

CONTAMINATED LAND

July 2006 Issue 1

BULLETIN

EUROPEAN POLICY

Commission backtracks on promised soil thematic strategy

The soil thematic strategy has “mysteriously disappeared” from the European Commission agenda, according to the European Environmental Bureau, which accused it of “abandoning soil protection”.

According to the EEB, the postponement of the proposal followed strong opposition from some member states and from within the Commission itself.

It said that over 3.5 million potentially contaminated sites had been reported across the EU, and suggested it would cost between 59 and 109 billion euros to clean up. “It is therefore imperative that an EU strategy, incorporating a soil framework directive proposal which addresses these challenges, should be published without further delay,” a statement said.

“The Commission is about to sacrifice a vital part of Europe’s ten-year environmental agenda, which was laid down by parliament and the council,”

EEB policy director Stefan Scheuer said. “DG Environment’s earlier plans for soil protection have already been dramatically weakened. Instead of submitting the resulting, much depleted, document to parliament and governments to allow discussion on how best to proceed, president Barroso is planning to bury it altogether.”

Catherine Bowyer, of the UK-based Institute for European Environmental Policy, told *CLB* that a consultation on the strategy had ended with both DG Agriculture and DG Enterprise expressing reservations. “Enterprise is very concerned about the proposal to require member states to produce contaminated land inventories,” she said. “There are worries about how it would work in practice – for example the UK doesn’t really know where all its contaminated land even is.”

Merlin Hyman, director of

environmental sector lobby group the Environmental Industries Commission, said: “What is proposed is a return to an approach of working to strict definitions of contamination and the development of a register of contaminated sites, which flies in the face of the risk-based approach the UK has developed.

“Also – as Defra has pointed out – it’d be easier to give the Commission a list of sites that aren’t contaminated than to create a register of sites that are. Everywhere has some contamination. Because of this a number of member states, including the UK, have violently opposed the strategy, and that’s why it has been pulled.”

What happens next remains to be seen, with internal Commission negotiations continuing. Bowyer said: “DG Enterprise is very set in its position, but DG Environment is unwilling to back down, so we can expect a long battle.”

IN BRIEF

Regime change

Changes to the contaminated land regime come into force on 4 August.

The regime will be extended to cover radioactive contamination, and appeals against remediation notices will be heard by the secretary of state under the *Clean Neighbourhoods and Environment Act 2005* rather than by magistrates.

Chris Papanicolaou, contaminated land specialist and partner at law firm Jones Day, welcomed the change. “With appeals heard through the planning inspectorate instead of by local magistrates, concerns over lack of familiarity with contaminated land issues, leading to lack of consistency in decisions, should be addressed. The planning inspectorate have inspectors who understand these issues from the planning and waste management perspective and have years of experience in assessing expert evidence. Because of the higher degree of expertise it’s more likely that consistent judgements will be made as to whether local authorities or the Environment Agency have made the right decision in excluding and apportioning liability, as well as the suitability of the remediation proposed,” he said.

“The change also tidies up the anomaly whereby decisions relating to special sites were dealt with by the secretary of state, with everything else going through the magistrates.”

Under the existing regime, appeals against remediation notices issued by local authorities rest with the Magistrates Court and appeals against those served by the Agency – in regards to a special site – with the secretary of state.

CLB LAUNCH

Readers welcome *Bulletin* launch issue

Welcome to the first issue of *Contaminated Land Bulletin*, the new monthly newsletter for contaminated land professionals in both the public and private sectors.

The *Bulletin* is edited by Rob Bell, a specialist environmental journalist with many years experience in the field, and the ex-editor of *Contaminated Land Management and Environment Business*. Bell said:

“Contaminated land is a fascinating and fast moving area and it’s a pleasure to be writing about it. Growing public awareness and a rapidly changing regulatory framework

mean that local authority officers, developers, contractors and many others need the up-to-date and concise information *CLB* will provide.”

Contaminated Land Bulletin’s launch customers are Nigel Clark, marketing director of consultancy Enviros, and Linda Attrell, service unit manager of the pollution control group at Lewisham Borough Council.

Clark said: “I welcome the launch of *Contaminated Land Bulletin*. There has never been a more important time to be up to speed on the issues the *Bulletin* will be covering. And with Rob in control it is sure to be an

informative, incisive and entertaining read.”

Attrell also welcomed the launch of *CLB*, which will be published alongside *Air Quality Bulletin* and *Noise Bulletin*. “*CLB* will complete a trilogy of informative publications. It is a particularly welcome addition as contaminated land has received limited coverage in the past in this manner.

“The time available to local authority officers to read publications is limited, and I’m sure the *Bulletin* will be an invaluable way of keeping up-to-date with contaminated land news.”

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IN BRIEF

Investment assistance

City financier AngelBourse and the Environmental Industries Commission have launched a service aimed at gaining access to investment for UK environmental companies.

The EIC said AngelBourse will act as a "gateway" to global investors, creating a network that can access sources of finance from investors to institutional investors and hedge funds.

