

Better Regulation Meeting

27th September, 2011 Meeting Notes

Location: CL:AIRE Office, Marble Arch, London

FINAL

Present:

Andrew Wiseman (<i>Chair</i>)	Stephenson Harwood
Jane Garrett	Contaminated Land: Applications In Real Environments (CL:AIRE)
Nicola Harries (<i>Secretariat</i>)	Contaminated Land: Applications In Real Environments (CL:AIRE)
Nick Willenbrock	Contaminated Land: Applications In Real Environments (CL:AIRE)
Nicola Paton	Specialist in Land Condition Register (SiLC) and Royal Environmental Health Institute of Scotland (REHIS)
Tom Coles	Department for Environment, Food and Rural Affairs (Defra)
Lisa Crews	Environmental Protection UK (EPUK)
Ian Heasman	The Soil and Groundwater Technology Association (SAGTA)
Michael Powell	Home Builders Federation (HBF)
Trevor Howard	Environment Agency (EA)
Steve Moreby	Gloucester City Council
Christopher Taylor	Brent Council
Mike Quint	Society of Brownfield Risk Assessment (SoBRA)

By telephone: Seamus Lefroy- Brooks Association of Geotechnical Specialists (AGS) & Environmental Industries Commission (EIC)

Meeting Notes

1) Apologies

Apologies were given for Peter Johnson - Strategic Forum for Construction & UK Contractors Group, John Silvester, Nicky Linihan and Richard Read - Planning Officers Society (POS) / Local Government Association (LGA), Paul Sheehan (EIC) and Phil Crowcroft (SiLC).

2) Welcome and Introductions

The chair welcomed everybody and each member of the group introduced themselves. The chair explained that the scope of the meeting was to bring government, industry and the regulators around the table to look at the scope of Better Regulation in relation to land contamination (planning and Part IIA) and permitting, and to ascertain if things could be undertaken differently and in a more efficient way. It was reiterated that there is no fixed agenda for this meeting and it is hoped that there will be open discussion.

A number of those present noted that although they may be members of certain organisations and/or employed by others their comments were in a personal capacity and should not be

intended to represent the views of their employers or the organisations they were a member of.

This meeting has come about as there is a strong appetite for Better Regulation within the current government and the Environment Agency. They are looking at streamlining many regulations to try and get the economy going. This has been highlighted by the “Red Tape Challenge” of which the Environment Sector is currently being asked to suggest changes in regulations. It is important for this group to demonstrate that we are voluntarily looking at our own sector. **ACTION: CL:AIRE to input a statement that this group has been set up to look at Better Regulation.**

3) Discussion

Members were asked for any current examples where they thought Better Regulation had been applied or could be applied?

3.1) Definition of Waste: Development Industry Code of Practice

The Definition of Waste: Development Industry Code of Practice (CoP) was provided as an example. Within this scheme a Qualified Person from industry acts on behalf of the regulator and signs a declaration that the process being followed is in line with the agreed CoP. The procedure to become a Qualified Person was described in detail. The members were asked if this template could be used and perhaps extended into other areas? What are the positive and negative aspects?

The regulator - Environment Agency (EA) confirmed that they had been actively involved in developing the CoP with industry and are now monitoring the scheme in an auditing capacity. Since its launch in 2008 there has not been any significant malpractice to date. It is a voluntary code and the EA have produced a position statement on the use of the CoP and signposted from their website.

Members from industry agreed that they had embraced the CoP and value its flexibility. It has enabled sites to be redeveloped expediently and more cost effectively. There are however still many small developers who are not using the CoP or are aware of its existence which is reflected on the number of Qualified Persons and references made to it in planning applications.

3.2) Permitting

Members also suggested that perhaps there could be some streamlining in the issuing of Mobile Treatment License Deployment Forms when using a straight forward remediation technology on site. Currently the regulator (EA) checks Mobile Treatment Deployment forms centrally – could this process be signed off by A.N.OTHER? Could the limited resources within the EA be used more effectively elsewhere? Is this a real problem for industry? How many deployment forms are received by the EA and issued annually? **ACTION: EA to provide information on number of deployment forms processed.**

It was agreed that the EIC would ask their members who undertake remediation activities to provide evidence of costs incurred due to delays and judge the strength of feeling if the process could be streamlined and be more efficient. **ACTION: EIC to canvass their members for evidence.**

3.3) Planning

Are there opportunities for stretched Planning Departments within Local Authorities to get assistance from external experts, or to help raise the standard of information provide in planning applications? It was highlighted that Local Authority Planning Departments do not always rely on internal contaminated land specialists, they are free to use external advisors and in fact many do if they need specialist advice on contaminated land, or any other technical matter. It is currently a flexible approach and at the discretion of the Planning Department.

It was felt that one major problem is the quality of contamination information that is received to support some planning application for soil and groundwater. The planning process has recently been streamlined and pre-application discussions are encouraged. This process has been seen as a positive step, however these may have to reduce or stop due to reduction in resources available in the Environment Agency.

The role that the EA play in consulting on planning applications relating to groundwater and controlled waters risk assessments is one of the largest burdens for regional EA staff.

Could there be a voluntary audit process undertaken by a "Licensed Person", to review planning application supporting information before submission to the Local Planning Authorities? This may be seen as favourable if it meant that the planning decision was streamlined and speeded up? People were reminded that the planning process is a democratic process undertaken by elected individuals so it must work within the current system.

