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Contaminated Land Policy Team

DEFRA
Area 3C
Nobel House
17 Smith Square
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15th March 2011

Dear Sir

Part 2A Statutory Guidance consultation

We write on behalf of SAGTA to give our response to your consultation on the Statutory Guidance for Part 2A of the Environmental Protection Act 1990.

SAGTA is a members association of several respected UK organisations who own and responsibly manage contaminated land. We were essentially involved with discussions surrounding the original Part 2A and the first Statutory Guidance and have remained an ever-present sounding board for Environment Agency and DEFRA. Building on more than a decade of experience, SAGTA is the authoritative voice of industrially contaminated land from a land holder's perspective. We seek to enable the efficient and cost-effective management of contaminated land within a framework of sustainability, through:

- Sharing technical knowledge and experience
- Opportunities to shape the development of best practice risk-based processes and technologies, and in advancing new concepts
- Providing a voice for land holders in the translation of policy into practice
- Understanding the opportunities and risks of the emerging sustainability agenda.

General comments

We seek regulations that provide certainty and support proportionate action without compromising the protection of human health and the environment. SAGTA is supportive of what the Statutory Guidance (SG) seeks to do in providing a legal framework that encourages voluntary and responsible remediation action. In particular, the liability transfer mechanisms have been an important factor in making the UK the leading country in Europe in developing its Brownfield sites. Therefore, we welcome the review of the SG for Part 2A of the Environmental Protection Act 1990 (the "contaminated land regime" or "the Act") and the proposed approach.

The contaminated land regime has a considerable "knock-on" effect for the planning regime, so we hope that the current review of the planning regime and what will become of Planning Policy Statement 23 "Planning and Pollution Control", especially "Annex 2: Development on Land Affected by Contamination" will be considered together with a review of the SG. Unutilised Brownfield sites cause a social blight on local communities, as well as having an economic impact on the area in which they live, and perhaps environmental impacts. Such

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sites lead to poor perceptions of an area by attracting antisocial behaviour, which can prevent investment, so areas cannot escape deprivation. By appropriately defining Part 2A, as you propose within the SG, we consider that Brownfield development will be simplified and the regulatory uncertainty will be lifted.

Role for a “National Advisory Team”

Whilst we acknowledge that making the SG more appropriate to the original aims of the Act, we consider that there may be a considerable impact arising from the first few Determinations that are considered as these will be much more precedent setting than any under the old SG.

As a result, we would urge the establishment of a dedicated and carefully constituted “National Advisory Team to work with Local Authorities that are considering Determinations on sites under the new regime. It is, in SAGTA’s view, an ineffective use of government and public resources (money and staff) to expect each Local Authority to employ suitably-trained legal and technical persons in-house; each would need to follow the process with the required discipline on sites where there is uncertainty about the grounds for Determination. After a reasonable number of Determinations have been considered, with accompanying ‘case study’ guidance produced, the role of the Team would diminish in the light of experience and could be disbanded. As a result, we would propose that this Team would only be needed for the medium term if combined with further work on guidance to establish when the Possibility of Significant Harm (POSH) becomes in itself significant (SPOSH). Its funding could also be “top-sliced” from the Capital Grants, as intrusive work would be required and the Team would prevent considerable unnecessary repetitive expenditure.

The consequence of the absence of POSH guidance is that there is tendency to use lower thresholds of risk as the basis for defining ‘Contaminated Land’. Whilst not always the case, such over-conservative assessment can result in unwarranted attention, leading to unnecessary stress for the public and homeowners alike and can therefore also be disproportionately costly to businesses and UK plc. This is why, in SAGTA’s view, it is vital that the Team be established to assist the first Determinations and create supportive ‘case study’ guidance. Otherwise, we feel that the regime will end up in the wrong place, as has happened before, with the unwelcome side-effects that hinder the regeneration of our urban areas.