EIC director Merlin Hyman told *CLB* that the contaminated land sector is a major target for the partnership: "Contaminated land is a massive growth area for the environmental sector, with strong export potential. It's a key area and a real target for the city."

● Contact Adrian Wilkes at EIC ☎ 020 7935 1675 or Cherry Farrow ☎ 07739 573932.

Compost project

WRAP is calling for interested parties to apply for funding to promote the use of compost in the regeneration and remediation of brownfield sites.

The purpose of the work is to use 20 "trailblazer" projects to demonstrate the use of compost to the brownfield sector. These will focus on opportunities in remediation, soil manufacture and landscaping.

● For more information, email Paul Mathers: paul.mathers@wrap.org.uk.

Demonstration report

CL:AIRE has completed and published its latest technology demonstration project report: *A Reducing and Alkalinity Producing System (RAPS) for Passive Treatment of Acidic, Aluminium Rich Mine Waters*.

The report describes a project designed for the treatment of contaminated water leaching from a colliery at Bowden Close in County Durham, and was written by Paul Younger's team at Newcastle University.

● enquiries@claire.co.uk.

ENFORCEMENT

Colchester serves stop notice

Colchester Borough Council has issued a temporary stop notice against a developer that failed to comply with requirements to properly remediate a site before commencing works.

The development is on the site of a former petrol station that is contaminated with hydrocarbons, identified during previous investigations into groundwater contamination as part of a prior development proposal.

When the new development was mooted, the council asked the developer to revisit the investigation, and a report was submitted but found to be inadequate. A meeting then took place where council officers and the Environment Agency informed the developer that a more detailed investigation was required.

Environmental control officer Paul Pearse told *CLB*: "The

developer was asked to be patient before beginning work while we worked out what we were dealing with and they developed a remediation method statement.

"However, the developer began to drive piles into the ground and all hell broke loose. Hydrocarbon fumes were vented into the atmosphere, causing havoc in the area. We threatened them with a temporary stop notice, but they weren't playing ball. Equipment was initially moved offsite, but the following week we were informed work was going to begin again, despite the fact we still had insufficient information on the plume of contamination under the site."

The council was concerned that continuing works could vent more contamination into the air and create new preferential pathways,

hampering future remediation efforts. "Working with the Agency, our planners and the planning enforcement team we decided enough was enough, that we'd lost control of the site and that a temporary stop notice needed to be served," Pearse told *CLB*.

The developer now has 28 days to provide the information the council has demanded.

"We didn't want to do this, but the developer forced our hand," Pearse said. "It has been a pain, but it's gratifying to see that contamination is being taken seriously by our planning enforcement team. It also shows the new legislation works – in the past we would have had to give 28 days notice before taking action, but a temporary stop notice can be served immediately, which has allowed us to regain control of the situation."

REMEDIATION

Mobile home residents to be rehoused

Remediation will go ahead at a mobile home park in Eynesbury found to be contaminated with benzo(a)pyrene by Huntingdonshire District Council. Residents will be rehoused while works take place.

The council told *CLB*: "It has been agreed that 46 of the 50 plots will need remedial action. We're going to move residents temporarily while work takes place on individual plots.

"The communal grassed areas not do require remediation as they will remain undisturbed. The hard standing the homes are on is not going to be removed either, but residents will be required to sign an agreement that they won't disturb it without permission.

"Remediation will be carried out on areas that are likely to be a problem such where vegetables are grown. The gardens will be excavated to two feet, the bottom and sides lined with a membrane and fresh soil put in."

POLICY

Tories campaign against HIPs

The Conservative Party has launched a campaign against the introduction of home information packs, criticising them as "dodgy" because of a number of perceived failings, including the non-inclusion of information on land contamination.

The campaign was launched as Oxford Economic Forecasting claimed 90,000 jobs could be lost as a result of the introduction of the packs.

Shadow housing minister Michael Gove said: "The case for this pricey regulation is unravelling week by week as the small print is revealed. HIPs have not even been launched and they are already on their last legs."

Calling for the government to scrap the scheme, he continued: "If people trust these dodgy HIPs, I fear they will be lulled into a false sense of security. If they don't and commission their own survey, costs will be duplicated. Either way, home buyers and sellers will pay the price for this new government red tape on the housing market."

However, the Department for Communities and Local Government said including information on contaminated land would be impractical. In a statement it said: "It is important to strike a reasonable balance between comprehensive packs, and the cost of providing this information. Requiring everything would just heap unnecessary extra costs on the majority of sellers.

"The regulations authorise the inclusion of information on potential hazards like contamination, and it is strongly encouraged that these are included where relevant."

As *CLB* went to press, the government came under more fire on HIPs after announcing that the home condition report element of the packs would not be introduced on time, with Tony Blair accused of a "u-turn".

Gove told the Commons: "The government's ongoing plans for home information packs are now a complete shambles. The government should abandon the whole scheme and consult afresh."

