

**REVISION OF SAFEGROUNDS GUIDANCE
SECOND CONSULTATION ON LMGv2
SUMMARY OF RESPONSES AND PSG DECISIONS**

There were 15 responses to the consultation. The responders are listed in Table 1 and referred to in the text by the letters in the table, eg [B]. The SAFEGROUNDS Project Steering Group (PSG) discussed points arising from the responses at its meeting at the end of June 2007 and made decisions on the way forward.

The consultation asked five questions about major issues for LMGv2 and requested general and specific comments on the draft outline contents (LMGv2 Outline Contents Draft 1, 23 April 2007). This paper summarises responses to the five questions, views on other issues that are of concern to several consultees, and PSG decisions on how to proceed when the first complete draft of LMGv2 is prepared. There will be consultation on this first draft and an opportunity to discuss it at a workshop in autumn 2007, when a wider range of stakeholders will be present than are represented on the PSG. It is envisaged that decisions on unresolved issues will be taken at the workshop and contentious topics will be revisited.

CONSULTATION QUESTIONS

Question 1 Status of the LMG

This question was whether the statements in LMGv2 about its status should be less prominent than in LMGv1. Of the 12 people who responded to the question [A-K, O], 10 supported the idea of low key statements about the status of LMGv2. H and I disagreed. Two of those who supported low key statements suggested that the text should express more commitment to the guidance and encourage its use [F, G]. Those who preferred the current, prominent statements about the status of the guidance questioned whether there was now a greater degree of agreement amongst SAFEGROUNDS participants than when LMGv1 was produced [H, I].

The PSG was of the view that no decision should be taken on the nature or prominence of statements about the status of LMGv2 until a late stage in drafting. Organisations will then have clearer idea of what LMGv2 will contain and will be better able to decide on the extent to which they can support it.

Question 2 Key Principle on Stakeholder Involvement

The question was whether the wording of the key principle on stakeholder involvement (KP2) should be changed and, if so, how. Three respondents favoured leaving KP2 unchanged [B, F, M]. Nine respondents favoured changing KP2 but had different preferences as to wording or did not express a preference [A, D, G, H, I, J, K, L, O]. It is unclear from one response whether the person favoured change or not [E]. Table 2 shows the current wording of KP2 and all the suggestions for change.

The PSG decided that for the first draft of the guidance it is preferable to keep the wording of KP2 as short as possible and to deal with all the various issues at the appropriate places in the text of LMGv2. The PSG agreed the following wording for KP2:

“Site owners/operators should involve stakeholders in the planning and decision-making processes for the management of contaminated land.”

It was also agreed that the definition of “involvement” should be reconsidered (see Addendum to this paper).

Question 3 Levels of Protection for Radioactively Contaminated Land

The question was whether LMGv2 should continue to recommend a case-by-case approach for radioactively contaminated land in which the level of protection is not specified in advance but emerges from a comparison of land management options. All 11 people who responded to this question agreed that such an approach should be recommended [A, B, C, D, F, G, H, I, J, K, O]. Various suggestions were made for wording of the text on this topic and the PSG agreed that these should be taken into account in drafting.

Question 4 Levels of Protection for Non-Radioactively Contaminated Land

The question was about how the CLR11 approach should be treated in LMGv2. Four respondents were of the view that the CLR11 approach should be summarised and recommended for use when non-radioactive contamination is present, or for both radioactive and non-radioactive contamination [C, D, H, I]. Five respondents agreed with the proposal in the consultation document that the recommendation should be that one approach should be used when radioactive and non-radioactive contamination is present, that it should be the approach recommended in the LMG for radioactive contamination, and that if the CLR11 approach is used there should be stakeholder involvement throughout [A, B, G, J, K, O]. One respondent suggested expansion of the text on Part 2A and cautioned care over legal issues [F].

The PSG agreed that alternative texts for Section 6.3 be included in the first draft of LMGv2. One of these will follow the draft outline contents but bearing in mind potential legal issues. One will recommend the use of the CLR11 approach for non-radioactive contamination and point out the similarities between it and the regulatory and SAFEGROUNDS approaches for radioactive contamination. A decision between the two texts will then be made at the autumn workshop, in the light of responses to the consultation on the first draft of LMGv2.

