

Our ref p&t/HP  
Your ref  
Date 18 March 2010



Chartered  
Institute of  
Environmental  
Health

Richard Holland  
The Planning Inspectorate  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

By e-mail: [richard.holland@pins.gsi.gov.uk](mailto:richard.holland@pins.gsi.gov.uk)

Dear Mr Holland

## Model Planning Conditions: Consultation

I refer to the Inspectorate's consultation, announced in December, and in particular to the conditions concerning contaminated land. As you might know, the Chartered Institute, through our Standing Conference on Land Contamination, was behind the current model conditions for contaminated land, published by DCLG only as recently as May 2008.

If there was anything wrong with those we have not been made aware of it but if they must, nevertheless, be replaced so soon, we would like to suggest some amendments to those you now propose.

Beginning with the conditions for:

### **CONTAMINATED LAND [FOR LARGE AND/OR COMPLEX DEVELOPMENTS]**

#### **Condition 1**

We suggest that the title be changed from "*Site characterisation*" to "*Site investigation and risk assessment*", better reflecting the intention and content of the condition which follows.

#### **Condition 2**

Insert at the beginning "*Where contamination is found which poses unacceptable risks*" to provide continuity with Condition 1. Of course, where a site investigation demonstrates there is no contamination, no remediation scheme will be required.

Delete "*by removing unacceptable risks to human health, buildings and other property and the natural and historical environment*"; this is implicit in the preceding phrase "*a condition suitable for the intended use*".

Re-arrange the second sentence to provide a more logical order, i.e. to place the description of works after the nomination of the preferred remediation option.

Delete "*a timetable of works*"; there is no reason to hold a developer to a timetable of works for remediation and, hence, no reason to require one to be specified.

Delete the final sentence; it is superfluous in the light of the requirement in the first sentence "*to bring the site to a condition suitable for the intended use.*"

### **Condition 3**

Insert "*Where required*" at the beginning; no scheme will be implemented unless one is required.

Delete "*in accordance with the approved timetable of works*" from the first sentence and insert "*prior to the site being occupied/brought into use*". This is for consistency with the change we propose to Condition 2 and to relate implementation of the scheme to its purpose.

For "*validation*" substitute "*verification*" per para 4.3 of CLR11 (Defra/Environment Agency 2004).

Insert "*and approved in writing by*" after "*submitted to*" for consistency with Conditions 1 and 2.

### **Condition 4**

Delete "*within [Z] days*" from the first sentence and insert "*without delay*". While it would be unenforceable to require a report to be made immediately, an allowance of Z days imports some delay which could lead unnecessarily to the escape of contaminants.

Delete "*once the Local Planning Authority has identified the part of the site affected by the unexpected contamination*"; PPS23 makes it clear that this is a function of the developer.

Insert "*investigation of that part and a risk*" at the beginning of the second paragraph for consistency with Condition 1.

Insert "*submitted to and approved by the Local Planning Authority*" for consistency with previous conditions and since it is not clear that this, as opposed to just the scope of the assessment, is among the "*requirements of condition 1*".

Delete "*together with a timetable for its implementation,*" from paragraph 2 for the reason given above under Condition 2.

Delete "*in accordance with the approved timetable*" from paragraph 3.

Delete "*measures identified in the approved remediation scheme*" and insert "*which*".

For "*validation*" substitute "*verification*" per para 4.3 of CLR11 (Defra/Environment Agency 2004).

### **Condition 5**

Insert at the beginning "*Where indicated by the remediation strategy,*"; depending on the remediation option(s) adopted, a m&m scheme may or may not be necessary.

Delete "*take place*" and insert "*be occupied/brought into use*"; the need may not be apparent before any development takes place while the need to show the long-term effectiveness of remediation is linked to the future use of the site.

Delete "*must both be*" and insert "*has been*".

In the second paragraph, delete "*scheme is complete*" and insert "*objectives have been achieved*" per CLR11 (ibid)

And concerning the proposed condition for:

### **CONTAMINATED LAND [FOR SMALL AND/OR SIMPLE DEVELOPMENTS]**

We are not convinced of the wisdom of a consolidated condition for "small/simple developments" (which lack a definition anyway) since it appears to us that it is neither the size nor the character of a development which matters, rather it is the degree and nature of the contamination to be dealt with. Setting out a number of conditions corresponding to recognised steps in the risk management process, moreover, actually makes the requirements easier to understand, nevertheless any such condition should, at least, be consistent with the conditions above for large and/or complex developments and if a consolidated condition must be offered, we suggest:

Insert "*and assessment*" after "*investigation*"; clearly, the results of any investigation need to be assessed for their significance.

In place of "*methodology*" substitute "*scheme*"; a description of methods would not include, in particular, the number or location of soil samples to be taken.

In place of "*made available to*" substitute "*submitted to and approved by*"; it is as important that the results of the site investigation are approved for a small site as for a bigger one.

Insert "*unacceptable*" before "*contamination*" where it appears in the second sentence and again at the beginning of the second paragraph.

In place of "*begins*" at the end of the first paragraph, substitute "*occupied/brought into use*."

Add a third paragraph: "*A verification report shall be submitted to and approved in writing by the local planning authority before the development is occupied/brought into use*"; it is as important on small sites as on bigger ones that the effectiveness of a remediation scheme is checked.

In addition,

### **For both LARGE AND/OR COMPLEX and SMALL AND/OR SIMPLE DEVELOPMENTS**

Add a Reason: "*To ensure that risks from land contamination to the future users of the land and neighbouring land are minimized, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to neighbours and other off-site receptors [in accordance with policy [ ] of the adopted local plan (date).]*"

Our suggestions are set out again in the accompanying comparison of texts (PINS' proposals vs the CIEH's suggestions) with their major differences highlighted for convenience.

