

Mid Sussex District Council

**CONTAMINATED LAND INSPECTION STRATEGY –
UPDATE AND REVIEW**

January 2013

Introduction

In 2002 Mid Sussex District Council published its Contaminated Land Inspection Strategy (CLIS) in response to new legislation that was introduced by section 57 of the Environment Act 1995, namely Part 2A of the Environmental Protection Act (EPA) 1990. 'Part 2A' came into force on 1 April 2000. The CLIS sets out the Council's approach for responding to the challenges posed within the District by land that may be contaminated.

This document presents our progress in implementing the CLIS, as well as other significant changes that have occurred within the District and nationally (Appendix 1), since the publication of Revision A of the Council's CLIS in April 2007. A copy of the current Inspection Strategy document is available on the District Council website.

Aims of the Strategy

To identify actual and potential contaminated sites within the District by rational, ordered and efficient investigation, to remove unacceptable risk to human health and the environment and prevent the creation of new contaminated sites.

In order to achieve this aim, the Council will:

- Reinforce a "suitable for use" approach enabling developers to design and implement appropriate and cost effective remediation schemes as part of their redevelopment project of contaminated sites to bring damaged land back into beneficial use;
- Identify sites which do not come under Environmental Protection Act 1990, Part 2A but could still be contaminated, to ensure that the land is suitable for its current use or can be made suitable for its intended future development use, where a receptor may be introduced;
- Record information on a public register stored as part of the corporate 'Geographical Information System' (GIS), showing the sites identified under Part 2A of the EPA 1990;
- Maintain a formal review mechanism between Environmental Health, Planning, and Building Control to enable effective monitoring of contaminated sites undergoing redevelopment or with permission for redevelopment;
- Complete a review of all actual and potential sites of concern;
- Complete a risk assessment on each of the identified sites.

Progress since April 2007

The first stage of the Strategy involved the collation of data on the presence of sites that had a former potentially contaminative land use. Using specialised software

these sites were then prioritised on the basis of potential pollutant linkages using a Source-Pathway-Receptor model. This enabled sites to be ranked against each other, allowing resources to be directed towards investigating the highest priority sites i.e. those areas where pollutant linkages are most likely to be found. For example, housing with gardens that is situated on a former chemical works or gas works, for instance, would attract a higher initial priority score than say an apartment development on a former engineering works.

Analysis of data using the prioritisation software indicated that there were 56 high priority sites, 1,900 medium priority sites and 804 low priority sites. The high priority sites included industrial estates and former landfill sites, for example; the medium priority sites ranged from old gas works to sewage works to infilled land; and the low priority sites included railway land, garages and former brickfields. It should be reiterated that the initial prioritisation of sites was based on potential pollutant linkages and not purely on the potential for pollution to be present at a particular site. Therefore, a site associated with a high risk of contamination (such as a former gas works) is not considered a high priority if there is no apparent link to a sensitive receptor, such as housing with gardens or controlled waters, for example.

Further more detailed assessments of the prioritised sites are necessary in order to refine the risk rankings. As such, we have begun to undertake detailed inspections of the sites and the additional information obtained during the inspections will allow us to re-categorise these sites in line with the revised Statutory Guidance of Part 2A of the EPA 1990, details of which are outlined in Appendix 1. Priority for detailed inspections was given to the highest risk sites.

It should be noted that it may not be necessary to carry out a walk-over survey of every single prioritised site. In order to evaluate a site, a desk-based risk assessment may be sufficiently robust in some cases, or a risk assessment submitted by a developer via the planning system may provide sufficient information. Furthermore, we might not be able to complete walk-over surveys at some sites due to circumstances outside of our control, for example, no access to certain sites because of safety considerations.

High Priority Sites

We have completed detailed inspections of the high priority sites.

Out of the 56 high priority sites identified during the initial prioritisation process, five sites were actually found to be within neighbouring local authority areas and were therefore discounted from the Council's list of sites requiring detailed inspection.

