

# PART IIA CONTAMINATED LAND REGIME

Procedural Training

PRE-COURSE WORKBOOK



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**The Part IIA Contaminated Land Regime:**

**Training in the Agency's  
Roles and Responsibilities**

**Preparatory Workbook**

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# 1. Introduction

This workbook is an introduction to the background, structure and implementation of the Part IIA Contaminated Land regime.

It will help you prepare for the forthcoming workshop which will cover the Agency's planned procedures to carry out its duties and powers for the forthcoming legislation, due for implementation on 1<sup>st</sup> April 2000.

This training is a key component of initiatives being put into place by the Agency to introduce the regime. It will be built around the Agency's Process Handbook, Procedures, and other technical and support documents.

During the workshop, you will be provided with a route map through the various stages, delivered through structured illustrations, case studies and exercises. The workshop will concentrate on:

- ◆ the Agency's role in the regime
- ◆ how and when the Agency will interact with local authorities who are the principal regulators for the regime
- ◆ watchpoints and key issues that Agency staff need to be aware of in undertaking their specific roles

This workbook provides you with:

- ◆ a summary of existing legislation that is applicable to the regulation of land contamination, and how the new legislation interacts
- ◆ the relevance of planning and development control and its interface with the new legislation

- ◆ a summary of the new regime and the role of local authorities as primary regulator, covering:
  - the duties they are required to undertake
  - the points at which they will interact with the Agency
- ◆ a summary of the matters covered in the Process Handbook which will support you in your day to day functions
- ◆ an introduction to the topics to be covered by the training

This workbook is not intended to replace the Process Handbook and Procedures, but to provide an overview of their contents and key features. You should therefore take time to familiarise yourself with the Handbook prior to the training event. Your manager will be able to supply copies of the documents if you have not already received a set.

This workbook has a series of 'review' questions to help you assess whether you have understood its content. A number of 'research' questions are also included, which you will need to refer to the Process Handbook and Procedures to answer.

If you find there are certain parts of this workbook you do not understand or find difficult to complete, simply highlight them and move on. There will be opportunities to raise matters during the training days.

## 2. Objectives

By the time you have completed this workbook, you should be able to:

- ◆ summarise:
  - the elements of current legislation relating to the control of Contaminated Land
  - the role of the planning regime in the control of Contaminated Land in the context of land development
- ◆ understand:
  - the role the Part IIA regime plays within the legislative and planning framework
  - the role and responsibilities of the Agency
  - the role and duties of local authorities in implementing the regime and the points where they interact with the Agency in:
    - requesting information, advice and support to assist them in their duties
    - transferring regulatory responsibilities to the Agency for certain sites

### 3. Background

UK Government policy for dealing with land contamination is built from two perspectives:

- ◆ preventing new contamination
- ◆ dealing with past contamination

Various legislative measures have been introduced to prevent contamination occurring. Such legislation has sought either to ensure that authorised processes conform to best practice, or to prohibit or control the discharge of certain substances, particularly to groundwater.

Existing contamination at sites identified for redevelopment is dealt with via the planning process. Land not due for redevelopment has historically been dealt with via the Statutory Nuisance powers of local authorities, which are concerned primarily with the protection of human health and property. The Water Resources Act 1991 provides powers to prosecute polluters of the water environment. However, the potential effects of existing land contamination on the wider environment have only relatively recently been recognised and reflected in Government policy.

The previous Government's policy paper Framework for Contaminated Land (1994) identified the need for a modern, specific power to replace the historical statutory nuisance provisions, and to improve the clarity and consistency when dealing with land contamination. This policy has been endorsed by the present Government, and has culminated in the addition of a new section (Part IIA) to the Environmental Protection Act 1990.

This primary legislation, introduced by Section 57 of the Environment Act 1995, is supported by Statutory Guidance which covers key elements crucial to the working of the regime, as well as Regulations that deal with certain detailed provisions.

## **4. The New Part IIA Regulatory Regime**

### **Introduction**

Part IIA allows for the identification of land that meets the statutory definition of 'Contaminated Land' (see Box 1). It enables the enforcing authority to ensure appropriate and cost-effective remediation is carried out to deal with contaminated land, either voluntarily through agreement with relevant parties, or, if this cannot be achieved, by enforcement action.

The principal regulators for the process are local authorities. The Agency has an important role supporting the local authorities, and on certain sites, known as 'Special Sites', the Agency becomes the enforcing authority.

