

Model Procedures CLR11 updated and web-based Land Contamination: Risk Management (LCRM)

The Model Procedures for the Management of Land Contamination CLR11 guidance was published in 2004, it provides the technical framework for structured decision-making about land contamination. The basic process can be adapted to apply in a range of regulatory and management contexts, subject to any specific constraints arising from these contexts. CLR11 is intended to assist all those involved in the management of land contamination in particular landowners, developers, industry, professional advisers, financial service providers, planners and regulators.

The Environment Agency (EA) published an update to CLR11 online in June 2019 called: Land contamination: risk management (LCRM) for feedback on the technical content and structure. CLR11 was archived from GOV.UK in 2016 as part of the smarter guidance project. Archived content can be used for historical reference although it does not represent official EA or government guidance and as such should not be used as a reference guide or relied upon. Given that CLR11 was widely used in the sector the EA decided to reform the content based on the principles of CLR11 and as such the scope, purpose and the framework of the new LCRM guidance remains the same as that in CLR11.

The reformed content is largely intended to present the information in a web-based format for use on a range of devices (laptop, mobile phone, tablet) so that it is navigable, concise, clear and understandable, so that it is easier to manage, maintain and keep up to date. The technical language, terminology and content has been updated, explained and retained where necessary.

Stage 1 sets out the risk assessment procedures which includes the three tiers of risk assessment comprising a Preliminary risk assessment (PRA) first tier which is to develop the outline conceptual model and establish whether there are any potentially unacceptable risks, tier 2 about the development of a Generic Quantitative Risk Assessment (GQRA) using generic assessment criteria and assumptions to estimate risk and tier 3 is for the development of a Detailed Quantitative Risk Assessment (DQRA) using detailed site-specific information to estimate risk. Stage 2 now focusses on Options Appraisal and Stage 3 includes more emphasis placed on developing and producing a single remediation strategy and includes verification.

The EA are currently reviewing the feedback from the consultation process and will republish the guidance in early 2020 and CLR11 will be permanently withdrawn. LCRM will represent the latest EA guidance on land contamination which will avoid any confusion over which guidance to use.

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DoWCoP update

“Of the ten projects audited only two were initially rated as good...”

The Definition of Waste: Development Industry Code of Practice (DoWCoP) is a voluntary code developed by CL:AIRE with the support of the Environment Agency (EA) and which has been operating successfully since 2008 providing a pragmatic solution to the use of excavated materials including contaminated soils and made ground on development sites in a sustainable manner without involving waste legislation. Version 2 of the guidance was issued in 2011 and since 2013 there has been discussion and preparation of Version 3 to expand the role of the management of materials under DoWCoP. However, whilst there have been a few tweaks and clarifications issued by CL:AIRE in the intervening period, Version 3 remains elusive.

Following an audit of the scheme comprising 32 projects carried out by the EA in 2015 it was concluded that improvements to the scheme were still needed. CL:AIRE submitted the proposed Version 3 of DoWCoP to the EA in 2017 for its approval although the EA still had concerns about how the scheme was being applied and the EA legal team had concerns regarding some of the original text in Version 2 together with items in the proposed new scope items. Oversight of the DoWCoP now resides with the EA Waste Division. A workshop in May 2019 to review the DoWCoP application continued to raise concerns around the misuse, abuse and illegal activity associated with some projects said to be undertaken under the scheme and although it is still proposed that Version 3 of DoWCoP will be issued, no date is set.

Early in 2019 CL:AIRE completed the audits of 10 further projects using DoWCoP and it was concluded that there was a need for improvement on a range of issues. The common failings uncovered by the audits were as follows:

- Materials Management Plans (MMP) missing key information and not providing a clear plan
- Missing or a unsuitable material tracking system
- Missing schematics of the materials management/tracking system

- Poor document and file referencing and therefore no provision of a clear audit trail, and
- No or limited contingency plans or references to contracts being in place.

The projects were reviewed by the CL:AIRE executive and given an initial grading. A number were also passed to an external independent expert for a second opinion and quality assurance process. The documents were assessed to be:

- Good - all documents present and generally in accordance with the guidance.
- Improvement Needed - most documents present but do not accord with the industry guidance / small number of documents or key information were missing.
- Poor - a significant number of documents were missing or of a quality well below the industry standards or guidance set out within the DoWCoP.

