Guidance Note for Developers and Consultants

Sites Affected by Land Contamination (West Midlands Area)

Last Updated: November 2021. Contact: Environment Agency, Sustainable Places Team, West Midlands Area. WestMidsPlanning@environment-agency.gov.uk

Overview.

This advice applies to sites where land contamination may be present as a result of previous or current land uses. It relates to the protection of ground and surface waters ('Controlled Waters', as defined under the Water Resources Act 1991). For Human Health matters seek advice from the Council's Public Protection / Environmental Health Department.

Government Policy, as detailed in the National Planning Policy Framework takes a precautionary approach to land contamination (See NPPF paragraphs 174, 183-185 and the 'Land Affected by Contamination' section of the National Planning Practice Guidance [NPPG]). Before the principle of development can be determined, land contamination should be investigated to see whether it could preclude certain development due to environmental risk or cost of clean-up (remediation).

Where contamination is known or suspected (see the Land Contamination DoE Industry profiles) , a desk study, investigation, remediation and other works may be required to enable safe development (Paragraph 183 of the NPPF).

Minimum requirements for submission with a planning application are a desk study and preliminary risk assessment, such as a site walkover or conceptual model. Site Investigation and Remediation Strategy reports may be required for submission with a planning application for sensitive

land use types or where significant contamination or uncertainty is found.

We recommend that proposers should:

1. Follow the risk management framework provided in Land contamination: risk management (LCRM) (previously known as 'CLR11'), when dealing with land affected by contamination.

2. Refer to the Environment Agency Guiding principles for land contamination for the type of information that we required in order to assess risks to controlled waters from the site. The Local Authority can advise on risk to other receptors, such as human health.

3. Consider using the National Quality Mark Scheme for Land Contamination Management which involves the use of competent persons to ensure that land contamination risks are appropriately managed.

Applicants should contact the Council's Public Protection / Environmental Health team who may hold records on known/potential land contamination. If during site works, contaminated material is suspected, you are advised to stop works and seek further guidance. Remediation of contaminated land may also require an authorisation under environmental permitting legislation. We do not recommend individual environmental consultants, but the ENDS REPORT directory may help find environmental consultants that undertake contaminated land assessments.

Information that should be submitted with planning applications.

Preliminary Risk Assessment.

As a minimum the applicant must submit a Preliminary Risk Assessment. (This is also known as a Phase 1 Desk Study and may include a site walkover.)

Preliminary Risk Assessments should include:

- Details of the current and former uses of the site (usually referring to an Envirocheck or similar report and a site walkover).

- Discussion of the risks posed by the site to 'Controlled Waters' receptors i.e. conclusions regarding the possible / likely sources of contamination that may be present based on the uses of the site and walkover, the likely contaminant pathways and the potential 'Controlled Waters' receptors.

- Create a rough outline of the situation (known as a 'conceptual model'), e.g. a diagram that includes the most important information about the land, the contamination, what it can harm and how.

- Consideration of potential options to deal with any risks posed by the site to 'Controlled Waters' receptors e.g. breaking the source-pathway-receptor linkage. This does not need to be a full remedial options appraisal but does

need to demonstrate that the developer understands the issues that may be encountered and the possible scale of remediation.

Please refer to the contaminated land pages on GOV.UK for more information.

The conclusions of the report should contain recommendations on how the contamination, will be dealt with through the development so that the site can be made safe for users and the environment and will not cause or exacerbate pollution.

In some cases, this information may be sufficient to determine whether the principle of development is acceptable subject to planning conditions to secure the conclusions of the report, such as further detailed investigation, site remediation and validation.

In other cases, there may be insufficient information at this stage to make a decision on the application, and more information may be required prior to determination. This is more likely to be the case if the site is particularly contaminated, the site setting is more sensitive, or the end use proposed is particularly sensitive to contamination. In these cases, the applicant will need to submit more detailed information.

Site Investigation Report.

The next stage of more detailed information is a Site Investigation Report. (This is also known as a Phase 2 Detailed Site Investigation.) The 'Detailed Investigation' phase is the on-site validation of the conceptual model. Through intrusive investigation, chemical testing and quantitative risk assessment, the Phase 2 study can confirm possible pollutant linkages. It should also provide appropriate remediation options.

