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INERT WASTE MANAGEMENT : A VARIABLE GEOMETRY CONCEPT

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I. INERT WASTE: A NON OPERATIONAL DEFINITION

A. A GENERIC DEFINITION

- Definition of **inert waste** by **Directive 1999/31/EC on the landfill of waste**:
 - Does not undergo any significant physical, chemical or biological transformations,
 - Does not dissolve, burn or otherwise physically or chemically react,
 - Is not biodegradable,
 - Does not adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health ;
 - The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not endanger the quality of surface water and/or groundwater.

I. INERT WASTE: A NON OPERATIONAL DEFINITION

- **Inert waste is defined by its intrinsic nature** (ex. : does not undergo any significant physical, chemical or biological transformations) **as well as its use, and its context, whether physical, chemical or biological** (ex. : “*does not adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm to human health*”)
 - Difficult to assess in practice, when the physical context in which the waste will be placed is not yet known

I. INERT WASTE: A NON OPERATIONAL DEFINITION

UNDER FRENCH LAW

- Sole legal definition of inert waste in France: Article 266 sexies, III, Customs Code (TGAP)
- **No freestanding definition of inert waste in the Environmental Code**
 - Article R. 541-65 Environmental Code references the definition set forth in the aforementioned Directive 1999/31
 - Draft Order (to be published in Spring 2011)
 - Would introduce a freestanding definition of inert waste in Article R. 541-8 Environmental Code
 - Two differences with Directive:
 - ✓ Concept of "*environmental damage*" would replace concept of "*environmental pollution*"
 - ✓ No reference to water quality

I. INERT WASTE: A NON OPERATIONAL DEFINITION

WHAT ROLE DOES INERT WASTE TAKE IN THE CLASSIFICATION OF WASTE?

- French law provides the following categorical distinctions :
 - ✓ Three categories of waste according to admission into a storage facility (hazardous, non-hazardous, inert)
 - ✓ Two categories of waste in the List of Waste (hazardous, non-hazardous) (Art. R. 541-8 Environmental Code, annex II)
- This categorical discrepancy raises the question as to what types of waste exist :
 - Are there three exclusive categories of waste (hazardous, non-hazardous and inert), or rather two categories (hazardous, non-hazardous) both of which may also be included in the definition of inert waste ?

I. INERT WASTE: A NON OPERATIONAL DEFINITION

The case of asbestos-cement waste

- **Asbestos-cement waste is stored in an inert waste storage facility, even though it is otherwise classified as hazardous (code 17 06 05*)**
 - Ministerial Order dated Oct. 28, 2010
 - Circulaire dated Feb. 22, 2005 re asbestos-cement waste
- This discrepancy is the subject of an **action for failure** to fulfill an obligation that the European Commission brought against France before the Court of Justice of the European Union on October 29, 2010

I. INERT WASTE: A NON OPERATIONAL DEFINITION

B. SECTORAL PRECISIONS?

1. Criteria for admission into a storage facility

- Until 2010, inert waste storage facilities were submitted to an authorization system which differed depending on the source of waste (waste coming or not from regulated facilities)
- As of today, inert waste storage facilities are excluded from the nomenclature of regulated facilities:
 - ✓ Administrative authorization under Article L. 541-30-1 Environmental Code
 - ✓ Conditions for inert waste admission into a storage facility set forth in a single ministerial order dated October 28, 2010
 - ✓ Admission values can vary depending on certain parameters, upon adequate justification and pursuant to a prefectural order (*arrêté préfectoral*)

I. INERT WASTE: A NON OPERATIONAL DEFINITION

- Even though the storage legal scheme is now unified, inert waste still raises various difficulties :
 - The limits set by the order dated October 28, 2010 are admission limits and not definition criteria
 - However, in practice, despite the lack of a definition, admission limits are used to define inert waste

I. INERT WASTE: A NON OPERATIONAL DEFINITION

2. Inert waste from extractive industries

- Directive 2006/21/EC dated March 15, 2006 on the management of waste from extractive industries
- Decision dated April 30, 2009 from the European Commission completing the definition of inert waste : transposed in France by Ministerial Order dated April 19, 2010 on the management of waste from extractive industries
- More precise criteria (*see Appendix*)
- National lists of waste that satisfy the criteria of inert waste without specific testing (such lists are currently being developed in France)

II. INERTNESS: A CRITERION FOR MANAGEMENT ?

A. INERTNESS IN THE MANAGEMENT OF EXCAVATED SOIL

Circulaire dated December 24, 2010 on nomenclature of regulated facilities operating waste treatment activities

- **Inertness is not a criterion upon which the management of excavated soil is based:** the *circulaire* only addresses “polluted” soil, without actually defining such soil
 - Comparison with admission limits into an inert waste storage facility? With background concentration?
- The criteria for the management of excavated soil are based on the **notion of "site"** which depends on whether a regulated facility is being operated on the relevant soil surface:
 - ✓ Regulated facility: site = land *"placed under the responsibility of the operator"*
 - ✓ Non regulated facility: site = land in the perimeter of a permit delivered under land planning regulations

II. INERTNESS: A CRITERION FOR MANAGEMENT ?

1. On-site reuse of soil

On-site reused soil is not considered to be waste

- The **confinement** of polluted soil on the site (consisting of contiguous parts of the same project) shall not be classified as a waste storage operation
 - Management plan (*plan de gestion*), including a risk assessment depending on land use

- The on-site **treatment** of polluted soil is not classified under the nomenclature of regulated facilities
 - Activity regulated *via* Prefectoral Order

