



NICOLE

Network for Industrially Contaminated Land in Europe

To : Sent via email cristina.gutierrez-cortines@europarl.europa.eu

Subject:

**NICOLE Position on Proposed Soil Protection Directive
(Network for Industrially Contaminated Land in Europe)**

Date: 7 November 2008

Dear Mrs Gutierrez-Cortines

NICOLE is a network of representatives of industry, service providers and the scientific community. It was formed in 1996 with an aim to bring together professionals involved in the management of land and water contamination in the member states of the EU – www.nicole.org.

NICOLE's Soil Working Group has commented on earlier versions of this draft Directive, in January 2007, July 2007 & October 2008. We have recently reviewed the current Presidency proposals on Framework Directive for the Protection of Soil, dated 15 September 2008. In general we support many of the current proposals made by the Presidency but we have a number of important issues that we consider are critical for the sustainable protection and management of soil. In line with NICOLE's focus and expertise in the management of contaminated land, our comments focus primarily on soil contamination aspects.

In the event that these comments and proposed amendments would benefit from further explanation, we would welcome the opportunity to make further representations.

Yours sincerely,

John Waters
Chair of NICOLE
Soil Working Group

Johan De Fraye
Chair
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NICOLE Secretariat

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Summary of Proposed NICOLE amendments to the Presidency Proposal for a Directive of the European Parliament and of the Council of Ministers Establishing a Framework for the Protection of Soil (COM(2006)0232 final), dated 15 September 2008.

Suggested Amendments

NICOLE welcomes many of the proposals contained within this document and was particularly pleased to see the explicit reference to groundwater in Chapter 1 and the references to sustainable remediation and proportionate cost in Article 13 on Remediation. Our suggested amendments balance the protection of the fragile and important brown field regeneration market, and its role in bring impacted sites back into beneficial re-use, without reducing the effectiveness of the Directive in protecting human health and the environment.

**NICOLE Amendment 1
Article 2**

Presidency Proposal

Proposed NICOLE amendment

**ADDITIONAL SUB CLAUSE
(10) remediation means measures to address the source-pathway –receptor linkages to reduce the risk to human health and the environment to acceptable levels**

Justification

NICOLE believes that providing a definition for remediation would be extremely helpful and in the context of sustainable risk based remediation ensure it is clear that remediation may consist of measures other than source treatment.

**NICOLE Amendment 2
Article 10**

Presidency Proposal

Proposed NICOLE amendment

Member States shall put in place a national strategy for managing soil contamination that includes:

- (a) a method for identifying potentially contaminated sites,
- (b) a means of ensuring public access to information on potentially contaminated sites,
- (c) a policy for investigating potentially contaminated sites,
- (d) a method for determining whether a site is contaminated,
- (e) a method for deciding the standard of remediation

Member States shall put in place a national strategy for managing soil contamination that includes:

- (a) a method for identifying potentially contaminated sites,
- (b) a means of ensuring public access to information on **potentially** contaminated sites,
- (c) a policy for investigating potentially contaminated sites,
- (d) a method for determining whether a site is contaminated,
- (e) a method for deciding the standard of remediation required,
- (f) a programme or programmes for ensuring investigation and remediation in serious cases (priority action programmes).
- (g) **a process for managing cases where liability for funding remediation (or a portion of the remediation) should transfer**

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required,

from one potentially responsible person to another.

- (f) a programme or programmes for ensuring investigation and remediation in serious cases (priority action programmes).

Justification

(b) NICOLE remains concerned that an inventory of potentially contaminated sites may blight the potential for redeveloping, and often therefore, remediating such sites. However if a register is drawn up we strongly recommend that it only focus on identified contaminated sites, rather than all potential contaminated sites to minimise the risk of property blight.

(g) NICOLE supports the principle of the "polluter pays". However we feel more clarification is warranted with regard to obligations and liability of owners, operators and polluters, if these are all different. For example, who would be considered to be the polluter in a case where the original owner of the land (and operator of the 'polluting' process) sold it with full information to a purchaser, and at a discount to allow the purchaser to deal with the pollution, who then exposed humans to the chemicals of concern by redevelopment of the site? It would seem inequitable for the responsibility to remain with the original owner.

