

United Kingdom Quality Ash Association Environment Agency and Waste Issue Update Newsletter

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Introduction

This newsletter is a summary of the situation relating the classification of PFA as a waste and associated matters.

Lobbying and legal interpretation

The electricity supply industry, through the Joint Environmental Programme (JEP), wrote in December 2003 to Sir John Harman and Dame Barbara Young - Chief Executive Environment Agency, with copies to Elliot Morley (Minister for the Environment), Steven Timms (Minister of State for Energy, e-Commerce & Postal Services), Bill Stow (DEFRA), Joan MacNaughton (DTI), Neil Davies (EA) and Chris Bower (EA). In this letter they put forward the legal arguments for PFA NOT being a waste. This was supported by a legal review carried out by Steven Tromans, an eminent barrister in Environmental Law. To date the electricity supply industry is awaiting a response.

The barristers review disagrees with the Environment Agency's view that PFA, and many other materials, should be treated as wastes. He takes the view, as do so many other industries, that the EA interpretation is a misinterpretation of EU case law and not applicable to many secondary and by-product materials like PFA.

Very recently (15 January 2004) there has been an interesting EU court case regarding the classification of Petroleum coke as a waste. This ruling was requested by an Italian judge as to whether PET coke produced as a by-product from manufacture of other fuels in an oil refinery, and intended to be used as fuel, should not be classified as waste under EU law. It was decided by the EU court that PET coke is not a waste! See order in case [C-235/02 Saetti and Frediani](#). Unfortunately the ruling is not available in English at the time of writing. It is clear from this ruling that deciding when a material is or is not a waste is a very complex issue. The problems a badly drafted Directive can cause! But at least it demonstrates that by-product materials are not necessarily automatically wastes when they are being put to some beneficial use, e.g. as a fuel in this case.

Waste and Resources Action Programme (WRAP)

WRAP have held a series of seminars on aspects of waste and recycling. They are promoting the concept of 'Protocols' as a way of proving that materials such as recycled aggregates are not wastes. The first of these documents will probably be "The QUALITY PROTOCOL - for the production of aggregates from inert waste", which has gone through a series of revisions and currently has been sent to DEFRA and EA for final approval. This latter stage is felt to be a formality and WRAP hope that a series of documents will be produced in a similar vein, including ones for slag, fly ash/PFA and Incinerator Bottom Ash. The document repeats the Environment Agency definition as when a material is a waste. It does go farther in suggesting that by following the protocol a material 'probably' is not a waste – but it still leaves the final decision up to the courts! This we feel is not tenable for most contractors and will mean they will move away from recycled aggregates and materials like PFA.

While we support the general principle for this initiative for materials that are clearly wastes, e.g. PFA when recovered from old landfills, the UKQAA has had such a document, albeit by a different name, on our web site for over 2 years called "Environmental Code of Practise for the Sale and Use of Pulverised

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Fuel Ash". This document was produced many years ago at the behest of the Environment Agency as a method of ensuring such 'waste' materials were used in a sensible manner. However, it has proven impossible to get anyone from the Environment Agency to review and comment on this document during the intervening years. There is little difference between the contents of the WRAP and UKQAA documents in general terms. We find it rather disappointing that our original document was ignored for so long and yet this approach is now apparently the preferred way forward.

Lobbying

We received a letter from Sir John Harman in response to our reply of 9 October 2003. This letter restates the EA view on the definition of waste, confirms the EA view that a Waste Management License is required for the Bosty Lane contract in Walsall and states that the exemptions under the 1994 regulations are being reviewed. In addition, it does state that DOE Circular 11/94 has NOT been withdrawn. As the 1994 regulations and Circular 11/94 give permissions for exemptions for 'beneficial use' this does not seem to quite coincide with their decision over Bosty Lane. However, the exemptions to the regulations do not explicitly state 'grouting', but have a generalised 'beneficial use clause'. It is intended to reply to this letter, but we are awaiting the response to the JEP letter as discussed above in the meantime.

It is our understanding the EU does intend to sort the problems of definitions of waste out this year. While it has been generally accepted that changing the Waste Framework Directive at this stage would be counter productive, there needs some considerable clarity on the definition of waste, recovery, recycling and by-product. Currently the Irish Government has the EU Presidency and intends to make this matter one of their priorities with results being forthcoming by July 2004. Perhaps the Martin Cullen's Speech at EEB Conference on "How to Increase Sustainable Investment: the need for Integrated Policies Ministers speech on 2 February 2004 shows the intent:

Through our preparations in the Environment Council, the Irish Presidency is keen to give greater momentum to the environmental dimension of the Lisbon Strategy. We should be both positive and tactical about the advantages of European growth that is achieved with the maximum of eco-efficiency. That is why we are placing a strong emphasis on the contribution of environmental technologies, and the need to remove potential barriers to their fuller take-up.

Bosty Lane, Walsall

The contract where the EA decided to announce their change of view was the Bosty Lane contract. This mine is now being filled using natural sand grout. Because sand doesn't make as good a grout, the contractors have been forced to increase the cement contents of the grout mixes, coupled with the higher density of natural aggregates, has led to an increase of 40% in traffic movement around the area, e.g. cement tankers and sand trucks. As natural aggregate and extra cement cost considerably more, the contract value has increased by £500,000. Yet, it is important to remember that at no time has there been a suggestion that PFA is not the ideal material for filling this mine, neither are there any suggestions there is a deleterious environment impact of using PFA on this site!

Conclusions

It is clear there are moves in the pipeline designed to at least reduce the burden for by-product materials being classified as 'wastes'. However, it has already cost the environment ~50,000 tonnes of natural aggregates and the tax payer ~£500,000 for one single contract!



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The initiatives within the EU at least give one hope the light may be turned back on in the tunnel.

Should you wish to discuss any aspects of the above, have any information that may assist, please contact the undersigned.

A handwritten signature in black ink, appearing to read 'Lindon K. A. Sear'.

Lindon K. A. Sear, BSc, PhD, FICT Technical Officerⁱ

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ⁱ Note: While every effort has been made in this newsletter to ensure the statements made and the opinions expressed are a safe and accurate guide to the situation, no liability or responsibility can be accepted in this respect by the author and publishers, e.g. the United Kingdom Quality Ash Association.