Question 5 Record Keeping

The question was whether any other guidance should be given about keeping records in the long term (decades and longer). Suggestions for adding to the guidance included:

- recommend that there should be provision for capturing, maintaining and preserving records in the long term and for ensuring that information in the records can be accessed [D]
- note that duplicate copies of records may be required that are kept at separate locations (eg in a national archive and on site) [D]
- recognise that site boundaries may change with time [D]
- keep records of indemnities, warranties and conditions of land transfer as well as land condition records [I]
- expand the text on regulatory record keeping requirements for nuclear-licensed sites [C].

It was also suggested that IAEA Technical Report Series 450 and HSE guidance on record-keeping for radioactive waste and decommissioning be consulted and perhaps referenced. The PSG agreed with the comments of one responder [C] that it is important not to duplicate or be inconsistent with the supporting document on record-keeping. The guidance in LMGv2 should focus on principles, mention legal requirements, and refer readers to other documents for details. Points made by the various responders should be considered in this light.

OTHER ISSUES

Guidance on Stakeholder Involvement

A number of points were made about guidance on stakeholder involvement. These are summarised in Table 3, with the agreed courses of action for the first draft of LMGv2.

Flow Diagrams

One respondent requested that the flow diagrams be labelled “generic”, “simple sites” and “complex sites”, as in the original consultation on the diagrams, rather than “generic”, “more complex sites” and “very complex sites” [D]. The PSG agreed that the original titles of the diagrams should be retained, for consistency with the SAFEGROUNDS website. Another respondent was of the view that three diagrams is too many and would cause confusion [C]. There is no requirement to use all three diagrams in LMGv2 and, on reflection, the original “simple sites” diagram (called “more complex sites” in the outline contents) seems redundant. The PSG agreed that it should be removed from LMGv2 and Section 4 redrafted accordingly.

Marion Hill, for consortium of research contractors
27 July 2007

Addendum – Definition of “Involvement”

The definition given in the outline contents of LMGv2 (see Section 1.5.4) was:

“Involvement includes communication, provision of information, consultation and participation in decision-making processes. It does not include taking final decisions on how to manage contaminated land because these are always the sole responsibility of the site owner or operator (on nuclear-licensed sites the licensee and on defence sites MoD).”

The definition should be read in conjunction with the definition of “stakeholders” as all the people with an interest in the management of the contaminated land, including regulators, local authorities, government departments (central and in the devolved administrations), site owners, site operators, local residents, CBOs and NGOs.

Following discussions at the PSG meeting it is proposed to remove the last sentence of the definition of “involvement” and state in Section 7.1 of LMGv2 that:

- a) for legal and practical reasons, final decisions on how to manage contaminated land have to be the sole responsibility of the site owner or operator;
- b) it is essential that site owners/operators take stakeholders’ views into account in reaching these decisions,
- c) it is also essential that site owners/operators demonstrate to stakeholders that their views have been taken into account.

It may also be appropriate to distinguish between “stakeholder involvement” and “stakeholder engagement”. From a presentation given recently by the NDA’s director of communications, it appears that the NDA interprets “engagement” to mean communication and consultation, but not participation in decision-making processes. It could be valuable to make it clear that LMGv2 recommends doing more than engagement.

Table 1 Responders to First Consultation on LMGv2

	<i>Name</i>	<i>Organisation</i>	<i>Responding as individual or organisation</i>
A	Jack Armitage	NUKEM	individual
B	John Kelly	Oxfordshire County Council	individual
C	Claire Gallery-Strong	BNGSL	organisation
D	Mike Pearl	UKAEA	individual
E	A N Other	CBO	organisation
F	Steve Moreby	Gloucester City Council	individual
G	Peter Booth	Nexia Solutions	individual
H	Ray Dickinson	Defence Estates	organisation
I	Mark Hill	Defence Estates	constituency
J	Colette Grundy	Environment Agency	organisation
K	Hugh Richards	Magnox Electric	organisation
L	Richard Bramhall	LLRC	organisation
M	Paul Dorfman	University of Warwick	individual
N	Andy Thomas	Future Solutions	individual
O	Shelly Mobbs	HPA	individual

