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INTERSOL 2010

**Variations allemandes du principe “Pollueur – Payeur”
Distinction stricte entre sol et déchet**

**German variations of “Polluter-Pays-principle”
Strict distinction between soil and waste**

Stefanie Beste
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German Soil Protection Law

Federal Soil Protection Act (Bundesbodenschutzgesetz = BBodSchG)

- + Statutory Order on Soil Protection
(BundesbodenschutzV)
- + Technical Bylaws

German Waste Law

Closed Substance Cycle Waste Act

(Kreislaufwirtschafts- und Abfallgesetz = KrW-/AbfG)

+ **Statutory Orders on Waste**

(mainly based on European Directives e.g. with regard to electronic equipment, batteries, packaging, waste oil etc.)

Coming soon:

Closed Substance Cycle Act

(Kreislaufwirtschaftsgesetz)

Implementation of Waste Framework Directive
2008/98/EC

Comparison Waste law – Soil protection law Definitions

Waste law	Soil Protection Act
<p><i>Movable property</i> <i>that the owner disposes of, wishes to dispose of or must dispose of (§ 3 para 2 KrW- /AbfG)</i></p>	<p><i>Upper layer of the earth's crust</i>, in so far as the layer fulfills <u>soil functions</u> including its liquid and gaseous components (excluding ground water and beds or bodies of water) <i>§ 2 para 1 BBodSchG)</i></p>

Waste or Soil?

Intersectional Cases

- Subsidiary application of Soil protection law

- Manuring of fields with biological waste
- Close-down of disposal sites or other waste disposal facilities

(§ 3 para 1 BBodSchG)

- Application of Soil protection law

- Soil contamination caused by closed disposal sites

(§ 36 KrW-/AbfG)

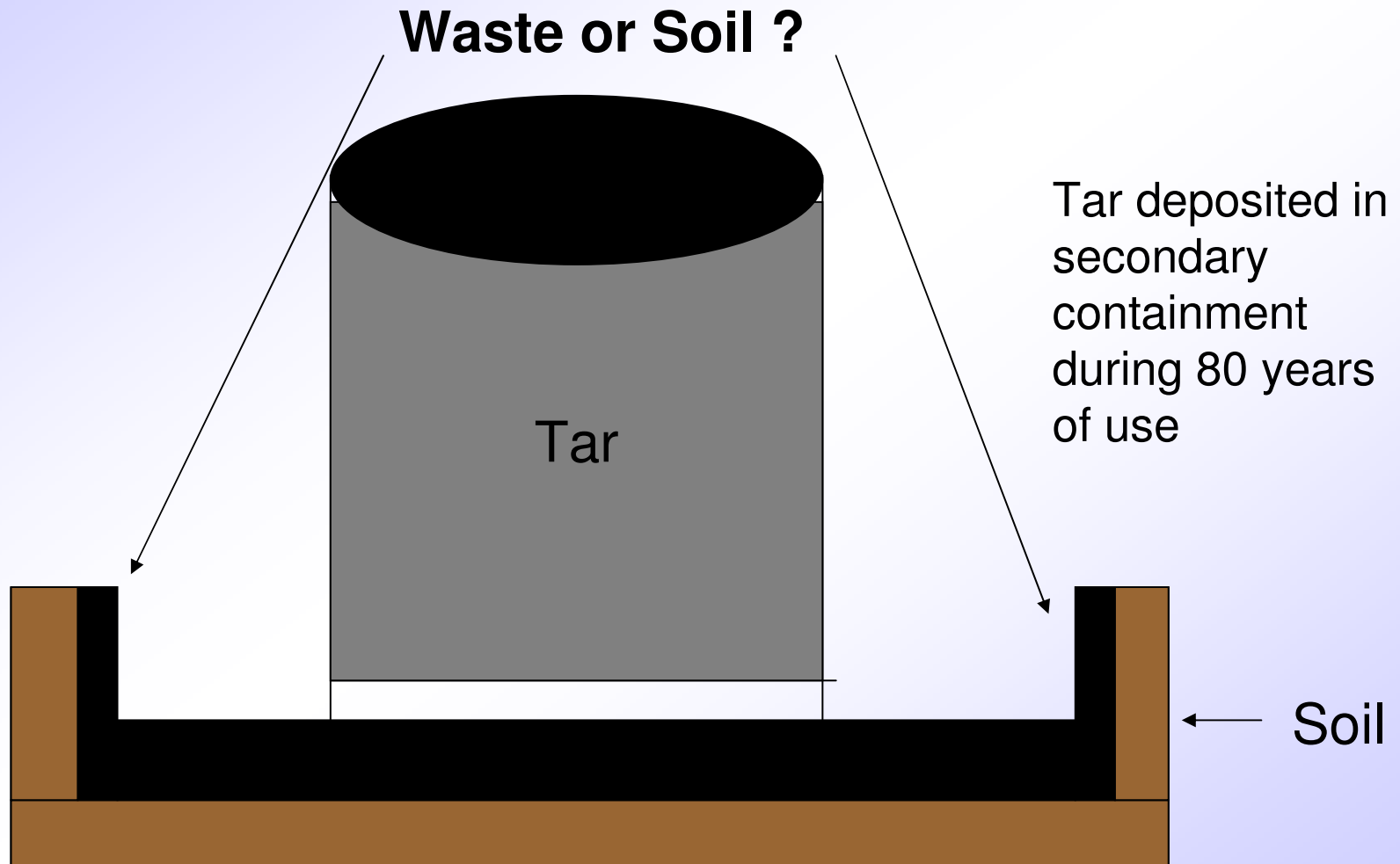
Waste or Soil?