LEGAL ACTION

Regs blamed for two year battle

Pendle Council has criticised the contaminated land regime following a two-year court battle over responsibility for remediation on a contaminated site, which has still not been resolved.

The council fears it will be forced to pay for remediation itself and hope it can recoup the cost from either Defra or the "responsible person" under Part IIA.

Problems began when the site, which has a history of use as a chromium plating works, was determined as contaminated with heavy metals. Tanks on the site were filling with rainwater, causing contaminated water to overflow onto the site itself and flow into nearby drains. A remediation notice was served and appealed, leading to two years of court appearances.

However, over the course of the legal process the tanks have been washed clean and contaminated water is no longer leaving the site, although the company did take some remedial action. But the contaminated soil on the site has not been dealt with, and the council has neither the appetite nor the funds to re-enter the

legal system in hope of resolving the problem.

Environmental health officer Susan Marshall explained to *CLB* that the appeal against the remediation notice, which took place through the magistrates court, proved to be a tortuous process.

"We've spent two years in court, with the associated legal costs and the cost of my time, and the site is still contaminated. It has been an extremely complicated and expensive process because we've had to take legal advice at every stage and each time we've turned up at court we've had to have a barrister with us."

She criticised the fact that there are 23 grounds for appeal against a remediation notice, and admitted the council was lucky to have prevailed. "In the first instance we only served a notice against the original polluter, without considering the two more recent owners. So if the appeal had been against the notice as it was written, we probably would have lost. Out of 23 grounds for appeal, we were lucky they chose the wrong one."

The council is now attempting to resolve the

problem of the remaining contamination through voluntary means rather than through the courts. Marshall said: "When the appeal process ended we looked at the option of serving another remediation notice. However, we've decided it's out of the question. We spoke to Sevenoaks Council about their case against Circular Facilities and their costs were around £250,000. We just didn't want to go down that road again if we could possibly avoid it."

Pendle is in touch with all three parties involved, all of which Marshall said have a part to play in the clean-up. However, an agreement has yet to be reached as to responsibility for remediation.

Marshall told *CLB* that while there has to be an appeal process, the current rules make it extremely difficult for local authorities to act swiftly when there is an immediate risk to human health.

"Because contaminated water is no longer running off the site, there is no clear human receptor and so we cannot say there is an immediate risk to health and take action. But that doesn't stop the site being contaminated with heavy metals."

IN BRIEF

UXO research project

CIRIA is producing the first UK good practice guidance to help developers and clients deal with unexploded ordnance: *A clients' guide for assessing risk on UXO*.

A number of large regeneration projects including redevelopment prior to the 2012 Olympics will encounter unexploded ordnance UXO hazards, a legacy from World War I and II bombing. Areas most at risk include East London, the Home Counties, the south west, Scotland, the north east, and the Midlands

There is currently no guidance available to assist professionals in assessing the construction risks associated with the discovery of UXO. CIRIA said that developers have limited knowledge of the subject and tend to depend on a limited number of explosive ordnance disposal specialists to deal with these sites leading to delays and increased costs.

● Contact Joanne Kwan ☎ 020 7549 3327.

Record profits

Profits at environmental consultancy Hyder Consulting have "advanced by 169%", according to the company. Turnover is up 26% to £171.3 million and the company said its order book has grown by 30% in the past year to £240 million.

Chief executive Tim Wade said: "These results reflect further progress in developing our core engineering services while growing the management and advisory services part of our business."

Research funding

Lancaster University has been awarded funding for a PhD student to help develop better methods of bioremediation.

The funding will pay for a three-year Industrial CASE PhD studentship.

The student will work with consultancy Remedios on improving the effectiveness of biopiling in remediating hydrocarbon contaminated soils.

REMEDICATION

All clear from Mole Valley for estate

Following a protracted round of sampling, which the Mole Valley Council said was hindered by lack of clarity in government guidance on contaminant levels requiring remediation, an estate in Bookham has been given the all-clear by the council's environmental health department and technical adviser Mike Quint of ESI.

Residents have been told that their gardens do not constitute contaminated land, are suitable for everyday usage and that it will not be necessary to excavate and replace material from their properties.

The council first became concerned about the estate at the end of 2004 when initial screening of the area discovered poor soil sample results. Further extensive sampling and

surveying then took place over the next year. The council said its decision on the Greville Court estate was delayed because of the lack of clarity in guidance on risk assessment.

Judith Lowe - an expert on the regime and independent advisor to Defra and a number of local authorities - confirmed at a recent meeting that the council had needed to establish its own criteria for evaluating risks from the site.

She said: "Mole Valley District Council has taken a sensible approach in line with the recent advice note from Defra and guidance from the Chartered Institute of Environmental Health."

Lowe told the meeting of residents that the government is fully aware of the problems that local authorities experience in

implementing the contaminated land regime and that relevant government agencies are working hard to provide the tools councils need to reach good quality, consistent decisions on potentially contaminated land sites.

