



Land remediation and quality schemes

In December 2013 DEFRA announced that the funding for the Contaminated Land Capital Grants Programme (CLCGP) had been reduced substantially to £0.5million annually. In a report entitled 'Examination of contaminated land sector activity in England' published by DEFRA the remediation of land contamination in England identified that the costs of remediation of sites under Part 2A regulation by local authorities is estimated at £29.8 million of which 85% of the costs came from the CLCGP and the costs for the remediation of Special Sites under Part 2A is approximately £12.4 million of which 44% came from the CLCGP,

DEFRA anticipate that the revised Statutory Guidance on Part2A and the publication of new soil assessment criteria will lead to fewer contaminated sites needing remediation. Initiatives such as the proposed National Quality Mark Scheme and the use of Suitably Qualified Persons are intended to satisfy local authorities and the UK environmental agencies that no additional action will be necessary to ensure compliance with environmental legislation such as that under the Part 2A or the planning regime.

Whilst these changes may lead to some reduction in unnecessary remediation of land contamination, funding remains an issue, and the lack of central government funding could result in more legal actions taken against the polluter or the owner/occupier to recover costs for the assessment and remediation of contaminated sites under the Part 2A regulations in the future.

Environment Agency audit of the DoWCoP

The Environment Agency (EA) and Contaminated Land: Applications in Real Environments (CL:AIRE) have carried out a research project to provide analysis of the use of the Definition of Waste: Development Industry Code of Practice (DoWCoP) on a number of development projects in London and the South East. The report is available at the following [link](#).

A total of 32 projects were audited which included sites under the following DoWCoP scenarios; 20 Site of Origin projects, 11 Direct Transfer projects and one Cluster Site project. The Qualified Person (QP) on each project was contacted by CL:AIRE and asked to provide all relevant project documents which had been submitted to the QP and as such formed the basis for the declaration signed by the QP. These documents include the Materials Management Plan (MMP) together with supporting documentation where relevant, the materials tracking system, the QP declaration form and the verification report.

The process of auditing a project involved following the criteria set out in the MMP template and performing a gap analysis of the information provided. A project which was able to answer fully all the questions of the audit process, including providing all supporting evidence, had documents which were clearly referenced and organised and which demonstrated continuous efforts to work to best practice were considered 'good' projects, whereas projects for which the supporting documents were present but were not referenced or presented clearly and continuous efforts to work to best practice were not demonstrated were considered 'satisfactory'. Projects where the supporting documents were missing were considered as 'needing improvement'. It was necessary as part of the audit process to contact the QP for the projects which had missing information.

Out of the 17 Site of Origin projects 10 were considered good, 5 satisfactory and 2 as needing improvement. None of the 11

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Environment Agency audit of the DoWCoP

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Direct Transfer projects audited were considered good, 4 were satisfactory and 7 needing improvement. There were 3 projects which were a combination of Site of Origin and Direct Transfer. One of these was considered good, one satisfactory and one needing improvement. There was only one Cluster Site project which was considered good. The total volume of material which was managed under the audited projects is reported as 1,075,652m³.

Of the Site of Origin projects audited, 53% had used an in-house QP for the declaration and of the Direct Transfer projects, 46% had used an in-house QP. In total of all the projects audited 50% had used an in-house QP.

General comments arising from the audit process include inadequate data management generally providing unclear or complicated document titles, poor reference to supporting documents and missing information particularly the material tracking system and contingency sections. It was recorded that 27 out of the 32 projects did not have a verification report although it was recognised that some of these projects may not have been completed at the time of the audit in August 2013, although 19 of the projects were referenced as being from 2011 and 2012 which is presumably the year in which the QP declaration was submitted.

Based on the findings of the audit a number of recommendations were proposed for the future development of the DoWCoP version 3 which includes a revision of the MMP model template. It was considered that this change will be beneficial for the project teams preparing the MMP, as well as CL:AIRE staff and the auditor and will allow particularly the auditor to distinguish clearly between satisfactory and unsatisfactory answers and references.

Concern was raised in the review regarding the provision of copies or relevant extracts of supporting documents. It was noted that some of the projects provided a short relevant extract although this was not considered sufficient information for the auditor. It was considered that complete supporting documents need to be supplied with the MMP although there is a need to reference clearly the relevant sections of the supporting documents which will assist the auditor, particularly as some of the supporting docu-

ments exceed 1000 pages. Concern was expressed in the audit process with regard to how long it took for information on some of the projects audited to be supplied to the auditor particularly where the QP was absent for example on leave and it was recommended that the documents prepared as part of the DoWCoP project including the supporting documents need to be readily accessible by the QP and other team members.

