



NICOLE
A Network for Industrially Contaminated Land in Europe

NICOLE Position May 2007

Comments on the Proposal for a Directive of the European Parliament and of the Council on Waste

Introduction

NICOLE (Network for Industrially Contaminated Land in Europe) is a leading forum on contaminated land management in Europe, promoting co-operation between industry, service providers and academia on the development and application of sustainable technologies.

NICOLE welcomes the principles contained in the Thematic Strategy on Waste Prevention and Recycling and the goal of making Europe a recycling society.

NICOLE's interest in waste is in relation to contaminated and uncontaminated soils, soil treatment, and materials generated by brownfield regeneration. NICOLE has identified that certain interpretations of the current Waste Framework Directive are undermining fundamental established principles of 'suitability for use' and 'risk based land management' in use in Europe. These principles are supported by the proposed Soil Framework Directive. NICOLE is keen to support productive revisions to the Waste Framework Directive to support these principles and enable a consistent approach to soil management in Europe. Under current interpretations, opportunities are being lost to reuse treated and untreated soils, restrictions are being placed on treatment and regeneration processes, and this is placing a greater burden on landfill and the use of primary, quarried, replacement.

The NICOLE Waste Working Group has compiled this Position Paper. NICOLE would be happy to work with European Institutions in respect of drafting guidance that helps to link contaminated land and waste policy in a way that positively encourages sustainable development, or in any other related productive capacity.

Disclaimer:

This document doesn't necessarily reflect the opinion of all individual NICOLE members or member organisations



Article	Area	Position	Reason
2	Exclusions	NI COLE supports the exclusion of <i>unexcavated contaminated soil</i> and the exclusion of <i>waste_waters</i> from the revised Waste Framework Directive.	These exclusions would resolve the issue of unexcavated contaminated soil and in-situ groundwater being waste, as raised by the European Court of Justice Van De Walle ruling.
		NI COLE supports the exclusion of <i>uncontaminated excavated materials which can be used in their natural state whether on the same site or another site.</i>	Not-with-standing the technical difficulties of defining 'uncontaminated' and 'natural state', NI COLE supports this exclusion as it will support and facilitate the sustainable reuse of useful materials.
3A	By-Products	NI COLE supports the Council of the European Union's wording on by-products ^(Ref 2) namely that a substance or object is a by-product and not a waste provided that: <ul style="list-style-type: none"> (a) <i>further use of the substance or object is certain;</i> (b) <i>the substance or object can be used directly without any further processing other than normal industrial practice</i> (c) <i>further use of the substance or object is an integral part of a production process whether in the same continuing production or in the wider economy; and</i> (d) <i>further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific application</i> For contaminated soils the requirements in (d) should be based on risk assessment and suitable for use principles.	Brownfield regeneration and contaminated land management processes may produce materials that are safe and suitable for use without processing; that the producer intends to reuse and never intends to discard; and that may have economic value. Such materials are better defined as by-products rather than as wastes, as the by-product definition would facilitate their efficient and sustainable reuse, and would avoid substitution for non-renewable natural virgin materials in the economy.
5	Recovery	NI COLE supports the European Parliament's wording on recovery ^(Ref 1) , namely that: <p><i>Member States shall take the necessary measures, consistent with the provisions stated in Article 1, to ensure that <u>where practicable</u> all waste undergoes recovery operations.</i></p>	Other texts do not include the 'where practicable' test. There may be a technical solution that is possible, but is neither cost effective nor results in environmental benefit (e.g. life cycle analysis may show greater environmental impact from recovery than from disposal). This could result in disproportionate costs and in some circumstances increased environmental impacts.
6	Disposal	NI COLE supports the European Parliament's wording on disposal ^(Ref 1) , namely that:	Other texts state that where recovery is <u>not possible</u> , all waste must undergo disposal operations. This highlights the same concern in Article 5 above, namely that recovery may be possible



Article	Area	Position	Reason
		<p><i>Member States shall ensure that where prevention, reuse, recycling or other recovery does not take place, all waste undergoes safe disposal operations which meet the objectives set out in Article 7.</i></p>	<p>but is not always desirable from a cost benefit or an environmental perspective.</p>
7	Protection	<p>NICOLE supports the European Parliament's wording on protection^(Ref 1), namely that:</p> <p><i>Member States shall take measures to ensure that waste management from collection until recovery or disposal is carried out by means of processes or methods ensuring a high level of protection for:</i></p> <ul style="list-style-type: none"> <i>(a) human health</i> <i>(b) the environment</i> <i>(c) water, soil, air and plants</i> <p><i>and without causing a nuisance through noise or odours or adversely affecting the countryside or places of special interest.</i></p> <p>although would not support (c) which is an incomplete repetition of (b)</p>	<p>Other texts use language such as '<i>without endangering human health</i>', '<i>without using processes or methods which could harm the environment</i>' and '<i>without risk to water, air, soil....</i>'.</p> <p>Without risk means zero risk, which is a technical impossibility.</p>
11 (or 3c)	End of Waste	<p>NICOLE supports the Council of the European Union's wording on end of waste status^(Ref 2), namely that waste shall cease to be waste when it has undergone a recovery operation and meets the following criteria:</p> <ul style="list-style-type: none"> <i>(a) the substance or object is commonly used for specific purposes</i> <i>(b) a market or demand exists for such a substance or object</i> <i>(c) the substance or object fulfils the technical requirements for the specific purpose and meets the existing legislation</i> 	<p>There needs to be a clear, workable, consistent and reproducible method for determining when waste soils cease to be waste in order to enable the reuse of treated and untreated soils, and to prevent undermining of well-established risk based land management principles.</p> <p>There is a need to avoid situations where it would be legal to leave certain soils in situ but illegal to place soils of the same quality standard next to them.</p>



Article	Area	Position	Reason
		<p><i>and standards applicable to products; and</i></p> <p><i>(d) the use of the substance or object will not lead to overall adverse environmental or human health impacts according to Article 7</i></p> <p><i>The criteria shall include limit values for pollutants where necessary.</i></p> <p>Regarding limit values for pollutants in soil:</p> <ul style="list-style-type: none">• Environmental and quality criteria should be risk based and location specific in accordance with current good practice• NI COLE would not have objections to the development of a parallel set of generic end-of-waste criteria for soils. There could be positive advantages in relation to, for example, marketing materials from soil treatment centres.	<p>There is a need to avoid undermining ex-situ remediation processes and hence:</p> <ul style="list-style-type: none">• over-encouragement of in-situ remediation processes beyond sensible technical boundaries (resulting in greater environmental risks); or• increase off site disposal <p>which may occur in order to avoid definition of waste problems.</p>

Ref 1: European Parliament legislative resolution on a proposal for a directive of the European Parliament and of the Council on waste (dated 13 Feb 2007)

Ref 2: Council of the European Union, Proposal for a directive of the European Parliament and of the Council on waste (dated 13 March 2007)

Reactions on this paper can be sent to: Ian Heasman, leader of the NI COLE Waste Working Group (ian.heasman@uk.taylorwoodrow.com)

NICOLE Secretariat
PO Box 342
7300 AH Apeldoorn
the Netherlands
Email: marjan.euser@tno.nl
www.nicole.org