

Soil Guideline Values: The Way Forward

Introduction

1. The Association of Geotechnical and Geoenvironmental Specialists (AGS) is a long established trade association which represents the interests of over 100 companies (consultants, contractors and laboratories) involved in the investigation and assessment of land. The objectives of the Association include a commitment to improve the quality of geoenvironmental engineering. Accordingly, the AGS has been closely involved in the process to bring forward a new generation of Soil Guideline Values for the assistance of regulators and practitioners in the field of land contamination and remediation. The AGS was an active member of the SGV Taskforce in 2005 and 2006 and has established a group of interested members who have and will continue to monitor and inform the Way Forward process.
2. AGS members have considered the documents provided at November's meeting and are pleased to forward the following response which we trust will be given due regard in the consultation process.

General comments

3. Our overarching comment is that unfortunately the Way Forward document concentrates almost entirely on Environmental Protection Act Part 2A issues and pays little regard to the issue of development under the planning regime. In a large majority of cases, SGVs are, and in the future will continue to be, referred to in connection with planning rather than Part 2A enforcements or considerations for enforcement. The balance in the forthcoming Guidance should therefore reflect this. Developing Guidelines based solely upon Part 2A considerations and demonstrating "unacceptable risk" would not achieve the stated objectives and would be of very limited value given that in any actual determinations under Part 2A detailed quantitative risk assessment will often be necessary.
4. **The AGS therefore recommends that the Guidance should include appropriate emphasis together with clear and workable advice on the application of Guideline Values in both the planning context and that of Part 2A.**
5. The way forward document has dismissed the concept of a two tier system of Guideline Values [a Lower Threshold Value, below which concentrations would be acknowledged to present "no risk" and an Upper Threshold, or Action Value, concentrations above which require or trigger remedial or other action]. AGS recognises that PPS23 rightly places the responsibility on the developer to ensure that once developed, land does not fall under the Part 2A definition of Contaminated Land. The Task Force has suggested that the application of alternative statistical techniques could enable distinctions to be made around a single set of Guideline Values in a planning/ redevelopment or alternatively a Part 2A context. There continues to be a strenuous debate amongst AGS members on this issue and unanimous agreement on the merits of a one tier or two tier system of Guideline

Values has not been reached. As a consequence, this response does not make a recommendation in favour of either a single Guideline Value or an alternative two tier system. Individual member companies with particular views about this issue may be making their own submission. Notwithstanding the above discussion, it is the view of AGS members that whatever system eventually forms Government policy, the proper application of policy and guidance should ensure that there will be significant clear water between the determination of land as Contaminated Land under Part 2A and the condition of land considered to be "safe" or "suitable" for any planned redevelopment.

6. The Way Forward document identifies a substantial programme of new/ revised Guidance (summarised in Section 6). According to DEFRA these outputs are to be published by the end of December 2007. The AGS supports the recognition of the urgency of the need apparent in this date. However, The AGS is very concerned that DEFRA does not identify how such a major body of new Guidance is to be produced consulted upon and agreed to meet this deadline. It is envisaged that considering the responses to this current consultation must inevitably take until March/ April, leaving just over 6 months or so to draft, test, review and publish what is a very large body of work. The AGS does not doubt the skill, effort and intention behind this promised programme, but given the track record of DEFRA/ the Environment Agency in this respect and the numerous examples of failed commitments in the past, there are very considerable concerns that much of the promised Guidance will not be delivered.
7. **The AGS therefore recommends that DEFRA gives serious consideration to the resourcing necessary to ensure delivery of the committed end of 2007 timetable. This should include out-sourcing of work to the academic, regulatory and commercial arms of the contaminated land community.**
8. DEFRA has stated that it has no intention of any interim statement prior to the publication of the outputs listed in Section 6. The AGS is very concerned at the prospect that the present period of uncertainty will be allowed to continue and the present situation could recur.
9. **The AGS therefore recommends that DEFRA should publish a further CLAN as soon as possible after the receipt of the responses to this consultation to provide some interim advice and summarise the response to the Way Forward. This advice could include, for example comment upon the use of generic assessment criteria which are now widely available (e.g. as produced by LQM /CIEH, Atkins). It could also provide some clarification upon the use of the existing SGVs in both the planning and Part 2A context.**
10. From the AGS perspective, the SGV Task Force has proved an extremely useful body in obtaining opinion on the matters of concern from across the contaminated land community and then in developing options for the Way Forward. The work and efforts of all of the Task Force, but in particular Judith Lowe and Jane Forshaw have been greatly appreciated. It is recognised that this element of work has reached a logical conclusion with the publication of the Way Forward documents. However, the need for some stakeholder forum remains very apparent and indeed critical to the successful conclusion of this work and in its development in the future.
11. **The AGS therefore supports comments made by DEFRA regarding a successor stakeholder forum made at the November meeting and would be very pleased to commit its support to such a body. We trust that in considering the membership of any such forum, due consideration is given to the contribution that can be made by the AGS and its members.**

