

CIEH Standing Conference on Land Contamination



E-Newsletter #4 – August 2007

This is the fourth edition of our newsletter and the third this year. That's more than we expected to write and some measure of just how much is going on in the Contaminated Land world. As ever, do let us know what you think about it - feedback and suggestions of items for inclusion in future editions are welcome to: bill.baker@conland.fsworld.co.uk.

Once again, we're distributing this edition via our contacts in the various specialist Contaminated Land and generalist Pollution Groups and asking them to cascade it electronically to their groups' members. Our thanks go to them for doing that. But if you receive it by some other route, via a colleague on the next desk for example, why not contact your local group secretary and get your own name on their e-mailing list?

Soil guideline values - update

Speaking at May's Standing Conference plenary, Defra's Divisional Manager Sue Ellis told delegates that, contrary to hopes, the Way Forward had still not quite reached its final conclusions. That was to a small part due to organisational changes in the Department – with more to come – but mainly because they had had more responses than expected. That was good, of course, as was that they were mostly positive, but it was taking longer to analyse them.

Referring to 12 months of steady progress nonetheless, Sue reminded the audience what Part 2A was all about, and that planning was the principal vehicle for clean-up. Saying that the necessarily site-by-site process of dealing with unacceptable risks could "not be boiled down to a set of numbers in a published table" she pointed to the statutory guidance for a full explanation of the approach to be taken and emphasised that wasn't about to change. Questions had arisen, however, about the fit and practicality of SGVs and that was what had led to a review of the framework for producing tox and guideline values and

to improving the transparency and ease of use of the CLEA model. Not skirting controversy, Sue added that SGVs were not magic numbers, just one technical tool, and both Defra and CLG remained convinced that neither Part 2A nor planning needed a set of "minimal risk" numbers in addition.

Returning to the Way Forward document, she said that, clearly, "zone C" on risk assessment was what people found most challenging and some issues, for example around benchmarking, were still under discussion. Progress was being made nonetheless but, by contrast, the proposals in zones A and B were more straightforward and as a result, the Agency was now well advanced with updating CLEA and CLR10. Work relating to sampling and the use of statistics coming out of zone D was funded and some material had already been received and, overall, she was confident that most of the necessary work could still be done by the end of the year.

Standing conference meeting

Other speakers at the NEC included Advisory Committee chairman Jonquil

Maudlin, Defra's Seth Davies and LQM's Paul Nathanail in the morning, followed by double acts from Hugh Mallett and George Fordyce plus Geoff Card and Steve Wilson in the afternoon.

Paying tribute to the enthusiasm of practitioners, Jonquil gave a round-up of the work being done under the Conference's four Working Groups, much of which has been noted in these Newsletters, and encouraged CLOs both to keep making the CIEH aware of their needs and to get involved, e.g. in consultations, whenever the opportunity arose. Seth spoke about capital grants and said that Defra had been both surprised and pleased at their uptake; whereas under the old, SCA-based support system, less than half the allocation had been taken up, over 180 applications had been made for the new grants which were also usefully ring-fenced. He invited feed-back from authorities on how the new system might be improved, adding that some minor changes were already in prospect for the 07/8 round to streamline the application process and make outcomes more certain.

Rounding off the morning, Paul Nathanail gave a customarily fast-paced presentation on "Barge" (the Bioaccessibility Research Group of Europe). Now wider, in fact, than Europe, the Barge network brings together international institutes and research groups to study the human bioaccessibility of priority soil contaminants such as arsenic, lead and cadmium via the gastrointestinal tract. Whereas, Paul explained, UK technical guidance permits the use of site-specific estimates of oral bioaccessibility, and its correct estimation has the potential to impact on current risk assessment practice in a major way, there are currently no standardised and validated protocols for tests. A priority objective of the network, he concluded, is therefore to provide robust and defensible data on

bioaccessibility that can be used in human health risk assessment and policy making.

