

ENVIRONET NEWS

The electronic newsletter for improved environmental performance

CONTAMINATED LAND AND ENVIRONMENTAL LIABILITY

The issue of contaminated land is of primary importance due to the legal liabilities imposed by the Environment Act 1995 and the effect this has on land values.

New retrospective legislation due next year will impose these liabilities onto polluters, landowners and property occupiers.

Contaminated land is defined in the Act as:

'any land which appears to the Local Authority in whose area it is situated to be in such condition, by reason of substances in, on or under the land that -

(a) significant harm is being caused or there is a significant possibility of such harm being caused, or

(b) pollution of controlled waters is being, or is likely to be caused

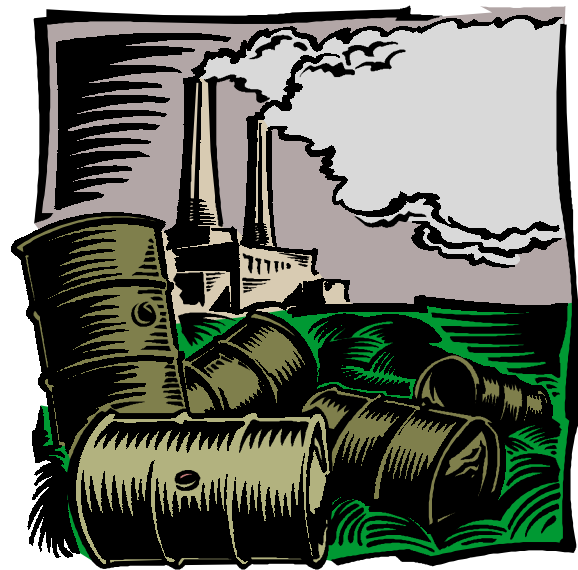
The interpretation of this and upon whom the liability falls are complex issues which need to be understood if informed decisions are to be made on the assessment of true land values. The DoE's consultation document *Consultation on Draft Statutory Guidance on Contaminated Land* dated September 1996 addresses many of the queries arising from this definition and sets out the liability regime and apportionment of remedial costs.

When assessing whether a site is contaminated or not, there are a number of factors to assess to determine whether:

- a hazard (i.e. contaminant) is present
- a pathway exists between the contaminant and the target receptor
- a target receptor is present i.e. human, controlled waters, flora, fauna, building structure or services

- there is the possibility of significant harm being caused

There are many biological, physiological, geological and human interrelationships which effect whether a pathway is present. The task of assessing the risk is often complex requiring professional judgement across a number of disciplines. It is further complicated by the 'fit for use' concept whereby contamination levels in an industrial site may be acceptable, but in a residential area they may not.



The aim of any investigation into contamination of land should seek to optimise beneficial use of the site by carefully balancing the risks with the costs of the investigation and the remediation works. The more that is known about a site, the more quantifiable and manageable are the risks. As a result, site investigations are usually carried out in two distinct phases, the Phase1 Environmental Assessment (Historical Desktop Survey) and the Phase2 Environmental Assessment (Detailed Site Investigation.)

A typical Phase 1 Environmental Assessment includes:

<p style="text-align: center;">INTRODUCTION AND SCOPE</p> <p>This section sets out the basis of the review, purpose, client details, etc.</p> <p style="text-align: center;">EXECUTIVE SUMMARY</p> <p>The executive summary gives a concise summary of the findings of the investigation, written in non-technical language. It categorises the risk level of site contamination and gives clear recommendations on whether a Phase 2 Site Investigation is justified.</p> <p style="text-align: center;">PHYSICAL SITE CONDITIONS</p> <p>I.e. Site Description, Surrounding Land use, Surface Water Regime, Geology, Hydrogeology. In this section we provide a description of the site, its surrounding land use (to include activities that may impact the subject site and down gradient receptors if contamination concerns are identified. Also in this section we describe the nature and sensitivity of the geological and hydrogeological setting, including an identification of licensed abstractions, discharge consents, etc.</p> <p style="text-align: center;">SITE HISTORY</p> <p>Using available Ordnance Survey, the site and surrounding land use history is examined to determine whether concerns exist either from on-site or adjacent former uses.</p> <p style="text-align: center;">SITE ACTIVITIES</p> <p>I.e. Manufacturing Activities, Materials Storage, Fuel Storage, Drainage, Asbestos, PCBs. Within this section we describe our on-site observations in relation to the current site activities, and if the information is available, historical activities.</p> <p style="text-align: center;">WASTE MANAGEMENT PRACTICES</p> <p>I.e. Solid Waste, Liquid Wastes, Air Emissions. This section describes the arrangements for waste handling and any concerns raised during the site visit</p> <p style="text-align: center;">CONTAMINATION ISSUES</p> <p>I.e. Production, Materials Storage/handling Areas, Site Infrastructure. Within this section, issues highlighted during the site visit, historical land use assessment, etc. are summarised.</p> <p style="text-align: center;">ENVIRONMENTAL RISK ASSESSMENT</p> <p>I.e. Assessment Rationale, Contamination Sources, Pathways for Contaminant Migration/Exposure, Targets, Overall Environmental Risk Assessment, Overall Environmental Risk Management. Within this section and depending on the levels of concern identified, an assessment of the implications of the environmental issues is provided within a site specific risk assessment framework.</p> <p style="text-align: center;">SITE REMEDIATION</p> <p>I.e. Remediation Requirements, Remediation Strategy, Remediation Costs. Depending on the level of concern identified, an outline assessment of the possible mechanisms for remediation, together with a budget cost assessment is provided.</p> <p style="text-align: center;">RECOMMENDATIONS</p> <p>Within this section we provide a brief summary of the key concerns and the recommended actions to address the issues.</p> <p style="text-align: center;">DRAWINGS & APPENDICES</p> <p>Site location plan is provided, together with a site layout plan, site photographs, copies of historical maps and information on public records for the site area.</p>

