

**ASBESTOS IN SOIL, MADE GROUND AND
CONSTRUCTION & DEMOLITION MATERIALS**

**Joint Industry Working Group Statement
on Discussions on Regulation and Enforcement with HSE and EA**

The Environment Agency (EA) is responsible for the protection of people and the environment from emissions from certain activities and for the purposes of this working group deals with issues relating to permitting of waste management activities that relate to asbestos. Contaminated land issues relating to asbestos are in most cases under the remit of local authorities.

The Health & Safety Executive (HSE) is responsible for worker protection and the protection of members of the public that might otherwise be affected by work on asbestos and asbestos containing materials. This includes asbestos-contaminated 'soils' and construction and demolition materials.

HSE and EA have agreed that effective application of the principal regulatory regimes that apply to a variety of work activities on asbestos and asbestos-contaminated materials needs to be consistent both within and between the two organisations.

Both agencies have agreed to work with the JIWG to develop a sustainable framework to enable appropriate, beneficial reuse of material contaminated with asbestos-containing materials whilst ensuring health and safety compliance and environmental protection.

It is further agreed that, in so far as legislation allows, there is a strong case for considering the approach to 'legacy' scenarios involving the presence of asbestos in 'soil', made ground and construction and demolition materials differently from current situations (i.e. where the addition of asbestos is more recent, e.g. from the demolition of buildings without all asbestos-containing materials having been removed) moving forward.

In accordance with the principles of sustainable development the EA encourage remediation schemes designed to achieve net environmental benefits by reducing the environmental risk and minimising the amount of asbestos-contaminated material being consigned to landfill.

The EA takes a risk-based, proportionate approach to regulation but will consider enforcement action where asbestos contaminated wastes are wrongly classified or managed inappropriately (e.g. mixed to cause dilution). The HSE will adopt a rigorous and rigid approach to enforcement of existing asbestos legislation to deter the demolition of buildings without all asbestos-containing materials having been removed.

Both HSE and EA have welcomed the work of the Joint Industry Working Group (JIWG). They both have agreed that they will work with the JIWG to clarify the rules in so far as their regulatory remits extend, in order to help find a satisfactory solution when dealing with asbestos in soil, made ground and construction and demolition materials.

The principal regulatory regimes and the practical compliance issues arising from these that have been identified as requiring further clarification are summarised in Figure 1. Further detail is set out below.

Waste Classification

Guidance will be developed by the JIWG, in conjunction with the EA, that provides clarification on the analytical determination of the asbestos content of materials and the classification of waste in compliance with the European Waste Framework Directive, specifically in the context of asbestos in soil, made ground and construction and demolition materials. This will include guidance on whether that waste is hazardous or not.

Classification of Asbestos

Current guidance on the methodology to be used by analysts for the determination of 'trace' amounts of asbestos in materials, which is contained in HSG 248, Asbestos - The Analysts' Guide for Sampling, Analysis and Clearance Procedures, was designed to identify impurities in building materials and other manufactured products, not material that may often be very heterogeneous, such as mixtures of soil, made ground and construction and demolition waste.

Currently, HSG 248 recommends that 'asbestos not detected' is reported when no asbestos fibre is found after careful searching of a sample under the stereo microscope for 10 minutes and searching a minimum of two preparations mounted in suitable RI liquid at high magnification by PLM/PCM for a further 5 minutes. If during the search only 1 or 2 fibres are seen and identified as asbestos, it is suggested that the term 'trace asbestos identified' is used.

HSE Approved Code of Practice L143, Work with Materials Containing Asbestos. Control of Asbestos Regulations 2006, specifies that any mixture which contains one or more of the six fibrous silicates at more than trace amounts as defined in HSG248 falls within the legal definition of asbestos.

Guidance will be developed by the JIWG, in conjunction with the HSE, which relates the legal definition of asbestos, together with practical guidance on the analytical determination of the same, to the classification of materials in compliance with the European REACH Regulation 2010, specifically in the context of asbestos in soil, made ground and construction and demolition materials. This will include guidance on whether materials containing very low levels of asbestos fibres or asbestos-containing materials fall within the legal definition of asbestos.