We hope that you find the above and the attached answers to your questions useful and that you seek to incorporate the issues into the new revision of the Statutory Guidance. Overall, SAGTA are very supportive of the work DEFRA have done to try to address some of the issues in this most challenging regime.

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If you would like to discuss any of the issues, or talk about any other ideas that you may have, SAGTA would, as always, be very enthusiastic to assist.

Yours sincerely

For and on behalf of SAGTA

Dr Richard Boyle
SAGTA Chairman

Frank Evans
SAGTA Deputy Chairman

Enc. SAGTA responses to consultation questions.

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SAGTA responses to consultation questions.

Issue 1: Shorter, simpler guidance

1. Do you agree that shorter, simpler Guidance would be an improvement? If not, please explain which areas need expanding and why.

SAGTA encourages shorter, succinct guidance that all stakeholders can understand so that lengthy legal arguments do not result. However, we do not endorse simply shortening guidance at the expense of clarity. We would actually welcome some repetition in the latter parts of the SG to refer the reader back to important previous paragraphs. We consider that this will aid the reader and user and avoid paragraphs either being taken or quoted out of context.

SAGTA also notes that there are a number of places where the SG states “relevant sections of the Act include ...”, for example paragraphs 2.1 and 6.2. In this context “include” implies an incomplete list. We would consider that it is generally helpful to have complete lists to avoid the reader and user having to consult other documents.

Issue 2: Separation of guidance on radioactively contaminated land (see paragraph 5 of the Introduction to the proposed new Guidance)

2. Do you agree with the proposed approach on radioactive contamination? If not, please explain why.

SAGTA agrees with this proposal. Dealing with radioactivity and “normal” contamination are done in two very different ways, so this will aid clarity. SAGTA members also operate in Scotland, where we note that this approach has worked well.

Issue 3: Broad objectives of the regime (Section 1 of proposed new statutory guidance)

3. Do you agree the guidance should state the broad objectives of the regime? Do you agree with the objectives as stated, and do you have comments on what the section says?

SAGTA agrees with this as we consider that it is extremely important to remind all parties of what the aims of the regime are to ensure that it is applied in the proportionate manner that SAGTA believes was originally intended. We recognise and welcome the inclusion of sustainability issues in paragraph 1.5 as it sets out the tone and intent of how the guidance and regime should be used. We support the apparent move from a solely science-based decision-making approach to one that includes other aspects such as sustainability and other local factors. This is especially the case when Local Authorities are determining on SPOSH, since the first ‘S’ is partially driven by socio-economic issues in the local area.

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SAGTA agrees with the objectives stated. To aid in the understanding of these, we would propose to include reference to the default hypothesis that land is not contaminated until proven otherwise to emphasise that the regime is a positive legal test. This is stated in 4.21 but could also have a place in Section 1.

SAGTA would also recommend framing the introduction with a comment that background concentrations of certain substances already exist diffusely due to the UK's long industrial past and our varied and complex natural geology. It is also important to recognise that many of the substances considered to be a potential risk under Part 2A are already accepted by society either due to the environment in which they live (e.g. vehicle fumes, natural background in soils) or due to personal social preferences (e.g. smoking).

SAGTA would recommend that people are referred back to the Act where it is appropriate.

Issue 4: Local authority inspection duties (Section 2 of proposed new Guidance)

4. Do you have views on the proposed new Section 2 of the Guidance? Should the Guidance introduce a mandatory deadline by which authorities should update their strategies?

SAGTA acknowledges the important and difficult role that the Local Authorities have in this process to protect human health and, with the Environment Agency, controlled waters. Therefore, we would support any views that they may have in this matter to ensure that the regime is sufficiently resourced.

SAGTA would recommend that Local Authority inspection strategies should also be sufficiently informed.