Residents have been informed that there remains one small hot spot where zinc has been found, which needs limited further inspection. The Environment Agency is also expected to confirm final clearance of the groundwater shortly.

Mole Valley District Council head of environmental health Mark Wilkinson said: "We are very pleased with the outcome, it eliminates uncertainty for the residents and avoids a huge amount of unnecessary disturbance."

IN BRIEF

Colliery transformed

The regeneration of the former Weetslade Colliery in North Tyneside into a wildlife area has been completed.

The 60-hectare site has undergone an extensive programme of work to transform the colliery and redundant pit heap into a wildlife area and community green space with a new network of footpaths and cycle ways.

The projects been managed by One NorthEast, with funding from English Partnerships through its national Coalfields Programme. The Land Restoration Trust will take over the park's ownership and will allow agents such as the Northumberland Wildlife Trust to run sites at a local level to ensure that the community wishes are met.

LRT appointments

The Land Restoration Trust has appointed three new development managers.

Chief executive Euan Hall said: "The Trust's ten-year goal was to sustainably manage 10,000 hectares of land; at the end of year two we already have over 20,000 hectares being offered to us. We have started to solve the problem of enduring derelict land and with three new experienced members of staff we will be able to deliver even more."

Alison Whitehead will be responsible for the North West and West Midlands regions. Jonathan Ducker becomes the Trust's development manager for the Thames Gateway and South East, and Ruth Potter will be responsible for development in Yorkshire.

Testing continues

Families on an estate in Cadishead are still waiting for the all-clear two years after Salford Council began investigations into concerns that the former site of an engineering works, wallpaper factory and copper tank manufacturers could be contaminated with heavy metals, solvents and coal tar.

The council told *CLB* that testing continues.

REDEVELOPMENT

Ordnance site plan revealed

A planning application for the redevelopment of the former Royal Ordnance factory at Bishopton, near Glasgow, has been received by Renfrewshire Council.

BAE Systems and developer Redrow plan to build 2,300 houses on the 964-hectare site, which will require extensive remediation following a century of munitions manufacturing.

BAE said that remediation was only feasible if it was funded by the redevelopment scheme, and that "decontamination will be undertaken using methods that meet health and safety requirements, are self-contained onsite to have minimum impact on the local community and allow recycling of reclamation and waste materials into the new scheme".

New build will be a mixture

of housing, interspersed with community facilities, open space and commercial development. At the southern end of the site a 36-hectare business park is planned. This will be the main source of the approximately 4,000 jobs it is hoped that the site will eventually generate.

CLB spoke to Scottish Environment Protection Agency officer Peter Murray, who has been involved in regulating the site over a number of years. He said: "It's a great big site with quite a lot of contamination scattered over it. Bishopton has a long, mixed use history – some areas are quite heavily contaminated, mostly with heavy metals, and there is some asbestos and explosives-related material.

"We're concerned about some of the heavy metals, and with

groundwater acidity – they used an amazing amount of acid in manufacturing. There are also areas that are contaminated with ammonia, as ammonium nitrate was used as a starter material for at least one of the explosives produced there."

A planning request for a new landfill on part of the site has been received by the council, and seems likely that a hazardous waste licence application will be made in order to deal with at least some of the most heavily contaminated material.

Murray said: "SEPA is assessing the outline planning application, with a deadline to respond of mid-August.

Personally I like the idea of a heavily contaminated site being remediated with funding through redevelopment – it makes perfect sense."

REDEVELOPMENT

Clyde Gateway partnership launch

Plans to clean up and redevelop 865 acres of derelict and contaminated land in Glasgow and Lanarkshire have been launched. Public funding of £248m is in place for the Clyde Gateway partnership, and it is hoped the project will attract an additional £1.4bn of private investment.

An area stretching across the Clyde from Glasgow Green to Cambuslang and from London Road to Toryglen and Shawfield, will be cleared.

Councillor Eddie McAvoy, leader of South Lanarkshire Council, said: "Derelict and contaminated land, which has in the past been viewed as a blight on the area, is in reality an untapped resource and this partnership gives us the opportunity to start using that resource; investment and hard work can turn such areas into a valuable community facilities, desirable sites for housing or market leading business locations. In addition the partnership will provide a vehicle for the regeneration of the communities in the area with the support of those communities."

REDEVELOPMENT

Green light for Luneside East

Approval for a compulsory purchase order for the "grossly contaminated" Luneside East site in central Lancaster has been granted by the government.

The city council's David Lawson told *CLB* there are two main sources of contamination on the site; the former town gasworks and a car battery-breaking facility. "All the nasties you can think of are present," he said.

Site investigations carried out by Entec UK found a wide range of hydrocarbons and heavy metals present on the site, including arsenic, cadmium, lead, mercury, selenium, chromium, copper and nickel.

Granting of the order means the council can take all of the 6.4-hectare site into its possession by the end of September 2006.

