



From Site Closure to Disengagement – Initial Short Summary

NICOLE NETWORK MEETING

18-20 November 2009, Douai, France

The NICOLE workshop held recently in Douai was developed around the theme of site closure management. For the purpose of the workshop, site closure was defined to arise upon a) termination of operations, and b) exit from the real property on which industrial operations were formerly run, wherein exit is aimed at the release of the industrial company from further obligations, liabilities or responsibilities towards the real property concerned.

Conceptualization

Upon the opening of the conference, discussion was raised early on concerning the role which industry, or any land user, has towards real property and society. These themes returned throughout the workshop:

- there is consideration of the topic of site closure and the challenge for businesses to efficiently exit sites without retaining lingering liability. This schematic of discussing site closure provides the practical framework within which industry usually operates and has had to operate. Under this umbrella participants were able to discuss issues that arise in practice, possible road maps, checklists etc which may be useful in designing a way through the site closure process. This platform of discussion also acknowledges that site closure can aim to mothball a site or to the transfer to the next owner and/or land-user;
- on the other hand the view could be taken that land users including industry have a responsibility towards land for future use, ie there was the concept of a continuing responsibility as a responsible citizen and member of society. This area of thought invited ideas and experiences which can be quite abstract and even philosophical; as well as a number of real-life approaches from practice. In practical terms, this means that as a principle, whether or not transaction terms for the land concerned have been agreed to this end, upon the drawing of site closure plans exit and clean-up targets can be positively developed with a view towards next use and re-activation of the property concerned. As an example: a company may make it a corporate policy that land which is exited is left behind in a re-activated state. In more lofty terms, the 'sustainability' approach means that one could ultimately question the basis of policy making and legislation, and of moral obligation towards land; and debate the role that society itself (not only the industrial land user) should play and contribute to reactivation of a site.

Presentations and Discussion of the Issues (Day 1)

When site closure takes place, industry is faced with multiple challenges. A sampling of the types of issues named is (this is a non-exhaustive list):

- internal synchronization (and lack of it):
 - business terms of a transaction (contracts drawn with future land owner) may include timelines that cannot be met, indemnifications which cannot be easily executed, insurance policies which do not work or which nonetheless require significant authority administration, etc

NICOLE is a network for the stimulation, dissemination and exchange of knowledge about all aspects of industrially contaminated land. Its 120 members of 20 European countries come from industrial companies and trade organisations (problem holders), service providers/ technology developers, universities and independent research organisations (problem solvers) and governmental organisations (policy makers).

The network started in February 1996 as a concerted action under the 4th Framework Programme of the European Community. Since February 1999 NICOLE has been self supporting and is financed by the fees of its members.

- company departments are involved who have different agendas, budgets, communication plans, and/or understandings. As a result decisions may be made by the various parties which is unsynchronized
- resources (having sufficient resources) and loss of experience at the local site (personnel and dossiers may disappear or become hard to find)
- land contamination is often only be a small portion of the closure process or budget. Demolition is a larger task and can in itself lead to further land remediation challenges
- regulators and external policy makers:
 - legal commitments and requirements must be assessed, identified and clarified.
 - depending upon the legislative and administrative regime involved, agencies can be at odds with one another over consent and aims of clean-up
 - existing legislative and administrative frameworks are different in the various Member States and will as a consequence continue to evolve differently in relation to the environmental European Directives (e.g. the revision of the IPPC to contain provisions on site closure) or national needs.
- society: before, during and after closure, as a stakeholder and potential recipient. Resistance can arise in the surround before and during closure

The issues noted above were clearly highlighted by numerous interesting presentations of true-life cases, a synopsis of which shall follow in NICOLE's full report on the proceedings. The break-out sessions which ensued served to detail these issues, offering a platform for further discussion.

Comment: How do we name Paul's write-up

The differences in legislative and administrative regimes in Member States, and the differences which can be expected in future as these evolve, were noted to be a key factor giving shape to any road map or decision-making process. It is not apparent that the existing or evolving frameworks will everywhere lead to guarantees of release of further obligations or liabilities / responsibilities and in addition to this there is an emergent trend which suggests that site closure may not in future be limited to merely the meeting of clean-up objectives.