Hugh (Buro Happold) and George (NHBC) gave a presentation on progress with their work to revise the usefully concise R&D66 – the Guidance on the Safe Development of Housing on Contaminated Land, first published by the Agency and the NHBC in 2000 which we hope to republish around the year-end. Geoff and Steve (Card Geotechnics/Environmental Protection Group) similarly explained their work on our behalf on the Ground Gas Handbook, planned to complement their current training courses (below).

GACs win award

The Generic Assessment Criteria developed by LQM and the CIEH last year won a "highly commended" at the ICU Innovation Awards for Technology, judged in May. Roughly equivalent to Best of Breed at Crufts, congratulations are due all round.

Defra contaminated land forum

The second meeting of Defra's new contaminated land forum took place in London on 17 May. The Forum was set up particularly with the European Commission's proposed Soil Framework Directive in mind and this meeting was given over to an all-day stakeholder workshop on the Directive, run by Defra's Soils Division and facilitated by Bureau Veritas.

Jonquil Maudlin was there for the CIEH which is a full member of the forum. A similar workshop was held in Scotland at the beginning of June. The report of the London meeting can be found at: <http://www.defra.gov.uk/environment/land/soil/europe/index.htm>

Soil framework directive

Meanwhile in Europe, progress with the Directive has been slightly more

measured than feared earlier in the year with no formal conclusions offered to the Environment Working Group as the German presidency approached its end. Immediately before that, nonetheless, the Rapporteur to the Environment Committee published a report recommending substantial revisions to the proposal and, not least, to Chapter 3, objections to which seem to be growing among Member States, including ourselves.

Drafting suggestions have since been invited by the new Portuguese Presidency, intending to work on a compromise text over the Summer and looking forward to a likely vote in the Environment Committee on 30 October with the aim of political agreement at Environment Council 20 December.

The Directive and Defra's impact assessment were the subject of a debate in the European Standing Committee of the House of Commons on 23 July. The report of the debate is in Hansard at: <http://www.publications.parliament.uk/pa/cm200607/cmgeneral/euro/070723/70723s01.htm>

IPM-net

As mentioned in the last Newsletter, the CIEH has joined the Scientific and Technical Advisory Committee of the Integrated Pollution Management Knowledge Transfer Network whose purpose is increasing and speeding up knowledge transfer into UK businesses. Bill Baker has since represented us at a workshop held to establish a five year strategy for the environmental industry in each of the main areas of land, waste and water. Others present included representatives from academia, consultancy, developers, contractors and regulators and their report has now been published, confirming the importance of several issues, many of which reflect the concerns of CLOs. They include the need for clear and consistent regulation; better education and training; a better

knowledge of the behaviour of pollutants in the environment and improved technology for monitoring and measurement; and a better approach to effective and sustainable risk management and the promotion of new remediation technology.

These findings should influence the policy and management of the knowledge transfer process and the promotion of co-operative working and collaborative partnerships in research and development projects through the network in the future.

LACORS

LACORS and CIEH policy staff meet informally occasionally to discuss a variety of environmental protection topics. Among the topics discussed at the last meeting was our "Needs & Resources" survey of last September (Newsletter #2) which, we suggested, showed significant under-resourcing in contaminated land, partly due to a high turn-over of staff. Though other, anecdotal, evidence pointed the same way, LACORS policy forum wasn't having it, saying contaminated land was in no worse a situation than other EP disciplines. Conceding, though, that this didn't mean there was no problem, LACORS has drawn our attention to some information and case studies on recruitment on the IDEa website at <http://www.idea.gov.uk/idk/core/page.do?pageId=6609296> which it has publicised to EP managers. You might like to do the same. LACORS say they won't be taking our concerns any further though.

Best value bites the dust

At the same time and as long-rumoured, BVPI 216 will, at the end of the year, be no more. Deceased; an ex-BVPI; gone to meet its draftsman etc etc. The NSCA has said "good riddance" but is that short-sighted? With ODPM's dabs all over them, the contaminated land indicators were problematic from the start, raising a number of never-resolved questions on

their interpretation and not least, whether they indicated anything useful anyway. So far, so good you might think, nevertheless resources tend to follow indicators and with Rogers' (Newsletter #3) decision, backed by the LGA's "Lifting the Burdens Taskforce", to relegate contaminated land from the premier league of local authority priorities there is some cause for pessimism.