We hope this is helpful.

Yours sincerely,

A handwritten signature in black ink that reads "Howard Price". The signature is written in a cursive style with a prominent underline under the word "Price".

Howard Price  
Principal Policy Officer

Direct line 020 7827 5839  
Direct fax 020 7827 6322  
Email [h.price@cieh.org](mailto:h.price@cieh.org)

PINS Proposal	The CIEH's suggestion
<p><b>CONTAMINATED LAND [FOR LARGE AND/OR COMPLEX DEVELOPMENTS]</b></p> <p><b>1. Site Characterisation</b></p> <p>No development shall take place until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it must include:</p> <p>(i) a survey of the extent, scale and nature of contamination;</p> <p>(ii) an assessment of the potential risks to:</p> <ul style="list-style-type: none"> <li>• human health,</li> <li>• property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,</li> <li>• adjoining land,</li> <li>• groundwaters and surface waters,</li> <li>• ecological systems,</li> <li>• archaeological sites and ancient monuments;</li> </ul>	<p><b>CONTAMINATED LAND [FOR LARGE AND/OR COMPLEX DEVELOPMENTS]</b></p> <p><b>1. Site investigation and risk assessment</b></p> <p>No development shall take place until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it must include:</p> <p>(i) a survey of the extent, scale and nature of contamination;</p> <p>(ii) an assessment of the potential risks to:</p> <ul style="list-style-type: none"> <li>• human health,</li> <li>• property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,</li> <li>• adjoining land,</li> <li>• groundwaters and surface waters,</li> <li>• ecological systems,</li> <li>• archaeological sites and ancient monuments;</li> </ul>

## 2. Submission of Remediation Scheme

No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

## 3. Implementation of Approved Remediation Scheme

The remediation scheme shall be implemented in accordance with the approved timetable of works. Within [Y] months of the completion of measures identified in the approved remediation scheme, a validation report (that demonstrates the effectiveness of the remediation carried out) must be submitted to the Local Planning Authority.

## 4. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out

## 2. Submission of Remediation Scheme

Where contamination is found which poses unacceptable risks, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use has been submitted to and approved in writing by the Local Planning Authority. The scheme must include proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), all works to be undertaken and site management procedures.

## 3. Implementation of Approved Remediation Scheme

Where required, the remediation scheme shall be implemented prior to the site being occupied/brought into use. Within [Y] months of the completion of measures identified in the approved remediation scheme, a verification report (that demonstrates the effectiveness of the remediation carried out) must be submitted to and approved in writing by the Local Planning Authority.

## 4. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out

the approved development that was not previously identified it must be reported in writing **within [Z] days** to the Local Planning Authority and **once the Local Planning Authority has identified the part of the site affected by the unexpected contamination** development must be halted on that part of the site.

An assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme, **together with a timetable for its implementation**, must be submitted to and approved in writing by the Local Planning Authority in accordance with the requirements of condition 2.

The measures in the approved remediation scheme must then be **implemented in accordance with the approved timetable**. Following completion of **measures identified in the approved remediation scheme** a **validation** report must be submitted to and approved in writing by the Local Planning Authority in accordance with condition 3.

### **5. Long Term Monitoring and Maintenance**

No development shall **take place** until a monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of [x] years, and the provision of reports on the same **must both be** submitted to and approved in writing by the Local Planning Authority.

the approved development that was not previously identified it must be reported in writing **without delay** to the Local Planning Authority and development must be halted on **the affected** part of the site.

An **investigation of that part and a risk assessment** must be undertaken in accordance with the requirements of condition 1 and **submitted to and approved in writing by the Local Planning Authority**. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority in accordance with the requirements of condition 2.

The measures in the approved remediation scheme must then be implemented, following completion of which a **verification** report must be submitted to and approved in writing by the Local Planning Authority in accordance with condition 3.

### **5. Long Term Monitoring and Maintenance**

**Where indicated by the remediation strategy**, no development shall **be occupied/brought into use** until a monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of [x] years and the provision of reports on the same **has been** submitted to and approved in writing by the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation **scheme is complete**, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be submitted to the Local Planning Authority.

**CONTAMINATED LAND [FOR SMALL AND/OR SIMPLE DEVELOPMENTS]**

No development shall take place until a **site** investigation of the nature and extent of contamination has been carried out in accordance with a **methodology** which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be **made available to** the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development **begins**.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved

Following completion of the measures identified in that scheme and when the remediation **objectives have been achieved**, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be submitted to the Local Planning Authority.

**CONTAMINATED LAND [FOR SMALL AND/OR SIMPLE DEVELOPMENTS]**

No development shall take place until an investigation **and assessment** of the nature and extent of **any** contamination has been carried out in accordance with a **scheme** which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be **submitted to and approved by** the local planning authority before any development begins. If any **unacceptable** contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before the development is **occupied/brought into use**.

If, during the course of development, any **unacceptable** contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate

<p>additional measures.</p>	<p>the approved additional measures.</p> <p>A verification report shall be submitted to and approved in writing by the local planning authority before the development is occupied/brought into use.</p> <p><b>Reason (common to all)</b></p> <p>To ensure that risks from land contamination to the future users of the land and neighbouring land are minimized, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to neighbours and other off-site receptors [in accordance with policy [ ] of the adopted local plan (date).]</p>
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