In a statement the council said: "The project will transform what is now an under-used, brownfield site which is badly contaminated and very much an eyesore into a new, vibrant, mixed use

neighbourhood with housing, business space, bars, cafes, local shops, public places, parkland, and cycle and walking routes."

Once possession is complete, National Grid will remove a gasholder and the Environment Agency will complete flood protection works. The council will then transfer the site to developer CTP/Development Securities which will undertake remediation. It is hoped that work will start either late this year or early in 2007.

The first phase of the development should be completed by the end of 2008 and will see all the public areas including parkland laid out, all the business space and over one-third of the housing completed.

The council said its costs in acquiring the site and removing the gasholder amount to around £12 million and are being met by funding from English Partnerships, the North West Development Agency, the European Regional Development Fund and a contribution from the developer.

POLICY

Agency revises MCERTS rules

The Environment Agency has revised its MCERTS policy for the testing of soils in order to clarify its position on *in situ* sampling and analysis.

Land contamination policy advisor Peter Ord told *CLB*: “We introduced the policy in 2003 when the Agency started requiring MCERTS-accredited data for regulatory purposes, but there is no standard for onsite testing of soils. However, we’ve always believed that onsite testing has a valuable role to play in site investigation, so we decided to take the opportunity in this policy revision to clarify this, especially as there was anecdotal evidence that doubt existed in the sector as to whether regulators would accept reports containing data from onsite testing. So this is not a new policy position – it just puts our existing view upfront in the policy document.”

Ord said that while onsite testing does not provide the same level of quality assurance as MCERTS-accredited testing carried out in laboratories, it does have a number of advantages including:

- Speed and accuracy in delineating contaminated areas and developing a conceptual site model;

- Flexibility as results are obtained quickly, rather than waiting for analysis to return from a laboratory;
- On-site testing is cheaper and allows more samples to be taken;
- Areas of particular interest can be targeted for further laboratory analysis. Ord said: “There should be no surprises when you get your lab results back if you have used onsite testing properly”; and
- While samples can deteriorate during the sampling process, storage and transport to the laboratory, onsite testing avoids this problem.

Olympic contractors named

Remediation contractors for London’s Olympic Park site have been named by the London Development Agency. Edmund Nuttall and Galliford Try will be responsible for remediating over one million cubic metres of soil.

The site in East London has a history of mixed use industrial activity, with widespread contamination present. A commitment has been made to use the “latest and most environmentally friendly techniques” to clean up

“Field testing and laboratory analysis are often complementary tools and their use will always be dictated on a site-by-site basis. We are now preparing guidance on the role and use of onsite analytical techniques for the management of land contamination and hope to release a draft document for consultation later this year,” Ord said.

“The limitations of onsite sampling need to be understood, but we see it as playing a complementary role to laboratory testing as long as it is appropriate; and properly used and evaluated.”

the land.

The LDA said that it expected that up to 90% of treated soil and 60-80% of materials from demolished buildings will be reused onsite. Remediation techniques that will be used include soil washing and thermal desorption.

LDA chief executive Manny Lewis said: “Remediation of the site is key not just for the Games but also for the long-term regeneration of the surrounding area.”

IN BRIEF

Norwich masterplan

Plans to regenerate a key area of east Norwich are to be taken forward through the creation of a new masterplan. The work has been commissioned by the East of England Development Agency and Norwich City Council.

The regeneration sites to be included in the masterplan are “significant brownfield sites that are awaiting sustainable, mixed-use regeneration”.

EEDA chair Richard Ellis said: “The masterplan will help to gauge the opinions and needs of local partners and the local community. Once it has been compiled it will be used to attract private and public sector investment to unlock these key brownfield sites for a range of uses such as housing, employment and leisure.”

Councillor Brian Morrey, the Council’s portfolio holder for development and sustainability said: “These large sites have been underused for many years.”

Research park launch

A multi-million pound project based at Cardiff University will tackle the legacy of land contamination left by Wales’ industrial and mining past and create company growth and new jobs in Wales.

Directed by Professor Hywel Thomas, head of the School of Engineering at the university, the Geoenvironmental Research Park is a partnership to create new hi-tech companies to tackle environmental problems in Wales and around the world.

First minister Rhodri Morgan welcomed the project as promoting Welsh expertise in this area.

He said: “Wales has developed considerable experience and expertise in terms of tackling pollution and land reclamation. Cleaning up the industrial residues of the past and bringing land back into beneficial use have both environmental and economic benefits are an essential part of our commitment to sustainable development.”

REMEDIATION

Midlands council considers home demolition

Up to 17 properties may be demolished on the site of a former Courtaulds factory. Wolverhampton City Council is considering a proposal to clean up carbon disulphide from the site in partnership with Akzo Nobel, which bought Courtaulds in 1998.

In order to fully remediate the area where high concentrations of the substance have been found, the council is considering buying 12 privately owned properties that may need to be demolished. Five council-owned home would also need to be acquired. Of the properties, only seven have been found to contain high levels of carbon disulphide in their gardens, but there are concerns the other houses could be left structurally

unsound by the works.