In any event, the whole system of looking at local government performance is set to change and both the current BVPIs and the comprehensive performance assessment regime will be abolished from next year. A new system, with fewer indicators overall, is set to replace them, in preparation for which Defra has proposed a draft set of environmental indicators which carries forward only one of the existing BVPIs in the environmental field.

In the money. Nearly

Quite unconnected, Defra has yet to announce the capital funding arrangements for this financial year (2007/8) and the CIEH is being told that some authorities are holding back on site investigations as a result. We think that's being somewhat over-cautious, since those are funded via RSG, nevertheless we understand that, subject to Ministerial clearances etc, there's hoped to be an announcement later this month.

Techy stuff

Draft Guidance on the Statistical Analysis of Land Contamination Data, begun by a sub-group of the late SGV Taskforce and one of the promised outputs of the Way Forward, is now on restricted circulation for comments. We'll be putting in our two-pennyworth before final revisions and release sometime in the Autumn (hopefully in time for our training – see below).

On the tox front, the government's Committee on Toxicology has published a statement on "Evolving approaches to chemical risk assessment"; go to <http://www.food.gov.uk/science/ouradvisors/toxicity/statements/cotstatements2007/cot200703> for a look.

Eco-risk

John Naylor of Bury took part on our behalf in another in a series of Agency workshops on ecological risk assessment in June. The Agency carried out an extended public consultation on a framework for ecological risk assessment during 2004. That consultation document can still be seen on its website and they are currently working to test that framework on real situations. A further report will follow but in the meantime, we've taken the opportunity to make various comments on, among other things, the setting of SSVs, the use of statistical tools and the likely priority local authorities will be able to give to ecological risks given their resources and understandable preoccupation with human health risks.

"Site-specific decisions"

Similarly, Andy Gosling of Hull represented us at a June workshop on site-specific decisions (that's bioaccessibility/availability to you and me) hosted by CL:AIRE in association with IPM-Net to build on the outcomes of the group that met previously under the wing of the Soil Guideline Value Taskforce. In our response to the Way Forward, the CIEH called for a higher priority to be given to producing some guidance on how to respond to the data being presented increasingly to local authorities by developers. Assisted by the workshop, aimed at improving awareness of the scientific and practical issues and achieving a better understanding of the technique's application and limitations, a protocol now looks a little closer.

Up before the beak

Judgment was given in the Lords in June in the case of *R v the Environment Agency ex p National Grid* [2007] UKHL 30. Essentially, the Agency contended that NG was the appropriate person to receive a remediation notice in respect of a former gas works at Bawtry, near Doncaster, by virtue of being the statutory successor (several times removed) to the actual polluter.

Under the key succession, from the British Gas Corporation to the privatised British Gas plc in 1986, as well as the assets of the predecessor body, its liabilities existing "immediately before" the transfer were passed to the new owner. The question was, did those liabilities include those yet to arise under Part 2A, not of course in force until 14 years later? "No" said the Lords; that liability did not exist at the time and cannot, therefore, have passed to NG; though the EPA is retrospective in the sense of creating a potential present liability for past acts, that is not the same as creating a past liability.

Turning on the construction of one section of the Gas Act, the implications are limited. NG is not a reluctant developer, nor a careless one though the decision may strengthen its hand to run its own, national remediation programme free from local pressures. Current owners of under-remediated land bought from the gas industry before 2000 look nonetheless to be in a precarious position.

