Letter from Lord de Mauley, Parliamentary Under Secretary, DEFRA, to all local authorities in England, December 2013

I am writing to update you on the future of Defra funding for the Contaminated Land Capital Grants Scheme.

Since 2009/10, over £38 m has been made available to local authorities through the Grants Scheme. However, as you will be aware the budget for the scheme has undergone significant incremental cuts in line with the economic downturn, decreasing from £17.5m in 2009/10 down to £2m for 2013/14.

You will also be aware that Defra published revised Part 2A Statutory Guidance in April 2012, which was designed to provide clarity to local authorities on implementing Part 2A of the 1990 Environmental Protection Act, to focus attention on the highest-risk sites and to enable Local Authorities to dismiss lower risk sites more quickly and easily. This has resulted in a more stringent risk-based approach to identifying and remediating contaminated land. Given these changes, Defra will no longer be supporting the costs of investigating and remediating contaminated land under Part 2A through the Contaminated Land Capital Grants Scheme. This is a regrettable but necessary change of approach but one that reflects current circumstances including activities looking at departmental priorities and government spend.

Despite continuing economic pressures, from 1 April 2014 for a 3-year period, it is anticipated that up to £0.5m could still be made accessible annually (subject to capital funding being available within Defra) for absolute emergency cases and to meet the requirements of on-going remediation projects where these are considered to be the highest priority. Funding will cease from 1 April 2017.

As currently, funding for local authorities to fulfil their statutory obligations under Part 2A of the Environmental Protection Act will continue to be provided through the Revenue Support Grant provided by DCLG.

Defra remains committed to providing the supporting tools to help Local Authorities embed the revised Part 2A Statutory Guidance. The project to develop new 'Category 4' screening levels will be published soon and this will sit alongside the Defra-funded research on 'normal' background levels of contaminants that is already available. Defra has also established a National Experts' Panel on contaminated land, whose remit is to advise Local Authorities on difficult decisions under Part 2A at more complex contaminated sites. This Panel is available for Local Authorities to access now and it is envisaged that Case Studies on the output of the Panel's work will also be available to be distributed to other Local Authorities to share best practice. The vast majority of contaminated land will continue to be remediated through redevelopment under planning guidance as set out in the National Planning Policy Framework.
I am writing in connection with your letter of last week to local authorities about the end of the Contaminated Land Capital Grants Scheme. The Chartered Institute would like to record its perspective on the Department's decision.

We are aware, of course, of how the budget for this activity has been paired back in successive years. You may not be equally aware, however, of how bids for funding have consistently outstripped those budgets recently, for example (according to the Environment Agency) by 49 (frustrated) bids and c.£6M in 2011/12, by 32 bids and c.£9M in 2012/13, and by 38 bids and c.£4M in 2013/14.

When, in addition, the Department's advice from FERA is that 'There are good, science-based reasons to be concerned that some sites pose significant risks from long-term exposures.' It is clear that there remains much to do, still only 13 years into a programme originally estimated to last 30, and a substantial unmet demand to fund it.

Your letter points to changes in the Part 2A Statutory Guidance last year as though ('Given the changes…') those have reduced the need for funding but, on your own argument, by focussing attention on the highest risk sites and enabling lower risk sites to be dismissed more easily, they should be expected to have done precisely the opposite. Nor can we agree that the withdrawal of capital funding can be dismissed as just a 'change of approach', necessary support simply switching to RSG; while an unquantified and, in any event, un-ring fenced amount of support may continue by that route, it is not and never has been the function of that to meet capital expenditure directly.

Contrary to your assertion, neither is it sufficient for local authorities to fulfil their statutory obligations and reaction from local authorities already is that the Department’s decision means the end of pro-active work under Part 2A. Effectively negating the duty given to them by Parliament, without the promise of funding it would be a reckless authority which embarked on detailed inspections with the prospect of creating blight and anxiety it could then do little about (nevertheless that is likely to be the result for many sites currently awaiting remediation).

Nor would that element of RSG support much activity anyway given the mean value of the bids since 2011/12 has been just over £112,000 and, for the same reason, the mere possibility of up to £500,000 pa in grants until 2017 is hardly consolation.

Notwithstanding, we would still like to know what you think an ‘absolute emergency’ is, and what constitutes ‘the highest priority’ for remediation, bearing in mind that funded investigations have exceeded funded remediations by some margin recently (suggesting a bulge in the number of determined sites still to work their way through the bidding process), and that all determined land, by definition, represents an unacceptable risk.

It is ironic that, just as the Department of Health has restored local authorities’ role in public health, Defra has chosen to inhibit that. The most recent budget of £2M was little enough but to cut it entirely is short-sighted and we would urge you to reconsider.
Thank you for your letter of 18 December about the cessation of the contaminated land capital grants scheme. I am sorry the reply is late.

As my letter pointed out, the decision taken by Defra to no longer support the costs of investigating and remediating contaminated land under Part 2A through the Capital Grants Scheme is regrettable, but necessary given current circumstances and departmental budget cuts. Regulatory activity under Part 2A will continue to be facilitated through a combination of Revenue Support Grant, the revised Part 2A Statutory Guidance, which reduces uncertainty, will enable faster and less burdensome decision-making, and support to regulators through new initiatives introduced by Defra to complement the revised Guidance. These include the Category 4 Screening Levels (when published), research into Normal Background Concentrations published in 2012, the National Experts Panel and case studies on the outputs of the Panel's work. Changes to the planning regime under the National Planning Policy Framework also encourage the re-use of brownfield land wherever possible.

I appreciate your point on the Revenue Support Grant not being sufficient to support capital expenditure. However, it was not my intention to suggest that it would take the place of capital funding, rather that the Revenue Support Grant is available within local authorities to ensure that their statutory duties continue to be fulfilled.

In response to your comment on the Food and Environment Research Agency's advice on the risks to health from contaminated sites, it remains the statutory duty of local authorities to require that land determined as contaminated land under the Act is remediated. If there is clear evidence of a strong possibility of significant harm to human health, we would consider that a prioritisation of funds by the authority would be justified to ensure that unacceptable risks are dealt with.

We are working with the Environment Agency on agreeing the methodology for how the contingency fund will be administered. This will enable the fulfilment of ongoing obligations as much as possible up to 2017, and will also provide a resource to regulators in the case of emergencies, subject to internal budget clearance procedures. An announcement on this will be made soon and will include details of qualifying criteria for emergency cases and ongoing remediation projects.

Defra will be reviewing the impact of the changes to the Grants Scheme to local authorities 12 months after the changes are introduced in April 2014. In addition, you will be aware that Defra has commissioned a new State of Contaminated Land survey, which will collect information on regulatory activity under Part 2A, the apportioning of liability, and funding mechanisms used for contaminated land identification and remediation. The Report will be produced by the Environment Agency in 2014 and will provide an additional source of information that could be used in the impact review.