



## **PORTSMOUTH CITY COUNCIL**

### **CORPORATE CONTAMINATED LAND STRATEGY DOCUMENT**

#### **1.0 Introduction**

- 1.1 Contaminated land is an issue which impinges upon all areas of the City Council's business and one which requires expertise from a variety of disciplines. It effects property transactions, marketing issues, planning, building control and even maintenance/works contracts all over the City. To be effective the strategy must encompass all of these areas and provide a clear framework within which all departments must operate.
- 1.2 Experience to date with sites such as Lumsden Road, Langstone Marina, Port Solent Marina, Stamshaw School, Milton Common and the Moneyfield/Longmeadow Allotment sites have shown that land contamination can be a significant problem in all areas of the City. In view of the new legislation in the form of the contaminated land provisions in the Environment Act 1995 which will come into force in April 2000, increasing government guidance and public awareness, it is essential that Portsmouth City Council has a clear up to date strategy for dealing with the issues related to contaminated land. The existing strategy approved by the Environment Committee in November 1991 must be updated to take account of the new legislation and the increased information now available to the City Council.

#### **2.0 Strategy Objectives**

The Key objectives of the strategy are;

- 2.1 To ensure compliance with and enforcement of statute.
- 2.2 To ensure that where redevelopment of sites take place in the City that the process deals effectively with any land contamination.
- 2.3 To ensure that procedures are in place for the open provision of information to the public, developers/property surveyors etc.
- 2.4 To encourage market confidence in the redevelopment of brownfield sites in the City and thus promote the recycling of brownfield sites rather than greenfield sites.
- 2.5 To address the liability issues associated with the Council's existing land holdings and avoid any new liability associated with land acquisitions.

### **3.0 Implementation of the Statutory Requirements of the Environmental Protection Act 1990**

3.1 Part IIA of the Environmental Protection Act 1990, inserted by Section 57 of the Environment Act 1995 places a duty on Local Authorities to inspect their area for contaminated land. Section 78A(2) defines contaminated land for the purpose of Part IIA 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 -

- (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"

Thus land may be polluted but unless it presents a significant risk to a receptor such as a human being or an aquifer used to supply water the mere presence of a former contaminative use does not require immediate action by the Local Authority.

3.2 The provisions made under the 1990 Act became effective on the 1 April 2000, in conjunction with the Contaminated Land Regulations 2000. All local authorities are now required to produce a strategy by the 1 July 2001, for identifying potentially contaminated land which is relevant to their area. The Portsmouth City Council " Inspection Strategy" is set out in full in a separate document which was approved by the Public Protection Committee on 21 March 2001. The Inspection Strategy Document was produced in line with the DETR Technical Advice Note "Contaminated Land Inspection Strategies". The document describes in detail how the City Council will identify, prioritise and evaluate sites to establish if they meet the statutory definition for contaminated land set out above. Set out below is an overview of the Inspection Strategy and an update on progress to date.

3.3 Any strategy on contaminated land can only be as good as the information upon which it is based. Due to the City Council's proactive approach to contaminated land since 1991, the Environmental Health and Trading Standards Service is already well advanced at collating information on sites which are potentially contaminated due to former land use(s).

3.4 The government have suggested that Local Authorities should consider focusing their strategies on districts where statutory contaminated land is most likely to exist, or on industries specific to that region.

The City of Portsmouth has a complex development history. The City is confined by its island location and as industry and ownership has changed the land has under gone multiple phases of development. Mapping has indicated that as much as 20% of the current land area has been reclaimed from the sea by drainage and land raising activities. Approximately 10% of the current land area has been reclaimed by tipping of waste. Most of the tipping was undertaken before 1974 when pollution control legislation was first introduced in the UK. The military owned large tracts of land across the City. The first

Royal Naval Dockyard was established in 1495, with other uses ranging from firing ranges to luminising workshops. At some point in the past military ownership will have affected all districts of the City.

Superimposed on this patchwork of historic land uses is the modern City of today, where industry and more sensitive land uses can occur throughout the Local Authority area.