Of the ten projects audited in 2019 only two were initially rated as Good, six were rated as Improvement needed and two were rated Poor. To be able to undertake regular auditing of DoWCoP projects CL:AIRE increased the Declaration fee to assist with administrative fees. CL:AIRE has stated that the process and outcomes of the audit will be used to feedback to the wider scheme development and be made available to regulators. It is also proposed to develop an improved administration system for the DoWCoP which now includes submission of a Verification Report at the end of the project.

CL:AIRE has submitted a number of bulletins over the last few years to clarify the use of DoWCoP. These include the following:

- Receiver sites must develop import criteria that are site and material specific. It is stated that this cannot just be generic risk assessment criteria for set after use scenarios, or even relevant site specific risk assessment criteria for the existing land condition at the receiver site. The criteria for the importation of materials needs to consider the potential concentration of contaminants (natural or



anthropogenic) in the materials, any additional introduced contaminants and the overall leachable burden that the imported materials may add to the receiver site.

- The regulatory position which covers re-use of materials under DoWCoP does not apply to the following activities which will remain subject to waste regulatory control:
 - ◊ contaminated materials that go off site for direct use at another site
 - ◊ wastes that are transferred to or from a Fixed Soil Treatment Facility unless it operates and material originates and is used within a defined Cluster under DoWCoP
 - ◊ the control of land spreading activities
 - ◊ the management of extractive wastes within the scope of the Mining Waste Directive.
- If DoWCoP is not used fully in accordance with the guidance and regulatory position statements and if Declarations submitted prior to material transfers or re-use, then the EA may take the view that materials are deposited as waste.
- The spreading of waste soil, dredgings or other materials on existing agricultural land for agricultural or ecological benefit is regarded as a distinct land treatment operation subject to separate legislative control i.e. permit or exemption and not covered under DoWCoP.

In 2018 CL:AIRE introduced a Qualified Person disciplinary procedure and a whistleblowing service. This disciplinary procedure has been followed for a number of Qualified Persons, which following investigation by CL:AIRE, resulted in the issue of formal warnings. The disciplinary procedures were used for a number of circumstances including that:

- The QP had taken a direct role in contacting regulators which is contrary to the requirement for independence from the project.
- The QP name appeared on documents supporting the MMP again contrary to the requirement for independence from the project.
- Declarations had been submitted without the EA and Natural Resources Wales

officer providing a 'no-objection' position.

- Identification of materials that were not suitable for Direct Transfer because they were either historically imported materials which had been treated and subsequently stockpiled over the long-term or that they were waste materials left over from historic quarrying activities at the site (extractive industry wastes).

CL:AIRE had also received information that suggested certain paperwork was not required as part of the MMP which was incorrect as the DoWCoP relies on a clear, detailed audit trail of all materials arising from donor source to receiver end-use. CL:AIRE had also been informed of the intention to charge 'tipping fees' at a receiver site. CL:AIRE stated that in such circumstances where it is intended to charge fees for accepting materials the project needs to be discussed with the local EA or Natural Resources Wales (NRW) officer as early as possible and CL:AIRE consider that it is likely that DoWCoP will not be the appropriate option for the management of these materials.

Clarification has also been provided on relevant contacts for projects under DoWCoP. For all Route A project (where contamination is present or suspected), the local EA and NRW waste or contaminated land officer should be considered a relevant regulator as set out in section 3.36 of the DoWCoP. The need for liaison does not trigger the need for submission of the MMP and this provides the officer with an opportunity to decide whether they wish to see more details.

For Route B projects (where contamination is not present or suspected) naming officers in the MMP when liaison has not been carried out as liaison is not always necessary for such projects has raised concerns with some local officers as it infers they have been approached or have approved the project.

QPs are reminded they should contact CL:AIRE before submitting a Declaration if they are in any doubt as to any aspect of the requirements.



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DoWCoP and landfill tax

In July 2019 CL:AIRE published a guidance note on the way landfill tax is to be applied and environmental permitting enforced which could affect how materials management for developments is carried out. The guidance note was prompted because CL:AIRE became aware that there had been a number of abuses of the environmental permitting system and the inappropriate and incorrect use of the DoWCoP.