Phase 2 Environmental Assessments are only recommended when the results of the phase 1 assessment justifies the expense of laboratory testing site samples for a variety of contaminants.

The scope of the assessments is tailored dependent on the nature of the site, the results of the Phase 1 Assessment and the client's objectives.

THE CASE FOR ENVIRONMENTAL MANAGEMENT

The number of companies obtaining certification to ISO 14001 is steadily growing, and is likely to continue as organisations put pressure on their suppliers to improve their environmental efficiency.

Many service and manufacturing organisations not only have to meet ever growing pressures of complying with environmental and health & safety legislation but also from pressures from their supply chain. An Environmental Management System (EMS), such as ISO 14001, gives tangible benefits, such as reduced costs, legal compliance and also demonstrates to both current and prospective customers, insurers, stakeholders and regulatory authorities the organisation's proactive stance on the environment.

The main considerations in assessing whether an EMS would benefit your organisation include:

- * Would your company benefit from improved environmental efficiency? E.g. cost savings, environmental liability and risk reduction, corporate image.
- * Are you seeing increased pressure from your customers, regulators, insurers, and shareholders for improved environmental efficiency?
- * Have you carried out a Waste Audit to identify the scope for waste (and resource) minimisation, compliance with Duty of Care Regulations and Special Waste Regulations?
- * Have you carried out an Energy and Water Audit to identify the scope for the more efficient use of your energy and water budget?
- * Have you carried out an Assessment of your Environmental and Health & Safety Liabilities in both your normal operating modes but also as a result of an accident? E.g. accidental spillage.

- * Have you considered whether it would be appropriate to take out insurance against your environmental risks?
- * Are you as Directors, or senior management, aware of your potential personal liabilities under Environmental and Health & Safety Law?
- * Have you communicated your environmental credentials to your target audience?

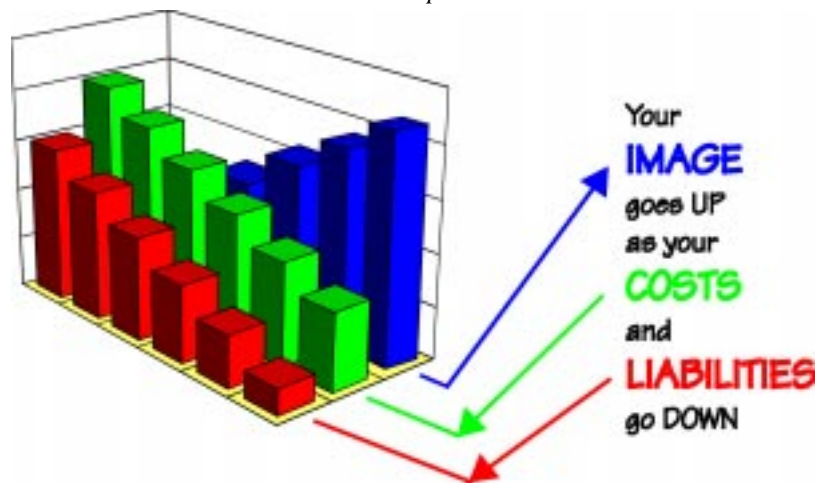
The key ingredients to an EMS include;

- * Environmental Policy
- * Organisational Structure – delegation of responsibilities and resources
- * Register of Environmental Effects
- * Environmental Objectives / Management Programme
- * EMS Manual and Record Keeping
- * Operational Control
- * EMS Audit and Review

The systematic audit of the organisation can realise previously unidentified benefits, such as systematic reduction and control of waste, decrease in energy and water consumption, availability of specialist insurance cover, lower risk of prosecution and greater confidence amongst all stakeholders as well as local communities, customers, regulators, investors and environmental groups.