Intersectional Cases

General Rule

Simply embedding waste in soil or covering waste with soil does not turn waste into soil.

To legally turn waste into soil it is required that the waste inserted into the soil has to be grown together with the soil.



Draft: Closed Substance Cycle Act

- Waste is no longer defined as „movable“ property
but
- New act will not apply to
 - **Land (in situ)** including unexcavated contaminated soil and buildings permanently connected with land (Art. 2 no 1 (b) Directive)
 - **Uncontaminated soil** and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purpose of construction in its natural state on the site from which it was excavated (Art. 2 no. 1 (c) Directive)

Comparison Waste law – Soil protection law Responsible parties

Waste law	Soil Protection Act
<ul style="list-style-type: none">• Producer of waste• Owner of waste• (manufacturer)• (public law parties) <p>(§§ 5 para 2, 22 para 1, 22 KrW/AbfG)</p>	<ul style="list-style-type: none">• Polluter• Legal Successor of polluter• Owner• Former owner• Party exercising physical control• Parent company <p>(More details)</p>

Hierarchy of responsible parties?

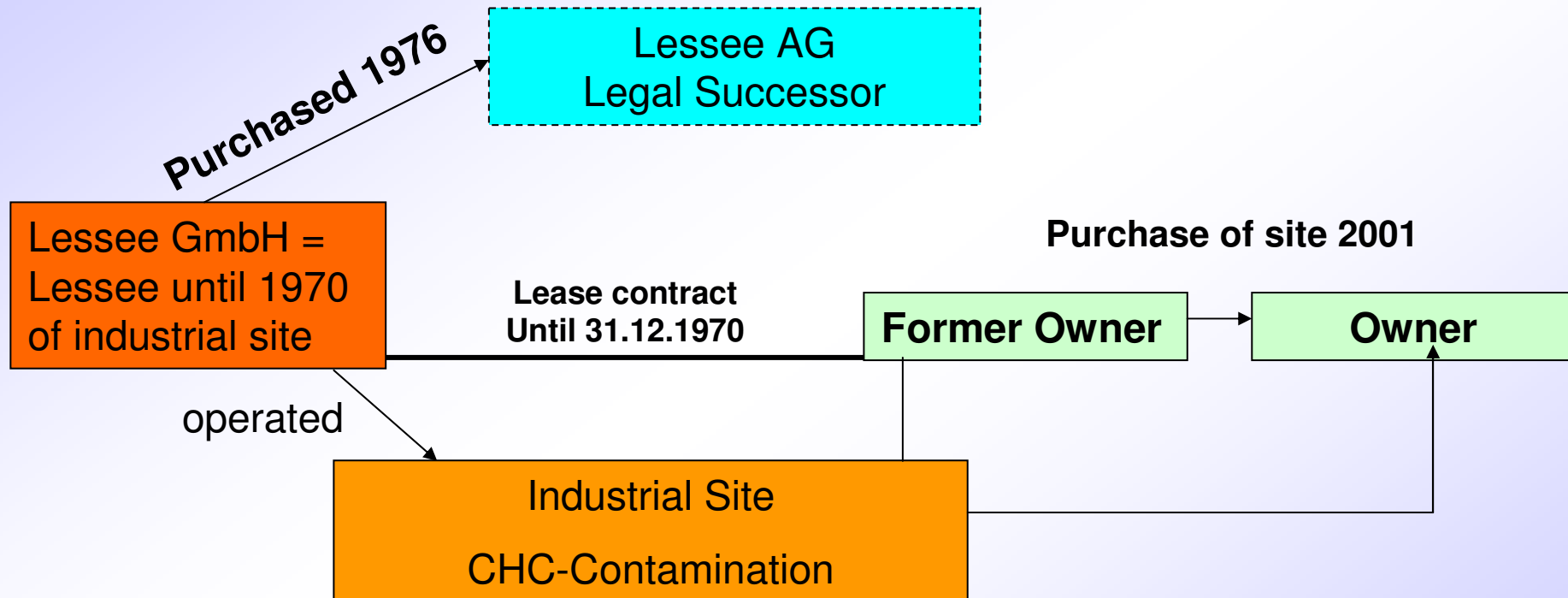
General Rule:

Principle of the efficiency of the prevention of danger

But

(European) Polluter-pays-principle gains more and more weight also due to Environmental Liability Directive

Case Study: German Soil Protection Law



Who is liable?

Comparison Waste law – Soil protection law Obligations

Waste law	Soil Protection Act
<ul style="list-style-type: none">• prevention• recycling or recovery• disposal•(labelling and documentation etc)	<ul style="list-style-type: none">• Investigation and examination• safety precautions• remediations <p>(more details)</p>

Soil Protection Act - Application in time

No statute of limitations!

In principle, the party responsible can be called to account by the competent authority for an unlimited period of time.

The liability scheme of the Soil Protection Act applies retroactively to contaminations generated a long time before the Soil Protection Act became effective if and to the extent contemporary public law provisions prohibiting soil or groundwater pollution already existed at the time the pollution occurred.

Thank you for your attention!

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