



NICOLE

Network for Industrially Contaminated Land in Europe



NICOLE input in BIOIS study

NICOLE disclaimer: "This document reflects the opinion of NICOLE, but not necessarily the opinion of each individual member of NICOLE".

Berlin, May 14th 2014

Anja Sinke

- Overall NICOLE sees the ELD and implementation by the MS, as an effective piece of European legislation serving its purpose of providing “a framework of environmental liability based on the ‘polluter-pays’ principle, to prevent and remedy environmental damage”
- For most European Member States NICOLE sees the ELD as topping up already existing legislation.



- For many NICOLE members their ‘remediation group’ was founded years ago. Where initially the focus was on dealing with historic pollution, the shift over the past years has been more towards prevention.
- NICOLE members have in common that the companies acknowledge the necessity of dealing with contaminated land and fully recognise the importance of prevention schemes.

Do you consider that the ELD's scope of strict liability works effectively?

NICOLE notices that many countries implemented the 'state of art defence' and/or 'state of permit defence', which puts a fair nuance to the concept of strict liability.

The recently revised IED covers many industrial operational activities.

Do you consider that the current scope of environmental damage under the ELD (biodiversity, water and land damage) as adequate?

- Yes, ELD adequately includes the ‘receptors’ to be protected
- NICOLE sees no additional environmental categories to be included.



Questions on significance thresholds

What is your opinion on the significance thresholds for water damage and land damage under the ELD?

- NICOLE sees the value of ‘significance thresholds’ based on risk assessment modeling and linked to defined and specific land-use.
- NICOLE would recommend to include overall NEBA (net environment benefit analysis) principles.
- Inclusion of ‘natural’ background
- Inclusion of sustainability principles



Where industry views taken on board?

	NICOLE	BIOIS recommendations
Strict liability	Keep defences	Delete defences
Scope	Is adequate	Expand
Thresholds	Risk-based & sustainable	Generic lowering



We recommend, therefore, that the Commission may wish to consider as a priority in a possible future revision of the ELD, deleting the optional defences.

The Commission may also wish to consider as a priority in a possible future revision of the ELD, including air damage in the ELD.

The Commission may wish to consider as a priority in a possible future revision of the ELD, lowering the threshold for an imminent threat of environmental damage.

The Commission may, thus, wish to consider as a priority in a possible future revision of the ELD, revising the threshold for water damage.