



SPECIALIST IN LAND CONDITION

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The Rt Hon Thérèse Coffey MP
Secretary of State for Environment, Food & Rural Affairs
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Alan Lovell, Environment Agency Chair of the Board
cc Sir James Bevan, Environment Agency Chief Executive
cc Rebecca Pow MP, Parliamentary Under Secretary of State (Minister for Environmental Quality and Resilience)

Friday, 21 April 2023

Sustainable and safe re-use of materials on brownfield development sites

Dear Secretary of State

Introduction and Background

The Specialist in Land Condition (SiLC) register scheme is a professional body that provides the highest level of accreditation for chartered individuals working in the land condition sector. SiLC is actively involved in championing quality in the provision of advice on land condition issues, promoting better regulation and responding to areas of societal concern. SiLC wrote to government departments (DEFRA, MHLGC and DBEIS) and the Environment Agency during 2021 to suggest a solution to a growing obstacle regarding the regeneration of some sites that our members had brought to our attention.

In our letter of 21 June 2021, we highlighted the inconsistency in how former landfill sites are regulated which restricts the potential to bring these sites back into beneficial use. We made the following recommendation:

Recommendation 1 - Amend the guidance within the Definition of Waste: Development Industry Code of Practice (DoWCoP) (Contaminated Land: Applications in Real Environments (CL:AIRE), V2, 2011) to include the re-use of site won materials from within historic landfills; OR: Produce new guidance which streamlines the waste recovery and surrender process for the re-use of materials from within historic landfills.

The Environment Agency (Malcolm Lythgo, Head of Waste Regulation) responded on 12 July 2021 indicating they are keen to support the sustainable reuse of materials to protect natural resources. They indicated the DoWCoP and Land Contamination leads were in the final stages of drafting internal guidance around these matters. They stated that the DoWCoP was not developed for historic landfills so would have concerns expanding its scope in this way.

DEFRA (Rebecca Pow MP) responded on 19 August to direct SiLC to the Environment Agency who were reviewing the Definition of Waste: Development Industry Code of Practice.

SiLC responded to the EA on 1 October 2021 to set out the background to why the DoWCoP was set up to respond to government concerns in 2004 over obstacles to brownfield development namely the dual regulation of material movements under planning and waste permitting. SiLC



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voiced concern over the EA thinking on historic landfills and the applicability of the DoWCoP which could lead to sterilisation of derelict sites. SiLC proposed the following potential solutions:

Recommendation 2 - Increase responsibilities of the QP under DoWCoP to address concern that the DoWCoP has been misused, i.e. to verify that the process has been followed and elements have been undertaken competently and correctly; and

Recommendation 3 - Establish a task force to review current legal problems, the issues faced by industry and pressure on the regulators to chart a safe way to move sustainable brownfield development forward.

Current Situation

The EA has not yet finalised their internal guidance as referenced by Malcolm Lythgo on 12 July 2021. A revised version of the DoWCoP has not yet been issued by CLAIRE and there is no indication as to whether the proposed version will address the concerns raised in SiLC's letters. During 2022 SiLC held a webinar on "Regeneration of Historical Landfill Sites – Multi-Stakeholder Perspectives" and completed a survey with brownfield professionals. The responses to this survey indicated that lack of clarity and inconsistency in approach within the EA to regeneration of historical landfills coupled with delays in obtaining environmental permits is a source of deep frustration within the brownfield community and represents a real constraint to regeneration.

Our survey indicated the current wait time on having a permit application duly made is 12 to 18 months, and then there are the further delays as the application is reviewed and the permit issued. Our survey identified development projects that were abandoned because of permitting delays, with some reporting delays in excess of 2 years. Such timeframes simply will not be tolerated by the construction sector, resulting in brownfield land that should be regenerated, being passed over for greenfield sites.

The current uncertainties are having a significant effect on opportunities to return many brownfield sites to beneficial use. Our members have identified many site redevelopments that have been either put on hold or entirely scrapped as a result of the financial implications of the need of environmental permits. Consequently, the benefit to local communities of restoring these sites is being lost and the cost of resolving their negative environmental legacy may return to the public purse.

Recommended Next Steps

SiLC believes that reuse of materials under a range of development scenarios, including historical landfills, backfilled quarries, colliery spoil (not covered by Mining Waste Directive) and historical stockpiles not associated with current development activities, can be achieved under the existing DoWCoP scheme as such sites were never excluded during discussions with the Environment Agency in the original developments of the scheme.

Whilst we advocate the expanded use of the CoP, our core objective is to promote transparency and clarity within the brownfield community. In order to do this effectively we need to understand the regulatory approach the EA are proposing so we can support communication.

Furthermore, SiLC represent industry as well as Regulators which allows us a comprehensive understanding of issues across our members. Actively engaging with us when drafting external guidance would ensure that the legal interpretation and regulatory approach is implemented in a way that can complement how industry operate, rather than introducing approaches that contradict



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this. The latter approach has a far lower probability of successful compliance, which in the long run drains regulatory resources, causes confusion and promotes inconsistency.

We would like to see a draft version of the new DoWCoP, and internal guidance to EA officers if appropriate, and provide some formal feedback.

Yours sincerely
On behalf of SiLC

A handwritten signature in black ink, appearing to read 'Tom Henman', written over a horizontal line.

Tom Henman
Chair of the PTP

A handwritten signature in light blue ink, appearing to read 'PNathanail'.

Paul Nathanail
Chair of the SiLC Board

A handwritten signature in black ink, appearing to read 'Louise Beale'.

Louise Beale
Deputy Chair of the PTP

A handwritten signature in black ink, appearing to read 'Ian Evans', written over a horizontal line.

Ian Evans
Deputy Chair of SiLC Board