The guidance note makes reference to Part III of the Finance Act 1996 which from 1 April 2018 (in England, Wales and Northern Ireland) amended the scope of landfill tax to include any site and not exclusively landfills, that were operating without the appropriate environmental permit, appropriate exemption or correctly applied use of the DoWCoP. Further information can be found [here](#)

A collaboration between CL:AIRE, HMRC, the Environment Agency (EA) and Natural Resources Wales (NRW) intends to identify and pursue regulatory offences relating to the reuse of soils and/or wastes on development sites. It is stated that the EA and NRW are aware of a number of abuses of environmental permitting and the DoWCoP by developers, unscrupulous waste operators, poorly informed consulting engineers, hauliers and contractors. Some of these projects are currently under investigation and disciplinary procedures are pending.

The consequences of breaches to any of the amendments to the Finance Act 1996 stated in the CL:AIRE guidance note is summarised as follows:-

- Sites in England which operate without the necessary environmental permit or exemption and / or are incorrectly operating under the DoWCoP will be liable for landfill tax at the standard higher rate (currently £91.35 / tonne) on all material irrespective of whether the waste is lower rated or not. A similar situation is applied in Wales.
- All materials deposited at illegal sites on and after 1 April 2018 will be subject to the tax. Previously certain materials deposited at permitted sites were exempt from landfill tax although these exemptions will no longer apply to illegal

sites so that all materials deposited at these sites is taxable.

- In addition to being liable for landfill tax, any person who deposits waste or knowingly permits the deposit of waste at an illegal site will face a separate criminal prosecution for waste offences.
- HMRC will be able to charge an additional penalty of up to 100% of the tax due and will also have the right to prosecute those who do not pay.

This action could result in any company or individual involved in a project identified as failing to have the correct or properly administered environmental permit, exemption or DoWCoP MMP being deemed to have illegally deposited a waste. Under such circumstances the details of all those involved in the project will be provided to HMRC who will pursue the collection of the Landfill Tax in addition to any other enforcement action taken by the EA and NRW. Applicable parties may include the client, consultants, contractors, hauliers and third party site operators all of whom may be jointly liable for this tax and any other resultant penalties.

CL:AIRE recommend that all developers review the procedures on their projects, how materials are assessed, reused or disposed of, including a review of existing MMPs, environmental permits or exemptions to make sure the correct mechanism is being applied and complied with. It is also stated that simply employing an environmental consultant or commissioning an MMP and instructing a Qualified Person is not sufficient to absolve the client and developer of their liability on this matter and clients and developers are urged to use appropriate, professional and competent consultants or contractors who have demonstrable experience and expertise in order to achieve compliance.



Competent person

The revised National Planning Policy Framework (NPPF) was published in 2018 which sets out the Government's planning policy framework for England and how these are expected to be applied. The guidance is available from the following [link](#). One of the key sections relating to contaminated land is as follows:

178. Planning policies and decisions should ensure that:

(c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

The definition of a competent person (to prepare site investigation information) in the framework is as follows:

A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation.

It may be considered that a relevant qualification is a University degree in a suitable subject for example an environmental science, earth science or chemistry and membership of a professional organisation may be a Fellow of the Geological Society or Member of the Institution of Environmental Sciences or one of the many other professional scientific or engineering bodies. However competence should not be confused with academic qualifications or even experience; a relevant qualification provides only a benchmark of attaining some level of knowledge in a particular subject, membership of a relevant professional organisation may be nothing more than paying the annual membership subscription and experience in dealing with types of pollution must take account of the length and breadth of that experience.

Broader criteria are needed to benchmark a person as competent. Competence is a combination of not only knowledge and experience, but encompasses other skills such as the behaviour and attitude of the practitioner, that the practitioner, demonstration of relevant continued professional development (CPD) and on-going training and the ability to apply these collective attributes in the performance and delivery of their duties. The [skills framework tool](#) developed by the Specialist in Land Condition Register can assist

practitioners in their career path providing a record of capabilities and progress.

There are several schemes which are managed by organisations in the industry which involve the need to demonstrate a level of competence by providing details of the practitioner's work. Most are assessed by their peers and in some schemes the applicant is tested through an exam.

Chartership

Many professional organisations have chartership, for example to become a Chartered Scientist, Chartered Engineer, Chartered Geologist or Chartered Chemist. The process involved is intended to demonstrate that the competencies of a practitioner have been impartially assessed by other professionals. These qualifications are nationally recognised and are valued by employers. The professional organisations have a Code of Conduct for professionalism and where necessary can implement disciplinary procedures should it be proven that members do not abide by the Code of Conduct rules.