- 3.5 Given this complex pattern of land use it was not considered appropriate to focus our strategy on any specific area of the City. Nor was it considered appropriate to focus on any specific industries. The City has always had a mixed pattern of industry, including four former gasworks sites, chemical works, timber importers/treatment yards, tar distillation plants and smaller industries such as hat manufacturers, with no particular industry dominant. The only exception to this are the military uses and these will need to be addressed as part of our strategy.
- 3.6 Instead the strategy for Portsmouth has focused on identifying and researching primary sources of information which will provide information on historic land use across the City which will not only enable the identification of contaminated land meeting the statutory definition in the Environment Act 1990, but will also enable:
  - (a) identification of sites with potentially contaminated land uses to ensure appropriate planning conditions are imposed prior to re-development
  - (b) objective prioritisation of sites based on the principles set out in the Statutory Guidance
- 3.7 For Portsmouth there are two primary sources of information on historical land use, the Ordnance Survey historic maps dating back to 1860 and the Trade Directories for Portsmouth dating back to 1823.
- 3.8 The Environmental Health and Trading Standards Services Contaminated Land Team has already:
  - (a) Collated historic maps from a number of sources to create six seamless images of the City area which are held on a Geographical Information System for c1870, c1898, c1910, c1932, c1938(partial) and c1952 at a scale of 1:2500. Departments can currently access these maps via the City Engineers GIS unit or the Environmental Health and Trading Standards Contaminated Land Team Service.
  - (b) Researched the trade directories held in the Central Library on an approximate five year basis to capture all industrial/retail premises which might have had the potential to cause some form of contamination. This has produced a database of 52,800 records for the period 1823 to 1995 which is held by the Environmental Health Service.
  - (c) Transferred the hand-written ledgers of the Petroleum Officer for Portsmouth which records the addresses of all licensed petroleum tanks dating back to 1908 onto a database. The new database contains 5771 entries putting the information in a readily accessible

format. The current and historic information on approximately 2000 tank entries with a capacity of more than 1000 gallons has now been transferred on to the GIS.

- (d) Captured information from the historic maps on to the GIS, recording the location of former coastlines, streams, land drains, marshland, brick pits etc., as these give an indication as to areas where landfilling may have taken place. Alluvial deposits associated with former streams and coastlines can also provide pathways along which mobile contaminants may have or are migrating.
- (e) Recorded on the GIS information on the geology underlying the Portsmouth area.
- (f) Recorded on the GIS the location of all current and historic wells which could act as a migration pathway for pollutants to contaminate the underlying groundwater.
- (g) Recorded on the GIS the land use in all areas of the city to distinguish between land which is put to more sensitive uses such as domestic gardens, allotments and sites of special scientific interest etc. Such land is more likely to meet the statutory definition of contaminated land if contaminative uses were historically present. The GIS also provides the ability to directly overlay the current street pattern onto the historic map to determine which properties are most likely to be at risk.

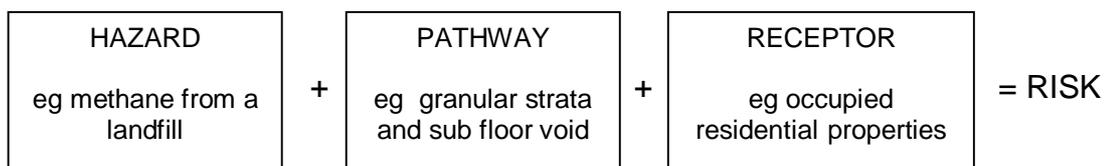
3.9 To provide information on potentially and actually contaminated land in a more readily accessible format, the Contaminated Land Team are in the process of:

- (a) Using the trades database described in 3.8 (b) above and historic street directories to pinpoint as accurately as possible onto the GIS the location of the trade premises listed with the greatest potential to be contaminated. The trade premises being transferred are based on the list of industries outlined in the 1991 DoE Consultation Paper and the 1996 list of DoE Industry Profiles. To date approximately 8500 entries have been transferred onto the GIS.
- (b) Capturing information on all site investigation and site remediation reports held by the Environmental Health and Trading Standards Service.
- (c) Locating and recording Land areas currently or formerly owned by the Ministry of Defence or its predecessor organisations

In addition, any new information provided by the Environment Agency or other external organisations will be evaluated and where appropriate used to update and improve the information held on the GIS.

3.10 For a City with a complex history like Portsmouth, it is not practical to evaluate and investigate every potentially contaminated site identified individually. Government guidance indicates that land identified as potentially contaminated due to a former land use can only present a risk to the public

where it is actually contaminated, there is a receptor who can be adversely affected by the contamination present, and a pathway exists by which the contamination can reach the receptor.



- 3.11 The Portsmouth strategy will utilise this principle, in conjunction with the spatial information and the functionality available within the GIS to help objectively evaluate and prioritise all the land areas occupied by former/present potentially contaminative uses in an objective manner. This will be achieved using the GIS Site Prioritisation Model, which has already been created for this purpose.
- 3.12 Initially the GIS model places a 20m grid of points across the entire area of the city. This equates to a point for roughly every 3 or 4 houses in the City. A score is assigned to each layer of data on the GIS, and the computer then evaluates the layers of data which coincide with each grid point. Having stored the score assigned to each data layer, it totals up the score for each point and changes the point into a coloured dot to reflect the magnitude of the score, which will also objectively reflect the priority with which sites should be evaluated.
- 3.13 The maximum score which can be recorded is 100. This is because the scoring system is divided into three parts to reflect the need for there to be a contaminative use, a pathway and a receptor for a potential risk to exist. If any grid point only overlays pathway and receptor layers, but there is no potentially contaminative use present, then the score adjusts to zero. More detail on the model can be found in reference 9. This information and the scores generated by the model is for the specific use of the City Council only for the purpose of prioritisation.
- 3.14 The GIS Site Prioritisation Model was tested successfully on the Tipner district of Portsmouth, where a significant amount of site investigation data was already available. This confirmed the model was effective at prioritising sites with a mix of historic and current uses. In 1998 the model was used for the first time to prioritise sites throughout the Portsmouth area for investigation in 1998/1999. It is intended that as data capture on the GIS proceeds the model will be run once a year. An officer will then view all of the sites which generate a score above a threshold level of 60 points, to undertake a more detailed review of the site history, potential pathways, receptors and any information already available on site investigation and remediation to determine whether the site should be prioritised for further investigation. Government guidance on investigation and designation of sites will then be followed regarding special sites and notification of land owners etc.
- 3.15 Any site in Portsmouth City Council ownership found to have a model score of more than 60 will have a Remediation Statement prepared indicating an action plan for the site in line with the government guidance (Section 78 H(7) of the Act refer). The strategy in relation to the City Council's property