SAGTA notes that “reasonable likelihood” (paragraph 2.8) and “reasonable possibility” (paragraph 2.9) are interchanged. Are the two terms different? If they are, SAGTA would recommend explaining the differences or if they are not different we would recommend that the same term is used to aid clarity. This is also the case within the text where we feel there are uses of different terms that are again not intended and explanation and/or resolution would assist.

Issue 5 Risk assessment – general (Section 3 of proposed new Guidance)

5. Would the Guidance be improved by making the changes relating to risk assessment and the new requirement for risk summaries, and do you have views on the proposed changes?

SAGTA welcomes the section on risk assessment. However, we would recommend introducing this section differently by commenting that all sites may pose some level of risk, from vanishingly small to extremely high, but it is for the Local Authority to look only for those sites that pose either a POSH or SPOSH. The terms POSH and SPOSH should then be explained and what the difference of including the first ‘S’ makes, since it is a local and socio-economic issue.

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SAGTA considers that paragraph 3.2 is confusing. Risk is actually assessed by combining likelihood with severity. Unless there is a specific rationale the double use of significant confuses matters. They could be removed.

Within paragraph 3.17 on the topic of from whom Local Authorities should seek advice, SAGTA would recommend that risk communication experts are also included in those to be consulted. This is because the subject is potentially a very delicate issue and in SAGTA's experience, talking to affected residents is a difficult and skilled job. It is very easy to misphrase something that could cause significant stress and worry to the public, no matter how well-intentioned the comment originally was.

SAGTA considers that Risk Summaries (paragraph 3.27) are a very good idea on certain types of sites, since if you cannot describe the apparent risk at the site then you cannot understand it. We think that they should be technically sound and balanced and consider all areas of uncertainty that may exist. In addition, advice from remediation contractors should be sought early in order to understand the risk from carrying out remediation works at the site.

However, SAGTA would recommend that these Risk Summaries should only be produced as a final stage in the process, immediately before and only on sites where the decision on whether to Determine or not is about to be taken (Category 1 and Category 2 sites). They should not be used to report on lower risk sites (Category 3 and 4 sites). We consider this for two reasons. Firstly, these will be very difficult documents to prepare, so we think that there is unnecessary burden placed upon the Local Authority. However, our main concern is because of risk communication issues because mis-wording and emotive language can lead to misrepresentation of the circumstances.

It is generally accepted that once a perception of risk is established, the facts of an issue become irrelevant. The whole intention of the revised regime, namely to prevent disproportionate remediation could be undermined by a newly-created driver, i.e. the requirement to carry out unnecessary remediation because of risk perceptions created by the risk summaries.

SAGTA recommends that for Category 3 and 4 sites, a risk summary is not a requirement of the SG. Rather, we recommend the SG requires that a Local Authority issues a simple statement that the site does not fall within the definition of Contaminated Land. Given this will be a scientific-based decision, the need to communicate wider socio-economic and local factors is not required. This will remove the worry to affected residents, whilst also confirming no regulatory intervention will occur to the landowner so that they can avoid unnecessary cost and adverse public or market response. In such cases Risk Summaries will remain a useful tool that can be used where a particular reason exists but not a statutory need.

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Issue 6: Background presence of contaminants (Section 3 (paragraphs 3.19-3.21 of proposed new Guidance))

6. Do you agree that the revised Guidance should make clear that “normal” background levels of contamination are not caught by the regime, unless there is particular reason to think otherwise? If not, please explain why.

SAGTA welcomes the inclusion that natural and anthropogenic background contamination (paragraphs 3.19-3.21) should be included in the decision as to whether or not a site should be Determined. However, we must not lose sight of the fact that background levels of contamination may still be present at concentrations that may pose a risk to humans. However, in such instances, planning and land management issues would be more desirable solutions to consider, rather than Determination as Contaminated Land and thus requiring remedial action.

SAGTA considers that the example in paragraph 3.20 illustrating this is confused. We would suggest that it is reworded for clarity to highlight that an extremely widespread source for lead and BaP may come from both ashes as well as (historically in the case of lead) vehicle exhausts.