Permitting and Licensing

The Control of Asbestos Regulations 2012 apply to all work with asbestos. Depending on the degree of potential exposure, materials being worked on, etc. some work with asbestos or asbestos-containing materials may have to be carried out by a Licensed Asbestos Contractor. If an activity is non-licensable, the work may still need to be notified, if it qualifies as such.

Remediation of contaminated land involving waste normally requires an Environmental Permit to be issued by the EA to the contractor undertaking the remediation activities.

Other activities involving small quantities of certain defined waste may be exempt from the need to obtain an Environmental Permit, whilst others may require an Environmental Permit to be issued by the Local Authority.

Guidance will be developed by the JIWG, in conjunction with the EA and HSE, that will facilitate compliance with both regulatory regimes, ensuring that duty holders are clear about whether work is licensable (and/or notifiable) or not in the context of asbestos in soil, made ground and construction and demolition materials.

Guidance on when the requirements of the Environmental Permitting Regulations 2010 will apply to the remediation of asbestos in soil, made ground and construction and demolition materials will be also developed by the JIWG, in conjunction with the EA, as will guidance to support the regulation of exempt waste activities and waste activities regulated by the Local Authority.

Guidance or regulatory enforcement positions will be developed by both agencies, if necessary, setting out the framework for enforcing waste and asbestos regulations in respect of the presence of asbestos and/or asbestos-containing materials in construction and demolition materials arising from the failure to remove asbestos from buildings and/or structures prior to demolition.

Recycling and Reuse

There is some confusion as to the legality of the recycling and reuse of materials contaminated with low levels of asbestos.

The REACH Regulation applies to substances manufactured or imported into the EU in quantities of 1 tonne or more per year. Generally, it applies to all individual chemical substances on their own, in preparations or in articles (if the substance is intended to be released during normal and reasonably foreseeable conditions of use from an article). Waste, as defined in the Waste Framework Directive, is exempt.

Article: means an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition. This definition has been taken to mean recycled ground and construction materials engineered to a specification. [Drafting Note – it is proposed to amend REACH shortly in any case to extend the asbestos prohibition to materials containing asbestos as well as articles. This is to bring REACH into line with the position that existed in the legislation it replaced.]

The placing on the market and use of asbestos and of articles containing asbestos added intentionally is prohibited,

Guidance on when the requirements of the REACH Regulation 2010 will apply to the recycling and reuse of materials contaminated with low levels of asbestos will be developed in conjunction with DEFRA.

There is some confusion as to the requirements placed on the transport of materials contaminated with low levels of asbestos.

The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG Regulations) and the European agreement (“Accord européen relatif au transport international des marchandises dangereuses par route”, known as ADR) together regulate the carriage of dangerous goods by road.

It is acknowledged that whilst there are special provisions for the consignment of exempt materials, typically non-friable products or materials, or friable materials when packed in accordance with UN requirements, as well as threshold quantities for the transport of asbestos, there does not appear to be a de minimis concentration threshold for the application of the CDG Regulations to bulk construction materials containing low level amounts of asbestos which might be considered to not present a significant health or environmental risk.

The carriage of bulk materials contaminated with low levels of asbestos and asbestos-containing materials is an area where definitive practical guidance on how to comply with legislation, whilst adopting the modern principles of Better Regulation and at the same time not adversely impacting on environmental quality and/or health & safety, is required.

Guidance on when the requirements of the CDG Regulations 2009 will apply to the transport of materials that have undergone treatment and/or recycling to allow them to be beneficially reused under the provisions of the Development Industry Definition of Waste Code of Practice will be developed in conjunction with the Department for Transport, in conjunction with the EA and HSE where appropriate.

Drafted by Stephen Forster,

IEG Technologies UK Limited,

Chair, EIC-CL:AIRE Joint Industry Working Group

in consultation with:

Trevor Howard, Senior Advisor (Groundwater & Contaminated Land), Environment Agency

&

Health and Safety Executive

15th March 2013

Asbestos in Soil: Policy, Regulation & Enforcement Review

Figure 1 - Principal regulatory and compliance issues

