

What is waste? The legal definition of waste and why it matters

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What is waste?

- Why does the legal definition of waste matter?
 - in many jurisdictions (e.g. NSW, Victoria and European Community)
 - waste** □ **trigger for waste regulation**
 - prohibitions on unlawful disposal, requirements for licensing, and controls on transport
 - consider two recent NSW examples
 - Environment Protection Authority v Hardt* (unreported, NSW Land & Environment Court, Preston CJ, 19 July 2006)
 - Environment Protection Authority v Australian Waste Recyclers 1 Pty Ltd* (unreported, NSW Land & Environment Court, Cowdroy J, 22 December 2005)

What is waste?

- Definitions of 'waste'
 - generally start with the notion of 'discarding' or 'disposing'
 - *'any material, solid, liquid or gas, that is unwanted and/ or unvalued, and discarded or discharged by its owner'* (NZ Waste Strategy)
 - *'any substance (whether solid, liquid or gas) which is discharged, emitted or deposited' and any discarded, rejected, unwanted, surplus or abandoned substance'* (NSW Protection of the Environment Operations Act 1997; Vic Environment Protection Act 1970)
- but, the definitions do not stop there...

What is waste?

- Definitions of waste extends to...
 - reuse, recovery and recycling
 - *'this definition recognises that what one person or organisation regards as waste can be a useful resource when used again for a beneficial purpose'* (NZ Waste Strategy)
 - *'any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale, recycling, processing, recovery or purification by a separate operation by that which produced the substance'* (NSW POEO Act) and
 - has recently been extended further... *Protection of the Environment Operations (Amendment) Act 2005*

What is waste?

- EC Waste Framework Directive (EU directives 75/442 and 95/156)
 - ‘any substance or object... which the holder discards or intends or is required to discard’ (Article 1, Annex 1)
 - Member States are required to ensure that waste is recovered or disposed of without threat to human health and the environment (Article 4, Annex II)
- tension between the ordinary meaning of discard and the intention of the Directive to impose a regulatory framework on both disposal and recovery procedures (apparent in decisions of the Courts)

Some questions

- How far then should the definition of waste extend?
- How far down the waste processing and recovery process?
- When does waste cease to be '*unwanted, unvalued, discarded or discharged*' and become a valued resource which can be used again for a beneficial purpose?
- When is a recovery operation complete and waste ceases to be a waste?
- What should be the trigger for this change from '*waste*' to '*not waste*'?

Some examples

- diesel product and other fuel products recovered from diesel oil and lubricating oils removed from Navy establishments in Sydney and used for fuelling waste transport trucks and for sale - *Farrell v A.L.Y.P Enterprises Pty Ltd* (unreported, NSW Land & Environment Court, Bignold J, 12 July 1991)
- blast furnace slag from Port Kembla steelworks sold and used as permeable material suitable for the construction of base course and drainage blanket for engineering works such as road making, pavement and heavy filling - *Wollongong City Council v Australian Iron and Steel Pty Ltd* (unreported, NSW Land & Environment Court, Holland J, 22 September 1988)

Some examples (cont.)

- construction and demolition material which by a process of crushing, grinding and separating was made suitable as structural fill and used for particular rehabilitation works for the rehabilitation of the Huntley Colliery - *Environment Protection Authority v HTT Huntley Heritage Pty Ltd* (unreported, NSW Land & Environment Court, Pearlman J, 11 April 2003)
- recovered paper solids, waste paper sludge and other waste produce derived from the process of pulping timber product used as a soil conditioner on agricultural land in Shoalhaven NSW - *Ryan & Anor v Jarret & Anor* (unreported, NSW Land & Environment Court, Pain J, 13 April 2006)

Some examples (cont.)

- scrap metal including unsheathed copper left over from the manufacturer of copper windings, fragments of cable, ferrous material, ferrous scrap and mixed scrap collected and transported for sale on the commodity market, marble rubble and debris, pitch obtained from emissions produced by electro-static filters used in cooking ovens, to be disposed of by burning, and 'Sansa' (olive oil residues) - *Tombesi and Others* [1998] Env.L.R 59
- recycling of scrap metal by processes including sorting, separating, fragmentising, cutting, shearing, crushing, compressing and baling and scrap metal used as feedstock in a furnace without any further processing - *Mayer Parry Recycling Limited v Environment Agency* [1999] Env.L.R. 489

Some examples (cont.)

- solvent and liquids derived from waste sources reprocessed to make a fuel (Cemfuel) for use by the cement industry as an alternative fuel to coal and then burnt in a cement kiln (*Castle Cement v The Environment Agency* (unreported, High Court of Justice, Queens Bench Divisions, Burnton J, 22 March 2001))

NSW amendments

- New paragraph added to the definition of waste...
'any processed, recycled, reused or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations'
- Waste Regulation 2005 prohibits the application of 'residue waste' to land for the purpose of growing vegetation, including but not limited to land used for agricultural, horticultural, silvicultural, pastoral or environmental rehabilitation purposes

NSW amendments (cont.)

- Residue waste
 - '(a) fly ash or bottom ash from any furnace,*
 - (b) lime or gypsum residues from any industrial or manufacturing process,*
 - (c) residues from any industrial or manufacturing process that involves the processing of mineral sand,*
 - (d) substances that have been used as catalysts in any oil refining or other chemical process,*
 - (e) foundry sands and foundry filter bag residues,*
 - (f) residues from any industrial or manufacturing process that involves the refining or processing of metals or metallic products,*
 - (g) any substance that is hazardous waste, industrial waste or Group A waste.'*

NSW amendments (cont.)

- New offence of 'land pollution'
- 'land pollution' or 'pollution of land' are defined to mean *'placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous:*
 - (a) *that causes or is likely to cause degradation of land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, o*
 - (b) *that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,*

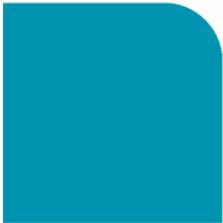
But does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations.'

Conclusions

- The definition of waste clearly includes the processes of reuse, recovery and recycling
- The solution the Australian and European Courts have been developing to define 'waste' is twofold:
 - First, the definition of waste must not be too restrictive in scope but the term 'discard' must be retained as an essential condition of classifying substances as waste
 - Second, the obligation to deal with waste safely must continue throughout the recovery operation and the recovery operation is not complete until the environmental risks in the waste is eliminated

Conclusions (cont.)

- Challenge for waste regulation is to strike the right balance in the legislative drafting to define 'waste' and its interpretation:
 - to regulate waste and its potentially harmful environmental and public health outcomes
 - without discouraging the reuse, recycling and recovery of waste which is, after all, the goal of our waste minimisation and 'zero waste' policies



Thank you

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