The Specialist in Land Condition (SiLC) Register

This scheme was developed by and is administered and assessed by professionals in the contaminated land sector focused on understanding of the land assessment process for example under planning, associated with technical understanding of key legislation and guidance. The scheme is intended for experienced practitioners from a diverse range of professional bodies working in the land condition and brownfield regeneration areas and is supported by nine professional institutions across the sector. The practitioners need to be Chartered and the process of registration involves the submission of a project log of experience, the provision of references, a written statement setting out experience and how this accords with the Code of Conduct, undertaking an open book exam and attending an interview. The SiLC scheme is an established scheme aimed at setting higher standards in the industry. Further detail about the scheme and a register of practitioners can be found at the following [link](#).



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Competent person cont.

National Quality Mark scheme (NQMS)

The National Quality Mark Scheme (NQMS) supported by a register of Suitably Qualified Persons (SQP) was launched in January 2017. The initiative was developed by the Land Forum and the scheme focuses on activities such as site characterisation 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. The scheme is administered by Contaminated Land: Applications in Real Environments (CL:AIRE) and a register of the SQP is available via the CL:AIRE [website](#).

To become a SQP it is also necessary to become a registered SiLC and to pass on on-line exam specifically on the NQMS scheme and the responsibilities of a SQP.

The Society of Brownfield Risk Assessment (SoBRA)

The SiLC scheme and SQP are focussed mainly on skills required for the management of land affected by contamination, which can be numerous and multi-disciplinary. The SoBRA scheme is designed to complement these other schemes. The SoBRA scheme is not intended to demonstrate that an individual is an expert in land contamination risk assessment but that the individual possesses the critical technical, scientific and communications skills required to design, perform and/or critically evaluate land contamination risk assessments.

The scheme is focussed on the technical detail associated with such risk assessment but also requires that applicants have a broader understanding of the context and impact of risk assessment on the management of land affected by contamination and the skills to communicate the effect of the risk assessment conclusions, uncertainty and implications of these. The scheme covers risk assessors with skills in the practice areas of Human Health, Controlled Waters/Water Environment,

Permanent Gases and Vapour Intrusion and applicants may apply to be assessed in a maximum of two of these practice areas per application. Each of the practice areas can be assessed at the grades of either Registered as a Risk Assessor with SoBRA (RSoBRA) or Fully Accredited Member of SoBRA (ASoBRA). Further details of the scheme can be found on the SoBRA [website](#).

Register of Ground Engineering Professionals

The Geological Society of London (GSL), The Institution of Civil Engineers (ICE), The Institution of Materials, Minerals and Mining (IoM3), Engineering Ireland (EI) and the Institution of Geologists of Ireland (IGI) have sponsored the development of the Register of Ground Engineering Professionals (RoGEP) to enhance the competence of Ground Engineering professionals.

The Register provides external stakeholders including clients and other professionals with a means to identify individuals who are suitably qualified and competent in ground engineering, be they consultants, contractors, members of public bodies or have academic backgrounds.

To apply candidates must be chartered with GSL, ICE, IoM3, EI or IGI and be involved in various disciplines or on various projects that fall under the broad heading of Ground Engineering. RoGEP Registrants need to have an appreciation of other disciplines and interests that extend beyond but interface with ground engineering, and are able to demonstrate how ground engineering interacts with other technical professions. They also need to comply with the Code of Conduct of their host institution in all their professional activities. For further details on the application process please visit the ICE [website](#).

Qualified Person

Under the Definition of Waste Code of Practice (DoWCoP) scheme which is administered by CL:AIRE, it is necessary that information included a Material Management Plan is reviewed and a

Declaration issued by a Qualified Person prior to materials being used under the scheme.

It is necessary for Qualified Persons to update and maintain their knowledge of waste and contaminated land management. To become a Qualified Person the applicant will need to attend a DoWCoP training course, have academic qualifications relevant to the area of activity, have chartered status, a minimum of 5 years experience and be currently engaged in the planning or oversight of remediation projects, or projects involving site materials management, providing evidence of this experience including with references. Also the applicant must not have any individual convictions under waste or environmental legislation, or be barred from acting in the capacity as a result of previous activities in the role of the Qualified Person. All applicants are required to pass an online exam with re-testing every 2 years to make sure knowledge of the DoWCoP is maintained together with the provision of a log of CPD relevant to the DoWCoP. A register of Qualified Persons is available on the CL:AIRE [website](#).

