

28th October 2008



Mr T Howard
Land Contamination Policy Advisor
Environment Agency
Block 1
Government Buildings
Burghill Road
Westbury on Trym
Bristol
BS10 6BF

Dear Mr Howard

Guiding Principles Consultation

Please find enclosed the SiLC PTP (Professional and Technical Panel) response to the Environment Agency consultation on Guiding Principles for Land Contamination.

The SiLC PTP has consulted with registered SiLCs (Specialist in Land Condition) and is pleased to provide feedback to the Environment Agency in respect of both our overall view on the Guiding Principles and specific individual comments on the documents.

Yours sincerely

Phil Crowcroft
SiLC Professional and Technical Panel Chairman

Consultation Response

A. General comments and suggestions

The SiLC PTP welcomes this initiative by the EA to provide guidance on how they will approach certain types of sites where they choose only to offer “generic advice”. The PTP is also very supportive of the principle of recommending that work in the field of land contamination should be undertaken by suitably qualified and competent persons. The PTP believe that SiLCs are able to offer a potentially wider area of capability and competence than just signing off Land Condition Records, and would wish to see this recognised in the Guiding Principles when they are finally published. We have suggested some words in our more detailed response below.

A number of respondents on our consultation with SiLCs have not fully appreciated the role that the Guiding Principles is intended to play as the commentary on this was contained in your covering letter, rather than the documents themselves. We suggest that a paragraph is introduced at the front of the GPs to advise on how the EA will use them as “generic advice” for sites where they will not offer site-specific advice. An example would be useful i.e. when a planning application is made for a brownfield site on a minor aquifer with no nearby surface water bodies etc, the EA will not provide site-specific advice, but expect the applicant to follow good practice as set out in GPs.

We also feel that the term “advice” is often misunderstood, and the EA should use terminology such as “for low risk situations, the EA will not review submitted information, and will refer the consultee to standard generic good practice guidance”.

Without this more focussed steer, many readers will see the GPs as just more generic advice repeating what is already provided in other documents.

The GPs refer to land contamination in the headings, but then limit themselves to controlled waters and waste issues. This is seen by many respondents as a missed opportunity to provide balanced advice with respect to all aspects of land contamination, but especially human health issues. Furthermore, the extent of coverage of waste issues is patchy and falls short of dealing with them in a comprehensive manner. We appreciate that the EA is only the regulator for Controlled Waters and Waste, but the document does not explicitly state that it is provided to the reader in relation to EA regulatory duties, rather than on a wider best practice basis. With the current title, there is no indication that this document is a means of dealing with EA lower priority duties.

With the partial coverage of waste issues, it may be worth considering the removal of waste from the document insofar as controlled waters are a receptor to be protected from land contamination, whereas waste is merely a regulatory artefact and another name for contaminated soil. It might be better to stop saying that the GPs deal with “land contamination, groundwater, surface water and waste issues” and to say that the GPs deal with potential impacts on controlled waters arising from contamination of the ground. Along the way, some contaminated ground may be classified as waste, and readers need to be aware of how to stay within the requirements of waste legislation.

A number of SiLCs suggest that rather than repeating existing guidance in short summary form, that the EA should just update Model Procedures, in the same manner as the recent update of R&D 66 Guidance on Housing on Contaminated Sites. Model Procedures has a comprehensive reference list, and this would be equally effective in

ensuring the reader is pointed to the most up to date reference. An on-line version could be kept live and up to date on a regular basis.

A challenge for the EA will be to ensure that the Guiding Principles become well-known and easy to find on their website. As Model Procedures is well-known, there is some sense in making the two inter-linked, or become the same document i.e. update the MPs as noted above, or making the GPs a further volume of MPs.

The FAQs are seen by many as a valuable way to deal with the aspects of site development which most frequently give rise to problems.

B. Specific comments

Your letter requests responses under a series of headings, and as we are not able to annotate the PDF versions circulated, we have used these headings below.

1. *Technical or factual errors or inaccuracies;*

Response: No comment

2. *Other important questions you think could usefully be answered in the FAQ document*

Response:

Yes we would like to see:

How do the guiding principles fit in with EC Environmental Liability Directive 2006?

When is there a duty to report contamination found by the site investigation phase or site observations to the EA?

Are Special Sites dealt with differently in terms of Model Procedures and protocols?

3. *Whether there are other subjects that you think should be covered*

Response – See questions above, and in addition:

The section on Options Appraisal in GPLC2 ignores the need to combine the approach to dealing with contamination to protect all receptors, and thus, it deals with choosing a solution in complete isolation from the requirements of health protection. Health protection cannot be easily separated from controlled waters protection on many sites.