The recommendations include the need for more frequent auditing, possibly carried out annually. Further training for QPs was considered necessary in light of the findings of the audit process. This may take the form of a second phase of training after completing the initial introductory training for the DoWCoP process. For example training may include using a case study to assess the quality of information presented for inclusion in the MMP and a need to provide clear referencing to relevant sections of supporting documents. The possibility of a two tier system of QP sign off which would allow for secondary checking has also been suggested.

MJCA was requested to provide details of two projects for which MJCA personnel had been a QP and we were able to supply all the supporting technical information including the verification reports, something which had been absent in over 80% of the projects which had been audited. Senior MJCA personnel have significant experience in the production and implementation MMP and we have a number of registered QPs who have submitted declarations under the QP system. We have also provided wider technical support of these projects including preparation of the MMP and the supporting documents for the MMP which include site investigation reports and detailed quantitative risk assessments, undertaking site inspections to verify the management of the materials and preparing verification reports. MJCA personnel are experienced in a range of waste and permitting matters as well as developing and implementing remedial strategies and have considerable experience in producing relevant decision support tools and documents such as quantitative risk assessment necessary to deliver projects involving the management and reuse of site derived materials.



Remediation of land contamination in England

Since 2010 Defra has commissioned a series of [science and research projects](#) associated with the contaminated land sector. The most recent of these publications is an examination of contaminated land sector activity presented as separate reports for England and Wales ([SPI011](#)). The previous review was carried out in 2009 and presented in the report entitled "Dealing with contaminated land in England and Wales. A review of progress from 2000-2007 with Part 2A of the Environmental Protection Act".

The recent Defra report of an overview of the contaminated land activity in England since Part 2A was introduced in 2000 until the end of 2013 documents progress made on the identification and remediation of contaminated land sites using information collected from 197 of 326 local authorities (60%) in England and from the Environment Agency for Special Sites.

The report identified that land contamination in England is dealt with mainly through planning process (92% of all sites) with approximately 4% of contaminated sites dealt with under Part 2A legislation and 4% of sites which are not part of the planning process and where works are carried out under voluntary action.

Local authorities are responsible for the preparation and publication an inspection strategy for land contaminated in their administrative area. This requirement was introduced in 2000 as part of the Environmental Protection Act and 27% of the local authorities had published their strategies by 2001. Overall 55% of local authorities had published the most recent version of their strategy by 2007 and 45% had published their strategy after 2007 which suggests that most local authorities have reviewed their strategy since first published. The majority of the local authorities (61%) have not changed their priorities set out within their inspection strategy since it was first published and where changes have been made the main reasons include a move towards placing a greater emphasis on the planning system, a lack of funding for dealing with land contamination and development of new soil screening values presumably providing guidance for the assessment of

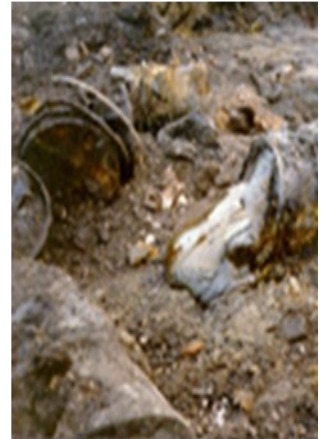
whether certain sites are not contaminated land.

Over 90% of local authorities have established a list of potentially contaminated sites, and by the end of December 2013, 30% of the local authorities reported they are on target toward achieving the objectives of their inspection strategy although 49% are behind target, 5% had no made progress and 17% had not set targets.

It is reported that between April 2000 and December 2013, 11,207 potentially contaminated sites have been inspected, which represents 5% of the potentially contaminated sites brought to the attention of the local authorities. These inspections have been funded mainly by the local authorities (64%) or by central government funding (33%) and third party funding contributed to only 1% of sites.

By the end of December 2013, 59 local authorities reported that 511 sites have been determined under Part 2A, including 50 designated Special Sites. Of the 461 contaminated land non-special sites, it was reported that 430 sites have been remediated and the EA reported that 31 Special Sites have been remediated. The majority of these sites (377) were remediated by the local authorities at an estimated cost of £29.8 million and the remediation of the 31 Special Sites at a cost of approximately £12.4 million. The remediation works for 85% of sites carried out by the local authorities has been paid mainly by the Contaminated Land Capital Grants Programme (CLCGP). The remediation works for 44% of Special Sites has been paid for by the CLCGP, 29% by the Class A Appropriate persons (the polluter) and 27% by the Class B Appropriate persons (the owner or occupier of the land).