A spokesperson for the council told *CLB* that £2 million was set aside to pay for remediation by the cabinet on 12 July, but that a decision whether to go ahead had not yet been made.

As part of an investigation into the presence of the substance in the gardens of houses built on the site of the former rayon factory, 90% of 200 gardens tested have been declared clear of carbon disulphide at significant concentrations. However, high levels exist in a small number of gardens, although the council said that no health risk to residents has been found so far.

With phase two of the investigation now underway to

test the rest of the estate, a specialist team of council officers has been considering, along with Akzo Nobel, the best way of dealing with the situation.

Council leader Roger Lawrence said: “Since Akzo Nobel first approached the council last year regarding the possible presence of carbon disulphide, the council has worked very hard to identify precisely the extent of the problem and how it may be resolved to the satisfaction of the residents and the city.

“The council wants to deal with this matter as quickly as possible, especially as we know the presence of carbon disulphide may be affecting the local housing market.”

Paying for the UK's industrial past

Will the High Court ruling in the Bawtry gasworks case really transform remediation in the UK, or has the decision been overhyped?

The ruling by the High Court in the case of *National Grid Gas v the Environment Agency* will impact on the remediation of up to 2,000 potentially contaminated former gasworks sites across the country – or so we're told.

However, careful examination of the decision – which is still subject to appeal – suggest the consequences may not be as far-reaching as many may think.

The case came about following the discovery of a pit containing coal tar in the garden of a house in Bawtry, near Doncaster. Investigations by Doncaster Council discovered further contamination on the site, where a gasworks had operated between around 1920 and 1960. The gasworks was demolished in the early 1960s and the site was then sold and redeveloped for private housing.

Fearing a risk to a major aquifer used for abstraction under the properties, the council made a special site determination and the Environment Agency took over as the relevant enforcing authority.

Recovery of costs

At this point in proceedings, the Agency would normally serve a remediation notice to the appropriate persons – those who caused the contamination or allowed it to take place (a knowing permitter).

However, in some cases the relevant enforcing authority is precluded from serving a remediation notice, for example where it has the power to carry out remediation itself under Section 78N of the *Environmental Protection Act 1990*.

This provides local authorities (or the Agency in the case of special sites) to clean up sites where it is judged that only part of the costs of remediation are recoverable.

Recovery of "reasonable" costs are allowed under the Act, with reasonable defined by the relevant statutory guidance, which states that where there is more than one knowing permitter and one or more cannot be found – for example in a case where a company has ceased trading – the enforcing authority should seek to recover from the remaining culprits the portion of the financial liability for which they would be considered responsible if the other parties paid their share.

And this is where it all became rather interesting. While the exactly source of the contamination was impossible to ascertain, it was agreed that the trouble was caused by coal gas production on the site, carried out

by NGG's predecessors, the South Yorkshire and Derbyshire Gas Company and the Bawtry and District Gas Company, prior to 1960.

However, in 1948 the industry was nationalised and the site and its liabilities transferred to the East Midlands Gas Board, which remained the owner and made use of the site for storage and distribution purposes until it was sold and redeveloped.

Assigning liability

As the gas board is NGG's statutory predecessor, the Agency identified it as a knowing permitter, and therefore an appropriate person alongside Kenneth Jackson, the developer that had obtained planning permission for the housing estate impacted by the contamination.

However, as Kenneth Jackson is no longer in existence, the Agency named

“NGG – a company that had never actually owned the site in question – was far from happy, and so the court battle commenced”

NGG the sole knowing permitter, and following completion of the remedial works, sought a reasonable proportion of the cost from NGG.

NGG – a company that had never actually owned the site in question – was far from happy, and so the court battle commenced. Managing director of National Grid Property Phil Kirby said: "National Grid takes its environmental responsibilities extremely seriously. We have one of the UK's largest programmes of brownfield remediation and over the past decade have helped to reclaim hundreds of acres of our own land. If this judgment were allowed to stand, it would inappropriately allocate liability and discourage brownfield land being brought back into beneficial use."

NGG held that it was not liable for part of the Agency's costs on three grounds:

- That it was not the "appropriate person" as it had not knowingly caused or permitted the contamination to take place;
- That it is a completely separate entity from its predecessor the gas board, and could not be held liable for its actions; and
- That even if it were liable for the actions of its predecessors, it could not be held responsible because the liability in question did not legally exist when liability was transferred from the gas board.

The High Court dismissed NGG's interpretation of the legislation, finding that NGG was responsible for its predecessors' liabilities, was the appropriate person, and that liability under Part IIA is retrospective.

So, assuming the decision is not overturned by the House of Lords, the ruling makes clear that potential liability for remediation costs will fall on the statutory successors of the original polluter, opening NGG up to potential claims for costs incurred in the clean-up of former gasworks across the UK.

However – and perhaps most importantly – the decision was made in a case where nationalisation and privatisation were major factors. While NGG may well face further claims, and the rail, water and electricity sectors may also come under the spotlight, it appears unlikely that the decision would be applicable beyond this unique set of circumstances.