SAGTA welcomes the discussion on Generic Assessment Criteria (GACs, paragraphs 3.22-3.24). We also welcome the statements that these numbers should not be used as remediation targets for either the contaminated land or planning regimes

7. Do you have any views on how background/normal levels of contamination has been defined in paragraph 3.20 of the proposed new statutory guidance?

SAGTA considers that ‘background’ can vary significantly over short distances. However, information on background levels of some potentially significant contaminants is not readily available from the British Geological Survey or other sources. It may prove difficult for the landowner of a potentially contaminated site to demonstrate background if this would involve collecting samples from land he does not own. Therefore, this is an area where there is likely to be the need for a better evidence base. In terms of tools, the USEPA program ProUCL is useful for assessing sample results against a background population.

Issue 7: Significant harm to human health (Section 4.1 of proposed new Guidance)

8. Do you have any views on the proposed clarification of the statutory guidance on significant harm? Which option do you prefer and why?

SAGTA overwhelmingly favours Option 2 as it provides greater clarity over the definition and is more transparent and offers flexibility, as it breaks down the issue into more manageable portions. In respect of paragraph 4.9, a suggested first sentence is drafted below to help aid understanding:

If the local authority decides that harm is occurring but is not significant harm as defined above, it should then consider whether this harm is evidence that there might be significant possibility of significant harm, which would then be grounds for possible Determination as contaminated land.

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9. Do the options on significant harm strike the right balance between protecting against unacceptable harm to human health, whilst ensuring the regime does not unnecessarily catch less-serious health effects (where the impacts of regulatory intervention would probably outweigh the benefits)?

SAGTA considers that the SG does, if and when correctly employed, strike the right balance. However, we would recommend that the test of the effect of intervention should be required explicitly.

Issue 8(a): Possibility of significant harm (human health) (section 4.2 of proposed new Guidance)

10. Do you agree that the new Guidance should clarify that possibility of significant harm should be considered before moving on to decide whether or not a significant possibility of such harm exists? If not, please explain why?

SAGTA believes that it is a great step forward for the SG to consider POSH before SPOSH, i.e. splitting the part that can be largely carried out scientifically (POSH) from the part that cannot and that relies upon local and socio-economic factors (the first 'S' in SPOSH). We would not however, discount the challenge the process provides and the important role of the suggested National Advisory Team

11. Do you have comments on Annex 1 of the proposed new Guidance?

Although it is stated that Annex 1 is not statutory, SAGTA considers that it will actually become the default used by Local Authorities and will be more of a template than a guide. As a result, we think that care is needed that the content is appropriate and complete. We consider that there needs to be a section that explicitly discusses background concentrations. There may be merit in bringing together a working group or making it a defined task of the National Advisory Team to discuss the Annex 1 issue only.

Issue 8(b): Significant possibility of significant harm (human health) (section 4.2 of proposed new Guidance)

12. Do you have views on the proposed new “red-amber-green” clarification of how SPOSH should be decided would improve the Part 2A regime? Does the new test strike the right balance between establishing a legal framework, whilst giving local authorities sufficient flexibility to take proportionate decisions in the interests of local communities?

SAGTA considers that the clarification that determining SPOSH is a positive legal test is helpful. We also think that the clear elimination of sites that do not cause POSH is powerful. The separation of clear-cut decisions from the more difficult decisions encourages transparent thinking and will require the support of a range of parties and will take the decision higher into Local Authority management / councillors. We consider that this will indeed make the regime more proportionate.