In the papers

Both the Guardian and the Times ran stories in June on the UK Soil and Herbage Survey, led by the Environment Agency. Described as the most comprehensive survey of toxic chemicals, involving samples of vegetation taken from over 200 sites around the country, the headline result was that levels of dioxins, having risen since 1850, have

declined in the last 20 years by an average of 70%. They remain, however, twice as high in urban areas as in rural ones. Levels of PCBs and PAHs had also fallen, though in the case of the former, not as much as expected.

The Times, on 21 July, carried an interview with Pat Troop, Chief Exec of the HPA which included comments on contaminated land. Tap her name into the search box at www.timesonline.co.uk to "meet the woman whose job it is to worry about absolutely everything".

Questions

In parliament

LibDem member for Rochdale Paul Rowen asked the Environment Secretary when soil values for asbestos were expected to be published. Junior minister Ian Pearson replied (18 April) that the Agency and the HSE were working closely together on this and "detailed qualitative and quantitative technical guidance which can be used in assessing individual sites against the definition of "contaminated land" established under Part 2A" was expected to be "ready for publication by the Agency by the end of 2007". We might have said we would hold him to that - except he's already moved-on!

PPS23

English Partnerships has now given us a summary of the conclusions from its survey of local authority planners and CLOs on the implementation of PPS23, undertaken last October (Newsletter #2). Key among the opinions offered was that most of the problems encountered arise from a lack of communication between parties at various stages in the process. This may be between developers and site workers not informed of decisions after planning permission has been granted, or it may be because either/both pre-application and post-application discussions do not always take place in some local authorities (and actual meetings are even rarer), despite best

intentions and that being a basic requirement of PPS23.

Alleviating this problem, some local authorities have guidance notes, advice leaflets and websites that they refer applicants to. These nonetheless vary in style and content and a suggestion is that local authorities as a whole should review and share the most easily understood and effective - something, in fact, the Standing Conference's Planning Working Group is already doing.

Planning decisions

While on the topic of planning, we're interested in hearing about any planning appeals where the Inspector appears not to have been up-to-speed on CL matters. Copy the decision letter, with/out your own commentary, to Howard Price at the CIEH.

Additions to the website

White is the new yellow

A combination of the CIEH's new corporate style rules and the need to highlight changes to reviewed text and distinguish that from non-reviewed text have caused the latest edition of the "Yellow Guide" (the Local Authority Guide to the Application of Part 2A of the EPA 1990) to look as wan as our designers did by the time they had finished their work. Notwithstanding, thanks to Defra's RAS Division and the reviewers, Atkins and Judith Lowe, the quality of the contents is as high as before. It's on the website; it needs to be on your desktop.

While mentioning the website, why do so few of you make use of the Discussion Forum there? Let us know.

Consultations

Soil directive

Defra's first public consultation on the proposed Soil Directive (see above) was published on 27 July. Responses are invited by 19 October (the 'statutory' 12 weeks), but sooner if possible in the light

of the progress expected on the other side of the channel.

If you want to tell the CIEH what your concerns are, please let us have them by 10 September.

Inter-authority co-operation

The CIEH wrote to Pollution Study Groups in June asking about the various models for co-operation existing between authorities in the EP field. These range from full-blown agency arrangements to the joint appointment of consultants but what is not always clear are the legal basis for them or the financial or management arrangements. Subject to what this initial scoping reveals, the idea is, in partnership with LACORS, to produce a concise toolkit to encourage others to adopt them where that might produce service benefits. If you're part of any kind of joint working arrangement, formal or informal, please let us know by brief e-mail to: h.price@cieh.org and we'll follow that up.

EA/LGA/WLGA protocol

The Protocol ("Protocol no.5 – Land Contamination") agreed between the Agency, the Local Government Association and the Welsh LGA under the "Working Better Together" initiative in 2003 is up for revision. You can find the current one at: <http://www.lga.gov.uk/Documents/Publication/5landcont03.pdf> Tell us if you have any ideas on how it might be improved.

Free CD with every landfill!