portfolios is set out in more detail in Section 9.

#### **4.0 Release of Information**

- 4.1 The release of information on potentially or actually contaminated land is a difficult issue as it can cause property blight if handled in an uncontrolled manner. The City Council is committed to openness in relation to all information provided the information is being provided to an appropriate person for a proper purpose.
- 4.2 The Environmental Health Service will continue to respond to specific written requests for information held by the department on historic land uses and investigation data. A disclaimer is added to the written response making it clear that the information provided is only that available to the department at that time and encouraging the requester to make more extensive enquiries. An appropriate charge is made for provision of the information. This is consistent with the Environmental Information Regulations 1992.

Note: Currently the response to the standard four land charge enquiries is "No", as no register has yet been produced and no notices have been issued under the new provisions. Where a more specific question is asked by a solicitor regarding landfill or contamination information the Environmental Protection Officer (EPO) reviews each additional question and responds appropriately.

- 4.3 A public register will be created to record information on sites where notices have been issued or a formal Remediation Statement has been prepared in line with Section 78(R) of the Act. It is proposed to create the register by the addition of a new data layer to the GIS.
- 4.4 Following approval of the Inspection Strategy document by the Public Protection Committee, it will be circulated to external organisations such as the Environment Agency, MAFF and English Nature for comment in line with DETR guidance. The presence of the strategy will also be advertised via flagship to enable public comment.

#### **5.0 Response to Complaints**

- 5.1 Any complaints from the public, business or other outside organisation should be directed to the Environmental Health and Trading Standards Contaminated Land Team. Within 24 hours the complaint details will be evaluated. If the officer determines that there is a potentially imminent risk to public health a more detailed evaluation of all the site information available will be completed within two working days and an action plan agreed with the Team Leader. Otherwise this evaluation will be completed within 10 working days.
- 5.2 Once an action plan has been agreed with the Team Leader the complainant and the owner of the land will be notified in writing. The action plan will be reviewed each time new information becomes available. When appropriate the Environment Agency will be involved in preparing an action plan.

## 6.0 **Planning Control**

For the purposes of the Town and Country Planning Act 1990, the potential for contamination is a material planning consideration, to be taken into account during the normal course of development. The government has indicated that it considers that the redevelopment phase is the most appropriate and cost effective time to deal with contamination issues, stressing that Local Authorities should make full use of the powers available to them in accordance with the guidance issued in Planning Policy Guidance Note 23 (PPG 23).

Paragraph 4.5 of PPG 23 states "The best way of minimising any associated risks is to ensure that sites which may be contaminated are identified at the earliest stage of planning. The history of the site or nearby sites is the principal factor in determining whether a site is likely to be contaminated or not. The document goes on to say that the responsibility for providing information on whether land is contaminated rests primarily with the developer (Para. 4.10). In districts which contain a significant number of possibly contaminated sites the government suggest that the LPA should add a question on contamination on their standard application form (Annex 10, para. 7)".

The City Council strategy on Contaminated Land should implement the guidance fully and our development control procedure should be adapted as follows:-

- 6.1 A question has been added onto the standard Portsmouth City Council planning application form to require developers to provide a brief history of the site indicating all previous known land uses and operations.
- 6.2 Where the answer(s) to the new question 13 indicates a potential for contamination, or where the redevelopment will involve the creation of new residential properties, or commercial redevelopment with a site area greater than 250m<sup>2</sup> a full desk study should be provided by the developer (unless the City Planning Officer in consultation with the CEHTSO determines sufficient information has been provided by the applicant). The desk study will provide a comprehensive site history with historic maps etc. A guidance note is available to assist applicants. (PCC Planning Advice Note 11.)
- 6.3 The Planning Officer should liaise with the Environmental Health & Trading Standards Service and wherever the information provided under 6.1 or 6.2 indicates the potential for contamination, or the LA hold such information (which should be copied to the developer). Planning permission shall only be granted subject to conditions requiring appropriate site investigation prior to the commencement of the development, and site remediation prior to occupation of the development, where such is found to be necessary.
- 6.4 On sites where the contamination or landfill gas issue is likely to be a physical constraint to the redevelopment options for the site, whether owned by the City Council or an outside body, the Planning Service, Environmental Health & Trading Standards Service, landowner and any other interested parties shall liaise to produce a development brief for the site. This would apply to sites such as the Tipner Redevelopment Area, Paulsgrove Tip and most

former MOD land.