Part IIA requires an overall risk-based approach to dealing with contaminated sites which is consistent with the general good practice approach to managing land contamination. The regulatory regime set out in Part IIA is based on the following main activities:

- ◆ develop a strategy for identifying contaminated sites
- ◆ assess the risks at specific sites
- ◆ identify those sites where unacceptable risks are present
- ◆ determine the appropriate actions to remediate each site
- ◆ consider the costs, and establish who should pay
- ◆ implement the remediation strategy at each site
- ◆ record the action taken

The specific activities to be followed by the Agency when supporting local authorities in regulating Contaminated Land, and acting as the enforcing authority for Special Sites are described in the Part IIA Process Handbook and supporting Procedures.

Other supporting material will be relevant when making decisions identified in the Process Handbook.

### Box 1: What is Contaminated Land?

Contaminated Land is defined under Part IIA 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 significant harm being caused, or
- b) pollution of controlled waters is being, or is likely to be, caused;"

In deciding whether land meets this definition, local authorities need to consider what type of harm is to be regarded as significant, and how to assess if there is a significant possibility of significant harm to one or more of the following receptors:

- ◆ human beings
- ◆ ecological systems or living organisms within specified areas
- ◆ property in the form of
  - crops, including timber
  - domestically-grown produce
  - livestock or other owned or domesticated animals
  - wild animals subject to shooting or fishing rights
  - buildings

Before a local authority can determine that any land in its area is Contaminated Land, it must first be satisfied that a contaminant (source), a pathway (exposure route), and a receptor (vulnerable target) exist for the land in question. The relationship between the contaminant source, pathway and receptor is termed the "pollutant linkage".

Continued

### Box 1 continued

Where a pollutant linkage is resulting in:

“significant harm, or presents a significant possibility of significant harm, or is resulting in the pollution of controlled waters, or is likely to result in such pollution”

it is termed a “significant pollutant linkage” (SPL).

Land should not be identified as Contaminated Land unless all three elements of a pollutant linkage have been identified, and the local authority is satisfied that the possibility of significant harm being caused is significant.

Before determining that pollution of controlled waters is being, or is likely to be caused, the local authority should be satisfied that a substance is continuing to, or is likely to, enter controlled waters. Land should not therefore be designated as Contaminated Land where the entry of a substance into controlled waters has ceased and it not likely to recur.

### When is Part IIA applicable?

Part IIA is relevant for sites in respect of their current condition and usage. Where a change in use of a site is planned, as for example where redevelopment is planned, any necessary action would be carried out under planning and development control rather than under the Part IIA regime.

Where other legislative regimes apply, it may be more appropriate to take regulatory action under these instead of Part IIA. For example, authorisations may be in place under other legislation, such as Integrated Pollution Control (Part I EPA), or the Waste Management Licensing regime (Part II EPA), which may provide mechanisms to deal with any contamination. Alternatively, legislation to prevent pollution of controlled waters may be applicable.

The enforcing authority is not required to serve a remediation notice under Part IIA where they are satisfied that appropriate action is, or will be, undertaken under such regimes.

The interaction of Part IIA with other legislation is shown in Box 2.

## **Who is responsible for regulating Part IIA?**

The primary regulators for Part IIA are the local authorities. They are responsible for the determination of land as Contaminated Land. This responsibility cannot be delegated to any other person or body.

The Agency has a key supporting role to local authorities, by providing information and advice, as well as being the enforcing authority in situations where Contaminated Land has subsequently been designated as a Special Site (see Box 4).

The responsibilities of the Environment Agency and local authorities are summarised in Box 3.

## **Why is communication important?**

Communication is essential to ensure that Part IIA is implemented in an efficient and effective manner. It is therefore vital that regular working arrangements are set up between Agency offices and relevant Local Authorities. The Memorandum of Understanding between the Agency and the Local Government Association (LGA) and the supporting Protocol on Land Contamination includes a provision for such co-operation.

Consultation with colleagues within the Agency is an important component of a number of the activities required under Part IIA, and professional judgement should be used to decide who to consult in particular circumstances. The relevant Procedures advise the minimum consultation required.