**NICOLE Amendment 3
ARTICLE 11**

Presidency Proposal

Proposed NICOLE amendment

11.1 Member States shall identify from existing information held by public authorities (i.e. data bases, inventories of sites, Land Quality Records) the sites where the potentially soil-contaminating activities as indicated in Annex II are taking place or have taken place in the past.

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11.2 The location of these sites and information related to these sites shall to be made available to public on request and shall be reviewed at regular intervals.

11.2 The location of **contaminated** sites and information related to these sites shall to be made available to public on request and shall be reviewed at regular intervals. **Once sites have been remediated in accordance with the provisions of Article 13 they shall be removed from these public records.**

Justification

As we have previously commented, we are strongly opposed to a register of potentially contaminated sites. We do not believe such a register can work and will simply result in property blight. If there is such a register it should be restricted to those sites that have been confirmed to be contaminated, namely those that pose a significant risk of harm to human health or pollution of the environment, not all potentially contaminated sites. There must also be a provision to remove remediated sites from public registers; this will be an incentive to voluntary action.

An alternative to the register may be to ensure that the public has access to information on historical land uses and in particular information where the activities listed in Annex II took place.

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**NICOLE Amendment 4
ARTICLE 12**

Presidency Proposal

12 (a) how to determine whether a potentially contaminated site is contaminated or not;

Proposed NICOLE amendment

12 (a) how to determine whether a potentially contaminated site is contaminated or not, **based on an assessment of the risk of harm to human health or pollution of the environment;**

Justification

The principal of risk based assessment is enshrined in other EU Directives, most recently the Environmental Liability Directive and this point needs to be reinforced here.

**NICOLE Amendment 5
ARTICLE 13**

Presidency Proposal

13.2 Remediation shall consist of sustainable actions on the soil aimed at the removal, control, containment, reduction of contaminants, natural recovery or any other appropriate means, so that the contaminated site, taking account of its current use or approved future use, no longer poses any significant risk to human health or the environment. When deciding on the appropriate remediation action, Member States shall give due consideration to social, economic and environmental impacts, cost-effectiveness and technical feasibility of the actions envisaged.

Proposed NICOLE amendment

13.2 Remediation shall consist of sustainable actions on the soil aimed at the removal, control, containment, reduction of contaminants, natural recovery or any other appropriate means, so that the contaminated site, taking account of its current use or approved future use, no longer poses any significant risk to human health or the environment. When deciding on the appropriate remediation action, Member States shall give due consideration to social, economic and environmental impacts, cost-effectiveness, technical feasibility of the actions envisaged **and encourage voluntary remediation.**

Justification

Not all remediation needs to be regulatory driven and the opportunity should be available for a responsible land owner to present voluntary proposals to expedite remediation.

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**NICOLE Amendment 6
ARTICLE 13**

Presidency Proposal

13.2 (second paragraph) If the means that would ordinarily be used for remediation will lead to a disproportionate cost with respect to expected environmental benefits, sites may be reconditioned in such a way that they do not pose any significant risk to human health or the environment, including restricting use to them.

Proposed NICOLE amendment

13.2 (second paragraph) If the means that would ordinarily be used for remediation will lead to a disproportionate cost with respect to expected environmental benefits, sites may be reconditioned in such a way that they do not pose any significant risk to human health or the environment, including restricting **access to them or the uses to which they are put.**

Justification

This amendment makes it clearer that if the source of contamination cannot be treated in a cost effective way, then a valid approach is to break other parts of the source-pathway-receptor linkage. This is a key point to facilitate sustainable, cost effective risk based remediation of sites to allow them to be brought back into beneficial re-use.

**NICOLE Amendment 7
ARTICLE 14**

Presidency Proposal

14.1 (first indented subsection) by the owner of the site or the prospective buyer when the site is sold, to the other party in the transaction, or

Proposed NICOLE amendment

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Justification

Producing a soil status report for every site at the point of sale is totally impractical, as NICOLE has pointed out previously. This will severely inhibit land transactions and provides no additional environmental benefit over and above the separate requirement for a soil status report at the time that land use changes are proposed.

Please note this document doesn't necessarily reflect the opinion of all individual NICOLE members or member organisations.

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