A reiteration of intent

As a leading lawyer in the contaminated land field pointed out to *CLB*, the ruling may reiterate the retrospective nature of the regime, but in doing so is only reinforcing that retrospective liability was part and parcel of Act's intention in the first place – Part IIA was based on a green paper titled *Paying for our Past* after all.

The hype around the decision may be due in part to the fact it is only the second to be resolved, after the controversial *Sevenoaks Council v Circular Facilities* case. Whatever the case, it seemed the decision may have limited impact on companies that do not fulfil a tight set of criteria.

Perhaps of more interest is the fact that the Environment Agency's total costs in remediating just 11 properties came to £700,000. Yes, the courts have made it clear that they won't shy from assigning financial liability retrospectively, and yes that is a welcome clarification. But if there's one thing this case proves, it's just how expensive remediation can be.

Progress on soil guideline values

CLB reports on the latest developments from the Soil Guideline Value Task Force, following a stakeholder meeting held by Defra earlier this month

Progress continues to be made in the efforts to resolve the long-running problems surrounding soil guideline values. With local authorities increasingly frantic in their desire for clear guidance as to what exactly constitutes contaminated land requiring intervention, the Soil Guideline Value Task Force has met again to discuss the emerging conclusions being drawn by Defra as to the way forward.

Task force members, a number of additional technical specialists and other stakeholders were invited to a meeting by Defra on 13 July for a progress report. Task force chair Jane Forshaw said: "Our main aim is to improve the technical guidance on the assessment of risks to human health from contaminated land, including CLEA."

According to Forshaw: "Defra reminded us of their long-standing policy objectives for contaminated land, and the problems being faced by LAs and other practitioners in applying the technical guidance. We heard how these problems were being approached, and about the close links with development, urban regeneration and future house building activity. We explored the concepts of risk and the gradations from negligible to serious risk, and the notion of unacceptable risk."

Changes to CLEA

Also, presentations from the Environment Agency outlined the issues surrounding and the ideas for adjustments to the Contaminated Land Exposure Assessment (CLEA) model, which it plans to pursue.

Land policy manager Sheena Engineer says: "The Agency has been doing a lot of work supporting Defra and the government in wider consideration of the way forward in assessing the risk to human health of contaminated land. One part of that is working on the CLEA model, which is under constant review."

Engineer says she understands that those working in the contaminated land field are becoming impatient for the problems to be resolved. "I appreciate that all stakeholders are very keen that we progress as quickly as possible in order to make guidance available so people can get on with the job of safeguarding the health of people affected by contaminated land," she says. "And I can assure you that's our priority."

Work carried out by the task force had identified a package of ideas aimed at providing a way forward on SGVs, with originally over 30 specific ideas under

consideration. At the meeting, Defra confirmed that the 30 previously identified proposals have been narrowed down, and an overall framework for the way forward has been developed.

Discussion papers on the way

Technical discussion papers are now being prepared which will set out what is envisaged, including changes to CLEA, and invite comments. These should be going out for consultation later in the summer, according to Forshaw. Defra also confirmed to CLB that "a set of technical discussion papers will be circulated for comment this summer".

“The meeting was a considerable step towards addressing the issues”

Subject to the comments received, these discussion documents will form the basis for the development of a work programme to be made public in the autumn. Forshaw says: "Meanwhile work is already underway to develop some of the outputs which are envisaged."

Department for Communities and Local Government officials were also present at the stakeholder meeting, and emphasised that government planning policy also focuses on "unacceptable risk", and that the references to "safe development" do not mean that a more precautionary standard should be applied through planning consents.

There has been speculation in the wider contaminated land community that two sets of values could be published - one setting out a minimum "safe" level at which intervention would definitely not be required, and another at which intervention would be mandatory.

Some local authority officers have expressed the opinion that this would simplify determination of contaminated sites by allowing local authorities to dismiss sites with contamination below the minimum threshold from further investigation, move more quickly where the higher level was breached and better utilise limited resources for investigation of those

in between.

However, those present at the meeting were told that there are no plans for a second, parallel set of soil guideline values to address minimal or negligible risk, since the legislation and policy require only consideration of unacceptable risk. It is felt that a second set of numbers could easily be misleading and misused, Forshaw explains.

Defra told CLB: "Attendees were reminded that the legislation requires 'unacceptable risk', therefore any improved technical guidance must be based on unacceptable risk."

The department's spokesperson also said: "Local authorities have sole responsibility for determining whether any site appears to be contaminated land. The circular published by the former Department for Environment, Transport and the Regions provides statutory guidance on the identification of contaminated land. We have no intention of changing this statutory guidance. We are merely looking to improve the existing series of technical guidance."

Forshaw says it is important to remember that the issue of soil guideline values is a very complex area and that it needs to be recognised that not all the answers are always straightforward.

She concludes: "I believe it was a successful day and a considerable step forward in addressing the issues identified by the task force last year."