**Box 2: Relationship of Part IIA with other legislation**

<u>Regime</u>	<u>Relationship</u>
Statutory nuisance	Statutory nuisance provisions in Part III of the EPA no longer apply to situations arising as a result of land being in a contaminated state. Statutory nuisance powers may, however, apply to Contaminated Land in respect of matters which are not related to the contamination, for example noise from operations carried out on the land.
Planning and development control	Part IIA controls would not normally be used for sites that are the subject of planning or development control legislation as a result of proposed changes in use, or construction works. However, the Local Authority will need to be satisfied that any land will not become Contaminated Land as a result of the change in use.
Pollution of controlled waters	Anti-pollution Works Notices may be served under the Anti-pollution Works Regulations 1999. Part IIA will apply in preference where there is a pollutant linkage between the land and controlled waters.  The deliberate disposal of effluent or listed substances to ground during remediation may be subject to the provisions of the Groundwater Regulations 1998.
Waste management	The provisions of Part IIA do not apply to any land where a waste management licence is in force, unless the contamination is unrelated to any breaches of licence conditions.
IPC and IPPC	A remediation notice may not be served if the powers of the Agency under the IPC regime can be used to deal with the contamination. IPPC will require remediation of land contamination arising from the authorised process.
Radioactive contamination	Separate regulations for radioactively contaminated land will parallel Part IIA.

### Box 3: Responsibilities under Part II A

#### Environment Agency

#### Local authorities

##### Duties

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>◆ provide information to local authorities on land contamination</li><li>◆ ensure remediation of Special Sites</li><li>◆ maintain register of Special Sites remediation</li><li>◆ prepare a national report on the state of Contaminated Land</li></ul> | <ul style="list-style-type: none"><li>◆ inspect their areas to identify Contaminated Land</li><li>◆ consult the Agency on pollution of controlled waters</li><li>◆ ensure remediation of land identified as contaminated</li><li>◆ transfer Special Sites to the Agency</li><li>◆ maintain remediation registers</li></ul> |
|---|--|

##### Powers

- ◆ provide site specific advice to local authorities on pollution of controlled waters
- ◆ provide site specific guidance to local authorities on Contaminated Land

## Review Questions

1. Which legislation implements the Part IIA regime?
2. In broad terms, what does Part IIA enable?
3. What approach does Part IIA require when dealing with contaminated sites?
4. What sequence of actions are set out in Part IIA?
5. Where are the individual activities for the Agency described?
6. What is Contaminated Land as defined by Part IIA?
7. List the duties of the Agency and local authorities under Part IIA.

8. In addition, what powers does the Agency have?
  
9. List five other regulatory regimes which have, or are expected to, interact with the Part IIA regime.

### Research Questions

- ◆ What are the key differences between the Part IIA regime and previous UK legislation for dealing with land contamination?
- ◆ Describe how Part IIA will replace such legislation, and how it will interface with other regimes.

## **5. Part IIA Tools and Support**

The operational requirements of the Agency in fulfilling its roles under the Part IIA regime are set out in the Part IIA Process Handbook.

This document is underpinned by a series of Procedures and supporting Standards and guidance documents that provide procedures and detailed advice on delivering these requirements.

The Procedures cover the following aspects:

1. Liaison with Local Authorities
2. Local authority strategies for inspection
3. Identification of Contaminated Land and special sites
4. Remediation.
5. Agency provision of site-specific guidance for sites designated as Contaminated Land
6. State of Contaminated Land report

A framework for liaison with local authorities is set out in the Memorandum of Understanding between the Agency and the Local Government Association (LGA), and the supporting Protocol on Land Contamination.

## **6. Local Authority Strategies for Inspection**

Part IIA requires local authorities in their role as primary regulators to take a strategic approach to the identification of land that merits detailed inspection. They are to set out this approach as a written strategy, which they are to publish within 15 months of the issuing of the Statutory Guidance.

### **What is the Agency's role?**

The Agency has an important supporting role to play in the development of inspection strategies, relating to the following areas:

- ◆ provision of information to assist authorities in developing their strategies
- ◆ respond to consultation enquiries from local authorities on their draft inspection strategies
- ◆ receipt of published inspection strategies

### **What information may be requested?**

Information is provided to Local Authorities within the context of the Agency/LGA Protocol on Land Contamination.

Before requesting information, the Local Authority should meet with the Agency to discuss its specific information needs. This is to ensure that the Local Authority's process of information collection is as efficient as possible, for both the Local Authority and the Agency.

The information held by the Agency and needed by the Local Authorities at this stage is likely to comprise:

- ◆ aquifer location and characteristics
- ◆ surface and groundwater quality and resources

- ◆ discharge consents and Groundwater Regulations authorisations
- ◆ IPC authorisations
- ◆ nuclear licensed sites and sites where radioactive substances are regulated
- ◆ closed landfills and waste management licensed sites

### **What advice should be provided?**

Comments provided by the Agency in response to a local authority request for consultation on the draft inspection strategy should concentrate on the assistance the Agency can provide through its particular expertise and knowledge.

The Agency should not advise the local authority of the adequacy of the strategy, unless it appears to depart fundamentally from the statutory requirements.