In the past, the Agency has required local planners to consult them on every proposal for development within 250m of any landfill, current or closed in the past 30 years. The Agency would then make a risk assessment, the results of which would be passed-on, usually in planning conditions. Since June, however, the Agency has considered its obligations are met by providing LPAs with a CD detailing the location of every landfill and, where known, their contents. Chief

Executives received a letter explaining the new process but Chief EHOs didn't; few copies will have reached CLOs consequently.

Though developments actually on top of closed sites and close to licenced sites will still need to be referred to the Agency, risk assessments on the remainder are, in effect, being shuffled-off on to local authorities. Not the best news for consistency of approach, the Agency's Press Release on 26 June hails the move as part of its "drive to be a more efficient regulator."; some CLOs, on the other hand, recall the Agency's withdrawal from site-specific advice on controlled waters and, complaining about how both they and local Agency offices were apparently omitted from the information loop, suggest that, at the least, a little prior consultation wouldn't have gone amiss.

On the way

Guidance

The Ground Gas Handbook, first announced last year, is just now getting a make-over from our designers. It will appear on the website soon.

The CIEH has been asked to support a small project on risk communication, proposed by an environmental health consultancy in Wales. The idea received a "thumbs up" from members of the Risk Assessment Working Group and, though it's not certain that it will go ahead, we have offered a modest sum towards the first phase. Other prospective partners include the HPA and CL:AIRE.

The set of model planning conditions, produced by the Planning Working Group, are now just awaiting legal clearance in DCLG. They expect to get them out under cover of a letter to Chief Planning Officers "over the coming weeks". We'll put them on the website too. Meanwhile, work on revising R&D66 continues with partners Buro Happold, the NHBC and with in-put from the

Agency. The result is expected around the end of the year.

Training

The first three of a series of CIEH events on ground gas have now taken place, very successfully. Four more events, in London, Cambridge, Manchester and York are lined up for September. Details and a booking form appear on the website.

Advanced planning is now underway for a number of events beginning in November on making determinations with a focus on obtaining and analysing site data. We'll be advertising these in the coming weeks and our thoughts are now turning to something on controlled waters in early 2008.

EMAQ+ made a timely return to the topic of human health risk assessment in July with the first set of events in a series of three, the next of which is scheduled for November. Aimed particularly at new entrants, these "basic", "intermediate" and "advanced" courses hope to pick up the outputs from TWF as they emerge. Remember, spare places at EMAQ+ events are open to all-comers but it's cheaper if your authority subscribes. If you're saying to yourself "What's EMAQ+?", it's our vehicle for re-cycling training courses already run under the CIEH banner, leaving that free for novel topics. In time, all our conland training will be through EMAQ+. To see more, follow the link from the Standing Conference homepage: <http://conland.cieh.org>.

Conferences

As mentioned in the last Newsletter, the CIEH will be showcasing best practice in environmental health at its "Best of the Best" conference to be held in Nottingham on 15-16 October. Two sessions on aspects of contaminated land currently appear in the programme: "Contaminated Land - a proactive approach to assessment and

remediation" from Katharine Hemmings and Ann Oliver of Coventry and another on the use of bioaccessibility testing from Phil Hartley of Newcastle. Go to www.cieh.org/events for more.

SAGTA is inviting LA reps to a workshop "Research into Land Contamination – what is needed and why", being held at Astra-Zeneca, Alderley Park, Macclesfield, on 12 September. Attendance is free. Further details and a booking form are in the calendar on the SCLC website.

In out, in out....

Last but not least, significant shakings-about in and around the Standing

Conference include (are you reading this LACORS?) the departures of Tracey Wilmott-French, Steve Manning and Andrew Bent-Marshall. Achieving the notable feat of incoming and outgoing in the same Newsletter, Ciara Longman has no sooner replaced Paul Pearse as leader of the Planning Working Group than she's off to Ireland. Also on his bike (though presumably Ciara's on the boat?) to the private sector is Darren Beesley – thanks to him for his work in the Risk Assessment Working Group. There's a new Minister for local environment at Defra too – Jonathan Shaw, MP for Chatham and Aylesford since 1997, and a former social worker.