- 6.5 Where conditions are imposed on planning approvals the Planning Service must ensure the conditions are complied with before development commences. It is almost impossible to undertake a site investigation or implement remedial measures once development is underway, so all works required by the conditions must be agreed at an early stage. Planning Advice Note 11 which explains issues related to contamination, current guidance documents available, and the timescales necessary for developers to complete site investigation work to comply with planning conditions should be issued to applicants who receive a conditional approval.
- 6.6 The LPA is required by the Town and Country Planning Act (GDP - 1995) to consult with the EA in respect of certain types of application. With the recent formation of the Environment Agency, and in view of the increased knowledge regarding gassing landfill sites in the area, the City Planning Officer and the City Environmental Health and Trading Standards Officer pursue an agreement with the relevant officers from the Environment Agency to review what types of application need to be referred to the Environment Agency and for which specific areas of the City.
- 6.7 Open discussion of all information related to potential contamination at the development stage and the application of conditions is the only sensible way forward to ensure the safe development of brownfield sites. This openness and validation of the clean up process will ultimately ensure market confidence in the redevelopment of brownfield sites, and thus promote the recycling of brownfield sites which is essential in a City with little/no greenfield sites available. This strategy is also in line with government policy.

## **7.0 Building Control**

- 7.1 The Building Regulations 1991 give the Building Control Officers authority to address contamination and landfill gas issues within the building footprint. Where a site is known to be on or adjacent to a gassing landfill Building Control Approval will only be granted subject to the design of the building(s) incorporating adequate gas control measures.
- 7.2 Where historical maps or existing site investigation data indicate that the proposed development is/or may be located on greater than one metre of made ground, Building Control approval will only be granted subject to the developer either:
- a) incorporating basic passive gas protection measures into the building design/construction, or
  - b) undertaking an appropriate level of site investigation.
- 7.3 Where the ground investigation reveals any methane or significant organic material within the ground the developer must provide a report by a competent person experienced in the development of buildings on gassing sites. The investigation report must include gas monitoring on at least 6 separate occasions at appropriate locations over a minimum period of 3 months, over a variety of weather conditions and atmospheric pressures and

include at least two periods of low and falling barometric pressure (falling below 1005mB). The competent person should provide written confirmation that the building design provides adequate protection for the gas regime recorded at the site.

7.4 Although the Building Control process is fundamental to the safe redevelopment of brownfield sites, it is not sufficient to have a strategy which relies on remediation controlled by building control alone because:

- a) Building Control Officers have no control over the safe remediation of landscaped areas and car parks outside the building footprint, and
- b) an increasing number of developers are making use of new provisions which enable them to utilise the services of private building control officers rather than LA officers. Obviously the private sector practitioners will not have the same local knowledge about historic land uses.

Consequently, a multi-disciplinary approach to approval of remediation schemes is required involving Building Control, Planning and Environmental Health.

## **8.0 Works/Maintenance Contracts**

8.1 As a major land holder the City Council awards millions of pounds worth of contracts for major new works projects and maintenance works each year. Where such works are taking place on contaminated land or potentially contaminated land the City Council has a duty of care to provide the fullest information possible to contractors including access to any relevant site investigation reports. The contractor will then be in a position to comply with:

- a) relevant health and safety legislation/guidance, including the Construction Design & Management Regulations (Note: the CDM Regulations place duties on the Council as client as well as the contractor)
- b) duty of care with respect to carriage of waste and waste disposal.

8.2 Contracts can be awarded by any front line service. It is not acceptable for City Council officers to claim that they were not aware of a problem. Where site specific information is not already available the officer responsible for the contract must ensure that proper enquiries are made to:

- a) establish the site history using historic maps and the GIS/trades database held within Environmental Health,
- b) determine if previous site investigation data is available within the City Engineer's Department or Environmental Health & Trading Standards Service,
- c) where enquiries made under 'a' indicate a potential for contamination but no site investigation data is available then provision must be made to obtain the necessary data before tendering the contract, or make

allowance in the specification/bill of quantities for the contractor to undertake the necessary investigation,

- d) any new data collated under 'c' must be copied to the Environmental Health & Trading Standards Service which will act as the central store for information on site contamination.

- 8.3 On a number of sites which are owned by the City Council, particularly those which were formerly landfills, site investigation followed by a risk assessment has shown that the site is safe to be used for its current use provided the ground surface is maintained to a high standard. This will normally involve a regular inspection of the surface, regular 'litter' picking to remove fragments of fill which have become exposed, and maintaining the grass cover across the site.