4. *Whether the checklists are useful, correct and whether there are improvements you think could be made (these currently feature in our 'Environment Agency guidance on requirements for land contamination reports' document, which this package would eventually replace)*

Response-Yes the checklists are useful but they are restricted by the fact that they focus on controlled waters and waste issues and yet this 'focus' is not mentioned in GPLC3.

5. *Other key guidance you think should be referenced (the package generally references Environment Agency guidance only. We think other guidance is*

adequately referenced in other documents including the Model Procedures and R&D66 2008)

Response- EC Environmental Liability Directive

6. Comments about the structure of the package i.e. the split into GPLC 1, 2 and 3

Response- The key issue that the document bundle focuses only on controlled waters and waste issues is lost in GPLC2 and 3. GPLC1 is focussed on Problem-holders, and GPLC 2 and 3 are focussed on technical advisers. This approach makes vols 2 and 3 sit uncomfortably with volume 1. It may be worth considering making GPLC1 the main text, and GPLC 2 and 3, annexes to the main text. This gives the document unity.

The format of GPLC2 met with positive comment – the links to documents are very useful. However, nothing is numbered, so it makes referring to a table or a box or a piece of text v difficult, and this should be addressed, as well as providing page numbers.

7. Comments on the content and usability of the package, particularly how useful it might be for your sector and how it could be made more so.

Response –

GPLC1

GPLC 1 introduces the objective (section 2.0) to 'mitigate the pollution or harm that may have already occurred' but then there is no explanatory note to explain the complexity of this issue i.e. whether the current party is the responsible person, cross site boundary migration etc.

The SiLC PTP suggests that the paragraph at the bottom of the 2nd page be replaced as follows:

"It is important to ensure that projects are overseen by relevant professionals, and one such scheme for accreditation of brownfield professionals is the Specialist in Land Condition (SiLC) scheme, which has developed from being mainly linked to production of Land Condition Records to have a much wider relevance in the industry. SiLCs can also be expected to have a substantial body of relevant experience and competence, and work to an ethical code of practice."

Section 3 of GPLC1, 3rd text para should also refer the Waste Code of Practice, as this is more directly relevant than netregs.

Annex 1, suggest add in question: "Do you understand the environmental setting of the site?"

GPLC2

How should I take climate change into account?

The answer provided concentrates wholly on the effect that climate change may have on remediation, and misses the key issue of what effect remediation may have on climate change, and this balance should be redressed with text on not creating

unnecessary carbon emissions by selection of best treatment option based on carbon as well as other factors, and also promoting the idea that conservative remediation solutions are not necessarily the best solutions, and we should balance risk of pollution of CW against risk of exacerbating climate change.

What methods or tools should I use?

Is CLR 1 still relevant? Surely we have something more recent than 1994?

The response to the Question on 'How do I choose what data to use in my assessment?' is very thin and it doesn't inform how to select appropriate CoC based on desk study research (This is needed in the situation where many of the early CLR series documents are now withdrawn).

In the same question, it is suggested that a "very conservative" approach be taken to critical parameter selection unless there is actual site data. The danger of this is that we end up with overly conservative solutions which are wasteful of carbon, and the EA should be advocating a balanced approach between environmental protection and carbon reduction measures. Pursuit of ever diminishing amounts of contamination may generate substantial amounts of carbon to the wider detriment of the environment.

How do I set remediation targets?

This answer should include reference to minimising carbon emissions.

This question also includes the statements that when the WFD is fully implemented:

- there should be no deterioration in status of the water body and
- compliance with the wider aspects of the Directive

It would assist consultants if both of these issues were giving further explanation i.e.

-over what size of water body is deterioration measured and is there a significance test on deterioration which the EA will apply?

-what precisely are the wider aspects?

How sustainable is XYZ remediation option?

No mention is made of carbon reduction or minimisation, and this should be addressed.

What waste legislation applies to remediation?

The first sentence refers to "Contaminated material", but in practice, recent view is that "contaminated" is site-specific and use-dependent, so should only refer to "material" or soil.

GPLC3

The tables are useful, but can be inflexible and are not always relevant to the particular scope for works being reported. For example, it would be useful to have a separate table for ground investigation rather than lumped with quantitative risk assessment, as the existing table is over 2 pages long and DQRA is not always needed, whereas a GI usually is. This is the case for almost any pro-forma trying to cover such variable subject matter, so changes within the tables would not necessarily make an improvement. However, if it can be stated somewhere that irrelevant boxes can be left blank or noted as such, that would be helpful, rather than have use of the tables being avoided because they don't appear to be directly applicable.

