

Frequently asked questions about our report entitled *Dealing with contaminated land in England and Wales*

We have prepared these frequently asked questions to support the publication of our report entitled *Dealing with contaminated land in England and Wales*. They provide additional background information about the report and the reasons for publishing it.

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1. Why have you published this report?

We are required by Section 78U of Part 2A of the Environmental Protection Act 1990 to report on the state of *contaminated land* in England and Wales from time to time or at the request of the Secretary of State in England and WAG in Wales.

We published our first report, *Dealing with contaminated land in England*, in 2002. Our latest report describes progress over the past five years (to March 2007) and includes information on the regime in Wales for the first time.

2. What is Part 2A?

Part 2A of the Environmental Protection Act 1990 was introduced by Parliament to help address the problem of historical land contamination and the risks it can pose to people's health and the environment including controlled waters. Part 2A came into force on 1 April 2000 in England and on 15 September 2001 in Wales. It requires local authorities to identify *contaminated land* and ensure that wherever possible its significant risks are addressed. We have a specific role for ensuring remediation of *special sites*, a category of *contaminated land* identified in the English and Welsh regulations (see also question 4).

3. Who regulates Part 2A?

Local authorities are the main regulators for Part 2A. They are responsible for identifying *contaminated land* in their area and for ensuring that any remediation is carried out.

Our main role in the identification and remediation of *contaminated land* is to provide site-specific advice where there is a risk of pollution to controlled waters.

We also have a specific role for ensuring the remediation of *special sites*, a category of *contaminated land* identified in the English and Welsh regulations. These are areas of *contaminated land* where the Government considers us best placed as the enforcing authority to ensure that remediation takes place.

We often work with the local authority to investigate whether an area of land meets the definition of *contaminated land* if it is also an agreed candidate for being a *special site*.

4. Who should read this report?

Our report is for anyone interested in the Part 2A regime in England and Wales and the progress made under it. It presents the facts, figures and views that we have collected. For readers who also want to know more about Part 2A and how it works, we have provided some further information in the appendices to the main report. For a full description of the regime in England and in Wales, please see the [Defra](#) and [Welsh Assembly Government](#) websites.

5. Who supplied information for the report and how was it collected?

We invited all 375 local authorities across England and Wales to complete a questionnaire. We had a 91 per cent response rate, comprising a 90 per cent response in England and a 100 per cent response in Wales. We also gathered information about the sites we are responsible for under Part 2A (*special sites*) from our own records.

6. What does the report cover?

Our report presents information about the implementation of Part 2A of the Environmental Protection Act 1990 in England and Wales. It contains data collected from local authorities and ourselves during the inspection, determination and remediation of *contaminated land* and *special sites* up to March 2007.

As part of this report, we also canvassed the views of local authorities on the most and least helpful aspects of the current regime. We also summarised the legislative changes since Part 2A was first introduced in England and Wales.

7. What is *contaminated land*?

Contaminated land is a term that has been used generally to describe land that contains chemicals such as heavy metals, chlorinated solvents, or petroleum products that may pose a risk to human health or the wider environment. Part 2A of the Environmental Protection Act 1990 introduced a legal definition of *contaminated land* as:

“any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that –

- (i) significant harm is being caused or there is a significant possibility of such harm being caused; or
- (ii) pollution of controlled waters is being, or is likely to be caused”.

Originally this definition excluded harm or water pollution if it was a result of radioactivity from these substances. Part 2A was modified in 2006 to remove this exclusion and further modified in 2007 and 2008 to include nuclear sites. The English and Welsh regulations can be viewed on the [Office of Public Sector Information](#) website.

In our report, we use *contaminated land* in italics to distinguish between the legal definitions and the more general use of the term. Only a small proportion of the land affected by contamination would be expected to meet the statutory definition of *contaminated land*.

8. What is a *special site*?

Special sites are areas of *contaminated land* under Part 2A of the Environmental Protection Act 1990 for which we, and not the local authority, are the main regulator. This means it is our responsibility to ensure the appropriate remediation is carried out. The categories of *contaminated land* that are to be designated as *special sites* are set out in the English and Welsh regulations.

Special sites are not necessarily the most seriously contaminated sites. They are cases of land contamination where we are considered by Government to be best placed as the enforcing authority.

There are four main categories of *special site* described in the regulations:

- some water pollution cases – includes areas of *contaminated land* affecting drinking water supply or (potentially) polluting controlled waters within a major aquifer;

- industrial cases – includes specific circumstances such as acid tar lagoons, sites where explosives were manufactured, or a site for an authorised process under the Environmental Permitting (England and Wales) Regulations and its predecessor regimes;
- defence cases – including most land currently owned by the Ministry of Defence and those of visiting forces;
- radioactivity cases – where land is *contaminated land* by virtue of radioactivity which can include nuclear sites.

