

Chapter 1. Introduction

1.1 General policy of the Isle of Wight Council

The Council is obliged, under Part IIA of the Environmental Protection Act, to inspect its area for the purpose of identifying contaminated land. This will be undertaken in line with corporate aims:

- IOW Council's Mission: "improving island life" by ensuring that as far as possible the island is a safe, healthy, prosperous and sustainable place to live, visit and work.
- The way in which the Council undertakes this mission is underpinned by the following values:
 - Listening to people
 - Working in partnership
 - Giving good service
 - Being open and fair
 - Caring for our unique environment

The relevant strategic objectives include:

- to protect and enhance the health, safety and environment of the island and its people
- to support sustainable tourism, economic, leisure and cultural development

This strategy will help towards fulfilling the Council's aims set out above. The Council's corporate values are particularly relevant to dealing with contaminated land. Careful regard will be had to these values at all stages of the strategy. The Council will ensure that these are reduced in order to encourage development on "brownfield" sites and improve the quality of the environment. This strategy fits well with other corporate strategies: the Unitary Development Plan, the LA21 Strategy and the Isle of Wight Partnership's Economic Development Strategy.

The IOW Council will take all appropriate measures to conserve wildlife and geology in the implementation of Part IIA of the Environmental Protection Act, in line with its statutory responsibilities for Nature conservation and the furthering of Agenda 21.

The Council is committed to openness in its decision making. Accordingly, the draft version of this strategy was sent to numerous internal and external organisations with an interest in contaminated land, for consultation. The Council also undertook a public consultation with a copy of the strategy sent to each Member of the Council and to each Town and Parish Council. The strategy was also made available in the following ways:

- on request, by post,
- from local libraries and Council offices,
- on the Council's website: www.iwight.com

Recommendations and observations were noted and necessary modifications made to the strategy where appropriate. The strategy will continue to be publicly available in the ways set out above.

Until the strategy was adopted in October 2001, the Council only usually cause contaminated land to be remediated through the planning process. When applications are received on land that is suspected of being contaminated, the Planning Department will usually require the applicant to undertake a site investigation in accordance with current practices, into the nature and extent of contamination. The results of the investigation will be interpreted in order that appropriate remediation takes place as a condition of planning consent. It is envisaged that remediation required during redevelopment will continue to be the main means of ensuring that contaminated land is cleaned up.

1.2 Regulatory context

Part IIA of the Environmental Protection Act 1990 was brought into force by section 57 of the Environment Act 1995. However, the legislation only came into effect on the 1st of April 2000 following another period of consultation. It is this Part IIA legislation which has introduced a new regulatory framework for Local Authorities and the Environment Agency to ensure that harm is not caused to human health, property and the environment by historic contamination of land.

The new contaminated land regime aims to ensure that all contaminated land is known, the risks understood, and that information is made available to the public and developers to guide them in redevelopment decisions. The main aim of the regime is to ensure that land classified as contaminated is remediated to reduce potential harmful effects.

1.2.1 The Role of the Isle of Wight Council

The Part IIA legislation requires each Local Authority to firstly, produce a strategy document detailing how the authority intends to undertake the following new statutory duties:

Table 1.

The Isle of Wight Council's new statutory duties under Part IIA of the EPA:

- The inspection of the Island in order to identify contaminated land
- The identification of contaminated land (and who is the regulator)
- Identify who is liable
- Secure remediation of contaminated land (by legal notice if not voluntarily)
- Act in default if necessary
- Recover costs of remediation
- Manage a public register of enforcement actions

The Council will continue, in its role as planning authority to consider land contamination when developing the Unitary Development Plan. For each individual planning application it will ensure that the land is suitable for current and future uses (unlike Part IIA that can only deal with current use).

Planning Policy Guidance: Planning and Pollution Control (PPG 23) 1994 and DOE Circular 11/95 "The use of planning conditions in planning permissions" explain the Council's duties. A new guidance document is being produced by the DTLR (formerly the DETR) to emphasise the contaminated land duties contained in PPG 23 and explain the interface with the planning system and the Part IIA regime. The planning authority may require ground investigations and remediation as conditions of planning permission, or it may require the ground investigation to be undertaken and reported before planning permission is granted. The latter will be more often the case where there is a substantial level of uncertainty regarding the levels of contamination, or where the discovery of contamination would have a significant impact on the design of development.

The Building Regulations 1991 also give guidance on the required measures to be taken to protect the fabric of new buildings and their future occupants from the effects of contamination. It will be the responsibility of the developer to carry out remediation of the ground and to design the buildings accordingly. These will continue to be set out as planning conditions and building controls (not remediation notices under Part IIA).

Another function of the Council is to undertake, in conjunction with the Environment Agency, the licensing of industrial processes under the Integrated Pollution Prevention and Control Regulations. A requirement of the granting of such a licence is that there is a plan to restore the site to its original condition after the surrender of the licence. Contained within the licensing conditions are a number of measures designed to prevent the land being contaminated by current industrial activities.

1.2.2 The Role of the Environment Agency

The Environment Agency (EA) is the regulatory authority for sites that the Isle of Wight Council determines to be contaminated only if they are polluting certain controlled waters (defined in Appendix 3), or for sites that have had certain industrial or military activities on them (outlined in more detail in section 6.3). These are called "special sites". The EA will enforce the remediation of such sites in a similar way to the Local Authority, including the maintenance of a separate public register of regulatory activity concerning special sites. Sites that are regulated by the EA will be kept on the EA's public register and will not appear on the Council's public register.

