

# **Boston Borough Council Contaminated Land Strategy**



**Update and Review  
March 2014**

## **Boston Borough Council**

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

**March 2014**

#### **Introduction**

In June 2001 Boston Borough Council published its Contaminated Land Strategy (CLS) 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 CLS 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 CLS, as well as other significant changes that have occurred within the District and nationally (Appendix 1), since the publication of the Revised Strategy of the Council's CLS in April 2004. 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 2004**

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 purchased data from Landmark all known sites were 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 garages or gas works, for instance, would attract a higher initial priority score than say an apartment development on a former engineering works.

Initial analysis of data indicated that there were 4 high priority sites and 722 medium/low priority sites of which 230 were former industrial uses and 496 were infill pond sites. The high priority sites included gas works and a former military firing range. The medium priority sites ranged from garages to sewage works to infilled land; and the low priority sites included railway land and former brickfields. It should be reiterated that 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 were necessary in order to refine the risk rankings. As such, we began to undertake detailed inspections of the sites and the additional information obtained during the inspections allowed 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 Section 5. 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**

Of the four sites initially identified by the Landmark data as high risk all of these sites have been assessed through a variety of mechanisms:

1. Boston Gasworks – the majority of this site was assessed and remediated suitable for use as part of the development of the Asda site. A small area of the former gasworks site to north of Asda site currently occupied by National Grid was not remediated as part of the Asda development. Nonetheless a voluntary assessment of this area has been undertaken by a Leeds based consultancy, Worley Parsons, on behalf of National Grid. This has resulted in works to stabilise and reduce the risk of gas works tars remaining in below ground tanks on this site. Work continues at this time to monitor the remediation and outcomes of the works.
2. Swineshead Gasworks, Tarry Hill, Swineshead, Boston – in 2003 an investigation of Hearts Cottage, a property adjacent to the former Swineshead Gas, Coal and Coke works site was carried out by Posford Haskoning Limited on behalf of the owner. The site investigation concluded that the contaminants present on site at the time of the investigation did not pose a high risk to future users human health, controlled waters, ecology or to neighbouring

properties. During 2010 the gas works site had a detailed intrusive contaminated land assessment carried out by contaminated land consultants, Delta Simmons, after initial assessment by Environmental Protection. A number of source-pathway-receptor linkages had been identified and assessed as significant risks warranting detailed inspection. The detailed intrusive assessment was funded by a grant from DEFRA's contaminated land grant aid scheme. The detailed inspection and assessment confirmed the presence of some site contamination resulting from former site activities but concluded these do not in the sites current use give rise to a significant possibility of significant harm. The site is therefore not currently statutory contaminated land.

3. Kirton Gasworks, Penny Gardens, Kirton, Boston – Evidence suggests this site was a small scale gas works. The major part of this site was developed in the 1970's by a local social landlord. Evidence within the building control record at that time indicates the site was cleared and does not make any mention of areas of contamination such as tars or ash. A recent contaminated land assessment was carried out on one part of the site following an application for housing development. This assessment that included limited sampling did not indicate the presence of any significant contamination. Trenches dug for the laying of drainage on the site showed no evidence of ash or tars within the ground. In the absence of any information to support the site in its current condition presents a significant risk no further action is proposed at this time.
4. Former Firing Range adjacent to the River Haven – The Landmark data had made reference to a former military firing range on both the 1906 & 1946 O.S. mapping, however, to what extent this range was used is unknown. Contact was made with the appropriate Government department in respect of this site, however, no response was every received. The exact location of the site is not know firmly but appears to be on land now forming part of the refuse tip in Slippery Gowt Lane, Wyberton and the adjacent tidal mud flats to the river Haven. The refuse tip is a permitted activity administered by the EA and therefore already under their control. In view of this and no evidence to substantiate and likely risks no further assessment of this site is proposed unless further information comes to light.

In a similar manner to the high risk sites a number of the medium risk sites have also been risk assessed including all seven of the sites identified as the highest priorities in the medium risk rated. The remaining sites will be reclassified 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.

### **The Development Process**

With limited financial and staffing resources now being made available to local authorities our efforts have been directed at ensuring brownfield sites that are being redeveloped are suitable for use. The planning process has been the mechanism for the investigation and remediation of a significant number of sites including 51 newly identified sites.

In order to be consistent in our approach as to when contaminated land assessment was necessary as part of any site redevelopment a planning matrix has been developed by the Lincolnshire Environmental Protection Liaison Group (LEPLG) for Lincolnshire Planning Authorities. The LEPLG is a

group encompassing all local authorities in Lincolnshire. In addition model planning conditions were devised to ensure any assessment went through a staged approach to assessment starting with a desk study. This staged approach allows for low risk sites to be screened out early in the process saving on unnecessary ground investigations as well as fulfilling the requirements of the National Planning Policy Framework.

The LEPLG has also developed a guide 'Development on Land Affected by Contamination' which gives technical guidance for developers, landowners and consultants. This has recently been updated on by the Yorkshire & Humberside Pollution Advisory Council (YAHPAC). YAHPAC is a regional grouping encompassing local authorities from the greater Yorkshire area, Lincolnshire and north Nottinghamshire. This guide is available on Boston Borough Council's website.

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 CLS 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.

### **Planning Regime**

In recent years, the Environmental Health section has been commenting on approximately 50 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 any priority sites and to work closely with the LPAs within the planning regime 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 has identified some new sites.

The Environmental Health section will continue to consult with the Local Planning Authority 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 revision of the Council's Contaminated Land Strategy in April 2004**

### **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 Boston Borough is formed of the Boston Borough Local Plan (adopted 1999) 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.

A new South East Lincolnshire Local Plan is under preparation in partnership with South Holland District Council.

### **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.

### **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. There are no aquifers with the Borough of Boston.