions. The code must be used during planning of development activities. It is not possible to apply the code and secure a declaration retrospectively.

Monitoring of the number of declarations indicates that DoWCoP uptake continues to increase steadily. Between its launch in 2008 and 2018, there were 4,521 declarations covering 73,957,430 m³ of material. Most declarations relate to direct transfers and site of origin with significantly fewer on clusters or combination.

DoWCoP declarations go straight to the management organisation, Contaminated Land: Applications in Real Environments (CL:AIRE). The Environment Agency is provided with the information needed for inspections, but no additional funding.

CL:AIRE runs an open access Register of Materials where developers can provide details of what materials are surplus to their development needs to help them link to other developers who may be able to use it. CL:AIRE also provides industry guidance.

The current version (2) of DoWCoP was published in 2011. The Environment Agency is reviewing this, and the accompanying guidance, with CL:AIRE. The updated version will reflect pilot studies and provide example documents. The new documents will be supplied digitally which will also allow updates where necessary.

Danny Hope- Materials Management: A Consultant's View

Hydrock

Material Management Plans (MMPs) were introduced in 2008 as a response to the 2005 EU Waste Directive. The process allows a self-regulatory approach to managing material generated by development. It is administered by CL:AIRE with inspections by the Environment Agency. Guidance can be found in the Definition of Waste Code of Practice (DoWCoP).

MMPs should be seen as the blueprint for good management of earthworks and remediation rather than a regulatory burden. They can help clients manage costs and sign off processes.

An MMP is needed for: re-use within a site of origin, 'Direct Transfer' of materials between sites (plan needed at either donor or receiver site and transfer must not increase the contaminant loading of the receiver site), and to allow transfer of Made Ground under certain circumstances within hub and cluster arrangements.

There are some cases where an MMP may not be needed due to the Waste Framework Directive provisions. Soil is excluded under Article 2(1)(c) when uncontaminated, excavated during construction, and certain to be used in its natural state for construction purposes on the same site. The developer must prove the material is not a waste, which is most easily done through completing an MMP but not doing a declaration.

Other times an MMP is not needed are during site investigation, if disposal is off site and only where this is covered by waste duty of care arrangements, and for minor works where it is appropriate and more cost effective to make use of a waste exemption.

There are two routes for completing MMPs, one for clean sites and another for potentially contaminated sites. DoWCoP requires 4 factors to be demonstrated: protection of human health and environment, suitable for use without further treatment, certainty of use, and properly estimated quantity of material.

An MMP needs to include: a desk study, SI and risk assessment, design statement or remediation strategy, earthworks spec and modelling, drawings demonstrating materials movements, regulator correspondence if possible, and contractual issues.

To be compliant the MMP should be reviewed by a Qualified Person (QP) who provides a declaration, be verified on completion, and gain regulator sign-off.

The main sticking points and pitfalls (among others, see PPT slides) for MMPs are evidencing adequate regulator correspondence (the 21 day response period is often unrealistic), getting accurate volume estimates from clients and keeping a watching brief, including site diaries.

Recent changes include that the QP needs to name a responsible person for verification (who will also receive the declaration receipt) and give a predicted date for the verification report. There is now also a disciplinary procedure QPs have to adhere to, for misuse of the Code of Practice, and CPD and an annual test for QPs.

Mark Field- Waste and Materials Reuse: A Contractors Case Study

Vertase FLI

Mark provided a remediation contractor viewpoint on the current materials management process and presented some very interesting case studies. He looked at the reuse of material on the site of origin, emphasising the importance of good earthwork balance; direct transfer from a donor site, the importance of imported soils not containing substances at concentrations in excess of those identified at the receiving site, and the Hub and Cluster approach which is arguably the most complex of approaches. He also looked at waste recovery permits which require a detailed process and evidence keeping and are not applicable to many sites.

The talk highlighted that there are a number of mechanisms to allow re-use of various materials but it is important to choose the approach carefully as they're not all applicable across all sites. Many developers do not have all the necessary information at their disposal to be fully compliant so this is an important consideration in determining the approach. In all cases, detailed information and record keeping is essential.

Rob Ivans- DoWCoP and The Local Authority

Mole Valley District Council

Rob set out the challenges commonly faced by local authorities in terms of engaging the development industry with the Definition of Waste Code of Practice. He stated that the local authority does not have a direct role in the materials management plan process, however, the local authority does have an important role in the regulation of all planning applications which in most cases form the basis for Material Management Plans (MMPs).

Most local authorities are small, with officers often having multiple roles and without specialist knowledge in this area. Verification of MMPs can be difficult to obtain because there is a tight 21 day deadline and consultants can be reluctant to commit to validating them. Ultimately planning authorities need verified evidence to demonstrate that remediation has been undertaken, so that they have a robust audit trail but developers find the whole process difficult to manage and a barrier to getting developments to market.

From a local authority perspective, there is a need for reasonable DoWCoP verification which is enough to make a sound judgment that material is of suitable quality, including good descriptions and sufficient samples, but which at the same time do not place unreasonable burden on developers. It is ultimately down to the consultants to ensure that required information is provided and meets the local authority's needs.

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