The EA can also provide the Council with site specific advice on planning applications and is a statutory consultee in respect of planning applications relating to landfill sites. The EA may also provide site-specific advice for sites

that the Council will examine during the inspection of the island. The Council must have regard to this advice.

Nationally, the EA is obliged to report annually on the level of regulatory activity by local authorities, and on the total amount of contaminated land identified. Isle of Wight Council will therefore liaise with the EA to assist with the compilation of this report.

1.2.3 Definition of Contaminated Land under Part IIA

For the first time, there is a statutory definition of contaminated land (section 78A(2) of Part IIA), which is outlined in Table 2.

Table 2.

“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

(a) Significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) Pollution of controlled waters is being, or is likely to be, caused”.

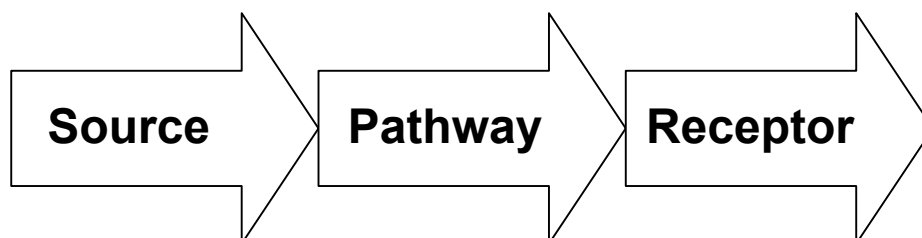
DETR Circular 02/2000, Chapter A, Annex 3.

This definition is fairly vague, but section 78A(5) requires the Council to follow more detailed guidance regarding the determination of “significant harm” and “significant possibility” for the specified receptors (see Tables A & B: Appendix 2). This guidance is found in the *DETR Circular 02/2000*.

1.2.4 Principles of Pollutant Linkages

The statutory definition of contaminated land (above) requires “significant harm” or “significant possibility” of such harm. In other words, a significant pollutant linkage must be established for a site to be declared “contaminated land”. This requires the identification of a source, pathway and a receptor of contamination for each site (see figure 1. & Table 3.).

Figure 1. Flow chart of pollutant linkage concept



Without all three present, a site would not be declared “Contaminated Land” under the new regime. A site may contain large quantities of contamination, but without a pathway and a receptor being present, it is not causing “significant harm” (Table B of Appendix 2) and would therefore not be determined as contaminated land and not entered on the public register. This approach requires a risk assessment to be undertaken for each site.

Table 3.

Elements comprising a significant pollutant linkage:

- A **Source** of contamination may be in, on or under the land.
- A **Pathway** is any means by which contaminants reach a receptor in significant quantities.
- A **Receptor** is that which is harmed by the contamination. Specifically, they fall into the following categories:
 - i. Human beings,
 - ii. Ecological system (certain designations),
 - iii. Property (buildings, produce, animals)
 - iv. Controlled waters (streams, lakes, rivers, groundwater etc.)

1.2.5 Principles of Risk Assessment

The determination that a site is “contaminated land” is made on the basis that significant harm is being, or is likely to be caused to the receptors specified above. This requires an actual significant pollutant linkage (source-pathway-receptor), or significant possibility of such a pollutant linkage to be present.

Initially, sites are identified for further investigation. These sites are selected because they have the potential to contain a contaminant (by reason of previous land-use), a pathway and receptor (by reason of current land-use in the vicinity and hydro-geological characteristics). The sites identified as having the greater potential risk are investigated fully, including intrusive ground investigations (where necessary), to establish the likelihood of significant harm occurring. Only if significant harm is caused, or a significant possibility of such harm being caused is proven, can a site be determined as “contaminated land”.

1.3 Development of the Strategy

The approach adopted by the Council in the strategy is to be based on the following principles (according to the statutory guidance):

Table 4.

- Be rational, ordered and efficient
- Be proportionate to the seriousness of any actual or potential risk
- Seek to ensure that the most serious problems are dealt with first
- Concentrate resources on investigating areas that are most likely to be “contaminated land”
- Transparency
- Defensibility

The Council has adhered to these principles and closely followed the *Technical Advice For Local Authorities (DETR)*.

A Contaminated Land Officer was appointed in June 2001 to produce and enforce the Council's contaminated land strategy. The first draft of the strategy was completed by August 2001. The strategy was then circulated for consultations with key departments within the Council and later, to Members, Town and Parish Councils and the public. The strategy was made available to the public for comment via copies in libraries, Council offices and the Council's website.

A number of external bodies were also contacted and asked to comment on the draft strategy in August 2001. These included:

Table 5.

Consultees:

- English Heritage
- English Nature
- Environment Agency
- DEFRA (formerly MAFF)
- Food Standards Agency
- South East England Development Agency
- Isle of Wight Partnership
- Southern Water PLC
- Chamber of Commerce

A Contaminated Land Liaison Group was established early in 2000 by Officers from the Hampshire and Isle of Wight Councils and the Environment Agency. This has proved a valuable means of sharing experiences, ideas and providing training seminars and workshops.