

THE SOIL AND GROUNDWATER TECHNOLOGY ASSOCIATION

SAGTA REPORT 23 – PART IIA REVIEWED

SAGTA was closely involved in the development and introduction of the Part IIA Contaminated Land Regime legislation. For example SAGTA workshops were held in April and December 2000. Armed with the benefit of some 3 years experience of implementation of the regime, the aim of this workshop was to provide an active forum for sharing and discussing regulator perspectives, landholder experiences together with contributions from specialist practitioners.

This SAGTA workshop, hosted by BP at Sunbury-on-Thames on 11th September 2003, included contributions from:

- SAGTA members' experiences as problem holders
- Local Authority perspectives
- Defra activities
- Environment Agency views on the current state of play
- Legal issues

Summary of The Workshop Outputs

The workshop and plenary session considered issues over the operation of Part IIA under a number of headings, aimed at identifying further steps and specifically the areas where SAGTA can contribute:

1. Legal

The issue	What should be done?	What can SAGTA contribute?
Further legal 'wrinkles' can be discovered	Write or talk to Defra	Collect information from SAGTA members' experiences
Water Bill, clause 89 (insertion of significant pollution of controlled waters)	Defra and Scottish Exec to agree legality of the proposed change to ensure a consistent approach	Hold workshop in 2004 on guidance on what is "significant"
Case law, including assessment of who is the appropriate person	UKELA setting up an e-library	SAGTA can continue to share experiences both internally and with local authorities and Environment Agency
Overlap of Legislation (e.g. planning guidance, Habitats and Waste)	Benchmark UK application of EU directives with other EU countries. Establish guidance and ensure draft PPG is compatible with Part IIA	SAGTA could assist in scoping and peer reviewing any guidance
Waste Framework Directive and Landfill Directive	Again need consistent application across EU. Need exemption on how contaminated soils are managed	Participation in Hazardous Waste Forum. Comment on Defra guidance

2. Technical

The issue	What should be done?	What can SAGTA contribute?
Is there too much guidance?	Promotion of what is there and a review of older guidance	Assist by supporting any Environment Agency initiatives
Is the guidance practical?	Understand impact of low/impractical SGVs	SAGTA can provide the Environment Agency with real examples
Is the guidance understood and used?	Simplified 'road map' to complement CLR 11	Assist in promoting the idea and drafting

3. Local Authority / Environment Agency

The issue	What should be done?	What can SAGTA contribute?
Resources and prioritisation of contaminated land	Reverse lowering of priority of contaminated land	SAGTA could voice the issue when it is difficult for the Environment Agency to do so
Consistency of approach	Greater use of (accredited?) consultants to assist	Continue and improve dialogue between LAs and SAGTA. Regional Workshops between LAs and SAGTA
BVPIs	Environment Agency to clarify targets/roles/objectives	

4. Industry

The issue	What should be done?	What can SAGTA contribute?
Redevelopment blight	Need to change perception of funders through education	SAGTA could improve its links with funders
Multi-ownership sites	Better communication of data and dialogue between owners	
Better co-operative dialogue between the regulator and potential appropriate persons	Encourage appropriate and timely communication on both sides	Lead by publishing examples and show that SAGTA can work with the local authorities
Sign off of remediation	Can the regulator provide a 'letter of comfort'? Use of Land Condition Reports	SAGTA and local authorities can continue to share information on examples which have worked

Summary of Workshop Presentations

Papers presented to the Workshop covered:

- A Local Authority perspective
- Member's short case studies
- Defra activity
- Views from the Environment Agency
- A Lawyer's view

A Local Authority Perspective

14 Districts in Lancashire have formed a Contaminated Land Officers' Group to encourage joint working and a unified approach to Part IIA. All contaminated land strategies have been published and the local authorities have identified between 600 and 2500 sites per authority with some potential for contamination. Available resources for implementing the policies are low (the number of full time posts is between 1 and no posts per authority). Only three determinations of contamination have been made within the Group.

The Group jointly purchases historical desk study data and tries to share good practice by networking on new documents, jointly developing planning guidance notes, sharing training courses and regular liaison with the Environment Agency.

Two case studies were presented. A housing estate built in 1997 was found to have high levels of methane and carbon dioxide discovered, although the gas flow was relatively low. Determination was made in December 2000 and a Class A liability person identified – the developer. Remediation statement agreed with the developer and the residents consulted. Remediation comprised installation of passive venting and work was shown to be effective. The remediation work was funded through SCA as the developer went into liquidation. A former metal plating site sold in 1999 to a grounds maintenance company was found to have elevated concentrations of metals present which had entered the soil and surface waters. 26 pollutant linkages were identified and the determination made. Class A person is denying responsibility and Class B person does not understand the seriousness of the situation. The local authority is considering serving a remediation notice requiring action.

Reasons for variable progress on implementation of the strategies were:

- Limited resources
- Contaminated land is not high on the political agenda and is not a Best Value Performance Indicator
- The public are not aware until it comes to selling their house

Members' Short Case Studies

Several SAGTA members presented short case studies on issues. Matters raised included:

- Some concern that SEPA is unsure whether insertion of “significant” into the contaminated land definition which covers controlled water might be a breach of EU law
- Doubts about consistency of approach by local authorities
- Still lack of clarity in some areas over the Environment Agency’s role
- Some errors in establishing the appropriate person
- Benefits of operating a corporate contaminated land strategy
- Some signs of local authorities now not getting involved in dialogue over voluntary remediation work, but just noting the activity. This is considered to be a backward step.

Defra and Environment Agency Activity

Defra views Part IIA to be ‘up and running’. The SCA funding is available to local authorities. Defra has sent a questionnaire to local authorities – no result yet available. Limitation on resources within Defra and with local authorities was a recognised issue. A new draft Planning Guidance should be issued later in the autumn. The Soil Protection Directive should be restricted to agricultural soils.

Only 10 local authorities have not published strategies. 63 sites have been determined contaminated to date and 17 Special Sites identified.

A large amount of Environment Agency activity is still going into publishing CLEA tox. and SGV data. Some indications on BTEX, naphthalene, phenol and benzo(a)pyrene were given. Consultation on a guidance document on development within 250m of landfills is being issued. This document recommends risk assessment and risk management. Advice is being issued on regulator involvement in voluntary remediation of contamination. CLR 11 (Model Procedures) is coming out (at last) for consultation.

A Lawyer's View

There is a possibility that under certain circumstances a knowing permitter may not be liable. Regulator is having difficulties in some cases in establishing appropriate persons in cases of orphan sites or where complex land transactions have occurred. Although it may be better for an appropriate person to be proactive, voluntary remediation is not defined in law. It should be remembered that the regulator in Part IIA has duties, but not discretion.

There is a move to recommend the setting up of a tribunal to assess court cases under Part IIA, as there are doubts whether Magistrates have the specialist knowledge.

For further information on SAGTA please contact the Secretary of the Association Doug Laidler at douglas.laidler@atkinglobal.com or Tel +44 01372 726140

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