

WARWICK DISTRICT COUNCIL

TO: HEALTH AND CONTROL COMMITTEE - 12 JANUARY 2000

SUBJECT: IMPLEMENTATION OF PART 11A ENVIRONMENTAL PROTECTION ACT 1990
DRAFT DETR CIRCULAR - CONTAMINATED LAND

FROM: ENVIRONMENTAL HEALTH BUSINESS UNIT

1.0 PURPOSE OF THE REPORT

To inform members about the proposed implementation of new legislation with respect to contaminated land. The report also asks for support towards the approach being taken by the Environmental Health Unit to address this new legislative regime.

2.0 BACKGROUND

Section 57 of the Environment Act 1995 amended Part 11A of the Environmental Protection Act 1990 to introduce a regime for dealing with existing contaminated land. There has been a long gestation period leading to the introduction of this legislation, with many draft circulars and guidance documents along the way. In September this year a draft circular, which purported to address the comments made in response to previous drafts, outlined the very complex framework which the Government intends to bring into force in April 2000. Some of the guidance which will be needed for this process has not yet been determined therefore the actual date of full implementation must still be regarded as uncertain.

3.0 OUTLINE OF NEW CONTAMINATED LAND REGIME

- 3.1 Part 11A will be implemented largely by local authorities. They will have 15 months from the date on which final guidance is issued, to publish a written strategy for inspecting their areas to identify 'contaminated land'.
- 3.2 Contaminated land is defined 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, 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. There are ten pages in the draft circular further elaborating on this definition. There are definitions of 'significant', 'harm' and 'significant possibility' etc.
- 3.3 If land is considered to be contaminated the local authority must then undertake a risk assessment and identify a 'pollution linkage', which comprises: a contaminant, a receptor and a pathway by which the contaminant can affect the receptor.
- 3.4 Where it has been determined that contaminated land exists and that there is a 'pollutant linkage' then this triggers a process through which the local authority must seek to have the site remediated. The site must be entered into a public register and undertake a consultation process. Certain categories of site have been defined as 'special sites', for example oil refineries and where water pollution is involved. The Environment Agency will be the enforcement authority for such sites.
- 3.5 Extensive guidance is set out as to how to identify the 'appropriate persons' who will be held liable for carrying out remediation work. It is intended that local authorities

should attempt to resolve the matter through informal means but if this cannot be achieved then there would be a power to serve a 'remediation notice'. An appeal period of 21 days would be allowed, to a magistrate's court. There are 19 grounds for appeal contained in the draft Regulations and the notice would be suspended during an appeal, though the authority could undertake urgent works if necessary and seek to recover costs, depending on the results of the appeal hearing.

3.6 The standard of remediation will be on a site by site basis. The principle being that the land should be suitable for the current use, without speculation about future use. There are two exceptions to this: a) appropriate persons may conduct more comprehensive clean ups if they wish; b) persons who have caused contamination due to a breach of environmental licence or permit must remove contamination completely.

4.0 RESOURCE IMPLICATIONS FOR THE ENVIRONMENTAL HEALTH UNIT

4.1 The Government has made funding available in the SSA towards the general revenue costs of running the new regime, to meet staffing costs. This amounts to £12 million in this year and £18 million for each of the next two financial years. A bid for resources of £25,000, for next year, has already been made to cover this authority's likely expenditure, though the real costs of implementing the scheme can only be guessed at yet.

4.2 The resource implications for Environmental Health are considerable. It is therefore intended to put the work of investigating the presence of contaminated land, out to contract. Decisions about how to proceed after this can be taken as it develops, when the scale of what we have to deal with becomes more apparent and more of the guidance from Government becomes available.

4.3 In addition to this there will still be the need to prepare tender documents and undertake work to let the contract. It will be necessary to supervise the contract and handle information collected by the survey. At a later stage there will be the need to carry out a consultation process, prepare a strategy, prepare a public register and if necessary become involved with determining persons responsible for and then ensuring the remediation of any contaminated land identified.

5.0 KEY ISSUES STRATEGIES

This area of work would fall under the Environmental Key Issue, 'to improve the quality of air, land and water in the district.....'

6.0 RECOMMENDATIONS

- 1) That the approach being taken towards dealing with the proposed legislation be supported.
- 2) That the bid for resources of £25,000 be supported.

Background Papers

1. Environmental Protection Act 1990
2. DETR Draft Circular - Implementation of Part 11a of the Environmental Protection Act 1990. September 1999

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Areas Affected: District wide