



# Land Contamination and Impacts on the Water Environment – You Said, We Did.

## November 2021

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### 1. Purpose

This document provides an analysis of the responses received to the *Land contamination and impacts on the water environment* consultation. It summarises the views we received and explains the actions we are taking in response.

### 2. Consultation responses and our reply to them

There were 17 responses to this consultation, mainly from local authorities. A summary of the questions we asked, the responses received and our reply to them is set out below.

It is recommended that this document is read in conjunction with the associated consultation response documents regarding the Scottish Government consultation on the new standards and the SEPA consultation on the revised *WAT-PS-10: Assigning groundwater assessment criteria for pollutant inputs* guidance document.

#### 2.1: Do you think we have clearly described the roles and responsibilities?

- 53% of respondents agreed that we have clearly described the roles and responsibilities;
- 23.5% were not sure;
- 23.5% disagreed.

Of those that disagreed, one did so because they disagreed with an aspect of the Scottish Government consultation rather than clarity over the roles and responsibilities.

Another asked for more details on roles and responsibilities around the requirement and enforcement of land contamination when considered under the planning regime.

Finally, one respondent disagreed because they wanted information included about the competency of risk assessors and technical reviewers. There were some other minor comments.

We propose to make minor changes to this section to take account of the comments made and improve the clarity of the section.

## **2.2: Appendix 1, Table 2 sets out the assessment criteria. Is it clear and helpful?**

- 53% of respondents agreed that Table 2 is clear and helpful;
- 17.5% were not sure;
- 17.5% disagreed;
- 12% did not answer this question.

Of those that disagreed, they did so because there should be clarification on how levels of assessment tie together, with clear examples. In addition, one respondent asked for information on how PPC and CAR impacts are integrated and an additional column for Planning and Redevelopment.

There were other comments about referencing and terminology. There was also a request to clarify how “special sites”, designated due to their former use, fit into this approach.

We will take on board your comments and make appropriate changes to provide clarity and correct errors. For information on sites regulated under PPC, SEPA has separate PPC guidance.

### **2.3: Appendix 2 sets out how to assess impacts on surface waters. Is it clear and helpful?**

- 76% of respondents agreed that Appendix 2 is clear and helpful;
- 6% were not sure;
- 6% disagreed;
- 12% did not answer this question.

The respondent that disagreed did so because there is too much reliance on footnotes, the appendix should include prevent and limit details, and there is too much focus on status rather than pollution, especially of unclassified water bodies and heavily modified water bodies. Other comments requested flow charts or case studies and clarification over terminology.

We will modify this section, taking into account your comments. We do not think this appendix should include details of prevent and limit as this only applies to groundwater. We will consider if this aspect could be more clearly explained elsewhere in the document.

### **2.4: We think that changing the description of “significant pollution” in relation to the future groundwater resource will only have a minor impact on the number of sites that will be designated as Part IIA Contaminated Land. Do you agree?**

- 53% of respondents agreed that it will have only a minor impact on the number of sites designated as Part IIA Contaminated Land;
- 23.5% were not sure;
- 6% disagreed;
- 17.5% did not answer this question.

The one respondent that disagreed did so because they thought the inclusion of the proposed future resource protection into the definition of 'significant pollution' has the potential to greatly increase the number of Part IIA sites defined on the basis of water pollution.

Other comments related to the question included a desire for clarification on how special sites, that are not designated because of impacts on the water environment, link to significant pollution.

Changing the threshold for impact on the future groundwater resource from a distance of 50m to 20ha of a hazardous substance should not significantly increase the number of sites designated as Part IIA contaminated land. This is because, in most cases, an impact at 50m will not result in a 20ha plume and because the assessment of plume size is restricted to hazardous substances only. It is possible that there would be a small decrease in number, but most respondents agreed with us that this would not be significant.

We will aim to provide further information on special sites which have been designated because of non-water related reasons and how these link to the approach.

**2.5: In Appendix 5 we have produced a list of the raw data we would wish to see in support of a site assessment. Do you think this list is helpful? Is there anything missing?**

- 76% of respondents agreed that the list is helpful;
- 12% were not sure;
- no respondents disagreed;
- 12% did not answer this question.

Most respondents thought that there were items missing from the list and have provided feedback of minor changes or additions.

A few respondents questioned the need for the checklist, citing the fact that several are already available such as in the EPUK document on the Risk Assessment Process associated with Contaminated Land which had already been adopted by a wide number of Local Authorities.

Most respondents agreed that the list is helpful. Whilst other checklists are available, we feel that the SEPA list clearly sets out what we think is required, as a minimum, for SEPA to

provide advice in relation to the water environment when requested. We will consider the detailed suggestions for improvement to this list and make changes accordingly.

**2.6: This section explains how to assess the impact of a site on the water environment. Do you think this section is clear? Is there anything missing?**

- 41% of respondents thought that this section was clear;
- 25.5% were not sure;
- 25.5% disagreed;
- 12% did not answer this question.

Respondents suggested that we should ensure consistency with other documentation, clarify definitions, add flow charts, and include information about special sites designated because of their former use, rather than impacts on the water environment.

A few respondents asked for further background on the basis for applying a higher standard of protection through non-Part IIA interventions. Comments also included asking for some further detail on dealing with limitations in the data or uncertainties in the risk assessment and how to assess if a site is causing poor status or pollution.