The Council's Contaminated Land Officer carried out walk-over surveys on 46 of the high priority sites, one of which was also subject to an intrusive site investigation via the planning system. The Environmental Health section is aware of a further two high priority sites that have been subject to risk assessment via the planning system. Therefore, it was considered that there was no requirement for the Council to carry out walk-over surveys on those two particular sites.

Desk-based risk assessments were carried out for the remaining three high priority sites because it was not possible to undertake walk-over surveys. The desk studies were deemed to provide sufficient information in order to make an informed evaluation.

Five of the high priority sites were on District Council owned land and the Council

owns areas of land within the boundaries of a further four of the sites.

As a result of the detailed inspections, the risk ratings of all high priority sites have been re-evaluated and are now considered to be a lower risk. We are currently in the process of re-classifying the sites in accordance with the new four category system set out in the revised statutory guidance.

The sites will be kept under review via the planning system, as well as further information that may be collated by or presented to the District Council as part of its Contaminated Land Inspection Strategy.

Medium Priority Sites

We have commenced inspections of the medium priority sites and aim to complete them by 2016.

Low Priority Sites

We will not be able to commence a formal program of detailed inspections of the lowest priority sites until we have completed inspections of the medium priority sites. However, detailed inspections of these sites may be carried out on an ad hoc basis in the meantime, for example if a site intersects another higher priority site that's undergoing detailed inspection or if a site is being appraised under the planning system.

No intrusive investigations will be undertaken unless it is considered that substances are causing significant harm or there is significant possibility of such harm being caused, for instance as a result of observations made during a site walk-over survey. The meanings of "significant harm" and "significant possibility" are explained in the Council's CLIS document or in Section 4 of the statutory guidance, for example.

Should the Local Planning Authority (LPA) receive applications for redevelopment or change of use in relation to any of the prioritised sites, then further assessment may be necessary prior to any detailed inspection due to take place under the Part 2A inspection process.

Examples of actions taken by the Council in relation to Part 2A of the EPA 1990 to date are described in Appendix 2.

Planning Regime

In recent years, the Environmental Health section has been commenting on approximately 100 planning applications per year in relation to contaminated land. Furthermore, we review, analyse and comment on a substantial amount of data in relation to developments of all sizes throughout the District, including desk study, site investigation, remediation and verification reports. Therefore, as a result of working closely with the LPAs, a proportion of the prioritised sites have been investigated through the planning system and, where necessary, undergone some form of remediation to make the site "suitable for use". It should be noted that in some cases the remediation undertaken has been limited, for example, residual contamination may well remain at a site intended for commercial use and further remediation would be necessary if the site was to be used for a more sensitive land use, such as housing with gardens.

Records of sites investigated and remediated through the planning system are maintained and the risk rankings will continue to be refined accordingly.

Future Actions

We will continue to undertake detailed inspections of the prioritised sites and to work closely with the LPAs to ensure that risks to the public from land contamination are minimised. Where a site posing an imminent risk to the public is identified then immediate remedial action will be taken. In this regard the District Council would also need to identify and notify those who may need to take further action on the land, determine responsibility for the remediation of the land by identifying the “appropriate person” and, if necessary, serve remediation notices.

The Strategy will next be reviewed in five years, however, an earlier review will be conducted if:

- a. there is any change in the legislation;
- b. there is any change in the statutory guidance issued by the Secretary of State;
- c. there is any change in key guidance in connection with site investigation;
- d. there is any change in proposed land use planning;
- e. there is any change in the local development plan.

The aim will be to conclude reviews within six months of any such change occurring.

