

## INVESTIGATION OF POTENTIALLY CONTAMINATED SITES

### 1.0 INTRODUCTION

- 1.1 The Environment Act 1995 introduced the contaminated land regime into the Environmental Protection Act 1990 by way of the provisions under Part 11A of that Act. Part 11 A, which came into force in April 2000, was introduced specifically to address the historical legacy of land contamination which can arise from many former industrial and military uses, including scrap yards, landfill sites, petroleum storage, munitions and gas works etc etc.
- 1.2 The regime focuses on the identification and remediation of land which is in such a condition by reason of contamination that it gives rise to '*significant harm or the significant possibility of significant harm*' to certain named receptors, or gives rise to pollution of controlled waters or the likelihood of such pollution. The fundamental principle of this legislation is that there must be a contaminant, a receptor and a pathway, which if combined create a pollutant linkage.
- 1.3 The purpose of this report is to:
- Appraise members of our legal obligations in respect of contaminated land
  - Highlight the cost implications associated with site investigations which may be required to determine whether or not land falls within the legal definition of contaminated land and
  - Outline the funding which is available from Defra under their Contaminated Land Capital Projects Programme for 2006/07.

### 2.0 CONTAMINATED LAND REGIME

- 2.1 Under Part 11A, local authorities have a duty to:
- Inspect their areas and identify contaminated land as defined in the Act
  - Establish the remediation required and who should be responsible for it
  - Ensure that remediation takes place, if necessary by serving a remediation notice and
  - Record certain information on a public register
- 2.2 Under this legal framework Local Authorities were required to produce a Contaminated Land Strategy detailing how they would inspect their area and identify land falling within the legal definition of contaminated land. This Authority's strategy was produced in November 2001 and forms the basis for the current risk based approach to identifying and remediating contaminated land. To date, in excess of 1000 sites in the district have been identified as potentially contaminated, some of which will require further site investigation to determine whether or not they are contaminated, within the meaning of the Act.
- 2.3 It should be noted that this legal framework is intended to be complementary to the Planning regime, in that contaminated land can still be dealt with by use of planning conditions as part of the redevelopment process. Indeed many sites within the district have been investigated and remediated through the planning process.

2.4 Sites are now emerging, (either through the risk based site inspections undertaken in pursuance of the strategy or by way of complaints about land which is suspected to be contaminated), which require further invasive site investigations to determine the nature and extent of any contamination present. Whilst the principle of the legislation is that the polluter should pay (if they can be found) for the cost of any clean up of the site, any costs associated with site investigations for determination purposes rests with the Local Authority.

### **3.0 CONTAMINATED LAND CAPITAL PROJECTS PROGRAMME 2006/07**

3.1 This Defra programme is intended to assist authorities in funding 'intrusive investigation' and 'remediation' work and is for capital expenditure. It is primarily aimed at supporting authorities' duties under Part 11A of the Environmental Protection Act 1990 but can also support cases where authorities are themselves responsible for the condition of the land (Local Authority owned land or orphan sites) and seek to take appropriate action in line with Part 11A principles. The capital support available to Local Authorities under this programme is in addition to the revenue support given by the Government via the 'Environmental Protection and Cultural Services' component of Revenue Support Grant (RSG), to assist LA's in meeting their revenue expenditure needs under Part 11A.

3.2 The major change for 2006/07 is that capital support under the CLCPP will now be delivered as direct grants made to the local authority under section 31 of the Local Government Act 2003. This replaces the previous complex arrangement of delivering support via additions [called SCE(R)'s] to an authority's RSG.

3.3 Take up under the old funding scheme was poor and so the current programme has been changed to encourage applications for funding from Local Authorities to facilitate their statutory responsibilities, and in particular those relating to site investigations for determination purposes. Applications are considered on a 'first come first served basis' and, if approved for 2006/07, the grant will be paid at the rate of 100% of the eligible costs which is currently set at a minimum of £5000.

3.4 Works eligible for funding under CLCPP include:

- Intrusive site investigations prior to determination – whilst the main objective of such investigations will be to decide whether the land meets the definition of contaminated land, there are situations where it may be cost effective to extend the scope of works to include a preliminary appraisal of remedial options
- Remediation – this covers works carried out by the Authority where it has a statutory power to do so i.e where it is acting in default of an 'appropriate person', where there is an orphan liability or where imposing statutory liabilities on an appropriate person would cause hardship. This will also include situations where the LA is doing the remediation by agreement and where some costs will be recovered from an appropriate person. In addition funding is available for LA owned sites requiring works of remediation
- Re-instatement costs – this is normally limited to the minimum works necessary to make the site capable of being used for its current use i.e re-turfing, fence repairs etc

- Associated costs – this would include project management costs but does not include any consultant’s costs associated with the submission of the application.