A full list of all categories of special site can be found on page 32 of the report.

9. What is a significant pollutant linkage?

Part 2A represents the risk posed by land contamination to human health and the environment as a contaminant – pathway – receptor relationship. Each element occurs independently but when occurring together they represent a risk:

- **Contaminant** – a substance that is in, on or under the land that has the potential to cause harm to human health or the environment, or to cause pollution of controlled waters.
- **Receptor** – in general terms, something that could be adversely impacted by a contaminant including people, property, wildlife and water bodies.
- **Pathway** – a route or means by which a receptor could be exposed to a contaminant.

When dealing with land affected by contamination, the contaminant – pathway – receptor relationship is called a pollutant linkage. However, not all pollutant linkages identified from land contamination will result in significant harm¹ or a significant possibility of significant harm. Nor will they cause or be likely to cause pollution of controlled waters under Part 2A of the Environmental Protection Act 1990. A significant pollutant linkage meets the statutory definitions for significant harm or pollution of controlled waters. It also forms the basis for a determination by the local authority that an area of land is *contaminated land*.

¹ Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (as amended in 2007) and the revised Statutory Guidance for Part 2A of the Environmental Protection Act 1990 introduced the definition of *harm attributable to radioactivity and the significant possibility of such harm*. The term significant harm does not apply to radioactivity.

10. What is remediation?

Remediation is when the risks posed to health and the environment are effectively managed. The process of risk management is called remediation so it does not always mean that the soil pollution itself is cleaned up.

Remediation is therefore the process of breaking the pollutant linkage (the contaminant – pathway – receptor relationship). As well as dealing with the contaminant directly (clean up) it also includes managing the risk by either breaking the pathway or further protecting the receptor (for example, by issuing advice to householders that restrict the growing of fruit and vegetables).

Under Part 2A of the Environmental Protection Act 1990, the term remediation is used more widely than in common usage. For cases that do not involve radioactivity it includes:

- a) “the doing of anything for the purpose of assessing the condition of –
 - (i) the *contaminated land* in question; or
 - (ii) any controlled waters affected by that land; or
 - (iii) any land adjoining or adjacent to that land;
- b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land for the purpose –
 - (i) of preventing or minimising, or remedying or mitigating the effects of any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or
 - (ii) of restoring the land or waters to their former state; or
- c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.”

Therefore under Part 2A, the term remediation not only includes risk management but also the further assessment of risks and on-going inspection activities.

11. How do you know that sites have been remediated?

The local authority (and in the case of *special sites* the Environment Agency) are responsible for ensuring wherever possible that *contaminated land* is remediated. *Contaminated land* can be considered to be remediated when all the significant pollutant linkages (see question 10) are broken or there is nothing reasonable that can be achieved by way of remediation, at that time. Remediation will normally be carried out by those responsible for the *contaminated land* on either a voluntary or enforced basis.

A verification report does not have to be produced by law, but provides a complete record of all remediation activities and data collected to support compliance with the remediation objectives. If a verification report is produced, those responsible for remediation may be better able to demonstrate that the risks from contamination have been appropriately and actually managed. It is considered good practice to demonstrate that the remediation objectives have been met for a site.

12. Is Part 2A the only way to ensure that land contamination is remediated?

No. Part 2A of the Environmental Protection Act 1990 provides the basis for regulatory action to deal with historical land contamination and also encourages voluntary remediation by others. The main ways in which land contamination is effectively managed are by:

- site owners and those responsible for the pollution undertaking voluntary remediation. This could be part of in-house accounting procedures or commercial land transactions such as due diligence;
- using the planning system to remediate existing site contamination when preparing land for a future use.

13. How can I find out more information about contaminated sites in my area?

Local authorities are responsible for identifying *contaminated land* in their areas. They are the lead regulator for dealing with contaminated sites. Many authorities make their inspection strategies widely available through their web site. We suggest that you contact your local authority if you want to enquire about specific sites.

14. What do I do if I suspect a site may be *contaminated land*?

We suggest that you contact the local authority in whose area the site is located.

15. How many sites have been determined as *contaminated land* (and designated *special sites*) under Part 2A of the Environmental Protection Act 1990 and how many have been fully remediated?

