

Part 2A – Revision of Statutory Guidance

Comments from Tom Coles



Background

- DEFRA Contaminated Land Team – 35 meetings with 150 key players
- Ministerial support for change
 - Publication of Consultation due around Christmas 2010
 - Needs clearance from new better regulation committee - may cause minor delay
- No changes anticipated to the Act (apart from Water Pollution) hence basic structure will remain the same:
 - Part 2A definition
 - LAs the primary regulator
 - EA responsible for Special Sites
 - Core provisions on liability, remediation and cost recovery
- Some chapters will remain largely as they are, others will be re-written



Anticipated Changes (1)

- Simpler and shorter
- Possibly removing Radioactive contamination into a linked but separate document (confusion over different legal basis)
- Greater clarity over broad regime:
 - Aim to deal with 'risky' land (where no market solution)
 - Also consider wider socio-economic and environmental impacts
 - Reasonable intervention where benefits of intervention > costs
- Expand Section on Risk Assessment:
 - Retain current main ideas (SPLs relating to current use)
 - More on how to recognise and deal with uncertainty
 - Use of expertise
 - When (and when not to) use GAC's
 - How to deal with 'normal' contamination
 - More legal backing to 'sensible' decisions (ie on advice from suitably qualified experts)



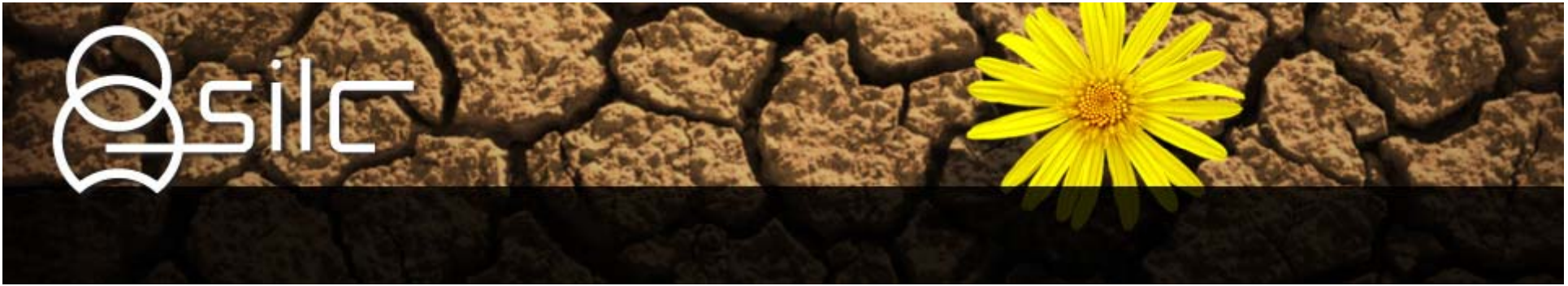
Anticipated Changes (2)

- New test for 'SPOSH'
 - Likely to be traffic light style
 - Red – definitely contaminated land
 - Amber – more consideration
 - Green – unlikely contaminated land
 - More guidance on how to deal with 'amber' sites
 - Looking at 'relevant' issues
 - Decisions in line with broad principles (i.e. sensible decision making)
 - Green Zone to give greater clarity on when land should **not** be considered contaminated land
 - Aim to give more legal certainty for developers etc
 - Help to avoid Las getting bogged down with low risk sites



Anticipated Changes (3)

- Controlled waters definition likely to be updated
 - Plan to commence with section 86 of Water Act
 - Describe 'significant pollution' in statutory guidance
- Guidance on remediation to be shortened but few substantive changes
- Guidance on liability and cost recovery to be shortened slightly but left substantially the same



Thanks to Tom Coles