Good news

All round it's good news for local authorities, which have become increasingly frustrated with the wait for results. It would be difficult to interpret "this summer" as meaning anything other than the next couple of months, which suggests the sterling work carried out by the task force members is beginning to come to fruition.

However, as Forshaw reminds us, this is a very complex, technical area, and one that Defra is desperate to get absolutely right, especially considering the problems that led to the suspension of the soil guideline values programme in the first instance and the pressure the department is under from local authorities and MPs such as Malcolm Moss. Still, Defra appears confident - alongside Forshaw - that progress is being made, so hopefully the sector can look forward to the publication of workable guidance in 2007.

Flattery will get you beer

Reaction to the launch of *Contaminated Land Bulletin* has been positive across the board, and it has been great fun spreading the news far and wide and basking in the support of the extended contaminated land community.

Current favourite person in the *CLB* newsroom is Enviro's Nigel Clark, who offered a particularly flattering quote for the launch story on the front page.

Nigel can be confident that the beer will flow freely on his visits to London, and with his beloved Crystal Palace dropping out of the Championship, it seems likely that the drowning of sorrows will be an imperative for the months to come.

Tempers fray on SGVs

Meanwhile, the Soil Guideline Values (or lack of them) saga continues, despite the sterling work of the SGV Taskforce, chaired by Jane Forshaw.

However, local authority tempers are fraying rapidly as councils come under fire for a lack of progress on contaminated sites that has been seriously hampered by the lack of

coherent guidance available.

Both Pendle and Mole Valley borough councils have made it clear in recent communications that their best efforts are being undermined by the lack of progress, as readers will know from the stories within.

While Defra and the Environment Agency work frantically to solve the problem, the Chartered Institute of Environmental Health has stepped into the breach with its own set of guidelines and Atkins is having a go too, with the engineering giant rolling out its own soil screening values to the private sector.

Rumour reaches *CLB* that Forshaw has described the CIEH's pre-empting of government policy as "unhelpful" but unfortunately she was unavailable to comment due to being sick in bed. We wish her all the best.

Disaster strikes

And in a terrifying development for booze-addled journalists everywhere, Greenpeace in France has claimed that radioactive waste is leaking into groundwater less than six miles from the Champagne vineyards.

According to the campaigning NGO, problems at a radioactive waste management site at Soulaire have been reported by operator Andra. Greenpeace campaigner Shaun Burnie said: "The authorities know they have a problem in Champagne, but this is only the beginning of the problem, the bigger picture is that France has a nuclear waste crisis that is out of control and threatening not only the environment and public health but also the economy of the Champagne region."

Well, they say that English wine is getting better and better each year, so perhaps when publisher Jack Pease and I sit down to toast the success of the launch issue of *Contaminated Land Bulletin* we should consider something from Devon?

Help make *CLB* a success

Thanks to you all for finding the time to read this, the first issue of *Contaminated Land Bulletin*. You can help us make the publication a success by letting us know what we're doing wrong (and hopefully what we're doing right). Email with your opinions: rob_bell@empublishing.co.uk.

CONTAMINATED LAND EVENTS 2006

August 30-31

CONTAMINATED LAND: RISK ASSESSMENT AND BIOREMEDIATION

Training courses to be held in Lancaster. Email Dr Ben Herbert - m.j.herbert@lancaster.ac.uk.

September 7

CONTAMINATED LAND GROUP

EIC meeting to be held in London. Contact 020 7935 1675.

September 13

SAGTA & CL:AIRE BUILDING CONFIDENCE IN REMEDIATION WORKSHOP

To be held at the Glaziers Hall in London. Contact Deborah Alexander on 0207 258 5321.

September 13

SITE INVESTIGATION TO SUPPORT THE RISK BASED ASSESSMENT OF CONTAMINATED LAND

Training course to be held at Shrewsbury by ESI. Email clairsooper@esinternational.com.

October 4-6

NICOLE 1996-2006: 10 YEAR ANNIVERSARY WORKSHOP, MAKING MANAGEMENT OF CONTAMINATED LAND AN OBSOLETE BUSINESS

To be held at Lueven in Belgium. Visit www.nicole.org.

October 19

RISK ASSESSMENT FOR GROUND GASES

Organised by CIRIA and to be held in Glasgow. Visit www.ciria.org.

October 26-27

LAND QUALITY TRAINING WORKSHOP 2006: EFFECTIVE MANAGEMENT OF LAND CONTAMINATION

Two-day workshop organised by the NSCA and to be held at Abingdon. Contact 01273 878770.

December 6

ENHANCED BIOREMEDIATION

A remediation training course, organised by IPM-Net, formally FirstFaraday, and to be held in London. Visit www.ipm-ktn.com.

CONTAMINATED LAND BULLETIN



Welcome to *Contaminated Land Bulletin*, a monthly newsletter covering contaminated land management and its consequences.

We welcome your comments and contributions and hope you enjoy reading it.

Rob Bell

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