Most of these sites will be under the management of the Leisure Service, but other land holding departments may also be affected. It is essential that it is clear in the maintenance contract that the contractor is responsible for maintaining the vegetation cover across the ground surface, what reporting procedures should take place when the surface is found to be damaged and what additional measures or restrictions are required on a site specific basis. For example, on football pitches goal mouth areas become worn, the City Council may require that such areas be dressed with new clean soil or for all nets and goal posts to be removed on some sites during the summer to give vegetation the chance to establish.

To ensure the site is maintained to an adequate standard, the land holding department must also nominate an officer to undertake a minimum bi-annual inspection to ensure the contractor is maintaining the site to the necessary standard. Note: this will require regular inspection of informal areas of public open space not currently inspected. The staffing and resource implications of this will need to be reviewed by the City Leisure Officer.

- 8.4 Where the Council or any utility company requires a contractor to place or repair services which cross sites identified as being contaminated the opportunity must be taken to place the service into a clean trench. The old service should be dug out and all arisings removed from site immediately. The arisings should not be placed on the existing ground surface unless underlain by polythene sheeting to avoid the more contaminated material from depth contaminating the ground surface. The new trench should be lined with a geotextile and backfilled with a clean non-porous material such as clay. The cost of these works will be met by the client requiring the work to be undertaken. Where a water service is to be replaced the advice of Portsmouth Water Company and the Environmental Health & Trading Standards Service should be sought. All works must be done in strict accordance with Health and Safety guidance (reference 5).
- 8.5 Where an easement is requested across land owned by the City Council which is known or suspected to be contaminated, the company requesting the easement must be given full access to information on the site history and any site investigation reports available. The company must only be granted consent for the easement subject to the following restrictions:

- i) All works must be designed and constructed taking into account the ground conditions and the works must be completed in accordance with a scheme approved by the City Environmental Health and Trading Standards Officer.
- ii) Before commencement of the works a full method statement shall be submitted to and agreed by the City Environmental Health and Trading Standards Officer. All works must be completed in accordance with the agreed method statement.

## **9.0 Property Transactions**

9.1 Portsmouth City Council is a major landowner, a significant percentage of the land owned by the City Council has been put to potentially contaminative uses such as land reclamation, waste disposal, engineering workshops, incineration, former MOD uses, etc. This land holding increased on 1 April 1997 with the transfer of Hampshire County Council land to the City Council, some of which is known to be contaminated. In addition, the City Council leases property to private organisations who by their legitimate use of the land may have caused or be causing new contamination.

9.2 The City Council must have a strategy which deals with:

- a) Contamination associated with existing land holdings.
- b) Ensures that we do not unwittingly purchase any additional contaminated land without appreciating the long term implications of such a purchase, with the price of the land reflecting the site's condition.
- c) Contamination caused by persons/companies who lease our land.

## **9.3 Existing Land Holdings:**

Since 1991 the City Council has had an ongoing programme of prioritising potentially contaminated land owned by the City Council for investigation funded by the Department of the Environment, Transport and The Regions (DETR). To date this has resulted in the investigation of more than 20 sites (Appendix A).

Where sites are found to have potentially significant levels of contamination a quantified risk assessment is undertaken to determine if there is a need for remediation for the current land use or any proposed land use. Where the risk assessment indicates remedial works are necessary or would be prudent the land holding committee is advised and appropriate remedial measures agreed with the relevant departments.

To date funding for remedial works has been obtained predominantly from the DETR Supplementary Credit Approval Scheme, and ten sites owned by the City Council have been remediated (Appendix A).

This ongoing programme of site prioritisation, investigation and where necessary remediation should continue in conjunction with the City Council's

strategy on contaminated land. In future all City Council land will be prioritised in the same manner as all other sites in the City (section 3.11 to 3.15 refer).

#### 9.4 Land Purchases/Acquisitions

Prior to committing the City Council to any new land purchases or acquisitions the Property Service/Legal Services must ensure that the full site history is known. This must include:-

- a search of all available historical maps;
- a review of the trades database held by the Environmental Health & Trading Standards Service, including determining historic property details from relevant street sections to enable the trades information to be accurately correlated to the land in question;
- detailed enquiries from the vendor as to the former activities at the site, location of storage tanks, details of materials, fuels, wastes etc. stored and information on any spillages.

If there is any suggestion that the land is on or adjacent to land which has the potential to be contaminated consultants shall be appointed to undertake an appropriate site investigation.

Only when the full implications of any contamination is known, appropriate consideration has been given to the potential long term cost implications and this has been reflected in the sale price - shall the transaction continue. Advice should be sought from Environmental Health and Legal Services as to the need to address future liabilities which will be dependent on the circumstances of the site.

Where land such as public open space is to pass to the City Council as part of a planning agreement (S106) the City Planning Officer must require the developer to provide:

- a) full site history information on the land to transfer, and
- b) an appropriate level of site investigation data to be agreed with the City Environmental Health and Trading Standards Officer.