The report prepared by the EA in 2009 reported that between 2000 and 2007, 659 sites had been determined as contaminated land which is a greater number than reported in the 2013 report for this period, although the 2009 records the numbers of sites as individual properties so for example housing estates were determined as multiple sites rather than one site. The recent report records a total of 1,087 sites as having been included within these determinations.



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Remediation of land contamination in England



Arsenic was found in over 55% of the reported sites making it the most widespread contaminant identified as part of a significant pollutant/contaminant linkage followed by lead, benzo(a)pyrene (BaP) and nickel. The remediation works have mainly comprised excavation and off-site disposal of material, or capping. Ex-situ physical treatment is also reported as a main treatment for Special Sites. Typically, local authorities used a combination of option appraisal and cost benefit analysis to support their selection of the remedial action. Where remediation has been completed commercial premises is the most common new land use followed by housing for those sites.

The overall trend on the yearly spend on remediation costs has fallen since 2008. In December 2013 Defra wrote to the local authorities informing them of the future of Defra funding for the CLCGP stating that “...the budget for the scheme has undergone significant incremental cuts in line with the economic downturn, decreasing from £17.5m in 2009/10 down to £2m for 2013/14...”. The letter goes on to explain that from April 2014

Defra will no longer be supporting the costs of the investigation and remediation of contaminated land under Part 2A through the CLCGP although a small amount of funding of £0.5 million annually will be made available for emergency cases only and this is subject to the capital funding in Defra.

Whilst the cessation in funding is associated with government funding cuts it is cited in the letter that the reason for withdrawing funding is that the revised Part 2A Statutory Guidance published by Defra in April 2012, provides clarity to local authorities on implementing Part 2A of the Environmental Protection Act, to focus their attention on the highest risk sites and to dismiss the lower risk sites more quickly and easily. Given that Part 2A of the Environmental Protection Act provides councils with a statutory duty to investigate and ensure the remediation of contaminated land sites so that they do not pose a potential risk to health, it is unclear how this responsibility will be achieved without funding from central government.

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National Quality Mark Scheme update

The Land Forum comprises representatives from a range of key government departments, public bodies and other organisations associated with land condition and land use issues. The forum has made further progress with an initiative to develop a National Quality Mark Scheme (NQMS) for land affected by contamination. The proposed scheme will focus on activities such as site characterisation including desk studies and site investigation together with risk assessment, remediation option appraisal and the verification of remedial works. The scheme is intended to make sure that these activities are carried out in line with established good practice procedures and to meet legislative aims.

A key feature the scheme will be to demonstrate that the work has been carried out in accordance with commonly accepted technical approaches that constitute established good practice, that capable people have carried out the relevant aspects of the work and that key elements of the work have been peer reviewed. The intention of the NQMS is to pro-

vide a sign off ‘product’ which will provide confidence to those commissioning the works and to the regulatory authorities that the potential risks posed by land contamination have been assessed adequately and appropriate and proportionate actions have been taken to manage or mitigate these potential risks. It is intended that the scheme will satisfy Local Authority and the UK environmental agencies that no additional action will be necessary to ensure compliance with environmental legislation such as that under Part 2A or the planning regime. The ‘product’ is signed off by a suitably qualified and experienced practitioner referred to in the scheme as a Suitably Qualified Person (SQP). The Land Forum has identified that certain professional standards will be necessary for the SQP, for example a need to be chartered, have sufficient experience in the procedures for the assessment of land affected by contamination and to be aware of the requirements of the regulatory regimes. Importantly the

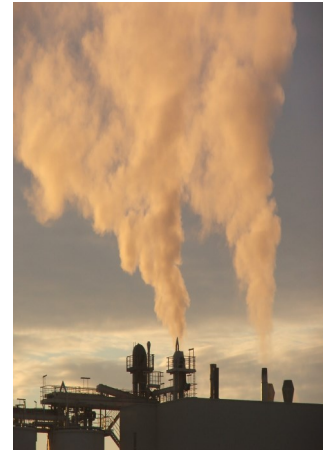
National Quality Mark Scheme update

SQP will need to be capable of recognising their own limitations and where specialist skills by other professionals are necessary.

To provide confidence to the sector to use such a scheme, the process needs to be able to demonstrate that data is processed and interpreted by competent people who have relevant experience and qualifications in their respective disciplines, that the work is controlled under established quality management systems, that the conclusions or recommendations need to be substantiated by the underlying data and are based upon reasonable interpretations in line with es-

tablished approaches, guidance and advice provided by the relevant regulatory authorities and that relevant limitations in the data and uncertainties in the analysis are clearly recognised.