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SAGTA considers that because the SPOSH test remains qualitative once a scientific-evidence base is proven, it could vary widely between authorities. We do not think it will be helpful if such wide variation exists as the decisions will be more open to legal challenge. Precedent setting is now also more of a danger than under the old SG as other Local Authorities will be able to turn to previous work as a basis for their decisions e.g. as suggested by 4.22(a). As a result, SAGTA considers it essential that the first thorough considerations of possible Determinations in particular that are carried out by Local Authorities are monitored correctly in terms of applying the right methodology and making the right decisions. Otherwise, we feel that the regime will end up in the wrong place again, as has happened before, with the unwelcome side-effects that prevent the regeneration of our urban areas. Therefore, we consider that it extremely important to provide case study guidance that would standardise the calibration of decisions. This may be possible via examples. However, SAGTA considers it more appropriate that a “National Advisory Group” be established comprising a range of stakeholders be created to guide and assist the first Local Authorities progressing Determinations and publish findings and experience on approaches applied. It is an ineffective use of government and public resources (money and staff) to expect each Local Authority to employ suitably-trained legal and technical persons in-house, each to follow the process with the required discipline on sites where there is uncertainty about the grounds for Determination. As a result, we would propose that this Team would only be needed for the medium term if combined with work to establish what the Possibility of Significant Harm (POSH) may be and when it triggers SPOSH. Its funding could also be “top-sliced” from the Capital Grants, as intrusive work would be required and the Team would prevent considerable unnecessary expenditure.

The consequence of the absence of POSH guidance is that there is tendency to use lower thresholds of risk as the basis for defining ‘Contaminated Land’. Whilst not always the case, such over conservative assessment can result in unwarranted attention, lead to unnecessary stress for the public and homeowners alike and can therefore be disproportionately costly to businesses and UK plc. This is why it is vital that the Team be established to assist the first Determinations and create supportive guidance.

13. Do you have views on the descriptions of the “red”, “amber/red”, “amber/green” and “green” categories? Do you have suggestions on how the categories could be improved?

SAGTA has no views how the category descriptions could be improved within the SG. However, as per our response to Q12, we consider it essential that support and extra guidance outside the SG is produced and think that this is best done through the creation of a “National Advisory Team” for the medium term.

14. Do you agree that local authorities should consider whether the health benefits of intervention would outweigh the health risks of carrying out remediation on “amber” sites? If not please explain why.

SAGTA considers that the benefits as well as the impacts on the population of any intervention should undoubtedly be taken into consideration before any Determination. The means of weighing up benefits against impacts when there may be different receptors involved offers a significant challenge which SAGTA thinks should not be underestimated.

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15. Do you agree that LAs should consider wider factors, such as social, economic and environmental impacts of the remediation, and whether the benefits of remediation would outweigh the impacts before taking SPOSH decisions on “amber sites”? If not, please explain why.

SAGTA considers that the benefits as well as the impacts on wider issues relating to social, environmental and economic issues of any intervention should undoubtedly be taken into consideration before any Determination. The decision to determine a site should not be one exclusively made by a contaminated land officer (CLO) on behalf of a Local Authority. It is a decision that the Local Authority senior representatives should make, using advice from the CLO that include the scientific-reasons as well as the socio-economic and local factors that are relevant.

Issue 8(c): Implications of the new SPOSH test for the use of risk assessment models such as CLEA

Early risk-based decision making requires GAC’s against which assessment is made. A current suite of GACs exists and plays a role and even though they represent very low risk they do allow decisions to be made. In the absence of any numbers on which to base decisions, it may be that no decisions will be made at all.

There is an argument that CLEA could be made redundant by the new SG. SAGTA does not consider that it is appropriate to consider an option of totally withdrawing CLEA model and all the accompanying guidance which is the product of considerable effort. The underlying concept is fine, although its implementation for chemicals has proved difficult because of lack of baseline information. Similar ideas are used successfully and are accepted internationally for radioactive contaminants.

We would, instead, recommend that the basis and standing of the CLEA model be re-emphasised to state what it may be used for in the context of the new regime.

