1 INTRODUCTION

Contaminated land is one of the least developed areas of environmental law in Spain, clearly reflecting the low interest of Spanish regulators in this area.

Indeed, the first significant step to tackle contaminated land was taken in February 1995, when the Spanish government approved the National Plan for Remediation of Contaminated Sites ("NPRCS"). The NPRCS consisted of a detailed assessment of contaminated sites throughout Spain, including more than 18,000 potentially contaminated industrial facilities.

The duration of the NPRCS is from 1995 to 2005, during which term the Spanish government intends to characterise some 1,600 sites and to clean up approximately 300. For this purpose, the Spanish government has entered into bilateral agreements with the 17 autonomous communities, each providing 50% funding for remediation of publicly owned sites¹, all in all amounting to 132 billion pesetas.

Despite the public authorities' efforts to tackle contaminated land through the NPRCS, Spain did not expressly regulate this area of Environmental law until 1998, and even then on a rather general and unenforceable basis. In 1998, the Spanish Parliament passed the Waste Act 10/1998, of 21 April² (the "Waste Act") which constitutes the basic legislation on waste at national level and provides the framework regulation for all types of waste. The Waste Act brings Spanish law in line with the requirements of the EC Directive 91/156. In broad terms the Waste Act is aimed at preventing waste production and setting

---

¹ One of the main drawbacks of the NPRCS is that public funds could not be used for the clean-up of privately owned sites. This was identified in 1999 by the Ministry of Environment, which has since then looked for alternatives to promote the clean up of private sites (Ministerio de Medio Ambiente, El Medio Ambiente en España, 1999, p. 146).

up the legal framework for waste production and management. In addition, the Waste Act intends to promote the reduction, re-use, recycling and other methods of valorisation of waste.

However, one of the main novelties of the Waste Act is the introduction of the framework regulation of contaminated land in Spain.

2 CONCEPT OF CONTAMINATED LAND

The Waste Act defines contaminated land as "any land the physical, chemical or biological characteristics of which have been adversely affected due to the presence of hazardous compounds of human origin, in concentrations that result in a risk to human health or the environment in accordance with the criteria and standards approved by the government"\(^3\).

This definition presents certain deficiencies. Firstly, the requirement of human origin of hazardous compounds, since land may be contaminated by the release of natural substances (e.g. crude mercury) in areas where they are not naturally present. It would have been preferable to refer to hazardous substances or compounds generated by human activity rather than to man-made hazardous compounds.

Secondly, the requirement that the concentration of hazardous substances must be such that it results in a risk to human health or the environment is problematic. The level of concentration creating environmental or health risks seems to be an absolute requirement. Thus, if there is not sufficient scientific evidence of such a risk, then the site at stake shall not be considered contaminated. Obviously, this constitutes a clear obstacle, since in many cases scientific knowledge is not sufficiently developed to assess whether certain substances may affect the environment and, if so, to what extent.

Thirdly, the consideration of a site as contaminated is greatly dependent on the criteria and standards set out by the Spanish government, which, at the time of writing, have not been published.

3 DECLARATION OF A CONTAMINATED PROPERTY

Each autonomous community shall issue an inventory of contaminated properties (the "Contaminated Land Inventory") on the basis of the criteria and standards approved by the Spanish government. It should be pointed out that

---

\(^3\) Waste Act, article 3 (p).