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Joint SAGTA & SoBRA Workshop

Introduction

- A legal perspective on the use of C4SLs in planning and enforcement
 - What are they?
 - Part 2A use
 - Planning?
 - Are they future proof?

Part 2A

- This has not changed
 - Environmental Protection Act 1990 Part 2A
 - Environment Act 1995 s78
 - In particular Contaminated Land is still:
 - “.... any land which appears to the local authority to be in such a condition, by reason of substances in, on or under the land, that significant harm is being caused or there is a significant possibility of such harm being caused”*

What happens?

- The Local Authority is under a duty to inspect their area
- A risk based approach
- Is *Significant Harm* being caused? or
- Is there the *possibility of significant harm* (POSH)? If so, is that possibility *significant* (SPOSH)?

What is Significant Harm?

- Section 4.1 Paragraph 4.5

“The following health effects should always be considered to constitute significant harm ...: death; cancer[s]; diseases likely to have serious impacts on health ...”

What are they?

- A 4 category test
 - Category 1 or 2 – Contaminated Land
 - Category 3 or 4 – not Contaminated Land
- Category 4 *“The local authority should not assume that land poses [a] SPOSH if it considers that there is no risk or that the level of risk posed is low.” (4.20)*

What are they?

- *“New technical tools and advice may be developed to help regulators and others apply This Guidance..... For example this might include the development of generic screening levels to help assessors decide when land might be assumed to be in Category 4.....” . (3.30)*

What are they?

- They are intended to enable 'low-risk' land to be dismissed from further assessment quickly and easily
- Regulators should be able to focus on the highest risk
- C4SL are expressed to be of greater risk than existing screening levels but still an acceptable risk within the context of Part 2A

What are they?

- C4SL “are designed to reflect a more pragmatic approach to contaminated land risk assessment (albeit still strongly precautionary)”.
- A new term has been adopted “Low Level of Toxicological Concern ... which would pose a low risk to human health”.

C4SL in Part 2A

- A simple tool to use
- Use to decide no further action
- Being over a C4SL does not (necessarily) mean Part 2A
- Exceed and further work is needed

Planning

- The 'National' Planning Policy Framework
 - Prevent unacceptable risks
 - Suitable for the new use
 - Not capable of being Part 2A
- The Impact Assessment for the new Part 2A
Statutory Guidance assumed C4SL would be used for planning

Planning v Part 2A



Planning

- Remediation in the context of a planning application
 - The LPA requires comfort by way of planning conditions
 - The developer requires comfort against future liability
 - Future owners / occupiers need to be ‘safe’
- What level is it realistic to expect remediation?
 - a cost benefit analysis
 - Delay v cost v future liability v reputation

The future

- Nothing is future proof



Contact Details



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