

### **3.0 INTERACTION BETWEEN REGULATORY REGIMES**

---

The EPA 1990 Part IIA has been designed to operate alongside and compliment several other pieces of legislation. The EPA 1990 Part IIA, will not be used where existing legislation may be enforced, providing this legislation adequately deals with the issues of contaminated land, or where the contamination has arisen due to a breach of an existing licence. The role of the existing legislation in respect to contaminated land and the potential integration with the EPA 1990 Part IIA is explained in this section.

#### **3.1 Planning and Development Control**

The planning regime is the major tool currently used to deal with contaminated land and development. The potential for contaminated land is assessed and investigated and conditions are incorporated into planning permission to ensure that a suitable for use approach is adopted for all the proposed developments. The intention of the EPA 1990 Part IIA is to deal with contaminated land issues that are considered to cause significant harm<sup>1</sup>, on land that is not undergoing development.

Potentially contaminated land sites undergoing development will therefore be dealt with using the appropriate powers within the planning regime. Conditions will be attached to these applications to deal with the issues of contamination where they have not been resolved prior to their consideration by Planning Committee. There may be occasions where only part of a contaminated site may be proposed for development. In such circumstances, and notwithstanding that each application would be judged on its merits, it would be a preference that the whole of the site should be remediated, subject to planning and other relevant legislation available to the Local Authority. Assessment of planning applications will include each sites

---

<sup>1</sup> Supra Sec. 1.1.1

proximity to, and potential impact on, all receptors as detailed in the EPA 1990 Part IIA<sup>2</sup>.

Under the Building Regulations 2000 a responsibility is placed on the developer to carry out the necessary investigation and remediation to ensure the fabric of the buildings and any future occupants are protected. These requirements may also be stipulated and enforced through appropriate additional conditions on planning permission.

Remediation may be required due to the investigation of the site. Some remediation may result in the need for planning consent. In such situations more information can be obtained from Development Control, Directorate of Environment and Development Services, CYC.

### **3.2 Water Resources Act (WRA) 1991**

The WRA 1991 gives powers to the EA to take action to prevent or remedy the pollution of controlled waters. The normal action taken under this Act is the serving of a “works notice”. Where it is considered that pollution of controlled waters is, or potentially could occur as a result of contaminated land, the EPA 1990 Part IIA will be used in preference to the WRA 1991.

Due to this preference for the use of the EPA 1990 Part IIA, the Contaminated Land Statutory Guidance states that where the CYC identifies a threat or actual significant harm to controlled waters, the CYC will consult with the EA and take into account any comments the EA propose in respect of remediation. Likewise, should the EA identify, or suspect a site is contaminated and may result in the pollution of controlled waters, the CYC should be informed and consulted enabling the formal designation of the land as contaminated<sup>3</sup>.

---

<sup>2</sup> Infra Appendix F

### **3.3 Groundwater Regulations 1998**

The Regulations give powers to the EA to prevent the discharge of List I substances and restrict the discharge of List II substances to groundwater<sup>4</sup>. The Regulations are complementary rather than supplementary to the EPA 1990 Part IIA for existing and future activities, but do not regulate historic sites, which may have List I, and/or II substances present. In this situation the EPA 1990 Part IIA would be required to be implemented by the CYC in consultation with the EA.

### **3.4 Water Resources Act (WRA) 1991 Part III Discharge Consents**

Discharge Consents are issued by the EA to control discharge of waste material to controlled waters. If pollution of controlled waters occurs from a licensed discharge location, this will be dealt with by the EA under the WRA 1991, as opposed to the EPA 1990 Part IIA. Additionally no Remediation Notice can require action to be taken which may impede or prevent a discharge which has been licensed under the WRA 1991 Part III.

### **3.5 Integrated Pollution Prevention and Control (IPPC)**

The Pollution Prevention and Control Regulations 2000, made under the Pollution Prevention and Control Act 1999, came into force on 1<sup>st</sup> August 2000. The new IPPC permits arising from the said Act will transitionally replace the existing Integrated Pollution Control (IPC) regime over the next few years and will incorporate all activities and discharges associated with the permit for a site.

The EA and Local Authority will carry out the regulation and enforcement of these permits. The regulatory body for each IPPC permit will depend upon

---

<sup>3</sup> DETR Circular 02/2000, 20 March 2000 p.17

the process type. The Pollution Prevention and Control regime requires operators of installations falling within the regime to remediate such sites to a pre-permit standard, determined from an initial baseline survey, prior to closure of operations. This contamination will be addressed through IPPC and not the EPA 1990 Part IIA. If contamination on site below that recorded in the baseline survey is deemed to have the potential to cause significant harm to a receptor, this will be addressed by the EPA 1990 Part IIA.

