

# European soil policy: fact or fiction?



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# Introduction

- Flanders in Belgium
  - 13.500 km<sup>2</sup>; 6.1 mo inhabitants
  - 450 inh/km<sup>2</sup>
- OVAM
  - Global principles
  - Tasks
- Soil Policies throughout Europe
  - most “old” MS have some policy
  - most “new” MS have none, but feel need

# Definitions

- Just solid part of Earth, or also groundwater?
- Flanders: Soil = the solid part of Earth, including groundwater, substances, organisms,...

# Identification of contamination

- Register of polluted soils
  - ➔ Land Information Register
- Who investigates when?
  - Operator ~ operation, permit
  - Owner/user ~ transfer, building permit
  - Government
- Flanders: investigation duty risk-activities
  - transfer
  - stop
  - periodically
- Quality assurance?

# Soil remediation

- Remediation necessary?
  - Difference new vs historical?
  - (multi-)functional soil standards or risk-based?
  - Often trigger for prevention
- Who remediates?
  - Polluter pays ~ liability
  - Beneficiary land use/ownership
  - Government
- When remediation
  - Government order
  - “Market trigger”: building, redevelopment, transfer

# Soil remediation (Flanders)

- Difference new-historical contamination
- Function-specific soil remediation standards
- Separation remediation duty - liability

# Clean-up goals

- Multifunctionality?
- Function based standards?
- Risk based remediation goal?

## Flanders

- Multifunctionality if possible
- BATNEEC:if multifunctionality not feasible:  
risk reduction/management

**environment - economy**

# Flanders: Transfer: Why?

- Transfers without “land status report”
- Liability on “guardian of land” for third party damage
- ✎ Optimal protection of new owner
  - “fraudulous” transfer by contaminator
- ✎ Protection of government
  - People are “willing” to spend money on soil information/remediation

# Transfer of land

- Transfer of any land : soil certificate
- Transfer of land with present or past ‘risk-activity’
  - preliminary investigation
  - descriptive examination
  - soil remediation plan
  - financial guarantee
- Prior to transfer, if not: risk annihilation  
controll: notary!!

# Flanders: Site-specific approach

- No legislation is applicable to complex problems, unless it's "open"
- Creation of a site
- Governemental decree on entire site: site-specific solution
- Wildcard for complex problems!

# EU soil framework directive

# Why soil strategy/directive

- Soil: non-renewable natural resource
  - Soil: crucial human activities/ecosystems
  - Costs degradation very high; borne by society
  - Soils increasingly degrading/irreversibly lost
- ⇒ Community *acquis* not sufficient

# Why soil framework directive

- EC rulings on “contaminated soil”
  - Texaco - Van de Walle
  - Thames Water
- Soil contamination = waste?
- “Framework”:
  - holistic approach
  - take account of variety of European soils, climate, cultures, ...

# Objectives soil directive

- Establish framework soil protection against:
  - erosion
  - organic matter decline
  - compaction
  - salinisation
  - landslides
- Limit/mitigate effects sealing
- Establish framework soil remediation

# Instruments soil directive

- “classical threats”:
  - MS must define risk areas
  - MS must work out management plans
- sealing: MS must take measures to prevent sealing or mitigate effects on soil quality
- contamination:
  - MS must set up inventory
  - MS must work out remediation strategy
    - remediation targets, prioritisation, timetable, funds
  - soil status report at transfer
  - set up mechanism to fund “orphan sites”

# Contaminated site: def

- contaminated site:
  - site with confirmed presence (caused by man) of dangerous substances of such a level that Member States consider they pose a significant risk to human health or the environment. Risk is evaluated taking into account current and approved future use of the land.
- Remediation: actions on soil: contaminant removal, control, containment, reduction
  - goal: no risk health/environment ~current and future use

# Soil framework directive: status

- parliament approved version with amendments
- blocking minority in council
- French presidency engaged to go on

# Pro's of directive

- Soil protection is OK
- Sealing: hint brownfield redevelopment
- Focus awareness rising is great
- Information on soil on “key-moments” is great
- Platform information exchange MS
- Funding “orphan sites” ~ state aid regulation!
- EU-wide remediation duty: more level playing field
  - ~new member states will also have duties

# Con's of directive

- Very prescriptive on identification process
- Demand for “trigger levels” ~ concentrations
- No incentives link remediation ~ market instruments

**But is soil directive only relevant legislative framework??**

# Water Framework Directive

- Groundwater is also water
- Map “Water bodies”
- Prevent & limit: prevent water contamination
- Quality mapping: good/poor
- Set up groundwater quality standards
- Poor quality must become good < 2015
  
- Who can always tell where soils stops and groundwater begins?

# Waste Framework Directive

- Waste may pollute soil: good waste management also protects soil quality
- European Court: Van de Walle/Texaco case
  - soil contamination = waste
  - contaminated soil = waste
- European Court: Thames Water Utilities
  - waste water from leaking sewage system = waste
- Regulations on using compost, sludge on soil
- Landfill Directive

# Directive Liability Environmental Damage

- Dealing habitat damage, water damage, land damage
- Land damage ~ risks human health, number of “high risk activities”
- Duty to prevent
- Duty to notify and mitigate effects of calamity
- Duty to restore

# Conclusions

- Many variations in systems in Europe
- Many similarities
- Often shifts in policy after “learning phase”
  - government order → market triggers
  - “pure” remediation → “contaminated land management”
  - strict soil criteria → risk based approach
  - leave room for flexibility
- Sharing information soil quality is very important !
- Quality assurance is very important!
- Even though systems vary, objectives are similar
- So, let’s learn from one another!

