



Specialist in Land Condition Professional and Technical Panel – feedback to Defra on revisions to the Part 2A Statutory Guidance

After meeting with Defra to discuss proposals for revision of the Part 2A Statutory Guidance (SG), the SiLC Professional and Technical Panel has collated views on how the SG might be revised to make the legislation more efficient and effective.

1. The SG should be prefaced by a Statement of Policy which makes a firm and unambiguous statement that land contamination issues are best dealt with through either the planning regime or through voluntary action, and Part 2A should only be applied where a site meets the definition of contaminated land and effective action cannot be achieved by either planning or voluntary action. The statement may also be used to include commentary on elements of the subject which cannot sit in the SG;
2. The revised SG should provide greater clarity around the meaning of SPOSH and how it should be assessed. *Examples* of how this may be done include:
 - Use a lines of evidence approach to establishing that badly impacted sites represent SPOSH, and that numbers are not always needed to make this judgement. Numerical criteria are not always helpful when, for example, free product or pure chemical has been identified on a site which is readily available to sensitive receptors. However, it is important to ensure that any determination ultimately has the evidence properly documented, and where numerical approaches are appropriate alongside lines of evidence, these should be provided on a rigorous basis and the SG or Statement of Policy should reflect this.
 - Produce a protocol for deriving “upper” bound health criteria values for use in DQRA. This would get away from the use of minimal risk levels in toxicology to a methodology that described the dose-response curve in greater detail.

It is recognised that these issues have been subject of much debate over the years, but the current uncertainty around SPOSH must be resolved by facing up to the technical issues rather than skirting around them.

3. The term “unacceptable intake” continues to cause confusion as it is linked to toxicology and Health Criteria Values, and the Department of Health/HPA does not appear to subscribe to the aims of Part 2A in their interpretation of this aspect of Part 2A. Frequently, responses from HPA in relation to potential Part 2A sites press for determination citing the need to “be on the safe side” or looking for additional protection for health. This goes well beyond just avoiding an unacceptable intake. It is recommended that the SG moves away from single value HCVs and relies more on lines of evidence approach.

4. Ensure that the interface between Planning and Part 2A is clear and unambiguous – Government Departments should work closely together to ensure this, and it is not sufficient to leave such co-ordination to chance. The approach under Planning must not be weakened under the redraft of PPS 23, and in particular, the responsibilities of the developer must be spelled out unambiguously/
5. The significant pollution of controlled waters amendment should be introduced without fail, and the SG should define what is meant by significant ie is it an exceedance of an EQS or a DWS, and if so, is it any exceedance, or an order of magnitude exceedance etc. The lines of evidence approach may also help to deliver good decisions in this respect.
6. The SG should simplify the attribution of liability chapter in order to decrease lengthy and costly legal battles and stress to affected parties.
7. The Statement of Policy should place greater emphasis on skills and competence of people dealing with the regime from initial inspection through to final remediation. For example, the Specialist in Land Condition scheme provides a register of professionals who have demonstrated competence in their area of land condition, and work to a Code of Practice which includes ethical standards. Private and public sector professionals should be suitably competent to deal with Part 2A, and should be encouraged to gain appropriate qualifications.
8. The SG should reflect what industry and regulators want as well as what Defra propose, and the consultation should be seeking feedback on ideas, rather than just consulting on a completed text;
9. As we currently have a set of published Soil Guideline values, the Statement of Policy should refer to the existing guidance that it believes provides the best advice. It would be helpful to have a clear statement on this to avoid continuing misconceptions in some quarters;
10. Some aspects of the SG can be better expanded in non-statutory or technical guidance, and Defra have sometimes indicated that they would like industry to step up to the mark to provide this. Recent examples where this has happened have included the EIC and CIEH/LQM Generic Assessment Criteria work, and the EA/CL:AIRE Steering Group on the Definition of Waste Code of Practice. Defra should provide seed funding for such initiatives, for example to cover the cost of managing a project, with pro bono contributions from industry and the public sector to generate the clarity needed around some technical aspects of the subject.
11. Existing but unpublished guidance such as the EA Fact Sheet on Methodology for Estimating SPOSH should be used to help take the overall issues forward.

12. With reference to the four categories of site proposed by Defra, we would comment as follows:

- a. Level 1 high level risk sites (methane gas migrating below houses, gasworks wastes near surface in gardens etc) should be determined on lines of evidence as much as numerical criteria, and public money should not be wasted on chasing a numerical justification when the cost of dealing with the problem could be less than the cost of further investigation. Asbestos in garden soils can be dealt with by a simple soil removal and replace project, but analysing soils to get a statistically confident answer at the limit of detection proposed by some authorities is likely to extend the period of exposure and double the cost of the final works, without markedly changing the outcome.
- b. Level 2 sites are clearly where most effort is warranted, particularly on housing sites, as decisions to determine and remediate involve more than just the inconvenience of carrying out the work, but also create health issues (stress, and associated physical symptoms such as headaches, depression, lowered resistance to other diseases).
- c. Level 3 sites as defined by Defra, remain the biggest area of uncertainty. We need to decide on what is SPOSH and then we avoid huge amounts of wasted time dealing with sites which apparently present relatively low risk.
- d. Level 4 sites should be “inspected” as soon as possible, on the basis that as long as a site remains “uninspected, but due for inspection sometime years hence”, it is potentially blighted. Whilst many Authorities have made excellent progress in inspection, some who have made less progress would do well to remove large areas of land at low risk of soil contamination from their inspection process by a purely desk-based review method.