The NQMS will be voluntary although it is hoped that local authorities and the UK environmental agencies will recognise the value of the scheme and promote its use when dealing with the assessment of land affected by contamination. Further details of the scheme can be found at the following [link](#) and there is a period of consultation which ends in May 2015.



Professional standards

The proposal for a National Quality Mark Scheme (NQMS) and the need for a Suitably Qualified Person (SQP) is reflected in the principles set out in the National Planning Policy Framework (NPPF) whereby there is a need for a competent person to prepare adequate site investigation information for the assessment of land contamination. This is the only reference in the NPPF to the use of a competent person although there are examples in many other professions where individuals need to be licensed to practice.

The concept of registered or licenced professionals advising on land contamination matters is more established in a number of other countries. In the USA the first Licensed Site Professionals (LSPs) experienced in the field of hazardous waste site assessment and clean-up was established in Massachusetts back in 1993 and other schemes in more states have continued to develop. In New Jersey in 2009 the Licensed Site Remediation Professional (LSRP) was introduced requiring a practitioner to have the appropriate qualifications and experience and to have completed training covering regulations concerning technical requirements. The LSRP has the responsibility for oversight with the specific aim that projects are completed quicker but delivered in a safe and robust manner to address the States' contaminated land legacy. Such schemes are not restricted to the USA. Australia has a well established 'Environmental auditor' model, and there are schemes throughout Europe.

There are of course 'checks and balances' in

place and a strict code of conduct, for these schemes such as revoking the licence to practice.

So can a SQP scheme work in the UK? Well the CL:AIRE Definition of Waste Code of Practice scheme has been in place for over 5 years. The scheme allows 'light touch' regulation of the management and reuse of materials including contaminated materials on development sites and the procedures for these projects are checked by a Qualified Person who provide a declaration to the Environment Agency.

There is an existing scheme in the sector dealing with the assessment and management of land contamination operated by the Specialist in Land Condition (SiLC) Register. The SiLC scheme brings together professionals from a broad background of organisations working in the assessment and management of land affected by contamination. Practitioners are assessed to be suitably qualified and that can demonstrate a high degree of experience and competence when advising on a range of land condition matters. This does not necessarily mean that a Registered SiLC is expected to be a technical expert in all disciplines associated with land condition, but rather the designation ensures that only competent practitioners who have the appropriate skills and experience are involved in undertaking specific assessments and adheres to relevant quality controls and as such a registered SiLC meets the criteria of a 'competent person' as set out in the NPPF and the criteria for a SPQ under the NQMS.

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ABOUT MJCA

MJCA provides independent advice on environmental issues to the public and private sectors. Delivering our services to high technical standards and commercial awareness enables us to provide practical, cost effective advice and sustainable solutions. Further information regarding our services can be found on our website www.mjca.co.uk

CONTACT US

Please contact [Kevin Eaton](#) for more information on any of the issues raised in this newsletter, or on any other Contaminated Land issues.

Other news

The National House Building Council (NHBC) has issued guidance on the use of Category 4 screening levels (C4SLs). The guidance provides a summary of the DEFRA-funded research project SPI010 – Development of Category 4 Screening Levels for the assessment of land affected by contamination published by CL:AIRE which sets out a draft methodology for determining Human Health C4SLs together with a Policy Companion Document for England published by DEFRA in March 2014. This Policy Companion essentially endorses the draft methodology and framework for the derivation of C4SLs and how DEFRA anticipate that regulators and risk assessors would use this in line with the Statutory Guidance. A separate Policy Companion

Document was published by the Welsh Government in May 2014. Scotland and Northern Ireland governments have not as yet provided any comment on the use of C4SLs. The NHBC guidance can be found at the following [link](#).

The Nuclear Industry Group for Land Quality (NIGLQ) has published a Nuclear Industry Code of Practice on Routine Water Quality Monitoring. The document covers specific issues relevant to water quality monitoring on Nuclear Licensed Sites although it covers a broader range of non-radioactive contaminants and provides a useful reference guide by summarising key issues and refers to relevant existing guidance. The types of water environments dealt with in this docu-

ment are groundwater, open freshwater bodies, 'in-pipe' and 'end of pipe' surface water drainage and inter-tidal surface waters. The guidance can be found at the following [link](#)

The Land Forum comprises representatives from a range of key government departments, public bodies and other organisations who are associated with land condition and land use issues. The minutes of the January 2015 can be downloaded from the CL:AIRE website from the following [link](#).

The Law Society have updated their practice note on contaminated land which includes an overview of the contaminated land regime. Information can be found at the following [link](#)