#### 9.5 Leasing Property

Many of the commercial organisations to whom we let property or land will undertake potentially contaminating activities which may result in the land becoming contaminated. Under the provisions of the new Environment Act 1995 if the original polluter cannot be found (for example, because the company no longer exists) the landowner becomes the person liable for the contamination and any site remediation required. If the City Council as a landowner does not take steps to prevent the occurrence of further off-site migration of contaminants then the City Council can also be found to be liable for the remediation of adjacent land.

In order to protect the value of its land holdings and to prevent the City

Council becoming liable for our tenants contamination it is essential that we have a strategy/policy which will protect the City Council's interests in the long term.

The Property Service and Legal Service should ensure that a specific strategy/documentation is in place to ensure the following:-

#### 9.5.1 Prior to Letting/Leasing Property in the Future

- a) Ensure the City Council has information on the quality of the site. If it is a greenfield site with no former potentially contaminative uses, ensure this is documented along with some background soil data to provide a baseline which can form the basis of any future claim. Where possible the onus should be placed on the new tenant to provide this background data.
- b) If the site has previous uses establish where potentially contaminating uses have taken place. For example, where are or were the fuel tanks, chemical storage tanks etc. Again ensure this information is documented and provide appropriate background soil data. This is necessary not only to protect the City Council's interest but also to comply with our obligation in relation to disclosure to the new tenant whose workers or contractors might come into contact with ground contamination.

Note: where new information becomes available to the Council regarding contamination during the term of the lease/tenancy agreement which may require action, then the Council must pass the information onto the tenant/lessee in order that they can make appropriate decisions.

- c) Ensure there are appropriate conditions in the lease/tenancy agreement requiring the new occupier(s) to comply with all appropriate environmental legislation to minimise the potential for future contamination and to require them to clean up any spills which may occur during their occupation.
- d) Ensure that it is clear in the contract documents that prior to relinquishing the lease/tenancy the onus will be on them to return the land in a condition which is suitable for its existing use and prove that they have not caused any new contamination. Where the occupier's trade is such that there is a high risk of contamination occurring then a site investigation will be necessary to prove the site has not been affected, or if it has to quantify the problem. The results of the investigation can be compared to the original background data obtained prior to the commencement of the lease before agreeing the remediation works necessary and/or the appropriate level of financial compensation to the Council which is applicable. The new tenant/lessee will not be liable for contamination caused by a previous tenant/lessee.
- e) During the course of the lease/tenancy agreement the tenant/

lessee must provide the Council with:

- details of the location/nature of fuel storage, documentation to confirm there has been no gradual loss of free product due to leakage,
- plans showing where chemicals or wastes are stored,
- plans showing where services and, fuel lines etc are,
- a copy of any Health and Safety files created in compliance with the Construction, Design and Management Regulations
- details of accidents/spillages etc
- where locations are moved the Council must be advised in writing of the new details.

#### 9.5.2 Termination of a Tenancy/Lease Agreement

a) Prior to the determination of a lease/tenancy agreement for whatever reason it is essential that quality information is obtained from the tenant/lessee before they leave the site, while yard managers, supervisors etc. are still available who can provide specific information on the site such as that outlined in 9.5.1(e) above.

b) Where there is any question that there may have been land contamination the tenant/lessee should be required to provide site investigation data to prove the site remains in the same condition as when the background site investigation was undertaken at the commencement of the lease, and if not to prove the extent of any contamination present.

c) Where contamination is present the tenant/lessee must be required to remediate the contamination to the standard identified by the background site investigation, or provide financial compensation to the City Council in order that it may undertake the remedial works.

d) Where the tenant/lessee has constructed or significantly altered a structure on the site a Health and Safety file will have been created in compliance with the Construction, Design and Management Regulations (CDM Regs). All such files shall be provided to the Council at the end of the lease to be held by the Property Service.

#### 9.5.3 Financial Implications

The Director of Corporate Services advises that the proposed obligations on the lessee will affect the premium or rental value of sites and this will be influenced by the extent to which such terms become commercially acceptable in leases. The actual cost implication will vary from lease to lease upon letting/renewal and thus cannot be quantified at this stage, but it will have no impact on current income

levels as the conditions cannot be imposed/negotiated until renewal or at a rent review.

The degree of 'cleaning up' required will need to be determined in advance by a background site investigation report, which identifies the level of contamination when the lease period commenced. Where the lease is for a long period it will be reasonable to require the tenant/lessee to provide this background report.

To enable these new requirements to be implemented a contingency budget will be needed by the Head of Property Service in order to fund the necessary site investigations, when it is not reasonable to pass this cost onto a new or existing tenant. (For example, when the tenancy is only for a short period of a few years.) It is estimated that an annual contingency budget of £40,000 will be required.

It will take a period of time to enable the procedures and agreements to be put in place before this part of the new strategy can be implemented. The Director of Finance & Resources should consider making a contingency provision of £40,000 available on an annual basis from April 2001.

Once the contingency budget is in place for this purpose, the contingency sum required should be reviewed after 18 months in conjunction with the CEH&TSO. Experience gained during the first 18 months can then be used to assess the adequacy of the finance made available.

