

CONTAMINATED LAND

1 SUMMARY

- 1.1 The statutory contaminated land regime, under Part IIA of the Environmental Protection Act 1990, came into force on the 1st of April 2000.
- 1.2 Local Authorities have fifteen months, until June 2001, to produce, after consultation, a written strategy for the inspection of contaminated land within their district.
- 1.3 The preparation and implementation of the inspection strategy is a corporate task, which will require the co-operative efforts of a number of individual divisions.
- 1.4 There are legal, financial and staffing implications both in the production of the strategy and its implementation

2 INTRODUCTION

- 2.1 Members will recall the report from the Head of Housing, Health & Community Care in November 1999 (Minute 448/99) informing them of the draft Contaminated Land Regulations and the draft statutory guidance circular 'Contaminated Land', issued by the Department of the Environment, Transport and the Regions (DETR).
- 2.2 On the 1st of April 2000, commencement orders brought into force the statutory contaminated land regime under Part IIA of the Environmental Protection Act 1990(Part IIA Regime). The Contaminated Land (England) Regulations 2000 came into force on the same day and the DETR has issued the statutory guidance Circular 02/2000 'Contaminated Land'.
- 2.3 Within fifteen months, which is by June 2001, the Council must, after consultation, produce a written contaminated land inspection strategy, which it should formally adopt and publish. Guidance on the content of this strategy is given within the Circular.
- 2.4 The contaminated land regime is risk based and adopts the 'fit for use' and 'polluter pays' principles.

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- 2.5 The regime will necessitate liaison with, and responding to, information from other statutory bodies, including the Environment Agency, English Nature and the Ministry of Agriculture, Fisheries and Food. DETR will be producing guidance to planners on the interface between the contaminated land and planning regimes.
- 2.6 The Environment Agency will be responsible for the remediation of contaminated land identified as 'special sites' and will be looking to agree a contaminated land protocol with Local Authorities. The Agency is also considering the type and detail of information that it can make available to Local Authorities, such as ground water sensitivity maps, bearing in mind the restraints of copyright.

3 INTERIM PROCEDURES

- 3.1 The Council is seeking to adopt a systematic approach to the identification of contaminated land. However, this will take time to complete and it is important to be able to respond to and investigate specific concerns raised by members of the public or business in the meantime.
- 3.2 Information may be provided which is sufficient to identify land as contaminated land directly or to suggest that detailed inspection and possibly intrusive investigations are merited. Alternatively, following assessment, the Council may consider that no action is merited ahead of the systematic analysis as the concern does not appear to be well founded or that consideration of the presence of receptors is sufficient to determine that the land is not contaminated.
- 3.3 The Interim Procedures as set out at Annex A to this report would enable the Council to respond to such concerns prior to the adoption of its contaminated land strategy.

4 ENVIRONMENTAL IMPLICATIONS

- 4.1 The remediation of contaminated land and, where appropriate, its utilisation for development will improve the natural environment of the District and reduce pressure on land within the green belt .

5 RESOURCE IMPLICATIONS

5.1 Staffing

- 5.1.1 The preparation and implementation of the inspection strategy will require manpower resources from Housing, Health & Community Care, Legal Services, Land Management, Corporate Policy & Initiatives, IT Services and Planning Services. There will be additional staffing implications, particularly for the division that leads and co-ordinates this task. Alternatively, other work will have to be stopped.

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- 5.1.2 Use of a Geographical Information System (GIS) is seen to be central to the transfer, collation and plotting of contaminated land information. In addition, it may be possible to utilise the GIS as the authority's statutory public register. The Council does not currently have sufficient GIS resources to accommodate this work, and this is an issue that will require further consideration.
- 5.1.3 The Essex Environmental Protection Study Group, in liaison with Essex County Council (ECC), is considering aspects of the Part IIA Regime where it might be mutually beneficial to carry out joint research. Agreement will also be sought on matters such as risk based classification of land uses to ensure, wherever possible, a consistent approach to the development and implementation of inspection strategies. ECC has confirmed that it is willing to make any relevant information that it holds available to Districts.
- 5.1.4 It is intended that a final year student from the Colchester Institute will carry out initial screening for sites of potential historic land contamination during the summer recess. This is the first stage of the process and will primarily involve the interrogation of the ECC GIS. The resultant information will be accessible to Rochford either directly via an extranet or by loading onto our own GIS. Further work will then be needed to refine and verify this information, conduct investigations etc, in order to produce the prioritised inspection strategy.