Summary

The Council has made progress with its Contaminated Land Inspection Strategy having completed detailed inspections of sites ranked as a high priority during the initial prioritisation process. Additional information obtained during the detailed assessments carried out to date has allowed the risk rankings to be refined and re-categorised as a lower risk. We are currently reviewing the sites that have undergone detailed inspection in order to re-classify them in accordance with the four category system set out in the revised statutory guidance. We will continue to undertake inspections of the prioritised sites and, where possible, refine the risk rankings, aiming to complete inspections of the medium priority sites by 2016.

In addition, the Environmental Health section continues to consult with the Local Planning Authorities in order to reinforce a “suitable for use” approach in relation to development. This ensures that sites are remediated under the planning system to a level that they no longer pose a significant risk to human health and /or the wider environment.

At present, there are no areas of land known to be contaminated in the legal sense within the District, therefore there are currently no register entries under Part 2A of the Environmental Protection Act 1990. To date, no remediation Notices have been issued for any property in the District.

Appendix 1: Significant Changes since the Publication of Revision A of the Council's CLIS in April 2007

Part 2A: New Statutory Guidance

In April 2012 revised Statutory Guidance on the contaminated land regime under Part 2A of the Environmental Protection Act 1990 was published by the Department for Environment, Food and Rural Affairs (Defra). The new Guidance came into force on 6th April 2012 and supersedes previous statutory guidance, which was published as Annex 3 of Defra Circular 01/2006. The aim of the new guidance is to simplify the contaminated land regime and provide greater clarity to regulators in deciding whether land is or is not 'contaminated land'.

The most significant change in the statutory guidance is a new four category system to help local authorities determine whether land is or is not contaminated on the basis of a significant possibility of significant harm to human health. The new guidance sets out a legal framework for taking decisions in the form of a category based test, whereby Category 1 sites are clearly contaminated and represent a high risk and Category 4 sites are evidently low risk and clearly do not qualify as 'contaminated land' under Part 2A of the EPA 1990.

Category 2 and 3 sites are less straightforward and require more detailed consideration before deciding whether a site meets the legal definition of contaminated land. Category 2 sites require further risk assessment under the remit of the Part 2A regime, whereas Category 3 will only be subject to further assessment via the planning system as a result of a proposed development or change of use, for example.

Defra has commissioned a research project with the aim of developing technical guidance to support the new Part 2A statutory guidance. It is proposed that Category 4 Screening Levels (C4SLs) will be developed to provide a test for deciding that land is suitable for use and definitely not contaminated land in the legal sense. It is intended that the C4SLs will represent a new set of generic screening levels that are precautionary but more pragmatic than existing GACs, soil guideline values (SGVs) and other screening criteria.

A similar system can be used for determining whether or not a significant possibility of significant pollution of controlled waters exists. This is described in detail in the statutory guidance.

The revised Statutory Guidance does not apply to radioactive contamination of land, which is now covered by separate statutory guidance published by the Department of Energy and Climate Change (DECC) in April 2012. Both sets of statutory guidance will apply in the event that land is affected by radioactive and non-radioactive contaminants. The enforcing authority should decide on the appropriate course of action having due regard to the relevant primary legislation and advice from the Environment Agency.

National Planning Policy Framework

On 27th March 2012, the former Planning Policy Guidance (PPG) Notes and Planning Policy Statements (PPS) were replaced by the National Planning Policy Framework (NPPF), reducing thousands of pages of technical guidance into around 59 pages. This included the withdrawal of PPS23: Planning and Pollution Control that

gave legislative and technical guidance in relation to development on land affected by contamination.

The underlying principle in the new NPPF is a presumption in favour of sustainable development. With regard to land contamination, the NPPF states that planning policies and decisions should ensure that new development is appropriate for its location and that developers and/or landowners are responsible for securing the safe development of land. The NPPF encourages the re-use of previously developed (brownfield) land, provided it is not of high environmental value. As a minimum, land should not be capable of being determined as contaminated land under Part 2A after it has been remediated via the planning process.