## 9.6 Marketing Sites

Where land owned by the City Council is being sold it is essential that the City Council provide all relevant information which might affect the value of the site or its future redevelopment to the potential purchaser. This should include where available:

- site history information
- geotechnical and contamination site investigation reports
- desk study reports
- details of the location of fuel tanks, waste disposal areas, soakaways etc.

If the site is suspected to be contaminated then the potential purchaser must be given the opportunity to undertake their own site investigation to establish the extent of any problem.

The information on contamination and potential remediation costs for an agreed end use should be taken into account when setting the value for the land. This process must be fully documented to protect the City Council from future legal action/claims by the purchaser or other future owners (i.e. the land is "sold with information" to comply with Part 5 of Chapter D, Paragraph D.57 to D.61 of the DETR Statutory Guidance on Contaminated Land).

## **10. Recommendations**

That the City Council adopt this document outlining the corporate strategy for contaminated land. Specifically the City Council should:

- 10.1 Adopt the strategy outlined in section 3 for the collation of information on potentially contaminated sites across the Portsmouth area (see note 1 & 2 below).
- 10.2 Utilise the Portsmouth City Council GIS Site Prioritisation Model to objectively prioritise sites for further evaluation and investigation.
- 10.3 Once the DETR publish the Statutory Guidance on Contaminated Land and the associated guidance on Local Authorities Strategies in April 2000, the CEH&TSO shall make any minor amendments to the strategy needed to comply with the guidance. The presence of the strategy will then be advertised and consulted on more widely in accordance with the recommendations set out in the guidance (see note 1 & 2 below).
- 10.4 Make full use of the development control process in line with the government guidance set out in PPG23 to ensure potentially contaminated sites are investigated and where necessary remediated.
  - (a) Where the answer to the new question on the planning application form indicates a potential for contamination, or where the development will involve the creation of new residential properties, or a new commercial development greater than 250m<sup>2</sup>, the developer will be required to provide a full desk study report. Unless the City Planning Officer in consultation with the CEHTSO determines sufficient information has already been provided by the applicant.
  - (b) Ensure that where there is a potential contamination and/or landfill gas problem the development should only be granted planning permission subject to standard conditions to be agreed by the Planning Service and Environmental Health & Trading Standards Service, requiring appropriate site investigation and remediation.
- 10.5 Pursue an agreement with the Environment Agency on the sites requiring consultation which are on or adjacent to landfills.
- 10.6 Ensure that prior to the tender of any works or maintenance contracts consideration has been given to the site history and potential for or actual contamination. Such information must be made available to tenderers or provision made in the contract for the contractor to undertake any necessary investigations.
- 10.7 Ensure that where maintenance contracts are awarded on sites which are known to be contaminated at depth, that the contractor is required to maintain the ground surface to a high standard. In addition, the land holding department must nominate an officer to undertake a minimum bi-annual inspection to ensure that the contractor is maintaining the site to the necessary standard.

- 10.8 The City Leisure Officer will also be required to make staff time and resources available to biannually inspect and maintain (where necessary) areas of informal public open space that are not subject to planned or routine maintenance.
- 10.9 Ensure that where services are to be replaced on land which is known to be contaminated the opportunity must be taken to place the new service in a lined trench backfilled with clean impermeable material.
- 10.10 Ensure that the City Council does not purchase or acquire any new land holdings without being fully aware of the sites history, potential contamination and actual contamination for which the City Council might become liable.
- 10.11 Instruct the Property Service/Legal Service to ensure that:
- a) prior to letting/leasing a property the City Council must disclose such information that it has on site contamination to the tenant/lessee,
  - b) ensure that the conditions of contract require the tenant/lessee to comply with all environmental legislation and stipulate that they are liable for any new contamination caused during their occupation of the site. [This will require the tenant/lessee or the Council to provide a report on the background level of contamination at the site. Where the lease/ tenancy agreement is for a long period it will be appropriate for the tenant/lessee to provide this background report.]
  - c) prior to the termination of a tenancy agreement/lease determine if any contamination has been caused and require that it be remediated to the same standard as that present when the tenant/lessee occupied the site, or that the tenant/lessee provide financial compensation to the City Council.
- 10.12 Ensure that when marketing sites for sale full information is provided to the potential purchaser on actual or potential contamination, and the opportunity is given for the purchaser to undertake his own site survey. This process must be fully documented to protect the City Council from future claims.
- 10.13 That the Director of Finance & Resources be asked to consider making an annual contingency provision of £40,000 per annum from the financial year 2001/02 in order to fund the investigation of sites owned by the City Council (Section 9.5.3 refers). The adequacy of this budget to be reviewed after 18 months in conjunction with the City Environmental Health & Trading Standards Officer.
- 10.14 That the CEHTSO be given delegated authority in consultation with the Director of Finance & Resource to make funding applications to the DETR for SCA to undertake site investigation/remediation work on sites identified by the GIS Model as needing investigation. Any approvals for expenditure will then be reported through the Members Information Service.