781 sites had been determined as *contaminated land* under Part 2A of the Environmental Protection Act 1990 across England and Wales up to the end of March 2007 (information provided by 91 per cent of local authorities). Out of these, 35 had been designated as *special sites*. 149 out of the 781 determined sites had completed remediation by the end of March 2007. Five of these completed sites were *special sites*.

16. Why does the report only cover local authority opinions on Part 2A and not the Environment Agency's view also?

We are the enforcing authority under Part 2A of the Environmental Protection Act 1990 for approximately five per cent of *contaminated land* sites. Local authorities are the primary regulators for the Part 2A regime and we wanted to give them the opportunity to give feedback on their experiences using it. We asked them to subjectively rank what they thought were the most and least helpful aspects of the regime. We asked all local authorities for their views irrespective of whether they currently have identified any *contaminated land* or not.

17. Are there any targets for the inspection or clean up of *contaminated land*?

There are no national targets for the identification or remediation of *contaminated land*. Local authorities may have individually set targets in their inspection strategies. We suggest that you contact your local authority for details.

18. Why has excavation and off-site disposal been used so much in site clean up?

Our report shows that disposal to landfill of contaminated materials has been a common remediation solution for *contaminated land* and for many other sites not covered by the Part 2A regime. This option is widely perceived as being cost-effective, relatively quick, and likely to reduce any residual liability from contamination remaining on the site.

19. What is the Environment Agency's wider role in managing land contamination?

Our role in managing the risks to human health and the environment from land affected by contamination can be divided into three main areas:

- **Minimising future contamination** – we do this (and ensure that new contamination is promptly managed) through regulating facilities and processes covered by the environmental permitting regime. We also regulate activities affecting water quality or involving radioactive substances.

- **Advising local authorities on addressing water pollution under the planning system** – As a non-statutory consultee, we provide site-specific advice on the impact to controlled waters of redevelopment of historical land contamination.
- **Dealing with possible pollution of controlled waters from historical contamination** – we have powers under s161A of the Water Resources Act 1991 and the Anti-pollution Works Regulations 1999 to ensure action is taken to prevent or remedy pollution of controlled waters. We also have powers under the Groundwater Regulations 1998 to prevent pollution of groundwater.
- **Investigating and remediating *contaminated land* and *special sites* under Part 2A** – we provide advice to local authorities investigating land that may be causing or likely to cause pollution of controlled waters under Part 2A. We also work with local authorities to investigate potential *special sites*, and if designated, ensure that appropriate remediation is carried out.

Further information on our role can be found on our web site at <http://www.environment-agency.gov.uk/landcontamination>

20. What is the role of local authorities in managing land contamination?

Local authorities are the primary regulator for dealing with land that is affected by contamination. Their responsibilities currently fall under:

- Planning and development control
- Environmental health
- Building control
- Statutory nuisance controls (restricted insofar as land contamination)
- Other relevant functions, eg petroleum licensing
- Health and safety.

Specifically under Part 2A of the Environmental Protection Act 1990, they are responsible for:

- inspecting their areas to identify contaminated land;
- determining whether any particular site is contaminated land;
- designating contaminated land as special sites;
- being the lead regulator for all contaminated land which is not designated as a special site.

Further information on these activities can be obtained from your local authority.

21. What do I do if I think I'm responsible for contaminating land?

We suggest that you contact the environmental health department at your local authority.

22. How is the inspection and remediation of contaminated land funded?

Public funds are required to carry out inspections before land is determined as *contaminated land* with no possibility of cost-recovery from third parties. Local authorities are responsible for inspecting their local areas and for investigating whether land is *contaminated land*, therefore the cost of such work falls on them. Sometimes, we may also agree to carry out site investigations on potential *special sites* to support a local authority in deciding whether the land is *contaminated land*.

An important aim of Government policy is that the polluter pays for the cost of managing the risks posed by land contamination. Under Part 2A of the Environmental Protection Act 1990, the provisions regarding liability were established to ensure that, where feasible, the remediation of *contaminated land* is paid for by an appropriate person. This includes those who caused or knowingly permitted the contamination or in their absence, the current site owner may have some responsibilities. However, it is not always possible to find an appropriate person who may be liable for *contaminated land* sites and, in these cases, the Government may ultimately pay for remediating them.

The Government supports some of the public costs of dealing with *contaminated land* through its revenue support grant to local authorities. Local authorities and ourselves can also access additional funds and, in some cases, be awarded money by Government for the capital costs of inspection and remediation under Part 2A.

customer service line

08708 506 506

www.environment-agency.gov.uk

incident hotline

0800 80 70 60

floodline

0845 988 1188