

CONTAMINATED LAND
INSPECTION STRATEGY

ENVIRONMENTAL PROTECTION ACT 1990, PART II A

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CHAPTER 5

LIAISON & COMMUNICATION STRATEGIES

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5.0 Whilst the regime of inspection and enforcement of contaminated land throughout the District will be driven by the Environmental Health Services Department the strategy will be corporate and collaborative. Lead officers will work closely with other departments, elected members and others such as Parish Clerks and Town Council Members with local knowledge. Effective liaison with other professional organisations and individuals will also be very important.

5.1 **STATUTORY CONSULTEES**

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Contacts have already been established with officers of all the “statutory consultees” via the Secretary of the Herefordshire and Worcestershire Contaminated Land Study Group. Several officers have attended meetings of the group and presented information to the local authority representatives. Particularly close contact has been kept with officers of the Environment Agency who have also presented a programme of joint training seminars on the complex issues arising from the new regime.

The statutory consultees defined by the DETR for the Contaminated Land Inspection Strategy are:-

- Environment Agency
- English Nature
- English Heritage
- Ministry of Agriculture, Fisheries & Food
- Food Standards Agency
- Worcestershire County Council
- Regional Development Agency

The Environment Agency determines its administrative boundaries according to river catchment areas. Unfortunately these boundaries do not equate closely to local authority boundaries. The Malvern Hills District overlays the Environment Agency areas of Upper Severn (regional office in Shrewsbury), Lower Severn (regional office in Tewkesbury) and also a small area of the District within South West area (regional office at Haverford West, Pembrokeshire). The main contact point with the Environment Agency has been agreed to be via the Tewkesbury offices.

5.2 **NON-STATUTORY CONSULTEES**

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As has been recognised earlier in this document, the Council recognises the important role that non-statutory consultees have to play in the inspection strategy process. The historical ordnance survey maps and land use overlays cover defined “Epochs” dating back to the late 1800s. However this information does not run concurrently, there are gaps in the information detail, particularly during the war years when mapping was not undertaken. Some industrial activity may have been undertaken in the “gap years” and may have disappeared again before the next series of mapping was undertaken. There is therefore a recognition of the importance of the wealth of local knowledge likely to be available from members of the public, organisations and businesses. The collaborative approach to information gathering and site investigation will be encouraged and further developed.

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5.3 **COMMUNICATION WITH OWNERS, OCCUPIERS AND OTHER INTERESTED PARTIES** [*Back to Index*](#)

The Council will seek to work closely with owners, occupiers and any other interested parties to ensure the voluntary remediation of all contaminated land sites before taking enforcement action. It is recognised that a quicker and probably more effective programme of remediation is likely by agreement rather than enforcement. The regulations also direct local authorities along this route of action and provide a financial encouragement to the voluntary remediator by exempting waste disposal costs which arises from landfill taxation. Where a remediation notice has been served no such exemption applies.

A successful voluntary approach will however be heavily dependent upon the Council's officers maintaining regular and effective communication with owners, occupiers and any other interested parties. This regular contact will be important whether or not the site under investigation is formally designated as contaminated land or not.

The following actions will be taken where a formal designation of contaminated land is made:

Designation of Contaminated Land

- i) Write to the owner and / or occupier of the land at least 5 working days prior to the designation explaining in summary the reason for the designation. The letter will include the rationale behind the Council's establishment of the Source – Pathway – Receptor linkage.
- ii) Write to the owner and / or the occupier explaining that the land has now been designated as contaminated land. This letter will include details of the suggested method of dealing with the voluntary remediation of the site. The level of remediation that the Council will aim for is to render the site "suitable for use" and not necessarily free from all pollutants.
- iii) Send a copy of the risk assessment documentation (if requested) to the owner and / or occupier of the land within 5 working days of the receipt of the request.
- iv) Write to all owners and / or occupiers of neighbouring land and also to any complainant within 5 working days of the designation.
- v) Contaminated land sites will not be entered onto the public register unless a remediation notice has been served. Details of sites prior to the service of a remediation notice will be kept on the Brownfield Land Register.

5.4 **SERVING REMEDIATION NOTICES** [*Back to Index*](#)

Due to the great complexities of the contaminated land legislation and the fact that it is largely untested through the courts (who provide guidance via case law decisions); every effort will be made to require remediation via informal means.

The following stages will be followed if a Remediation Notice is served:-

- i) Send a warning letter that unless final agreement can be reached on voluntary remediation there will be service of a remediation notice,
- ii) Service of a written remediation notice to the owner or occupier specifying the actions required,
- iii) Written notification to the owners and / or occupiers of neighbouring land and any complainant(s) within 5 working days of the service of the remediation notice.

Where an emergency situation occurs requiring a fast track process of contaminated land designation these steps will be adhered to although some deviation from the timescales specified will be expected.