### **Why does the Agency receive Inspection Strategies?**

Each Local Authority is required to provide the Agency with a copy of its Inspection Strategy as soon as it is published. The information is needed by the Agency in order to prepare the State of Contaminated Land Report and to respond to questions on Local Authority Inspection Strategies from the Government. The Agency will also keep under review the progress of Local Authorities in updating their Strategies.

### **What support is available from the Process Handbook?**

The following Procedural Activities within the Process Handbook outline the responsibilities of Agency personnel during the development and publishing of local authority inspection strategies:

- STRAT 01:** Provide information to assist in the development of local authority inspection strategies
- STRAT 02:** Respond to consultation from local authorities on the development of their inspection strategies
- STRAT 03:** Receipt of local authority adopted inspection strategies

These activities are described in *Procedure Note 2 (Local Authority Strategies for Inspection)*, and technical advice is provided in the *Supporting Manual on Information*.

### Review Questions

1. In which three areas does the Agency support the local authority in developing their inspection strategy?
2. List five types of information held by the Agency which local authorities are likely to need in developing their strategies?
3. What is the main objective of comments provided by the Agency on the draft inspection strategy?
4. What activities are followed when assisting Local Authorities in developing their inspection strategies?

## Research Questions

- ◆ You have received a draft inspection strategy for comment from the local authority. Outline the issues you would be able to comment on.
- ◆ Your initial view is that the inspection strategy does not meet its statutory requirements. How would you proceed?

## **7. Identification of Contaminated Land and Special Sites**

Under Part IIA, the local authority is required to determine whether particular areas of land meet the statutory definition of Contaminated Land. This will generally start once the local authority has published its Inspection Strategy, but there may be some overlap between the two sub-processes.

### **What is the Agency's role?**

The local authority has sole responsibility to determine land as Contaminated Land, and this cannot be delegated to any other person or body. The Agency will play an important role in supporting local authorities in the following key areas:

- ◆ provision of known information on specific sites, such as:
  - the physical and chemical nature of the land
  - the identification of who may have caused or knowingly permitted any substances to be present, which could result in the land being determined as Contaminated Land
- ◆ provision of advice about the applicability of other Agency duties and powers
- ◆ provision of advice on pollution of controlled waters
- ◆ inspection of potential Special Sites, as agreed with the local authority (see Box 4)
- ◆ involvement in the formal designation of Contaminated Land as Special Sites

## **What is a Special Site?**

The Contaminated Land Regulations 2000 includes provisions for certain types of land to be designated as Special Sites, provided that they have first been determined as Contaminated Land (see Box 4).

Where there is a likelihood that a site may be designated a Special Site, the local authority will normally request the Agency to carry out inspection of the land on its behalf. The objective of the inspection is to determine whether or not the land may be designated as Contaminated Land.

In this case, the determination of land as Contaminated Land remains the responsibility of the local authority, and the Agency will provide an opinion on whether it believes the data obtained from inspection indicates that a significant pollutant linkage is present. Where it is agreed that Contaminated Land should be designated a Special Site, the Agency takes over from the local authority as the enforcing authority.

Where the Agency and local authority cannot agree between them whether Contaminated Land is a Special Site, the matter is referred to the Secretary of State for a decision.

## **What support is available from the Process Handbook?**

The following Procedural Activities within the Process Handbook outline the responsibilities of Agency personnel during the identification of Contamination Land and Special Sites:

- IDENT 01:** Respond to local authority request for information on specific sites.
- IDENT 02:** Respond to local authority on applicability of Part IIA.
- IDENT 03:** Respond to local authority on whether or not a site is a potential Special Site.

- IDENT 04:** Respond to local authority request for advice on pollution of controlled waters.
- IDENT 05:** Undertake inspection of potential Special Sites
- IDENT 06:** Receipt of local authority determination of Contaminated Land
- IDENT 07:** Formal designation of Special Sites
- IDENT 08:** Referrals over designation of Special Sites
- IDENT 09:** Terminated designation of Special Sites

These activities are described in Procedure Note 3 (Identification of Contaminated Land and Special Sites, which is supported by a number of Supporting Manuals covering technical and legal issues related to these activities.