**Note 1:** On the 13 March 2000 the Environment Committee considered the above report (AI 8) and resolved :

- (1) that the Environment Committee confirm that the strategy set out in the report be adopted by the City Council as the Contaminated Land Strategy for Portsmouth, including recommendations set out in paragraphs 10.1 to 10.12, 10.13 and 10.14 of the report;
- (2) that the City Environmental Health and Trading Standards Officer be authorised to circulate the Strategy Document to external organisations and to the public in line with the requirements of the DETR Contaminated Land Statutory Guidance for comment;
- (3) that authority for implementing the Strategy be delegated to the City Environmental Health & Trading Standards Officer in consultation with other Chief Officers as appropriate.

**Note 2:** In April 2000 the DETR/EA released a draft guidance document which set out 'Technical Advice for Local Authorities on Inspection Strategies'. The final guidance has yet to be published. In the light of the impending deadline for completion of the local authority inspection strategy, relevant sections of the adopted Corporate Contaminated Land Strategy have been extracted and expanded into a separate Portsmouth City Council Contaminated Land Inspection Strategy Document. The format of the document is in line with the draft technical advice. The Inspection Strategy document does not supersede the Corporate Contaminated Land document, it compliments it, providing more detailed information on how potentially contaminated sites will be identified and prioritised.

On the 21 March 2001 the Contaminated Land Inspection Strategy Document was accepted by the Public Protection Committee of Portsmouth City Council. Full external consultation on the Inspection Strategy will now proceed, in line with DETR guidance (Circular 02/2000)

The presence of the Strategy has been publicised in the spring issue of Flagship, a magazine which is circulated to all business and households in the Portsmouth local authority area. The period for public consultation will end on 31 May 2001, to enable the Strategy to be completed and published in line with the statutory deadline of 1 July 2001.

## **BACKGROUND PAPERS/REFERENCES**

1. Environment Act 1995
2. DETR Circular 02/2000, Statutory Guidance on Contaminated Land.
3. Planning Policy Guidance Document 23: Planning and Pollution Control
4. Circular No 11/95: The Use of Conditions in Planning Permissions
5. Health and Safety Executive Guidance Document: Protection of Workers and the General Public During the Development of Contaminated Land
6. Building Regulations 1991
7. Public Registers of Land which may be Contaminated. DoE 1991 Consultation Paper
8. DoE 1996, Industry Profiles.
9. Contaminated Land Site Investigation Prioritisation Modelling Using GIS, September 1997, University Of Portsmouth, Kathleen White (MSc dissertation using Portsmouth as a case study area, sponsored by PCC).
10. Part IIA, Environmental Protection Act 1990.
11. DETR / EA Contaminated Land Inspection Strategies, Technical Advice for Local Authorities ( Draft ; April 2000).
12. Portsmouth City Council Contaminated Land Inspection Strategy, Consultation Draft, March 2001.

TJV/LJB  
Revised: 6 March 2000  
Minor Update 21 March 2001  
HCONTTV.SAM/Disk

## Appendix A

### List of Sites Already Investigated and Remediated as appropriate by Portsmouth City Council

SITE	PCC LAND	INVESTIGATED	REMEDIATED
Alexandra Park	✓	✓	N/A
Moneyfield Allotments	✓	✓	✓
Longmeadow Allotments	✓	✓	✓
Pembroke Park	✓(part)	✓	N/A
Old Portsmouth Power Station		✓	N/A
Richmond House / Britain Street	✓(part)	✓	N/A
Henderson Road Caravan Site	✓	✓	N/A
Victoria Park	✓	✓	N/A
Nelson Avenue		✓	N/A
Jervis Road / Twyford Ave	✓(part)	✓	N/A
Hilsea Crescent / Horsea Road	✓(part)	✓	N/A
King George V Playing Fields	✓	✓	N/A
Horsea Lane Allotments	✓	✓	N/A
Salisbury Road Allotments	✓	✓	N/A
Milton Common	✓	✓	✓
North Harbour Allotments	✓	✓	✓
Stamshaw Park	✓	✓	N/A
Tangier Road Field / Baffins Play Area	✓	✓	✓
Portsmouth College	✓	✓	N/A
Teignmouth Road Play Area	✓	✓	✓
Hope Cottage / Eastney Lake Allotments	✓	✓	✓
Eastney Lake Foreshore	✓	✓	✓
Great Salterns Estate	✓	✓	N/A
Burrfields Road Industrial Estate		✓	
Stamshaw School	✓	✓	✓
Fort Cumberland Road Pumping Station	✓		✓
Hilsea Lines	✓	✓	
Monkton Road Builders Yard		✓	N/A
Fawcett Road Clay Pit		✓	N/A
Cosham Gasworks		✓	N/A
Station Road Asphalt Works		✓	✓

**Note:** Many other sites have been investigated and remediated in association with private land owners and developers. Notable examples include Lumsden Road, parts of Portfield Road Gasworks Site, North Harbour Development and Gunwharf.