The situation may also arise where an old IPC permit has been surrendered and not replaced by an IPPC permit and contamination is detected on site. In this instance the EPA 1990 Part IIA will be implemented by the CYC as the site is not being regulated under any other legislation. Guidance on IPPC permits can be found in the DETR Consultation Paper<sup>5</sup>.

### **3.6 Waste Management (EPA 1990 Part II)**

There are several main areas of interaction between Part II 'waste on land' and Part IIA of the EPA 1990. The EPA 1990 Part IIA, will not consider contaminated land issues on sites that hold a current Waste Management License, providing the problem arose through a breach of the license conditions. The EPA 1990 Part IIA does however apply when the contamination on site arises through processes not considered by a condition on the site license.

A Remediation Notice cannot be served by the CYC if the contamination has arisen through illegal deposition of controlled waste. In these circumstances the EA will regulate the sites and the Waste Disposal Authority will undertake enforcement action where necessary.

Wastes arising from the remediation of contaminated land may fall within the category of 'waste disposal' operations or 'waste recovery' operations and as

---

<sup>4</sup> Infra Appendix B and Groundwater Regulations 1998

<sup>5</sup> DETR, Integrated Pollution Prevention and Control, A Practical Guide, August 2000

such could require licensing under the EPA 1990 Part II. Guidance on licensing may be found in the DoE Circular 11/94.

### **3.7 Landfill Tax**

The Finance Act 1996 introduced a tax on the disposal of wastes to landfill, including those arising from the reclamation and remediation of land. However, an exemption from this tax can be requested by the site owner or person(s) operating on behalf of the site owner by applying to HM Customs and Excise. This will only be granted if the material is being removed from contaminated land to prevent significant harm, or to facilitate the land for particular purposes. Exemption will not be granted if the work is being carried out in response to a Remediation Notice served under section 78E of the EPA 1990.

### **3.8 Statutory Nuisance (EPA 1990 Part III)**

Prior to the implementation of the EPA 1990 Part IIA, statutory nuisance under the EPA 1990 Part III was the main regulatory mechanism for enforcing the remediation of contaminated land. It is considered that the EPA 1990 Part IIA sets out the correct level of protection for human health and the environment, therefore the EPA 1990 Part III has been amended in the Environment Act 1995 to remove the ability to use this legislation for contaminated land.

The exception to the use of the EPA 1990 Part III for statutory nuisance in relation to contaminated land is where an abatement notice or order of the court has already been issued and is still in force. The provisions of statutory nuisance under Part III will also continue to be used in preference to the EPA 1990 Part IIA for waste that has been deposited on land and is giving rise to an offence to human senses (such as odours).

### **3.9 Health and Safety**

The Health & Safety at Work etc Act 1974 is concerned with the risks to the public or employees at businesses and other premises. Risks of these kinds could arise due to land contamination, in which case the liaison between the EPA 1990 Part IIA enforcing authority and the Health and Safety Executive (HSE) and Local Authority Environmental Health Departments is essential to ensure the problems are addressed without unnecessary duplication of controls, using the most appropriate regime.

### **3.10 Food Safety**

Part I of the Food and Environment Protection Act 1985 gives powers to prohibit specific agricultural processes and protect consumers from exposure to contaminated food. Under the EPA 1990 Part IIA Local Authorities should liaise with the Food Standards Agency (FSA) regarding any possible use of their powers under the Food and Environment Protection Act, when deemed necessary, for example the confiscation of crops believed to be contaminated. The FSA are available to advise on any potential food safety aspects of any specific cases of contaminated land that may be identified through the implementation and development of this Contaminated Land Strategy. Contaminated land may affect food safety directly by uptake from soils or indirectly by the transport of contaminants to other locations, by causing pollution of waters used to irrigate crops or to water animals.

### **3.11 Radioactivity**

Under section 78YC of the EPA 1990, Part IIA does not consider significant harm or pollution of controlled waters that is attributed to radioactivity from any substance. However, the section does give powers to the Secretary of State to make regulations applying to Part IIA, with any necessary modifications, to deal with problems of radioactive contamination.

### **3.12 Control of Major Accident Hazard Regulations 1999 (COMAH)**

COMAH requires operators handling prescribed dangerous substances to prepare an on site emergency plan, and the local authority to prepare off site emergency plans. The purpose of these plans is to provide details of restoration and clean up of the environment following a major accident. The Health and Safety Executive regulate this process. Should such an accident occur, the EPA 1990 Part IIA would not be used to initiate the clean up or restoration of a site.