

Better Regulations Meeting

28th February, 2012 Meeting Minutes

Location: CL:AIRE Office, Marble Arch, London

DRAFT

11am – 3pm

Present:

Mark Rolls	Chair
Nicholas Willenbrock	CL:AIRE
Tracy Braithwaite	The Soil and Groundwater Technology Association (SAGTA)
Morwenna Carrington	Department for the Environment, Food & Rural Affairs (Defra)
Phil Crowcroft	Specialist In Land Condition (SiLC)
Nicola Harries	CL:AIRE
Lisa Hathway	National House Building Council (NHBC)
Seamus Lefroy-Brooks	Association of Geotechnical & Geoenvironmental Specialists (AGS)
Steve Moreby	Gloucester County Council
Steve Normington	Planning Officers Society
Felix Oku	The Society Of Brownfield Risk Assessment (SoBRA)
Clare Robertson	Environment Agency (EA)
Paul Sheehan	Environmental Industries Commission (EIC)
Christopher Taylor	Brent Council
David Jackson	Independent Consultant by invitation.
Jane Garrett	CL:AIRE (present for part of the meeting)

Meeting Notes

1) Apologies

- 1.1 Apologies were received for Peter Witherington – House Builders Federation (HBF) and Richard Boyle – Homes and Communities Agency.

2) Welcome and Introductions

- 2.1 The Chair welcomed everyone and each member of the group introduced themselves. It was explained that the scope of the meeting was to follow up on the inaugural meeting of the sub-group on the 27th September 2011. The meeting was to provide an opportunity to discuss and explore in more detail which elements of Better Regulation, active elsewhere in the world, might be of value to the UK. Further, it was to allow a review and discussion of further feedback gathered from all elements of the industry. The aim of the meeting was to agree the future direction of the Group's work, including the development of draft elements or schemes that could eventually be put to consultation with industry and other stakeholders.

3) Discussion

- 3.1 The group reviewed and approved the minutes of the previous meeting. Progress on each action was outlined by the relevant group: -

- Letters to Ministers have been sent following on from red tape challenge.
- Environment Agency deployment figures – 2011 = 155 deployments, 2012 = 110 deployments, 284 = Definition of Waste Development Industry Code of Practice declarations (until Nov 11) equating to 1.4M tonnes of material diverted from landfill.
- External feedback received on previous meeting minutes noting that “Australian Auditing System” is incorrect terminology. Each state has its own system and should be referred to correctly.
- Tony Lennon of Chubb Insurance is interested in participating in the sub-group but was not able to attend this meeting.

3.2 In particular, group feedback was outlined by each representative where comments had been received.

3.3 The AGS were only able to supply anecdotal information at this stage as the majority of feedback had not yet been gathered.

3.4 A number of Local Authorities – Contaminated Land Officers had provided information and their views on where they saw problems occurring and had made recommendations on suggested improvements.

3.5 The EIC responses had a general reticence to undertake a name and shame process when giving evidence. Unfortunately there was no information / feedback regarding permitting issues at this time. Another EIC meeting is planned for the 7th March where members will be asked again for information. Questions had been submitted asking whether this initiative perhaps also covers a wider remit than just Contaminated Land e.g. flooding, wash-over and greenbelt management. Some first hand examples of poor practice were given but balanced with further evidence of proactive Local Authority work especially on contentious sites. Some of these projects were able to provide examples of audit roles already being used where Local Authorities have employed third party reviewers.

3.6 Overview of SoBRA responses to their survey monkey questionnaire was provided. The data generally supports previous points made by this sub-group especially with regards to the standards of submissions reviewed. There is strong support for aspects of peer review / auditing. SoBRA responses represent individuals only and not their organisations.

3.7 Question arising from the group on what will be done with all the evidence gathered? Action - CL:AIRE will condense all material, make it anonymous and post on the website page.

4. Further feedback from Sub-Group on the initiative in general.

4.1 Consistency and quality of work across Local Authorities and Private sector was raised as a major issue and whether a voluntary approach utilising resources such as LA checklists or pre-tender audits could help raise standards.

4.2 Reference was drawn to the Definition of Waste Development Industry Code of Practice as an example of Better Regulation which has freed up the regulator to focus on poor performance. This initiative started with the simplest areas of excavated waste management first to get acceptance from the industry, such an approach was suggested with this initiative. The group

reiterated the democratic process behind the planning process and therefore whatever is developed must not allow this to be undermined.

