

INTERSOL 2017 14 March 2017

Contaminated Sediments and Excavated Material Liabilities in the UK and France: A Comparative Approach

Marie-Leonie Vergnerie – Partner & Joanne Holbrook – Senior Associate



Main Provisions – Disposal on Land

- **EUROPEAN -**
- *Revised Waste Framework Directive (2008/98/EC)*
- *Water Framework Directive (2000/60/EC)*
- **UK -**
- *Environmental Protection Act 1990 (Part II A - Contaminated Land Regime) and DEFRA 2012 Circular*
- *Environmental Protection Act 1990 (S33/34 - Waste Management Regime)*
- *Environmental Permitting (England and Wales) Regulations 2007*
- *Planning Process*
- **FRANCE:**
- *Code de l'environnement (Livre II et Livre V)*
- *Arrêté du 30 Mai 2008 / Circulaire du 4 Juillet 2008*

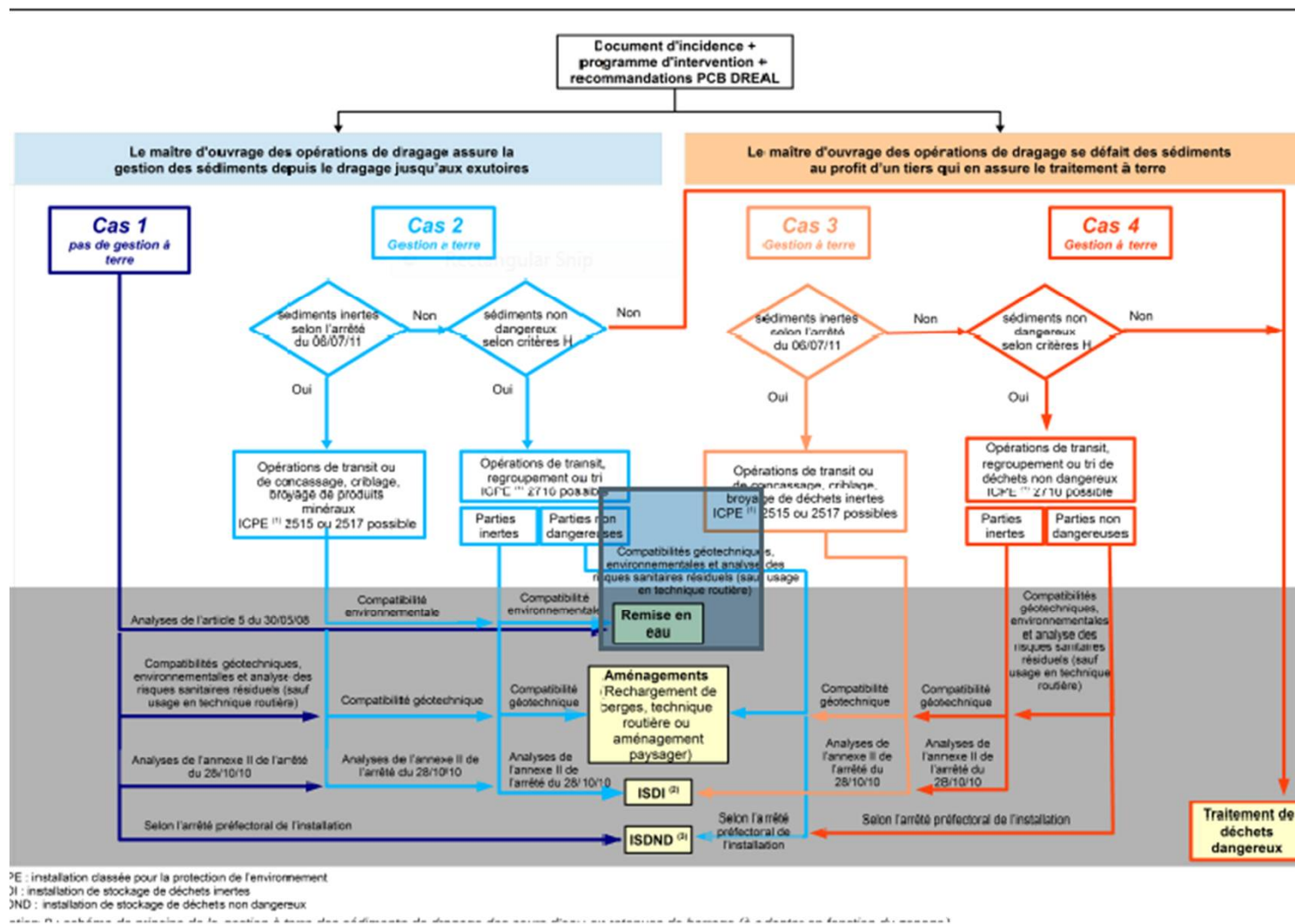
UK: Framework

- Contaminated Dredged Marine Sediments: Developing a management framework (ME1104) DEFRA
- Legal Barriers:
 - (1) Uncertainty regarding interpretation of European Directives
 - (2) Uncertainty relating to criteria and policies to be applied for the re-use, recycling and recovery of contaminated sediment on land within the Waste Management Regime and Waste hierarchy

Uncertainty: Waste Hierarchy

- Prevention - Preparing for re-use – Recycling - Other Recovery
- THEN Disposal
- UK Permitting Exemptions (Inland) – USE / TREATMENT/DISPOSAL/STORAGE
- e.g. Construction, spreading on agricultural land, screening & blending, bank deposits
- France: Cerema Guidance re-use under roadworks

CEREMA – Dter CE



Uncertainty: Waste Classification

- European Waste Catalogue / List of Wastes
 - Hazardous / non-hazardous
 - Mirror entries (inc M17 05 05)
- UK Environment Agency's Technical Guidance WM3: Waste Classification – Guidance on the classification and assessment of waste
- “Waste-holder” duty to determine classification
- France: H14 Guidance

Uncertainty: Interpretation

- BREXIT
- Environmental Audit Committee Report 4 January 2017
- House of Lords Energy & Environment Committee Paper 14 February 2017
- “Zombie” Legislation Risk
- Transposition of CJEU Decisions.
- Industry Response (e.g. CIRIA Guidance RP1037 (to replace R157))

Conclusion

- How Effective?
- Liability : Producer – Recipient/User – Contractors – Regulators
- Multiple Regimes with multiple liability risks.
- Pragmatism v legal certainty?
- Solution = Industry Challenge and local project initiatives?

INTERSOL 2017 14 March 2017

Contaminated Sediments and Excavated Material Liabilities in the UK and France: A Comparative Approach



Marie-Léonie Vergnerie

Partner | Associée

T: +33 (0)170 378 131

marie-leonie.vergnerie@fieldfisher.com



Joanne Holbrook

Senior Associate

T: +44 (0)161 835 8058

joanne.holbrook@fieldfisher.com