Detailed comments

12. Paragraph 2.7 is the only substantive text regarding planning in the document. It clearly states the policy being adopted by DEFRA and DCLG with respect to the "minimum" standards acceptable for new development. This is entirely consistent with the position as set out in the July stakeholder and November SGV TF meetings.

If a set of guideline values are produced which more closely approximate to the transition to unacceptable risk and no further guidance is produced for regulators we can envisage a situation where sites are given planning permission based upon likely exposures very close to the level at which significant harm, let alone harm, may occur. The AGS consider this may cause difficulties for remedial specifiers who themselves may be at risk of becoming appropriate persons under Part 2A or liable under common law or consumer protection legislation. We recognise that there is still significant debate over this issue and that the future practical implications will depend upon the level of risk inherent within the selected SGVs and the additional guidance on statistical interpretation. Overall, as discussed above, the AGS consider the important issue of planning on contaminated sites, a very common situation, merits a much higher level of priority in the Way Forward process. **The AGS therefore recommends the need for transparency in the planning process is recognised in the final outputs of the Way Forward process otherwise the regulatory community will struggle to provide a consistent approach.**

13. Paragraph 2.19 et seq set out the chronology of events and processes that have led to the current position. Given that it is understood that the target date for any final "product" of the Way Forward process is December 2007 as discussed above, **the AGS recommends that measures are put in place and resources allocated such that this programme is not allowed to slip and that interim guidance be issued to allow the whole of the contaminated land community to follow defensible courses of action until the revised guidance is available.**
14. Section 3. The AGS notes with concern that the objectives of the Way Forward do not include any reference to assisting in planning decisions.
15. Paragraph 4.6 sets out the approach followed in evaluating option proposals. The AGS note that "*the fit to Part 2A*" was a consideration but the fit with the planning system was not. As discussed above, it is our firmly held view that the implications with respect to planning on contaminated sites will be some of the most important practical effects and therefore should either have been a paramount consideration or the WF made it clear that its findings have no relevance to the planning situation. The position that merely avoiding Part 2A meets the requirements of PPS23 flies in the face of common sense and current practice of incremental improvement in the housing stock. Furthermore we would ask whether cost/benefit implications should play a role in developing the Way Forward guidance.
16. Turning to the practical changes considered the AGS generally find these to be sensible given the context in which the guidelines are being produced (*i.e* Part 2A) and our comments are intended to be read in that context. Should any alternative planning based guidance be issued then our approach to the practical proposals could change.
17. Paragraph 5.17 a) The AGS accept the selection of critical receptors and proposed revisions to frequency and period of exposure in the allotment scenario. While work is ongoing with respect to the latter **it is recommended that the much more common exposure scenario of public open space is considered and appropriate guidance at least on receptor behaviour is produced so that DQRAs can be conducted on a consistent basis nationwide.**
18. Paragraph 5.17 b) The AGS agree with the unchanged position with respect to averaging time and exposure duration.
19. Paragraph 5.17 c) The AGS agree with the approach and would welcome the early production further technical guidance. AGS would point out that every risk assessment is a site specific one and the WF wording is therefore confusing (indeed (d) goes on to recognise this).
20. Paragraph 5.17 d) The AGS note and agree.
21. Paragraph 5.17 e) The AGS note and agree with this change which we understand is in line with general international approaches.