Thereafter, we would support a joint effort on the part of industry and government to develop a set of screening criteria that represent the threshold between Category 4 and Category 3 sites. However, we would strongly encourage DEFRA to recognise the following two issues

- a) Environmental consultants are the key advisors to both industry and Local Authorities. Their buy-in into new screening criteria is very important.
- b) To develop more proportionate screening criteria, difficult political decisions regarding exposure and toxicology will be needed and the role of DEFRA in championing these decisions will be critical.

Issue 9: Significant harm and SPOSH to non-human receptors (see section 4.3 of the proposed new Guidance)

16. Do you have any views on the proposal not to amend the substantive nature of the statutory guidance on significant harm and SPOSH to non-human receptors?

SAGTA is supportive of the amendments and has no further views.

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Issue 10: Pollution of controlled waters (section 4.4 of proposed new statutory guidance)

17. Do you have views on the proposed new guidance on how to decide what constitutes significant pollution of controlled waters?

SAGTA considers that paragraph 4.41 provides a clear link to defined criteria. However, paragraph 4.42 dilutes this clarity, by bringing in the word ‘significant’ with no clear method by which significance can be determined. Is the intention that it is determined by the Environment Agency using the stipulated criteria? In this section, we think that hazardous substances, etc., need to be defined by reference to the appropriate EU Directives, to provide legal clarity.

18. Do you agree that a broad “red-amber-green” test in the Statutory Guidance is the right approach, and do you have views on how the red, amber and green categories have been described?

SAGTA is supportive of this and has no further views.

Issue 10(b): significant possibility of significant pollution of controlled waters (section 4.4 of proposed new statutory guidance)

19. Do you have views on the proposed new guidance on how to decide what constitutes significant possibility of significant pollution of controlled waters?

SAGTA is supportive of this. For completeness, we suggest appending to Category 4(a) “... or that no pollution is being caused.”

20. Do you prefer Option 1 or Option 2, and why? Can you suggest ways in which your preferred option could be improved?

SAGTA overwhelmingly favours Option 2 as it provides greater clarity over the definition and is more transparent and offers flexibility, as it breaks down the issue into more manageable portions. We think that Option 1 has the potential to lead to more subjective decisions and the adoption of potentially “precautionary” stances. It is important in that it requires a consideration of the consequence of determination as part of the assessment.

Issue 11: Determining whether land appears to be contaminated land (section 5 of proposed new statutory guidance)

21. Do you agree that these changes will improve the statutory guidance? Do you have views on any specific changes, and should there be additional clarifications?

At Section 5.3 the draft guidance requires local authorities only to consider informing affected persons of its conclusions. SAGTA considers that the appropriate default should be to inform affected persons, unless there are clear and documented reasons for not so doing. We think that an effective legal process requires consistent early engagement with landowners. It must allow ownership to be confirmed, historical information to be shared, and proactive risk management arrangements to be recognised. This does not consistently

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happen at the moment and we consider that matters will not be improved sufficiently under the new SG. If this does not happen, SAGTA thinks that it could also cause local communities to be misinformed about risks and responsibilities creating unnecessary stress on members of the public whose homes may have been blighted.

Landowners have a responsibility to challenge legal processes that are applied incorrectly. Responsible landowners also have reputations to manage. Landowners, local authorities and their advisors have the technical knowledge to foresee potential impacts on local communities and home-owners and work together to develop management plans and contingency arrangements to minimise this impact.

Issue 12 Remediation (Section 6 of the proposed new guidance)

22. Do you have any comments on Section 6 (remediation)?

SAGTA welcomes the reduction in length of this section. We especially welcome Sections 6(c) and 6(d), as members regularly comment that “project creep” occurs where provisions under Part 2A may prompt requirements for planning consent, the outcome can result in the authorities utilising the process to seek added stringency factors to site remediation.

