

Is the Environmental Permitting Regime fit for purpose?

Mike Longman of **VertaseFLI** argues for a radical shake-up of regulations covering the remediation of old landfills.

“Lessons learned” discussions following remediation of former landfill sites are often very lively affairs. VertaseFLI is at the forefront of the remediation of former landfill sites and has established a wealth of demonstrable expertise in bringing these often very large, complex and contentious brownfield sites back into beneficial use.

The most recent project in Reading included the excavation of 150,000m³ of landfill cap followed by the excavation and treatment of 244,000m³ of wastes deposited into former sand and gravel pits. The landfill possessed significant quantities of leachate and an interesting mix of industrial and commercial waste up to 11m deep. The site is immediately adjacent to a large residential area to the north and a main river to the south.

Planning and cost constraints dictated that the majority of the wastes could not be exported but must be treated to render them suitable for reuse. VertaseFLI designed a robust Remediation Strategy which identified a multi-disciplined approach to the treatment and re-assessment of treated materials which included source and particle size separation achieved through a number of approaches including screening, soil washing, air separation, hand picking and crushing/blending.

Whilst we faced the usual remediation challenges around ensuring the protection of controlled waters and human health, the key remediation drivers were environmental management of the works, meeting post-remediation geotechnical criteria and, predicting and managing post-remediation gas characteristics.

The works were completed under a standard rules *Mobile Treatment Deployment (MTP)* and recovered soils reused in accordance with *The Definition of Waste: Development Industry Code of Practice (DoWCoP)* and appropriate Materials Management Plan. Early engagement with the local planning authority, **Environment Agency** and **NHBC** proved critical in ensuring the correct legislative framework was identified and complied with. All regulators showed a genuine interest and applied a pragmatic and understanding approach. Permits, consents and other approvals

were granted in a timely manner and an active and on-going public liaison was established prior to works commencing.

Whilst both budget and programme were exceeded (hence those lively lessons learned debates), the environmental and geotechnical objectives were fully met and development with residential with private gardens is well underway.



Initial screening of wastes



Excavating landfill waste

For many years developers would not consider developing former landfill sites but remediation of the former landfill at Reading has clearly demonstrated that these difficult but often perfectly positioned brownfield sites can be brought back into beneficial use. VertaseFLI and indeed the wider industry are now being increasingly employed by developers to remediate similar sites all across the UK. There are an estimated 20,000 historic landfills in the UK all of which are likely to be having some detrimental environmental impact of one kind or another so the potential to address this

on-going land and groundwater quality issue as well as the need for ever increasing development land is enormous.

However, changes in permitting are afoot and which are causing much consternation. The Environment Agency is shifting position without first informing or consulting the remediation industry and secondly, not properly considering or establishing alternative rules. Despite previously allowing and, we are aware in some quarters still allowing, the remediation of similar sites under *MTP* and *DoWCoP*, the Environment Agency is also stipulating the *MTP* and *DoWCoP* are now not suitable for the remediation of former landfill sites. The lack of consistency is an old chestnut which we shall not discuss further here.

The Environment Agency has tweaked the various standard rules permits including the *MTP* discretely and regularly over the past few years and now rightly point out, that the normal standard rules *MTP* deployments are not suitable for the treatment of wastes from former landfill sites irrespective of whether the historic landfill permit has been surrendered or not. One should now consider that old landfills will always be landfills and are not brownfield land requiring remediation to render them suitable for reuse unless you are just going to dig them up and export them to another landfill. The Environment Agency go on to say that *DoWCoP* is not suitable for the reuse of soils produced by the treatment of the contents of old landfills.

So what does this mean for the development and remediation industry? To cut a long story short, you have one of two options assuming you can't afford to export the contents to another landfill; end of waste or bespoke waste recovery permit (WRP).

The end of waste panel and supporting guidance has been closed and withdrawn.



Construction of POS areas

New tools from the Environment Agency such as *IsitWaste* appear to go some way to plugging the gap but the onus remains with the producer with no way of guaranteeing the outcome but every possibility the Environment Agency may subsequently disagree with your assessment and deem your materials waste. You would then be faced with the prospect of being pursued jointly by the Environment Agency and **HMRC** courtesy of their new working relationship in support of the recent amendments made to Part III of the *Finance Act 1996* which widens the scope of Landfill Tax to cover any site (not exclusively landfills) operating without the appropriate environmental permit, appropriate exemption or, correctly managed and validated *DoWCoP* and MMP (<https://goo.gl/tfzTd4>).

This leaves us with the bespoke waste recovery permit route. To describe this as tortuous is an understatement. The key reasons are that very little of the supporting guidance is prepared in the context of remediation. The supporting guidance is aimed more at permanent waste treatment facilities or sites looking to permanently deposit recovered wastes to land. Remediation of historic landfills can only really “fit” into the latter category but it is hardly a snug fit. The application process is extensive and appears to roll all the usual requirements into one application. This includes amongst others:

- waste recovery plan where you must satisfy the waste v disposal panel (yes

this panel really does exist!) that what you are proposing is recovery and not a sham disposal operation,

- condition survey,
- comprehensive site investigations followed by DQRA (human health & controlled water),
- comprehensive operating manual on how you will assess and manage the potential environmental impact of your operations,
- possible site engineering,
- waste acceptance procedures and waste acceptance criteria and,
- finally but not at least, surrender requirements.

Those of you in the know will probably very quickly come to the conclusion that this sounds awfully like an application to operate a landfill and not remediation of brownfield land. And do not think your WRP will be issued within 12 weeks either. We are currently six months into the process for another landfill remediation project and there is still no permit (and that is not due to the quality of our application). There are some elements of the contaminated land regime here (CLR11) but it is dominated by the waste regime.

The greatest potential issue is what you might have to do to surrender your WRP. Unless you are recovering inert or very low risk non-hazardous waste, you will find yourself in standard surrender requirements. Be prepared to monitor your site post remediation for a minimum of two

years with no guarantee that surrender will be forthcoming. When the key guidance actually has landfill in the title (Landfill [EPR 5.02] and other permanent deposits of wastes), you could be forgiven for thinking you are surrendering a landfill permit and not undertaking remediation of contaminated land.

Despite my obvious sentiment, I would confirm that for the most part, I actually agree with the Environment Agency. Remediation of historic landfills under a standard rules *MTP* is not appropriate. Far more consideration and management of such activities is required. Further, reuse of recovered materials including soils from such activities is not fully in the “spirit” of the *DoWCoP* and for this reason, it is not an appropriate alternative to a permit. However, the current regulatory framework and guidance is similarly unsuitable without some radical review.

Should we not have a revision of types of Environmental Permit and conditions contained therein rather than trying to shoe-horn remediation of these valuable sites into waste activities? In the meantime, I will continue to work upon our bespoke WRP application for our new project in the hope our client does not just decide to walk away (which they have threatened to because of the complexity and time elapsed) and that I can subsequently surrender the permit before I retire.

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