For an independent view on whether your organisation would benefit from an EMS please call Nicolas Seal on 01275 851545

**The Business
Case for
Improved
Environmental
Performance**



NEW COSHH REGULATIONS 1998

The government has issued a consultation document “Proposals for new replacement Control of Substances Hazardous to Health regulations and amendments to the Approved Code of Practice: Control of Substances Hazardous to Health.” The changes outlined in this document will most likely form new regulations which will take effect from January 1999, known as the Control of Substances Hazardous to Health Regulations 1998. Further details of these changes will be discussed in our next newsletter when the changes have been confirmed.

SMALL FIRMS AND THE ENVIRONMENT

The results of a survey carried out by MORI early in 1998 have been published by Groundwork in their report “Small Firms and the Environment”. The survey looks at the SME sector and their views on the environment as a business issue.

The Executive Summary to the report concludes:

- *SMEs consider the environment to be an important business issue. For them, it ranks ahead of statutory requirements, investment, exchange rate, exports, European single currency and credit control.*

- *Many SMEs remain apparently unaware of certain environmental legislation affecting their companies, notably the Duty of Care provisions of the Environmental Protection Act 1990.*

- *Many SMEs accept that better environmental practice will save costs and improve relationships with customers.*

- *Regulators such as Local Authorities and the Environment Agency, as well as customers and insurers all have the potential to persuade SMEs to change their environmental practices.*

PLAINTIFF LOSES PASSIVE SMOKING CASE

In a landmark case a former nursing employee took her former employer to court for damages after she claimed she was forced to give up work due to passive smoking she was exposed to whilst working within a nursing home, housing a number of chain smoking pensioners.

The judge dismissed the nurse's claims, saying she had failed to prove the defendants were negligent so as to cause her injury.

Although the case was lost, it demonstrates the importance of providing a safe healthy environment. For employers, the importance of being able to demonstrate that all reasonable precautions were taken to safeguard health is paramount.

ENVIRONMENTAL INSURANCE AND LEGAL LIABILITY

Many environmental risks, which historically have not been covered by standard insurance policies, can now be covered by specialist insurance cover.

Environet works in conjunction with a number of specialist firms offering environmental services and has a close working relationship with a firm of insurance brokers specialising in environmental risks. In addition, Environet works closely with a Bristol based law firm specialising in environmental liability and the property sector. These services can be made available to Environet's clients on favourable terms.

DIRECTORS' PERSONAL LIABILITY - A Growing Nineties Concern

Unfortunately, in today's business environment, directors are faced with an increasing risk of being sued personally. The real concern is that many directors do not realise just how great these risks have become, and therefore they have not taken steps to protect themselves.

Within the law, there are a number of areas in which a director now has to be very careful to avoid the threat of litigation.

In particular, the Insolvency Act 1994 holds directors personally liable for the debts of their companies if directors are found guilty of trading when they knew- or ought to have known - that their companies were insolvent. Coupled with this is the Directors Disqualification Act 1986, which can result in a director being disqualified from holding such a position for up to 15 years if judged to be unfit.

More recently, The Environment Act 1995 makes directors personally liable in respect of pollution incidents, which occur with their consent, connivance or neglect. This will inevitably become an even bigger issue in years to come, considering the rapidly changing legislation in this field.

Furthermore, it is the responsibility of directors to manage their companies in such a way as to prevent employment disputes - such as those related to sexual or racial discrimination - from occurring. These can lead to significant problems even if the Director is not personally involved.

There is much the same attitude with matters concerning health & safety. Directors can be held personally responsible for neglecting relevant procedures and guidelines set out under the Health & Safety at Work Act 1974.

Whether public or private, it is difficult to ignore these issues. What's more, likely developments in the near future include increased accountability to shareholders and a shifting liability to directors when previously auditors would have been held totally responsible for financial inaccuracies.

Directors' and Officer's Liability Insurance is one solution to reduce the vulnerability of directors. The cover provides not only for actions against the company, but also the director, officer, committee members including health and safety officers, fire officers and the like, for a number of organisations and businesses.

This newsletter is for guidance only and professional advice should be obtained before acting on any information contained herein. Environet Consulting Limited cannot accept any responsibility for loss occasioned to any person as a result of action taken or refrained from in consequence of the contents of this publication.



Environet Consulting Limited

Bristol & SW Office

Rock Farm, Bristol Rd, Wraxall, Bristol BS48 1LQ, UK
Tel (+44) (0)1275 851545 Fax (+44) (0)1275 857199

London & SE Office

Spectrum House, 29 Ashcroft Park, Cobham KT11 2DN, UK
Tel (+44) (0)941 102921 Fax (+44) (0)1932 860967

Email contact@environet-uk.co.uk