Issue 13: Liability (Section 7 of proposed new Guidance)

23. Do you have any comments on Section 7 on liability? Is the new summary at paragraph 7.3 helpful?

The liability transfer provisions in the Part 2A legislation are progressive and have significant and positive consequences in enabling contaminated land to be bought back into beneficial use. The statutory guidance (current and proposed new versions) has relatively little say on the issue of liability because, most of the regime’s provisions on liability are in Part 2A itself, which is not in the scope of this review of the regime. SAGTA welcomes the improved transparency in Section 7.3 and overall welcomes the retention of this important part of the contaminated land regime.

The view of a SAGTA member is as follows:

As written, the liability of Class A persons is absolute and fails only if they cannot be traced. We read it as persisting no matter how many subsequent changes of ownership of the land may have occurred, during which the presence of contamination might have been discovered, and also extending to contamination that occurred before 1990. Is this the intended reading? This particularly affects former Crown land (and also some large corporations).

At this point, we are not able to confirm that this is endorsed by all SAGTA members but would be happy to seek further clarification if you so wish.

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Issue 14 Recovery of the costs of remediation (Section 8 of proposed new Guidance)

24. Do you have any comments on Section 8 (cost recovery) of the proposed new Guidance?

SAGTA welcomes the retention of the hardship provisions which are important to prevent a disproportionate burden landing on an organisation that cannot afford the costs. SAGTA note the clarification that hardship is not 'all or nothing'.

Chapter 4: Other issues

Issue 15: Appeals procedures: proposed changes

25. Do you have views on the proposed removal of Regulation 11?

The levels of uncertainty involved in making contaminated land decisions are such that the opportunity to be consulted on the process is invaluable within a proportionate regime. Judicial Review is a significant undertaking both financially and organisationally and the removal of Regulation 11 would make the inappropriate modification of remediation notices less open to challenge. In this respect, certain SAGTA Members would support the retention of Regulation 11.

Issue 16: Impact Assessment – consultation questions

26. Do you have views on the baseline assessment (Option Zero)?

and

27. Do you have views on the assessment of Option 1?

The current regime has been successful in terms of playing its part in raising the profile of contaminated land, making savings to the public purse by pushing the costs onto private sector land values through the development process, and through encouraging voluntary action. However it is one SAGTA member's experience that the mechanics of Part 2A do not function well when used in anger. Under 'Option Zero' SAGTA members have incurred costs of between £50,000 and £100,000 amount each time a piece of land has been Determined (mainly legal fees and complex technical assessments), despite the Determinations not being sufficiently robust to require the member to contribute to remediation itself.

A review of the impact assessment by selected SAGTA members (excluding those owners and operators of nuclear sites) suggest the impact assessment may be an underestimate concerning the amount of land that is undertaken on a voluntary basis by the polluter or landowner (paragraphs 66-69 in the Impact Assessment).

In general, SAGTA members are often dealing with the more complex and difficult sites to remediate and several members indicate average spends in excess of £500,000 per hectare on remediation. At least one member has been spending £30M per year for 15 years so it is reasonable to make some extrapolations from this given the member profile of SAGTA about what we have spent as a collective in a similar period.

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In terms of remediation standards, one member has confirmed that up to 25% of their work is driven by the standards set by the use of SGVs as remediation criteria

It seems likely that the costs of remediation through planning are likely to far exceed the £1bn estimate referenced in the IA, as there are numerous construction related activities such as earthworks, installation of roads and services that will have a remediation element not necessarily captured by the headline statistics. Typically remediation is a tiny proportion of the cost of redevelopment, but it is essential to get it right to safeguard the value of the overall development and this can sometimes drive conservatism. There may be regulatory conservatism through planning, perhaps due to inexperienced consultants, contractors or regulators. There may be institutional conservatism due to risk averse financiers or corporations (e.g. with US parents). The cost of action may be less than the cost of delay in the context of loans on land and development programmes. Although the SG will play a part, disaggregating this influence from other influences and quantifying it is a substantial intellectual challenge.

SAGTA members welcome the opportunity to contribute to this analysis.

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