Loosely tying into the above, the issues arising were also cast into the more philosophical, sustainability-directed approach. Thoughts were voiced during the two-day workshop period which feed into a 'sustainable society' theme of next (generation) use. There was debate on whether parties indeed have a responsibility towards land based upon past actions vs future possible consequences; there was the opinion that society and/or government have a role in activation as well, on the basis that industry needs an incentive to plan site closure for re-activation (why not simply mothball and /or leave a site as a brownfield site); etc. As a further thought – we could also borrow from a notion raised at the previous NICOLE workshop: the question was raised whether it is sustainable to try to remediate in a short time the effects of hundreds of years of industrial activity. Similarly, the question could be raised here on sustainable time scales – does it make sense to remediate an industrial site to residential or nature standard within a short period of time, leaving the burden for this remediation on industry who have not only produced (and at times polluted) but also positively contributed to economic development of society, ie should not all parties who have in the past benefited from industrial operations, take part and contribute to the site closure and re-activation process. This line of discussion invites philosophical and political views and requires policy reforms reaching well beyond the boundaries and capacity of our NICOLE workshop platform.

NICOLE is a network for the stimulation, dissemination and exchange of knowledge about all aspects of industrially contaminated land. Its 120 members of 20 European countries come from industrial companies and trade organisations (problem holders), service providers/ technology developers, universities and independent research organisations (problem solvers) and governmental organisations (policy makers).

The network started in February 1996 as a concerted action under the 4th Framework Programme of the European Community. Since February 1999 NICOLE has been self supporting and is financed by the fees of its members.

www.nicole.org

Practical Tools and Approaches (Day 2)

The objective of the conference was to understand how site closure can be conducted in a smooth and effective manner. Presentations and break-out sessions were directed at the offering of approaches and / or systems for organizing, managing, and preparing for site closure. There were examples given of successful integration of site closure into a start to finish, entry to exit, system involving defined steps of appraisal -selection of remedy/strategy-definition of goals / plans - execution-operation including site closure; with defined gate points for continuation. And an alternative similar approach was offered of identifying aspects-issues-business consequences-action plan. Break-out sessions were held to discuss and formulate possible solutions and /or approaches to solutions for overcoming the site closure challenges and issues.

It was commonly agreed that there is a need to inventory and identify potential issues; to plan ahead; to exert considerable effort into managing internal processes and decision-making; and to anticipate issues and possibly remedies. It was agreed that one template road map cannot be easily drawn for the site closure processes, however checklists can be developed which lead a person through key steps and types of issues that can arise. Potential issues were viewed to usually fall within the categories of people (personnel, community and other 'public' stakeholders such as local administrators, developers, municipal etc); EHS (environmental, health, and safety) including planning; and requirements (contractual / legal / commitments).

Finally, solutions were also offered, for example through the complete transfer of responsibility and liability to a third party or third-party legal construction (e.g. a land trust, or a temporary co-operation or limited company which is set up among parties involved in site closure and redevelopment). These solutions are well-practiced in some countries (e.g northern European countries such as the UK, Belgium, and the Netherlands) but appear to be less commonly implemented in other regimes.

Also as a final note, discussions are noted to have centered primarily around the scenario of site closure by large companies. Site closure was recognized to impinge on different kinds of issues if for example there is a small-sized family-owned company who rely for their retirement income on real property returns.

Follow-up

As a follow-up to this workshop there is general support for the unrolling of a generic site closure checklists.

A full report of the NICOLE workshop proceedings, including a summary of presentations, will follow. For comments, feed-back and follow-up, please contact the NICOLE Secretariat, email: marjan.euser@tno.nl

- Amsterdam, xx December 2009, Marianne Blom

The NICOLE thanks the 'Ecole des Mines in Douai for their gracious hosting of this successful workshop meeting on 18-20 November, 2009.

NICOLE is a network for the stimulation, dissemination and exchange of knowledge about all aspects of industrially contaminated land. Its 120 members of 20 European countries come from industrial companies and trade organisations (problem holders), service providers/ technology developers, universities and independent research organisations (problem solvers) and governmental organisations (policy makers).

The network started in February 1996 as a concerted action under the 4th Framework Programme of the European Community. Since February 1999 NICOLE has been self supporting and is financed by the fees of its members.

www.nicole.org