Part 2A Amendment: Radon

The regime for radioactive sites has changed, with an amendment that redefines the term "substance" for radioactive contaminated land, removing the exclusion for radon and its decay products. This came into force on 30 September 2010. The change allows the regulator to take action where land is contaminated by radon or its decay products as a result of the after-effects of a radiological emergency or a past activity e.g. radium luminised paint remnants. Naturally occurring radon gas continues to remain outside the scope of the regime.

Developing future land-use plans

The current adopted Development Plan for Mid Sussex District Council is formed of the Mid Sussex Local Plan (adopted 2004) and the Small Scale Housing Allocations Development Plan Document (adopted 2008). Local Plan Policy CS20 and the supporting text in Paragraphs 10.49 - 10.51 address the issue of development on potentially contaminated land. All planning applications, (this encompasses applications for new development, redevelopment, changes of use and conversions) should have due regard to the policies of the Development Plan as well as national policies and guidance.

Best Value Performance Indicators

Two Best Value Performance Indicators relating to contaminated land (BV216a "Identifying Contaminated Land" and BV216b "Information on Contaminated Land"), which came into effect in 2005, were withdrawn at the end of March 2008.

South Downs National Park

On 31 March 2010, the South Downs became the 10th National Park to be designated in England. The South Downs National Park is over 1,600 square kilometres and stretches 100 miles from the edge of Winchester to Beachy Head, including the southernmost area of the Mid Sussex District.

Aquifer designations

From 1 April 2010 the EA Groundwater Protection Policy has been using aquifer designations that are consistent with the Water Framework Directive. These

designations reflect the importance of aquifers in terms of groundwater as a resource (drinking water supply) but also their role in supporting surface water flows and wetland ecosystems.

The aquifer designation data is based on geological mapping provided by the British Geological Survey.

The new aquifer designations are as follows:

- Principal Aquifers: (highly permeable) - previously designated as major aquifers.
- Secondary Aquifers: (variably permeable) - subdivided into two types:
 - Secondary A - These are generally aquifers formerly classified as minor aquifers.
 - Secondary B - These are generally the water-bearing parts of the former non-aquifers.
 - Secondary Undifferentiated - In most cases, this means that the layer in question has previously been designated as both minor and non-aquifer in different locations due to the variable characteristics of the rock type.
- Unproductive Strata: (negligibly permeable).

Appendix 2: Examples of Actions Taken to Date

Potential sources of contamination that could give rise to risks to human health and the wider environment were identified during 'site walkover' inspections of several of the prioritised sites. Through informal negotiation we have persuaded the land owners / occupiers of several sites to carry out improvement works in order to break the link between these potential sources and any pathways and receptors, therefore reducing the risk. For example, at one particular site we convinced the owner to decommission a large old metal above-ground fuel-storage tank and replace it with a modern plastic tank and, along with several oil drums, it was moved into a secure and bunded area.

We have also liaised with the Environment Agency (EA) on several occasions where the potential receptors included controlled waters or the main receptor was perceived to be controlled water.

In 2009, prior to intrusive ground works at a site in Haywards Heath, materials consistent with landfill type material were discovered during an initial ground investigation. It was concluded that during the late 1950s and early 1960s the area had been used as a tip for predominantly domestic waste. The Environmental Health section of the Council was previously unaware of this site, which lies directly south of an area of MSDC owned land used as a community orchard. It was considered that the landfill may extend beneath the orchard itself and therefore the District Council commissioned a site investigation in order to delineate the extent of the waste materials and assess the risk to site users and the nearby surface water course. The investigation confirmed that the waste materials extended below the orchard, although chemical analysis of the soil, water and fruit did not identify any significant issues and the sites current use was considered to pose a low risk.

In addition to the above, the Council has liaised with land-owners, consultants, the EA and other interested parties following several fuel spill incidents and other pollution incidents. We closely monitored the subsequent investigations and remediation works to ensure the risks to human health and the wider environment were reduced and that the sites did not qualify as 'contaminated land' under Part 2A of the EPA 1990.