5.2 Financial

- 5.2.1 It is difficult at this time to predict the financial implications to the Council of the implementation of this Part IIA regime. Financial liability might occur in identifying relevant persons, carrying out intrusive investigations, ensuring the remediation of sites or, in certain circumstances, the Council carrying out remediation itself. Consideration will also have to be given to circumstances where the Council itself is or was the land owner, or through its activities in the past may have given rise to land contamination.
- 5.2.2 The Head of Corporate Policy & Initiatives is separately investigating the placing of information contained within the Local Plan onto the GIS. This will form an essential part of the Councils risk based strategy.
- 5.2.3 Historical land use data in the form of digital maps may be available at minimal costs from ECC, however, this is the subject of licence negotiations. The purchase of equivalent data for Rochford District would be in the region of £18 - £22,000.
- 5.2.4 Nottingham University, on behalf of the DETR, are developing a contaminated land exposure assessment model (CLEA) for use in

assessments within this risk based regime. CLEA will be available from DETR later this year, however, costs are not yet known.

- 5.2.5 DETR have stated that they will make available an additional sum of approximately £25,000 p.a. per authority through the SSA process. Members are reminded that this is outside the Council's net budget and is not the same as direct grant for a service.
- 5.2.6 Supplementary Credit Approvals for the remediation of contaminated land are available from DETR. The Environment Minister has announced that the sum of £21 million has been made available under this programme for the current financial year
- 5.2.7 A sum of £9,000 towards the cost of the Part IIA Regime has been included within the 2000/2001-revenue budget.
- 5.2.8 It would be prudent to include a provisional sum of £30,000 within the 2001/2002 estimates to cover potential data acquisition, investigations, site remediation and legal costs.
- 5.2.9 Dependant on the numbers of identified potentially contaminated, sites there may well be significant manpower implications for the implementation of the inspection strategy.

6 LEGAL IMPLICATIONS

- 6.1 The contaminated land regime is a statutory function of the local authority.
- 6.2 The inclusion of potentially contaminated sites within the inspection strategy, together with the implementation of the 'polluter pays' principle for site remediation, apportionment of liability and costs, will require detailed legal consideration.

7 RECOMMENDATION

It is proposed that the Committee **RESOLVES**

- (1) To adopt the Interim Contaminated Land Procedures as set out at Annex A to this report.
- (2) To include £30,000 in support of the contaminated land regime within the draft estimates for 2001/2002.
- (3) That further consideration be given to the resourcing implications of the contaminated land regime. (HHHCC)

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- (4) To support the joint initiative of the Essex Environmental Protection Study Group and Essex County Council in the development of contaminated land regime strategies.

G P WOOLHOUSE

Head of Housing, Health & Community Care

Background Papers:

For further information please contact F D Laycock on (01702) 546366

Annex A

Interim Procedures
Contaminated Land Strategy

1. The Council's approach in assessing information received from members of the public, businesses or other organisations regarding potentially contaminated land will include taking account of the following factors:
 - 1.1 the strength of the evidence already available to suggest that the land is contaminated land (for example visual evidence, previous investigations, anecdotal information that is likely to be well founded);
 - 1.2 the apparent urgency (for example, priority will be given to concerns about human health);
 - 1.3 whether the information is provided anonymously or not (in the former case, it would not be possible to ask further questions, for example and thus to test the information further);

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- 1.4 whether the information appears to be driven specifically by commercial considerations. For example, a prospective purchaser may want to be assured that land they are seeking to acquire will not be identified as contaminated land. In this context, the Council will encourage the enquirer to employ his own advisers to make a judgement prior to the Council completing its own identification process, except where the request is consistent with fulfilling the Council's strategy.
 - 1.5 the apparent motivation of the person supplying information where there are grounds to suspect that the information may not be well founded.
 2. When information is received, the following steps will be taken to keep various parties informed:
 - 2.1 receipt will be acknowledged;
 - 2.2 the anonymity of the originator of the information will be preserved, where appropriate
 - 2.3 owners and occupiers of land to which the information relates, or potential appropriate persons, will be advised that it has been received and how it will be dealt with;
 - 2.4 other regulatory authorities will be informed where the information provided relates to matters relevant to other regulatory regimes (e.g. the Environment Agency for matters dealt with under the Water Resources Act);
 - 2.5 advising the person(s) who provided the information, owners/occupiers/appropriate persons previously contacted, of the final outcome of the Council's investigation.