Recent European Developments & Remediation of Contaminated Land

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Outline of Talk

**Aim:** outline aspects of recent EC law developments and their impact on regulating the remediation of contaminated land in Ireland

**new!** 2008 Waste Directive
**Proposal** for Industrial Emissions Directive

**Topics**
1. Overview of Waste and IPPC regime in Ireland
3. Article 15 & 23 of proposal for Industrial Emissions Directive
4. Conclusions
Introduction – Waste Law & contaminated land

Waste Management Acts & Regulations

- regulates the handling of haz/non-haz waste

- Transposes largely the EC Waste Framework Directive (consolidated in 2006)

- Aim: for waste activities to be carried out without endangering human health or the environment

- Waste activities can give rise to contaminated land risk

- Certain provisions can assist in identifying and remediating contaminated land where it relates to waste activities.
NEW Waste Directive 2008
Unexcavated Contaminated Soil
– Art 2

12 Dec 2010 Deadline for transposition
WFD 2006 repealed and replaced

Article 2.1(b) excludes from the scope of the Directive

“land (in situ) including unexcavated contaminated soil and buildings permanently connected with land”

Implications for Ireland

from 12 Dec unexcavated contaminated soil cannot be considered waste and therefore cannot be made subject to the waste management regime
Article 2.1(b) exclusion effectively overrules the European Court of Justice decision in Van de Walle (2004)

In Van de Walle the courts held that unexcavated contaminated soil can be considered waste.

excavated contaminated soil is likely to still be considered waste (haz)
Article 6

“waste that has undergone a recovery process, may be defined as a non-waste and used as a raw material or produce once it complies with criteria developed in accordance with the following conditions

(a) Substance is used for a specific purpose
(b) Market or demand for the substance
(c) Substance fulfils the technical requirements for the specific purposes, meets existing legislation & standards
(d) Its use will not lead to overall adverse impact on health & the environment

Must develop limit values for pollutants where necessary
Waste ceases to be waste

Implications for Ireland

Clarifies somewhat when treated (excavated) contaminated soil is no longer considered waste.

Rely on Commission’s generic end of waste criteria for soil when developed. (risk based?)

Where no EoW criteria has been developed for soil, Ireland must decide this on a case by case basis (look to CEN standards for aggregates? CLAIRE code on the definition of waste?)
Introduction – IPPC Law & contaminated land

Part IV EPA Act 1992 (as amended)


- Regulates IPPC activities via IPPC Licences to prevent and control emissions to air, h2o, soil so that no significant pollution is caused

- IPPC activities can give rise to contaminated land risk

- Certain provisions can assist in identifying and remediating contaminated land where it relates to IPPC activities.
Proposal for Industrial Emissions Directive – Art 15

**Aim:** to recast IPPC Directive and 6 other industrial emissions related directives into one single Directive

**Article 15.1(d) Monitoring**
New! Require licenceholder to periodically monitor condition of the soil/grdwater for dangerous substances (at least every 7 years)

**Implications**
- Detect soil conditions during operations
- May result in operators taking more proactive approach to protecting the soil
- May miss hotspots
- Comprehensive monitoring could be costly
- Would tightening up of EMS be the better option?
Art. 23.2 Baseline Reports

Applicant for IPPC licence must furnish a baseline report if handling dangerous substances.

must contain quantified information on the condition of the soil. Commission to develop guidelines

Art 23.(3) & (4) Site Closure and Remediation

Art 23(3): licence holder furnish 2\textsuperscript{nd} baseline report when cessing operations

Art 23(4): to clean up site to the original condition as provided in initial baseline report. If not available then so that the site no longer poses risk to human health and the environment
Proposal for Industrial Emissions Directive

Implications for Ireland - Art 23(3) & (4)

- Likely to be a higher standard of clean up

- Likely to be less flexibility for EPA in determining clean up

- For the standard of “no longer posing risk to human health and the environment” may need to develop specific risk assessment procedures for contaminated land and to consider developing soil screening values.
CONCLUSION

- Ireland is member state of EU so must transpose and comply with these EU requirements

- These developments clarify (to an extent) how contaminated land is identified and remediated under both regimes
THANK YOU

Q & A