

**Report to
Public Protection Policy Development and
Review Panel**

Date: **12 March 2013**

Report of: **Director of Regulatory and Democratic Services**

Subject: **CONTAMINATED LAND STRATEGY UPDATE**

SUMMARY

Part 2A of the Environmental Protection Act (EPA) 1990 came into force in April 2000. It places a mandatory duty on local authorities to inspect their areas to identify contaminated land that is causing unacceptable risks to health or the environment and secure the remediation of that land.

The Council has had a Contaminated Land Inspection Strategy in place since 2001 and this has been updated periodically as required. The Government has recently amended the Statutory Guidance that local authorities are obliged to follow whilst carrying out their duties. As a result the Department of Environment, Food and Rural Affairs (Defra) requires all local authorities to revise their inspection strategies to take account of these changes.

The purpose of this report is to present the revised strategy attached as Appendix A to this report and provide members with an update on contaminated land issues.

RECOMMENDATION

The Panel's views and comments are requested on the Contaminated Land Inspection Strategy, attached as Appendix A prior to it being reported to the Executive.

INTRODUCTION

1. The Government's long-term aim is to work towards a future where all the contaminated land in England has been identified and dealt with. To achieve this, the Government has three objectives:
 - To identify and remove unacceptable risks to human health and the environment;
 - To seek to bring back damaged land back into beneficial use; and
 - To seek to ensure that the cost burden faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.
2. The Government has a wide range of policies and legislation to achieve these objectives. However, it is most likely that the clean-up of land contamination will occur under the control of three main regimes:
 - Planning and Building Control;
 - Environmental Protection Act 1990 part 2A;
 - Environmental Damage Regulations 2009.
3. Remediation of land may also take place through other legislative powers depending upon the scenario of how the contamination occurred.
4. The preference is that voluntary remediation takes place, either through market driven scenarios such as redevelopment of land or via negotiation with polluters and or landowners. If voluntary remediation is not forthcoming local authorities are required to assess which legislation is most applicable to secure remediation of the land on a case by case basis. To date the Council has made effective use of the planning and building control regimes to address contaminated land issues.

PART 2A OF THE ENVIRONMENTAL PROTECTION ACT 1990

5. Part 2A of the Environmental Protection Act 1990 s.78B places a duty on local authorities to inspect their areas to identify contaminated land and s.78E places an obligation on local authorities to secure the remediation of contaminated land.
6. Contaminated land is defined as:

Any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that

 - *Significant harm is being caused or there is a significant possibility of such harm being caused; or*
 - *Pollution of controlled waters is being, or is likely to be, caused.*
7. All local authorities were required to produce a strategy for inspecting their area to identify and remediate contaminated land. The inspection strategy is required to:
 - Be rational, ordered and efficient;

- Be proportionate to the seriousness of any actual or potential risk;
 - Seek to ensure that the most pressing and serious problems are located first;
 - Ensure that resources are concentrated on investigating in areas where the authority is most likely to identify contaminated land; and
 - Ensure that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land.
8. A report detailing the Council's first Contaminated Land Inspection Strategy was reported to and approved by the Health and Environment Committee on 22 May 2001. Three subsequent revisions were approved in 2005, 2007 and 2009. This latest revision is required as a result of recently amended Statutory Guidance.
9. The Contaminated Land Inspection Strategy explains the legislation, the duties placed on local authorities, the inspection strategy for Fareham, identifies priorities, details local circumstances, and sets priority actions for the period 2013-2018.

CHANGES TO THE REGIME

10. The legislation was reviewed by the coalition government and considered to be fit for purpose and necessary. The Statutory Guidance however was deemed to be confusing and failed to provide advice on the legal test that is required to be made when determining land as contaminated land.
11. The new guidance released in April 2012 excludes background concentrations of chemicals in soil from causing land to be contaminated land except in exceptional circumstances. It requires sites to be categorised based on risk. It brings the definition of pollution of controlled waters in line with European directives and adds in a requirement for significant pollution of controlled water. New guidance allows local authorities to be more flexible when determining land and serving remediation notices. Local authorities are now required to provide 'Plain English' risk summaries following determination of land as contaminated land and local authorities must ensure that remedial action results in a net benefit, financially, health wise and environmentally.
12. The Contaminated Land Inspection Strategy attached as Appendix A has been updated accordingly to take account of the changes highlighted above.

DETAILED INSPECTION

13. Detailed inspection of the presence of contaminants in soil predominantly occurs via the planning process and this is the main method by which contaminated land issues are addressed. Environmental Health is a consultee of the planning process and each site that it is consulted on is checked for the possible presence of contamination of land and the requirement for conditions is recommended to the planning department as appropriate. Once information in response to the condition is submitted, this information is again sent to Environmental Health for comment; this is usually in the form of a series of reports.
14. Since October 2011, 263 planning applications were consulted upon and 108 recommendations for a condition were made. Approximately 30 sites have been subject to some form of investigation and/ or remediation in the same period. Since the

contaminated land regime was introduced approximately 150 sites have been addressed through the planning process.

15. The planning regime has enabled the Council to deal with a number of land contamination issues including a gasworks, petrol stations, an oil depot, laundry site, vehicle repair workshops, haulage yards, landfilled areas, tanneries, a paint and glue factory, industrial land, MOD land, former pubs, oil tanks, hospitals and horticultural nurseries.
16. Future priorities for dealing with potential contaminated land under the planning regime include developments such as those at Daedalus.
17. Every opportunity is taken to fund site investigation and remediation work through external funding. £70,000 has been secured from Defra through Natural England to undertake preliminary investigations at 3 former Council owned landfill sites. This is a joint project with the Eastern Solent Coastal Partnership and the results will be useful under a number of different projects. This highlights how the opportunity to address potential contaminated land issues can be dealt with as part of wider schemes and by working in partnership with other agencies.