II. INERTNESS: A CRITERION FOR MANAGEMENT ?

2. Off-site reuse of soil

- Regardless of the nature of the soil (inert or not), the administrative *circulaire* dated December 24, 2010 specifies that **"as soon as soil is evacuated off the excavated site, such soil shall be considered as waste"** ; "its recovery or its disposal must be classified under waste regulations"
- **If the inert waste is "used for development, landfill or rehabilitation works or for construction purposes", Article L. 541-30-1 of the French Environmental Code (which requires an administrative authorization for inert waste storage facilities) does not apply.**
- However, the procedures for soil reuse require further clarification. Such issues are currently being addressed in a working group led by the Ministry of Ecology:
 - What thresholds? (background concentrations? Generic thresholds?)
 - What framework? Guidelines? (ex: Guidelines on the reuse of alternative materials in road engineering)

II. INERTNESS: A CRITERION FOR MANAGEMENT ?

B. INERTNESS IN EXTRACTIVE INDUSTRIES

1. The storage of inert waste and unpolluted soil in the context of mine or quarry operation

- What is a "unpolluted soil"? : soil that is removed from the upper layer of the ground during extractive activities and whose characteristics are "consistent with local natural background" (Ministerial Order dated April 19, 2010 on the management of waste from extractive industries)
- Internal storage facilities framework:
 - Mines : authorization under Mining Code (statute of limitation set by the Decree 2010-1394 dated November 12, 2010)
 - Quarries: authorization under rubric 2510 of the nomenclature for regulated facilities (quarrying) (statute of limitation set by the Order dated September 22, 1994)

II. INERTNESS: A CRITERION FOR MANAGEMENT ?

- Management plan (*plan de gestion*)
 - Mines: Decree 2010-1394 dated November 12, 2010, art. 5
 - Quarries: Ministerial Order dated September 22, 1994, art. 16 bis

- Financial guarantees to pay for any harm caused by a major accident following misconduct or improper operation (ex : collapse of a slag heap or rupture of a dike)
 - Art. L. 162-2 Mining Code and Decree dated November 12, 2010;
 - Article R. 516-2 Environmental Code

II. INERTNESS: A CRITERION FOR MANAGEMENT ?

2. The specific issue of backfill

How to fill in a quarry or a mine with materials removed during extractive activities?

- **1st case: backfill using inert waste or non-polluted soil**
 - **This backfill is not considered to be a waste storage operation (regardless of whether the material comes from operating the actual quarry or mine) (Ministerial Order dated September 22, 1994 on quarries, Article 1st ; Decree dated November 12, 2010 on mines, Article 1st)**

II. INERTNESS: A CRITERION FOR MANAGEMENT ?

- **2^d case: backfill using non-inert waste**
 - **With off-site materials: such backfill is prohibited** (confirmation of an existing rule) ;
 - **With waste resulting from extractive activities : such backfill is now qualified as waste storage**
 - Ministerial order dated April 19, 2010 on the storage of extracted waste classified under rubric 2720 (storage of hazardous waste and non-inert non-hazardous waste) expressly addresses "excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes"
 - French Law more severe than Directive 2006/21/EC dated March 15, 2006 on the management of waste from extractive industries, which allows backfill using any waste resulting from the extractive activities and does not regard such operation as waste storage
- Backfill using non inert waste, even resulting from the extractive activities, would be submitted to severe regulatory conditions (including financial guarantees)

CONCLUSION

- **The definition of inert waste is difficult to apply in practice**
 - A definition partly based on the specific use of waste
 - Admission limits used as definition criteria
 - Precisions under way for extractive waste
- **Multiplication of new but not always consistent concepts**
 - "Traditional" inert waste v. "extractive" inert waste
 - Inert waste v. dangerous and non dangerous waste
 - Polluted soil (in the context of polluted sites management) v. unpolluted soil (in the context of extractive industry)
- **Main impacts on operators**
 - Soil reuse
 - Backfill with extractive waste

THANK YOU FOR YOUR ATTENTION

APPENDIX

Commission Decision of 30 April 2009 completing the definition of inert waste
in implementation of Directive 2006/21/EC on the management of waste from extractive industries
(transposed by Ministerial Order dated April 19, 2010 on the management of waste from extractive
industries)

"Waste shall be considered as being inert waste, within the meaning of Article 3(3) of Directive 2006/21/EC, where all of the following criteria, are fulfilled in both the short and the long term:

(a) the waste will not undergo any significant disintegration or dissolution or other significant change likely to cause any adverse environmental effect or harm human health;

(b) the waste has a maximum content of sulphide sulphur of 0,1 %, or the waste has a maximum content of sulphide sulphur of 1 % and the neutralising potential ratio, defined as the ratio between the neutralising potential and the acid potential, and determined on the basis of a static test prEN 15875 is greater than 3;

(c) the waste presents no risk of self-combustion and will not burn;

(d) the content of substances potentially harmful to the environment or human health in the waste, and in particular As, Cd, Co, Cr, Cu, Hg, Mo, Ni, Pb, V and Zn, including in any fine particles alone of the waste, is sufficiently low to be of insignificant human and ecological risk, in both the short and the long term. In order to be considered as sufficiently low to be of insignificant human and ecological risk, the content of these substances shall not exceed national threshold values for sites identified as not contaminated or relevant national natural background levels;

(e) the waste is substantially free of products used in extraction or processing that could harm the environment or human health." (Article 1st)