There are two stages:

- generic quantitative risk assessment - to collect more site information for comparison with general standards, also known as generic assessment criteria (GAC). This will help improve your conceptual model and decide if the level of risk needs more detailed assessment or a plan for dealing with the contamination.

- a detailed quantitative risk assessment - to collect more site information for comparison with bespoke standards, also known as site specific assessment criteria (SSAC). This will help you decide on options and a plan to deal with any contamination. These options could provide a consideration of likely costs.

For more complex sites, additional information on the remediation measures / remedial actions may be required before permission can be granted. This is outlined below.

Meeting and/or detailed document review.

If you would like to discuss your proposals further, or for us to review technical reports/documents, this will be chargeable in line with our cost recovery service. This may help to ensure that they are comprehensive before formal submission or where concerns have been raised on a planning application.

Please contact our Sustainable Places team directly by email at: WestMidsPlanning@environment-agency.gov.uk

Discharge of conditions after permission is granted.

Where planning conditions have been imposed to deal with further investigation, remediation, validation and monitoring, we can offer advice prior to your formal submission. This will be chargeable in line with our cost recovery service. Please contact us on the details above.

Once permission has been granted subject to conditions, the developer will need to deal with the contamination on site. This is the remediation phase. The remediation phase of the process is generally split into two parts – remediation and validation.

Remediation Strategy.

This is a document detailing the objectives, methodology and procedures of the proposed remediation works. (It may also be called a Remediation Method Statement or Remedial Actions Statement or Report.) Where necessary it should also include a **verification plan** that provides details of the data that will be collected in order to demonstrate that the works set out in the Remediation Strategy are complete and identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. This should include any proposed phasing of demolition or commencement of other works to ensure development occurs in the right parts of the site in the correct sequence to ensure pollution is not caused. The developer should submit this information for approval before any works commence. Once this has been submitted and approved as part of the discharge of conditions application the development can proceed in the way the Remediation Strategy has set out.

Validation Report.

Following completion of the works, the developer must submit a Validation Report as part of the discharge of conditions application. (It may also be called a Verification Report.) This document demonstrates that the works have been carried out satisfactorily in accordance with the Remediation Method Statement and that the remediation targets have been achieved. In most cases this will allow the planning conditions to be discharged in full.

Monitoring Programme.

In some cases, a programme of monitoring is required as part of the remediation phase, or as part of the validation to demonstrate the site has been satisfactorily remediated. Sometimes monitoring may be required for a longer time period after the development has been completed. The Remediation Method Statement (and possibly the earlier Preliminary Risk Assessment and Site Investigation Reports) should have made clear where this will be necessary and established in detail what will be involved.) Monitoring may be necessary for landfill gas, groundwater and surface water (such as taking samples from a watercourse on a regular basis over a set period of time). Where these measures are necessary the planning conditions should include this, and in some cases a Section 106 Planning Agreement may be a more appropriate mechanism for securing necessary monitoring, such as when monitoring from off-site locations is required or if it is required for a particularly long time period.

Re-use of materials and the Environmental Permitting Regulations 2016.

Remediation of contaminated land may require an authorisation under the Environmental

Permitting Regulations 2016. Further information can be found at the following links:

- GOV.UK Standard rules: environmental permitting
- GOV.UK Check if you need an environmental permit
- GOV.UK Land and groundwater remediation deployment form

Under the CL:AIRE ('Contaminated Land: Applications in Real Environments') Code of Practice materials should be re-used on site in a sustainable way.

If contaminated / waste material needs to be removed from the site it should be deposited at a Permitted waste management facility. Records of any transfer/deposit of waste should be included in the Validation Report.

Sources of further information and guidance.

- GOV.UK Environment Agency technical guidance on land contamination
- GOV.UK Guiding Principles for Land Contamination
- GOV.UK Land contamination risk management (LCRM) previously known as 'CLR11')

- GOV.UK Planning Practice Guidance on Land Affected by Contamination
- The National Archives - Pollution Prevention Guidelines (PPG27) – Installation, decommissioning and removal of underground storage tanks
- GOV.UK Environment Agency Guidance on Groundwater Protection (previously known as 'GP3')
- GOV.UK DEFRA Guidance relating to Part 2 A of the Environmental Protection Act
- GOV.UK Search Defra Science and Research Projects