#### **4.0 SITES IDENTIFIED AS REQUIRING FURTHER INVESTIGATION**

- 4.1 There are a number of sites which have already been identified as requiring intrusive site investigation through our inspection and risk assessment process under our Contaminated Land Strategy and for which applications to Defra for funding are being considered.
- 4.2 However, a complaint alleging odours from and discolouration of materials on the Eling foreshore was received at the end of last year. This land is situated to the south of the Eling Wharf Industrial Site which has a history of light and heavy industrial uses, including the former Tar Distillery and Creosoting Works and Timber Works. Eling and Bury Marshes are directly adjacent to the site, to the east, and are designated as SSSI. A joint investigation was undertaken with the Environment Agency and following analysis of materials taken from the foreshore in March this year, elevated levels of heavy metals and oily compounds were found.
- 4.3 Following consultation with the EA and the Health Protection Agency, the decision was taken to fence off the foreshore to prevent public access to the area. This action was instigated as a precautionary measure and pending the outcome of further investigations. With its proximity to the Eling Tide Mill it is an area frequented by locals and tourists and with the onset of the warmer weather it is regularly used for boating, water-sports, swimming and fishing.
- 4.4 This site is, therefore, of high amenity value and with the human receptors associated with activities on the foreshore and the potential significance of the conservation areas in the vicinity, some urgency is required in determining the need for remedial works and further engaging stakeholders at the earliest opportunity. This site is considered to be a priority for invasive investigations and is a prime site for funding under the CLCPP. The aim of the investigation would be to determine the likely origin and extent of the contamination and to assist in the possible determination of the site as contaminated land under Part 11A of the Environmental Protection Act 1990.
- 4.5 The estimated cost of this initial site investigation is £26,500 and includes the cost of the project management.

#### **5.0 PREFERRED CONTRACTORS**

- 5.1 Such site investigations are a highly specialised area of work and in anticipation of the need at some point to undertake this type of investigation the New Forest and Dorset Contaminated Land Consortium (this is a partnership working arrangement between this Authority and the Dorset LA’s whereby we jointly fund our contaminated land consultant, WPA) drew up a generic specification for which tenders were sought.
- 5.2 The specification was based on obtaining a price for specific works ie installation of a bore hole, soil and water sampling, gas detection and monitoring, geo-physical

investigations etc. The Contract and Standing Orders procedure was followed and Bournemouth Borough Council oversaw the tendering process on behalf of the Consortium.

- 5.3 As a result, a preferred contractor has been nominated, namely Bournemouth University and they are Exor approved. Two companies are held in reserve, one of which is again Exor approved.

## **6.0 ENVIRONMENTAL IMPLICATIONS**

- 6.1 Clearly the Local Authority has a statutory duty to inspect their district and to identify contaminated land. The environmental consequences of failing in this duty could be severe, particularly if a pollutant linkage exists which could have consequences for human health and water pollution, if remediation were not to be undertaken.

## **7.0 FINANCIAL IMPLICATIONS**

- 7.1 Again the contaminated land regime does have financial implications for the Authority but as detailed in Section 3.0 the CLCPP does, subject to approval of any application, ease this burden by currently granting 100% funding for eligible works, including invasive site investigations.
- 7.2 The CLCPP has been discussed with the Accountancy Manager and his view is that, contrary to the previous scheme, there do not appear to be any hidden costs to the Authority in that the funding is by way of a 100% direct grant.
- 7.3 In the event of any application not meeting with Defra support then this Authority would still have the legal responsibility to undertake such site investigations, at their expense, in order to determine whether the land was contaminated land within the legal sense. It is not known whether the current scheme of funding will continue into 07/08 and as such advantage should be taken of the 100% grant.

## **8.0 PORTFOLIO HOLDER'S COMMENTS**

- 8.1 I recognise the complexities of the contaminated land regime and that it is a highly specialised area of work which does have financial implications for this Authority if we are to satisfy our legal responsibilities.
- 8.2 That said, I would support officers in their decision to make any application to Defra for funding for eligible works and would agree that an application for intrusive site investigations at Eling foreshore should be submitted as a matter of urgency.
- 8.3 I therefore concur with the recommendations made in this report.

## **9. ENVIRONMENT REVIEW PANEL COMMENTS**

- 9.1 **To follow**

## 10. CONCLUSION

- 10.1 Part 11A imposes certain statutory duties on the Local Authority to identify and secure the remediation of contaminated land. As part of that process intrusive site investigations will be required from time to time to determine whether land is contaminated within the meaning of the Environmental Protection Act 1990.
- 10.2 Sites have already been identified as requiring further investigation for determination purposes, either following complaint as in the case of Eling foreshore, or as a result of the site inspections and risk assessment process under the Contaminated Land Strategy.
- 10.3 Defra are inviting applications from Local Authorities to assist with the funding of certain eligible works for which 100% direct grant is available in 2006/07.
- 10.4 In view of the amenity nature of Eling foreshore it is considered that this site requires immediate intrusive site investigations to determine the likely origin and extent of the contamination and to assist in the possible determination of the site as contaminated land under Part 11A of the Environmental Protection Act 1990.

## 11.0 RECOMMENDATIONS

- 11.1 It is recommended that members:
- 11.1.1 Support an application to Defra for funding under the Contaminated Land Capital Projects Programme in respect of the intrusive site investigations required for the Eling foreshore and
- 11.1.2 Subject to DEFRA funding being available, a supplementary estimate of £26,500 be approved to fund the intrusive site investigations mentioned in 11.1.1 and
- 11.1.3 Further applications be submitted to Defra on a priority basis as and when required without further member approval, subject to:
- the current CLCPP remaining at 100% funding of eligible works
  - any site investigation is undertaken by one of the preferred contractors obtained through the recent tendering process
  - an information report is made available to members detailing the sites for which an application has been made.

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### Background Papers:

Letter from Defra, dated 13<sup>th</sup> February 2006 detailing the Contaminated Land Capital Projects Programme 2006/07

CLAN 1/06 – Guide to the DEFRA Contaminated Land Capital Projects Programme

New Forest District Council  
Contaminated Land Strategy –  
November 2001

Planning Policy Statement 23: Planning and Pollution Control