Table 2 Wording for Key Principle 2, Stakeholder Involvement

<i>Label</i>	<i>Suggested Wording for KP2</i>	<i>Favoured by</i>
current	Site owners/operators should develop and use stakeholder involvement strategies in the management of contaminated land. In general, a broad range of stakeholders should be invited to participate in decision-making.	B, F, M
new 1	Site owners/operators should involve a range of stakeholders in the planning and decision-making processes for the management of contaminated land. Who is to be involved and the extent of their involvement should be agreed with the relevant stakeholders.	K
new 2	Site owners/operators should involve a range of stakeholders in the planning and decision-making processes for the management of contaminated land.	D
new 3	Site owners/operators should develop and use stakeholder involvement strategies in the management of contaminated land.	D
new 4	Site owners/operators should involve an appropriate range of stakeholders within the various stages of contaminated land management.	G
new 5	Site owners/operators should involve a range of stakeholders in the planning and decision-making processes for the management of land contamination. Who is to be involved and the extent of their involvement should relate to the technical and societal significance of the land contamination.	H, I
new 6	Site owners and operators should involve a range of stakeholders in the planning and decision making processes for the management of contaminated land. The most sustainable decisions will be obtained by including a broad range of stakeholders and by considering the resource needs of different classes of stakeholder. Who is to be involved and the extent of their involvement should be agreed by the relevant stakeholders.	L
new 7	Site owners/operators should engage with all key stakeholders in the planning and decision-making processes for the management of contaminated land and document these processes, detailing how management options are decided on.	C
new 8	Site owners/operators should involve a broad range of stakeholders in the planning and decision-making processes for the management of contaminated land. Who is to be involved and the extent of their involvement should be agreed with the relevant stakeholders.	O

Note: The terminology “management of land contamination” in wording new 5 is inconsistent with that throughout the SAFEGROUNDS documents and website. It is also peculiar to one aspect of one regulator’s guidance (see revised regulatory framework paper). If new 5 were to be adopted the wording would need to be changed to refer to the management of contaminated land.

Table 3 Comments and Proposals for Guidance on Stakeholder Involvement

<i>Comment</i>	<i>Response and course of action for LMGv2 first draft</i>
Key principle 3 implies that stakeholders should always be consulted during assessments of land management options. Is this acceptable, given that we now distinguish between strategies and options? [K]	Sections 3, 4 and 7 make it clear that stakeholders should be involved in decisions on strategies and in option decisions that have strategic or other significance. This will be reinforced in the Option Comparison Guide. The key principle will be left as it stands.
There is no reference to the current supporting document on community stakeholder involvement by David Collier [L].	This supporting document is now out of date and will not be referenced. Relevant material from this paper will be included in LMGv2 and the Citizen's Guide. A check will be made that all important points are included.
There should be guidance on making resources available to NGO/CBO stakeholders to enable them to participate [L].	It is extremely unlikely that resources could or would be made available at any site other than a nuclear-licensed site. Resourcing at nuclear-licensed sites is a matter for the operators (at NDA sites the SLCs) and goes far beyond contaminated land issues. It is therefore not appropriate to include any guidance on resourcing. However, LMGv2 will recognise that resourcing will be an issue in some cases and recommend that it be discussed with stakeholders if necessary.
Mention that stakeholder involvement helps to generate and maintain trust between site and community and makes work more transparent [G].	Points will be included when drafting text for Section 7.1.
There should be caveats about the problems with SSGs, particularly their culture and imbalance, and the difficulties of involving non-SSG stakeholders [L, M].	Again this goes well beyond contaminated land issues. It is also inappropriate in guidance to criticise SSGs. The caveats will not be included. Instead, it will be made clearer that stakeholders other than those represented on SSGs need to be consulted about management of contaminated land on nuclear-licensed sites..
Mention should be made of the SSG consultations on site end-states [G].	Up-to-date text and references will be added in Section 7.2 prior to publication.

<i>Comment</i>	<i>Response and course of action for LMGv2 first draft</i>
There should be mention of the legal and contractual requirements for involving stakeholders [L, M].	Legal requirements for involving stakeholders are covered in the regulatory framework paper. Contractual requirements are not part of SAFEGROUNDS guidance. These types of requirements will not be mentioned in LMGv2, which is the same approach as in LMGv1. The Citizens' Guide will provide information on the degree of involvement required by law.
Why is the NSG mentioned in relation to the NDA's overall contaminated land strategy? [L, C].	It was assumed that the NDA would consult the NSG when it has developed its overall contaminated land strategy. This may not be the case so the reference to the NSG will be deleted.
Reference stakeholder engagement practice in the UK as well as in the US [N].	If suitable references can be found, they will be added.