Is there evidence of delays occurring in planning applications?

Industry believes that delays in planning applications decisions do cost their businesses. These costs can be associated with having to abandon projects, or when finished remediation projects are not signed off which causes delays in selling sites, having to maintain sites with security, protection against invasive species after remediation etc etc.

CL:AIRE confirmed that they have also heard from other companies who have experienced similar issues. **ACTION: CL:AIRE to gather further evidence.**

3.4) Part 2A

The issuing of the new Statutory Guidance hopes to provide clarity under Significant Possibility of Significant Harm (SPOSH) so that contaminated land decisions will be speeded up. It was claimed that currently some local authorities are delaying decisions on whether sites fall under Part 2A.

3.5) Skills

Better Regulation is all about good processes and procedures that can be followed, although it was agreed that technical skills of individuals undertaking contaminated land work is also a fundamental problem. Industry provided an example where they had paid a Local Authority to procure the services of an environmental consultant of the Local Authority's choice, to try and speed up the decision process because they did not have the relevant skills in house. Industry felt that this was a positive outcome, but thought that very few Local Authorities are in favour of this process.

Licensed Professionals

Australia operate a Licensed "Auditing" Professional scheme in each state. This was described to the attendees. Is there anything within this system that the UK can learn from or adopt? The scheme allows senior individuals within industry to become auditors. The scheme has been in existence for over 10 years. Each licensed professional has to carry their own professional insurance as they act individually and not within a company. Licensed professionals are used on potentially high risk sites such as schools and residential areas with gardens. Developers pay for the licensed professional input, it is mandatory and is written into primary legislation. In order for auditors to become licensed, they need to demonstrate their competencies in a number of key core discipline areas. In other areas, they are able to get support from other licensed professionals; however the auditor is still ultimately responsible for sign off. All licensed professionals need to be registered with a central body. All information is open and transparent with easy access and sign posting.

From discussions with Australian professionals the system is well thought of as it is felt that the licensed professionals who are often senior practitioners are working in partnership with the developers' consultants. This helps raise their standards and demonstrates best practice to others. The negative side to this system is the involvement of an auditor is expensive. Their rates are often twice the price of standard consultant rates which is to cover the added insurance that they have to have in place. However if decisions are undertaken quicker these extra costs could be acceptable.

Many in the group felt that the mandatory element could be key to the feasibility of this system. If a similar, but voluntary system was to be considered for England, insertion of a small amount of 'guiding text', indicating such a role might be able to be incorporated into both the revised Part 2A Statutory Guidance and forthcoming Planning Policy Framework.

Where would you find the pool of people that have the agreed skills? A contributor raised that SiLC is currently the nearest system but may need to be changed to suit the need. Not all current SiLCs may have the required skill sets or would necessarily want to become auditors.

It was agreed that the insurance sector is key to the success of such a system. CL:AIRE to invite Tony Lennon – Chubb insurance to provide input to the forum. **ACTION: CL:AIRE to invite Tony Lennon - Chubb insurance to the next meeting.**

It was agreed to provide web links to the Australian EPA Auditing Scheme and provide a short paper on the scheme highlighting the key points on the scheme. **ACTION: CL:AIRE to provide web-link to Australian Auditing system and provide a paper on key points of the system.**

There was also discussion of other Licensed Professional schemes in existence including some in USA and Europe. **ACTION: CL:AIRE agreed to provide a short paper on the Pros and Cons of different schemes.**

4) Conclusion

It was agreed before anything is taken forward that there needs to be a greater understanding of the key bottlenecks that Better Regulation can be applied to for the contaminated land and remediation industry. It is believed that there may be some relatively simple tasks that could

be undertaken that would streamline the existing system and raise standards rather than developing a whole new system.

The Better Regulation Executive identified a wide array of options for reducing regulation which would be a good starting point to explore. **ACTION: EA to provide key links.**

Housebuilders (HBF) and Industry (EIC and SAGTA) should provide evidence where there are currently delays in the planning system. **ACTION: HBF, EIC and SAGTA to ask members for evidence in hold ups in planning decisions and potential cost implications.**

SoBRA to ask their members on the amount of peer review work that their members have undertaken and what their general findings have been. **ACTION: SoBRA to canvass members**

It was identified that it is important to engage with all Local Authorities – planners as well as contaminated land officers/specialists. This has proved to be difficult as there is no one organisation that represents all contaminated land officers. The Land Forum has initially tried the Local Government Group but due to cuts in personnel numbers they were unable to attend. Therefore they are engaging with the Planning Officers Group, EP-UK, Standing Conference and individual local authority officers to hopefully hear their views. Some members of the group expressed their dissatisfaction with the current level of local authority representation and that some method of wider consultation with local authorities should be identified. **ACTION: EP-UK to look how they could facilitate this.**

It was suggested that as this is about Better Regulation perhaps the Local Better Regulation Office (LBRO) be invited to attend. **ACTION: CL:AIRE to contact LBRO**

It was also asked whether the Better Regulation Group extends into Wales, Scotland and Northern Ireland? **ACTION: CL:AIRE to discuss with the devolved administrations.**

5) Date of Next Meeting

It was agreed that the next meeting should be held in January 2012 – date to be confirmed. **ACTION: CL:AIRE to schedule a date.**