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Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Dafydd Elis-Thomas AM
Chair, Environment and
Sustainability Committee
National Assembly for Wales
Ty Hywel
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28 March 2012

Anawyl Dafydd,

Thank you for your letter dated 9 March, which followed consideration by the Environment and Sustainability Committee of the concerns raised by the Chartered Institute of Environmental Health Cymru (CIEH), regarding the draft Contaminated Land Statutory Guidance 2012. I would like to assure you that I have given full consideration to the points raised by CIEH in relation to the revised Guidance.

The contaminated land regime has been in force for ten years and in that time it had become clear that there were issues with the way in which the existing Guidance went about explaining when land does (and does not) need remediation. This had created significant uncertainty and led to unnecessary and expensive remediation work being carried out by regulators and developers and took up resources that could have been focused on dealing with more problematic sites.

The revised Guidance was prepared to address these issues and has been developed through close working with experts in the contaminated land sector. It will give regulators more confidence in their decisions, increase transparency and the proportionality of decisions and will help reduce administrative burdens in line with the principles of good regulation. I am confident that the revised Guidance will improve upon the existing contaminated land regime, as it aims to deliver a regime which is more effective at safeguarding human health and the environment, by effectively prioritising higher risk sites.

The most fundamental change in the revised Guidance is the introduction of new four category approach which reflects what assessors find when they investigate real

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sites i.e. some sites are clearly contaminated land (Category 1), some clearly are not (Category 4); and some are less straightforward and need some level of detailed assessment before a decision can be taken on whether or not the land is contaminated. The Guidance explains how to decide when land falls into each category. This will create far more legal certainty for regulators and will provide a better foundation for making scientifically robust decisions, because it recognises the importance of dealing with uncertainty in the decision making process.

There is no current evidence to suggest that the revisions to the Guidance will result in a reduced level of health protection to land users. It is also important to remember that the regime was introduced with the principal objective of capturing those higher risk sites that posed the most significant risk to human health. A lack of clarity in the existing Guidance has meant that substantial time and resource has been spent unnecessarily on sites where any risk is negligible. The new regime will still be highly precautionary, but will be better at focussing efforts on finding high risk sites and dealing with them first and helping local authorities appropriately dismiss low risk sites. This will allow the regime to be more targeted and efficient, while offering protection against potential health impacts. It is important to understand that these health impacts can be measured not only in terms of the human health effects directly from contaminants, but also from the effects of intervention. This is demonstrated by a recent study commissioned by Defra which found that stress caused to the person or persons living on or by potentially contaminated land can have a negative effect on health, and particularly so when decisions are unnecessarily protracted.

In our formal response to the consultation, we have made it clear that further technical tools and guidance will follow the revised Statutory Guidance to aid regulators in carrying out the assessment of the risks posed to human health. This will help embed the approach already set out in the revised Guidance which aims to aid local authorities in the decision making process, as far as possible, by setting out the categories of harm that should be considered to be significant in terms of human health. The Guidance promotes the use of all the available evidence in the decision making process and advocates local authorities seeking further specialist advice where necessary to aid their decision making.

The new Guidance includes consideration of social and economic costs and recognises that, where decisions cannot be made on science grounds alone, then social and environmental and economic factors must also be considered. This approach is to ensure that decisions produce net benefits, while appropriately dealing with risks. In the consultation phase there was widespread support that the new Guidance would (for the first time) explicitly recognise that all contaminated land risk assessments will involve uncertainty, and gives broad advice to regulators on how to deal with this, helping authorities strike the right balance, particularly on more complex sites.

I would like to reassure you that the revised Guidance does not condone any contamination that could pose an unacceptable risk to health, but does provide advice on how to deal with background or "normal" levels of contamination, avoiding unnecessary remediation work. This approach allows regulators to focus their efforts on higher risk land, reducing potential blight on land with normal low levels of contamination; where in the vast majority of cases there is no scientific evidence to suggest that any significant harm would be caused. For example, the regime was never intended to catch normal low levels of substances that could be called "contaminants" but which are found in all soil (e.g. the result of natural soil formation processes and human diffuse pollution), or commonly found materials in properties

such as the normal levels of historic ash in many gardens or ash used in historic construction techniques. It is important to note however that the revised Guidance makes it clear that regulators may conduct a risk assessment on land with normal background levels of contamination if there is a particular reason to consider that it might pose an unacceptable risk.

I hope this response helps with your consideration of the Contaminated Land Statutory Guidance 2012.

Yn gywir,

A handwritten signature in black ink, appearing to read 'John', with a long, sweeping horizontal stroke above the letters.

John Griffiths AC / AM

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