CORPORATE CONTRIBUTIONS

18. Environmental Health continues to be consulted on and contribute to planning policy strategies such as the pre submission Development Sites and Policies Plan, as well as supporting and advising the Council's Estates Team in relation to land disposals and purchases where land contamination may be a matter for consideration.
19. Officers within the Council also work corporately in dealing with land that the Council owns, for example, undertaking soil investigations such as on public open space to assist Leisure Services in making decisions about site drainage and site development. In addition, monitoring continues to be undertaken on a former Council owned landfill site to ensure that measures installed in 2001 to ensure the dispersion of methane gas continue to work effectively.

PRIORITISATION

20. In order to determine if contaminants are present, physical investigations of the land have to be undertaken; the Government requires that the most serious sites are investigated first. There is no prescribed process on how local authorities should prioritise sites in their area for detailed inspection; however, the aim should be to ensure that sites that present the greatest risks to health or the environment are inspected before sites that present a low risk. Therefore, a simple assessment of potential hazard and receptor sensitivity has been undertaken to assist in deciding the approximate order of detailed inspections. This is not set in stone and may change over time.
21. Work continues to be undertaken on prioritising sites for detailed inspection, using the extensive data collated and using the principles of risk assessment.

FINANCIAL CONSIDERATIONS

22. Under planning and building control the developer pays for investigation and remediation of the land. This is the main method the Government sees by which potentially contaminated land can be addressed.
23. Under part 2A all investigation costs up to the point of determining land as Contaminated Land must be borne by the Council. In terms of remediation costs: the Council will be required to pay; the polluter will be required to pay; the current landowner/ occupier will be required to pay; or the Council will pay for works in default and will then recover all or part of the costs from the polluter or current owner/ occupiers.
24. Costs are highly dependent upon the site and type of investigation/remediation required, but could range from thousands to hundreds of thousands of pounds. Where this course of action has to be taken and where the costs cannot be met from the existing budget a report will be presented to the Executive requesting the necessary funding.
25. In certain circumstances the Council may be required to fund remediation, for example, if remediation notices are not complied with, or if the polluters and landowners cannot be found or, indeed, where the Council is the polluter or where hardship is claimed and accepted.
26. Local authorities are recommended to have in place a transparent policy for assessing hardship and officers are currently working on this policy, which will be reported to the Panel for consideration at a future date.
27. The potential cost of dealing with contaminated land has been highlighted in the Council's Finance Strategy, but it is recognised that at this stage a figure cannot be put against this. However, it is clear that the costs the Council may have to meet in dealing with specific contaminated land sites will need to be considered on a site by site basis and where necessary these will be the subject of specific reports to the Executive.

RISK ASSESSMENT

28. There is a high risk that government funding will not be obtained due to the cut in the Defra Contaminated Land Capital Grant Scheme and that investigation and remediation costs under part 2A will need to be financed by Council budgets.
29. There is a potential risk of legal action if remediation causes risks to health and the environment. This will be addressed through risk assessment at the time of any future works.
30. External government funding is not available to address potential contaminated land on sites that have been previously developed since 1994 but which did not use the planning regime to address the contamination.

THE WAY FORWARD

31. The priority actions for the years 2013 -2018 include:
 - Detailed inspections under the part 2a regime should take place in accordance

with any agreed programmes;

- The cost recovery and hardship policy needs to be approved;
- The corporate contaminated land strategy needs to be updated;
- Inspections and remediation should continue via the planning and building control regimes where appropriate to encourage market driven solutions;
- Alternative funding sources and legislation should be used where appropriate to progress detailed inspection and remediation;
- Voluntary remediation should be encouraged prior to any regulatory action to reduce burdens on local taxpayers.

CONCLUSION

32. Work continues on the Contaminated Land Inspection Strategy; however, this is a long-term strategy and it is important that it is kept up to date and relevant to what needs to be achieved. There could be significant financial implications for the Council depending upon the issues that need addressing, but the emphasis has been on addressing contaminated land through the planning and building control regimes and this has been effective.
33. Complaints or concerns about land contamination are all investigated and are dealt with in accordance with the strategy. Issues are often resolved informally but where necessary and if appropriate a range of enforcement options are available to deal with the problem.
34. Members' views and comments on the Strategy attached as Appendix A are sought prior to it being reported to the Executive.

Appendices

[Appendix A](#) Contaminated Land Inspection Strategy 2013-2018

Background Papers:

Report of Director of Customer and Community Services to the Health and Environment Committee, 23 May 2000, Contaminated land.

Report of Director of Customer and Community Services to the Health and Environment Committee, 22 May 2001 Contaminated land Inspection Strategy.

Report of Chief Health and Regulatory Services Officer to the Health and Environment Overview Panel, 18 November 2002, Corporate Contaminated land Strategy.

Report of Chief Health and Regulatory Services Officer to the Health and Environment Overview Panel, 9 September 2003 Contaminated land Inspection Strategy.

Report of the Chief Health and Regulatory Services Officer to the Health and Environment Review Panel 6 September 2005 Contaminated land Inspection Strategy Update and Revision.

Report of the Director of Regulatory Services to the Public Protection Review Panel 4 September 2007. Contaminated land.

Report of the Director of Regulatory Services to the Public Protection Policy Development and Review Panel 8 September 2009. Review of Contaminated Land Inspection Strategy.

Report of the Director of Regulatory and Democratic Services to the Public Protection Policy Development and Review Panel. 8 November 2011. Contaminated Land Update.

Reference Papers:

None

Enquiries:

For further information on this report please contact Wendy Shakespeare (Ext 4394).