5.5 **POWERS OF ENTRY**

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Under Section 108(6) of the Environment Act 1995 a specific power of entry has been provided for the purposes of investigations required by officers of the Council. A minimum of seven days notice will be given regarding any proposed entry onto premises for this purpose. Where there is an immediate risk to human health the seven day notice period does not apply.

5.6 **ENFORCEMENT ACTION**

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The general principles of the Environmental Health Services Enforcement Policy (Oct 2000) will be followed. Consistency of approach on a county wide basis will also be sought via the regular meetings of the Contaminated Land Study Group.

5.7 **RISK COMMUNICATION**

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The Council will follow the guidance provided in “Communicating Understanding of Contaminated Land Risks” document, known as the SNIFFER (Scotland & Northern Ireland Forum for Environmental Research) guide in communicating risks to the “lay-person”.

The guide describes the process of risk communication to the general public through a process of four stages entitled;

- i) When to communicate - Communication must not be left too late and must be a continual process,
- ii) Who to communicate with – The process of identifying all stakeholders,
- iii) What to communicate – Explaining the risks and providing advice,
- iv) How to communicate – Providing a check list of communication approaches.

The legislation relating to contaminated land provides for limited powers to local authorities in dealing with substances in, on or under the ground. It is very likely that the Council will discover land which has been heavily polluted but will not be designated as contaminated land because a significant pollutant linkage is not proven.

The Council will now also not be able to deal with the site under the statutory nuisance provisions of the Environmental Protection Act 1990. The Council will

therefore be left powerless unless a significant pollution linkage is created at the site, for example by the introduction of a pathway (e.g. land drain) carrying pollutants to other land.

There have been concerns expressed by land owners that local authorities will seek to achieve levels of remediation which are unreasonable and overly expensive in the removal of any and all pollutants. The emphasis on voluntary remediation bringing sites to a condition where they are suitable for the intended use (not free of any pollutant) should prevent this.

Members of the public may also have an expectation that all sites inspected will be left free of any material that is not a naturally occurring substance. The Council recognises that a lack of understanding of the issues involved can lead to stress and unreasonable or unachievable expectations. It is important to recognise that in some circumstances the local authority will not be able to meet these expectations under the powers vested with it to deal with contaminated land.

The Council will treat any concerns raised by a member of the public seriously and with respect and understanding. In all circumstances the Council will be open and honest in its handling of complaints and representations brought by concerned persons.

5.8 **THE PUBLIC REGISTER**

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The Council will hold two data bases with information concerning land which it has investigated in the timetable of inspection. The main site specific database will be the 'Brownfield Site Register' this will not be available for public inspection. The Council is acutely aware of the dangers of 'blighting' a site by the apparent categorisation of land as polluted and creating a possible false perception of the level of desirability of a particular site.

Under the legislation the Council is required to maintain a 'Contaminated Land Register' which is available "at all reasonable times" to members of the public.

The MHDC register will be held by the Environmental Health Services Department at Highlea, 36 Church Street, Malvern. This will be a paper based register available on request by visitors to the reception desk during normal office hours which are 9.00am to 5.00pm Monday to Friday.

The regulations specify the information which the Council must include on the register and this shall therefore be:-

- i) • remediation notices and charging notices;
- ii) • details of site reports obtained by the Council relating to remediation notices;
- iii) • remediation declarations, remediation statements and notifications of claimed remediation;
- iv) • details of all sites designated as "special sites";
- v) • any appeals lodged against remediation or charging notices;
- vi) • notices terminating a designation as a "special site";

- vii) • notifications by owners / occupiers / appropriate persons of any voluntary works which they claim have been carried out on the site;
- viii) • convictions for relevant offences;
- ix) • Environment Agency site – specific guidance.

5.9 **PROVISION OF INFORMATION TO THE ENVIRONMENT AGENCY**

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The Environment Agency is required under S.78U of Part 11A Environmental Protection Act 1990 to prepare an Annual Report for the Secretary of State for the Environment on the position regarding contaminated land in England and Wales.

The report must include:-

- a) A summary of local authority inspection strategies, including progress against the strategy timetables and its effectiveness,
- b) The amount of contaminated land identified and the nature of the contamination,
- c) Measures taken to remediate the land, either voluntarily or by enforcement.

As the Environment Agency themselves are only responsible for overseeing the remediation of “special sites” the bulk of information required to complete the necessary details for the national survey will be provided by local authorities. The Environment Agency and Local Government Association have agreed a ‘memorandum of understanding’ which describes how information will be exchanged between local authorities and the Agency. MHDC will therefore provide all required information according to these agreed guidelines.

The Council will also provide the following information to the main point of contact with the Environment Agency in Tewkesbury:-

- i) Site details including contact names and address for all land designated as contaminated land;
- ii) Details of all remediation notices, charging notices, remediation statements and declarations issued or agreed;
- iii) Details of all sites where the Council is anticipating that designation as a “special site” is likely.

The Council will use the standard forms produced by the Environment Agency in order to provide the information in a consistent manner.

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