- 4.3 The group recognises that the function of Contaminated Land officers is often being covered by a range of people with differing technical backgrounds. Some Local Authorities already have no in house capabilities a problem which could be compounded by the effects of cut backs, however at this time, there is no evidence available to show the level of impact. It was estimated that 2/3 of all authorities have a contaminated land professionals but with cut backs their work loads have become stretched.
- 4.4 The group consider there to be enough guidance material already available and that provision of further guidance alone is unlikely to produce significant improvements. Notwithstanding this, the quality and standards of consultants work was raised as an issue and discussed, with a small number of examples of substandard reports being circulated. Poor work and poor data quality is perceived by the group as a major area of bottleneck within the current system. The main area of concern is when the client, often the developer selects the cheapest consultant; without informed clients this situation will be difficult to change. In some instances there is a lack of understanding in the difference between geotechnical sampling for foundations / piles and environmental sampling. On many occasions the assumption is made that the two can be simply grouped together, without much thought. Better communication of best practice approaches is required for clients alongside improving the performance of consultants. How can we arrive at a similar position as the Definition of Waste Development Industry Code of Practice where client organisations now frequently just demand its use?
- 4.5 Client/Landowner companies approaches to supply chains and tender procedures were questioned, and reference to work SAGTA has recently carried out on this subject was mentioned. Better performance of consultants at an early stage could relieve the pressure further down in the development line in terms fewer failed applications. This principle was supported by feedback received from Local Authorities on how they felt that pre-planning tender audit approaches improve the quality of submissions. Pre-planning application discussions between Local Authorities and Developers with their consultants anecdotally result in much better project approaches and less delays which saves money. Awareness is needed in the cost of delays versus the extra costs of an audit to achieve an efficient planning application process. The message to get across is that a good consultant can save a lot of money. Any scheme development should seek to prove this point with case studies and project facts.
- 4.6 SiLC cover a range of skills and could form part of a system if an auditing role is required, however it is recognised that SiLCs often come from a number of different backgrounds and therefore wouldn't be appropriate in its current form. It was suggested that perhaps each SiLC identifies their core competencies with evidence on the SiLC website to allow people to be more aware of different people's strength areas.
- 4.7 Discussion took place on the format of potential audit schemes focused on full licensed project reviews or licensed tender reviews i.e. pre-project. The group noted the core competencies from the South Australian scheme. However such a full licensed scheme was questioned as due to the potential to cause a constraint on business through additional cost and through number of individuals available to carry out reviews; currently there are 140 SiLCs.
- 4.8 The group believes a long term strategy is required but recognises the need to assess what can be done here and now to test the extent of the problem and make straightforward

changes to improve the regulatory system we already work within? The perceived raising costs of using 'better regulation' would be hard to manage, even though the extra cost is just about ensuring the work is carried out to appropriate standards.

5) Review and comment of 'Active Systems' - Presentation and Q&A session - Western Australia system.

5.1 Presentation slides hosted on Better Regulation section of CL:AIRE's website.

General questions arising.

5.2 Queensland is significantly different from the other state schemes running in Australia. It has a tiered peer review system based on the type of the site in consideration of risk - lesser levels of auditor experience and qualifications for different site types.

5.3 The vast majority of applications go through first time using the approach in Western Australia. The group felt it might be particularly effective on large, problematic sites (but is this where problems exist?) but it could be too burdensome for small project / site scenarios.

5.4 Some anecdotal feedback offered from the group – the Australian schemes aren't as effective as perceived with lots of one up man-ship between auditors. Further, some believe it is a risk adverse system, drawn-out and therefore sometimes very expensive.

5.5 It would be difficult to run such a system with multiple Local Authorities therefore it is unlikely that such a scheme could be implemented in the exact way achieved in Western Australia. Primary legislation would be needed to fully adopt such a scheme which is considered by the group to be very difficult to achieve. The Department for Communities & Local Government must be brought up to speed and become supportive of any new ideas and approaches.

5.6 The group discussed the potential for a voluntary approach using elements from such a scheme, and the ideas suggested by the industry groups. Whilst some of the group warned against the likely success of a voluntary approach the Definition of Waste Development Industry Code of Practice was highlighted as an example of how such a voluntary approach can be effective. If the proposed system is good and saves money, industry buy-in can be achieved without a scheme being made mandatory.

Action – Group feedback on Western Australia presentation and papers summarising South Australian and Massachusetts scheme, plus any further thoughts by the 9th March 2012.

Action – CL:AIRE to draft an initial scope for introducing the best elements of all schemes into a voluntary approach. This will be circulated in time for the next sub-group meeting where it will form the focus of discussion.

6) Review of Permitting third party auditing pilot.

6.1 An overview of the recent ENDS article was given which outlines the Environment Agency's recent work on examining 3rd party auditing for the permitting process. More information on this work will be provided by the group by the EA. It is proposed and supported by the group to link with this work so as to avoid duplication and ensure that soils and excavated materials are recognised as requiring expert attention beyond that of most waste experts.

Action – CL:AIRE to link with relevant parties in the EA to raise awareness of the sub-group and ensure interaction.

7) AOB

- 7.1 Meetings of the sub-group will be held quarterly with CL:AIRE to organise and facilitate.
- 7.2 Comments were offered that the group has made huge progress and has acknowledged that there are problems in both the public and private sector. All groups remain keen to progress this initiative to try and improve matters.
- 7.3 Further remarks were received on how the sub-group has reacted positively to engage with relevant parties, maintain a balanced attendance and gain some momentum.
- 7.4 Particular thanks were given to the Local Authority representatives who had participated and provided feedback so far. Thanks were also given to CL:AIRE for ensuring that Local Authorities are engaged in this sub-groups work by reaching out to Local Authority Groups, networks and forums. A commitment was given to ensure those all groups who've expressed an interest are kept up to speed.