We will seek to improve the section to address the comments made.

**2.7: Appendix 3 states that SEPA expects the remediation of the sources of groundwater hazardous substances as far as practicable. Do you agree with our definition of sources?**

- 47% of respondents agreed with our definition of sources;
- 35% were not sure;
- 12% disagreed;
- 6% did not answer this question.

Of those that disagreed, they did so because we should include broader goals to achieve 'sustainable development', it does not fit with the reasonableness test under Part IIA and

the list of 'sources' is incomplete. More clarity and detail on action required was also requested.

We are confident that the approach does fit with the reasonableness test under Part IIA because, whilst simplified, it relates to the seriousness of impact and only requires actions as far as is practicable. We will seek to improve the section to address the comments you have made.

## **2.8: Appendix 3 sets out our expectations for remediation to address impacts on the future groundwater resource. Do you agree with our proposals?**

- 35% of respondents agreed with the proposals;
- 41% were not sure;
- 12% disagreed;
- 12% did not answer this question.

Of those that disagreed, they did so because there is insufficient detail on disproportionate cost and increased risk to human health or the quality of environment as a whole, and because reference should be made to sustainability throughout the document, including the application of the SuRF-UK framework.

Other comments include a desire for decisions about remediation to take into account contamination in urban areas.

We will consider how we can best provide more detail and will add references to the SuRF-UK framework. The Scottish Government have asked us to set out in our guidance that in terms of remedial action, we will expect, as a minimum, developers/owners that are affected by contamination upgradient or adjacent to their sites to focus their remedial efforts on breaking the pollutant linkage so that their site would not be causing pollution if the other pollutant sources were not present. We acknowledge that this action will help improve the quality of groundwater, rather than necessarily achieving complete remediation of the source and plume, and this will mean that some pollution may persist.

**2.9: In Appendix 3 we state that where the impact is on groundwater resources, we will normally expect remedial action to prevent expansion of the plume or an upward trend in concentration at the source and to secure a long-term downward trend in contaminant concentration such that the groundwater resource will be restored to good status within an agreed reasonable timescale. Do you think we should provide detail on what a reasonable timescale is?**

- 41% of respondents thought we should provide detail on what a reasonable timescale is;
- 17.5% were not sure;
- 29.5% disagreed;
- 12% did not answer this question.

Those that disagreed did so because this is site specific, depending on the level of impact/harm and the feasible options available to address it. A couple of respondents highlighted that this is already covered in SuRF-UK sustainable remediation guidance.

Other comments included a request for a range of likely timescales and to provide examples.

We propose to provide broad guidance on this issue, whilst allowing for site specific decisions. We will also refer to the SuRF-UK guidance.

**2.10: The Scottish Government have consulted on whether a record of any residual land contamination should be kept. Give us your views on the practical content and logistics of this register.**

The views relating to this specific question included that the register should be updated quarterly and consideration needs to be given to the right of appeal to correct or amend information on the register.

One respondent suggested that if SEPA is granting the exemptions, it would be easy for SEPA to keep its own list including: source area, contaminants and reason for exemption. Otherwise, informal agreements with local authorities to provide details would probably be sufficient.

Another respondent thought that if the register is not retrospective it would lead to inconsistency in terms of what sites are on/off the list.

Finally, it was suggested that the register should be included as part of the SEPA water-environment-hub mapping.

Following the Scottish Government consultation, the Scottish Government have decided not to proceed with a register at this time and so no further discussion on its content or logistics is required.

## **2.11: Do you think the Part IIA guidance is clear and easy to read?**

- 47% of respondents agreed that the guidance is clear and easy to read;
- 29.5% were not sure;
- 6% disagreed;
- 17.5% did not answer this question.

Those that disagreed did so because the changes proposed are not reflected in the Statutory Guidance and this could lead to differing interpretations.

Other comments include adding a RASCI type chart or flow chart and a request for training to support this.

We will consider adding a flow chart or diagram to aid understanding and SEPA have already committed to awareness sessions for local authorities. Whilst we do not think the statutory guidance conflicts with this approach, we agree that the wording could be better aligned. We will suggest improvements to the Scottish Government when the guidance is next reviewed.



## **2.12: Is there sufficient information in the guidance to enable you to undertake or review an assessment and inform a decision on the action?**

- 18% of respondents agreed that there is sufficient information to enable an assessment to be undertaken or reviewed and inform decision on the action;
- 35% were not sure;
- 23.5% disagreed;
- 23.5% did not answer this question.

Of those that disagreed, one did so because they felt more clarity was required on how 'prevent and limit' requirements are handled/enforced in the planning process, the procedures for exemptions, and guidance on cost-benefit assessment.

A couple of respondents thought that this was not the purpose of this document.

We agree that this document will not provide all the information required to undertake and review a site-specific assessment. However, it is intended as overarching guidance that presents an overall approach and pinpoints other guidance. With this in mind - we appreciate that this question could have been worded better. We will clarify and add detail on the points raised.

For information on accessing this document in an alternative format or language please either contact SEPA by telephone on 03000 99 66 99 or by email to [equalities@sepa.org.uk](mailto:equalities@sepa.org.uk)

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Strathallan House, Castle Business Park, Stirling, FK9 4TZ