22. Paragraph 5.17 f) The AGS note the proposal to take into account the work of the Environment Agency on choice and use of plant uptake models. **It is recommended that the results of the study are made transparent and consulted on before incorporation into revised CLEA. We are frustrated that recent reviews have merely recommended further research.**
23. Paragraph 5.17 g) The AGS note the proposal to set guideline values using the reasonable worst case home grown vegetable consumption of the general population. It is agreed that this is a sensible approach and consistent with other assumptions (e.g. pica children). We consider that the reasonable worst case assumptions should be based upon realistic garden sizes. In the situation of new development we would suggest that a significant proportion of plots would have gardens areas falling below the small garden size referred to in Annex B.
24. Paragraph 5.17 h) The AGS welcome the tiered approach into estimation of vapour intrusion into buildings and request full consultation on these as appropriate.
25. Paragraph 5.17 i) The AGS support the move to a fully deterministic model.
26. Paragraph 5.17 j) The AGS welcome the check for double counting in specific threshold health effect contaminants.
27. Paragraph 5.17 k) The AGS welcome the development of guidance for assessment of lead on a site-specific basis.
28. Paragraph 5.17 l) The AGS support this proposal but question how this longer term change might be implemented in the form of revised SGVs.
29. Paragraph 5.17m) The AGS support the creation of a database of UK conditions. Accordingly the AGS will encourage members to contribute to the acquisition of such data.
30. Paragraph 5.17 n) and o) The AGS welcome these proposals
31. Paragraph 5.18 The AGS welcome the production of guidance on the way assessors should apply guideline values. However, as discussed above, it is imperative that this must also include guidance on their use in the planning regime. It is with respect to planning issues that the guidance will be most frequently used.
32. Paragraph 5.43 (a) AGS fails to understand how such a cost benefit analysis can be carried out without changes to the primary and or secondary legislation where CBA is clearly not an issue until the development of remediation strategies b) The AGS support the production of contaminant specific guidance to assist assessor's risk estimation where naturally occurring hazardous substances may be present. **It is our opinion that this is a priority issue and request that this issue is given a high priority in the Way Forward process.**
33. Paragraph 5.44 a) The AGS believe this is a sensibly pragmatic basis for defining unacceptable intake.
34. Paragraph 5.44 b) The AGS accept that the principle of setting priority for action where the soil derived intake exceeds the TDI. Further information will need to be provided on the practical implications of this priority within the Part 2A process. In respect of the second issue of treating a site as a priority if the combined intake approaches or exceeds LOAEL, we feel this may present difficulties where the LOAEL is very close to the NOAEL. The magnitude of this problem depends substantially on what it means to be "*regarded as a priority for action*".
35. Paragraph 5.44 c) **The AGS wish to see further details of the practical implications of this set out in more detail.**
36. Paragraph 5.44 d) The AGS support this approach. **However further detailed guidance will be necessary in respect of acceptable methods of calculating additive or synergistic effects.**
37. Paragraph 5.44 e) The AGS support this pragmatic change in the assessment of non-threshold determinands.

38. Paragraph 5.44 f) The AGS agree that this is a pragmatic approach to the treatment of arsenic.
39. Paragraph 5.44 g) The AGS agree that a similar approach should be adopted for asbestos and are pleased to see that it will be given priority treatment. **It is recommended that the approach must take into account existing occupational health standards.**
40. Paragraph 5.44 h) The comments in 5.44 c above apply.
41. Paragraph 5.44 i) The AGS support this proposal but would reiterate that in the planning context this may not be an appropriate standard.
42. Paragraph 5.52 The AGS reiterate concerns that the process as currently described is entirely aimed at Part 2A issues and must include full and proper consideration the planning context.
43. Paragraph 5.54 **The AGS recommends that guidance, protocols and frameworks for planning considerations must also be provided.**
44. Paragraph 6.4 **The AGS recommends that there should be full publication of all consultation responses following the February 2007 consultation and confirms it is happy for its response to be made public. As discussed in the general comments at the beginning of this response, it is essential that the process now moves forward to a satisfactory conclusion, including publication of a fully revised CLR guidance and CLEA model by December 2007.**
45. Paragraph 6.5 The AGS considers that, following the publication of the statutory guidance and release of SGVs and CLEA model in 2002, the training available to industry and regulators was not appropriately designed and targeted. We are aware of the initial very useful work by the SGV TF training subcommittee. The AGS recommends and would support proposals for dissemination of the future guidance by means of common training courses readily available and accessible across the whole of the contaminated land community.

The AGS trust that the foregoing is of assistance and would be grateful if we could be kept informed on progress of the Way Forward.