#### Box 4: What is a Special Site?

Contaminated Land is designated as a Special Site where one or more of the following conditions are met:

- ◆ any of the following activities have been carried out at any time:
  - disposal of waste acid tars in a retention basin
  - purification of crude petroleum or oil
  - manufacture or processing of explosives
  - the manufacture, production or disposal of:
    - chemical weapons
    - biological agents or weapons
  - an authorised prescribed process
- ◆ the land is any of the following:
  - used for naval, military or air force purposes
  - an atomic weapons establishment
  - within a nuclear licensed site
  - subject to Section 30 of the Armed Forces Act 1996
- ◆ the land appears to be contaminated as a result of the escape of substances from land meeting any of the above descriptions
- ◆ land which is affecting any controlled waters that:
  - are used as a drinking water supply, and are likely to require treatment in order to be fit for human consumption, or
  - are not likely to meet the requirements for water quality specified in regulations made under the Water Resources Act 1991, or
  - are contained within one or more defined aquifers and where pollution relates to one or more of defined substances

For full definitions, see the Contaminated Land Regulations 2000.

## Review Questions

1. Apart from the local authority, who has responsibility for the identification of Contaminated Land under Part IIA?
2. What supporting roles will the Agency play in the identification of Contaminated Land?
3. List five examples of a Special Site.
4. What types of information are local authorities likely to request from the Agency?
5. If agreement cannot be reached on whether land is a Special Site, how is the matter resolved.

6. **What are the three elements of a pollutant linkage?**
  
  
  
  
  
  
  
  
  
  
7. **What is a significant pollutant linkage?**
  
  
  
  
  
  
  
  
  
  
8. **What is the purpose of undertaking the detailed inspection of a potential Special Site?**

#### **Research Questions**

- ◆ **The local authority has requested that you undertake detailed inspection of a potential Special Site. What issues do you need to establish before agreeing to undertake the inspection?**
  
- ◆ **How would you proceed with planning an intrusive investigation?**

## 8. Remediation

Once it has been formally determined that land is Contaminated Land, the enforcing authority is responsible for ensuring that appropriate remediation is carried out. The Agency is responsible for securing the remediation of Special Sites. In all other circumstances this responsibility falls to the local authority.

### What is remediation?

The Government's intention is that any remediation required under Part IIA should result in the land being 'suitable for use'. The aim of remediation is to ensure that the land is, in its current condition, no longer Contaminated Land as defined under Part IIA, and that the effects of any significant harm or pollution of controlled waters that has occurred are remedied.

In most cases, this will mean that any significant pollutant linkages (SPLs) need to be broken, by one or more of the following actions:

- ◆ removing or treating the pollutant
- ◆ breaking or removing the pathway
- ◆ protecting or removing the receptor.

It is important to recognise that, under Part IIA, remediation includes not only the undertaking of remedial works ('remedial treatment action'), but also the collection of additional information about the identified SPL ('assessment action'), or the implementation of a monitoring scheme to ensure that conditions do not deteriorate to an unacceptable degree ('monitoring action').

The appropriate form of remediation for each SPL should be carefully assessed, balancing a number of factors including the feasibility, effectiveness and durability of the action. The reasonableness of the remediation action should also be considered, by comparing its costs and resultant benefits.

### **Who is consulted, and why?**

An important component of the Part IIA regime is the consultation period, which provides a means for all relevant parties (Interested Persons) to be consulted (see Box 5). The aim of such consultation is to achieve remediation on a voluntary basis, and to obtain consensus on the most appropriate form of remediation.

The consultation may also be important for practical reasons. For example, other parties affected by the remediation and whose consent may be required to access land and carry out works will need to be included in the discussion.

In addition, owners and occupiers may hold important information on the nature of contamination and the particular circumstances of the land that will be invaluable in determining what needs to be done by way of remediation.

### **Who is responsible for remediation?**

Under Part IIA, the Agency is required to make reasonable enquiries to identify the appropriate person(s) who may be held responsible for carrying out the remediation of Special Sites. The responsibility for remediation falls in the first instance to those who actually caused (or knowingly permitted) the contamination to be present.

The owner or occupier of the land only becomes liable if no such persons can be found (except in the case of pollution of controlled waters, where the owner or occupier cannot be held liable unless they caused or knowingly permitted the contamination to be present).

Where no appropriate person(s) can be found for a given SPL, then that SPL is considered as an orphan linkage. The Agency is responsible for carrying out the remediation of orphan linkages at Special Sites.

The Agency may also carry out remediation at Special Sites in cases where there is imminent danger of serious harm or serious pollution of controlled waters (termed urgent action), or where there are strong practical reasons for doing so. In this case, the Agency has powers to recover its costs from the appropriate persons, in accordance with the Statutory Guidance.

### **What is the process of remediation?**

Interested persons proposing voluntary remediation are required to submit a Remediation Statement, setting out what needs to be done, by when and by whom.

Where no acceptable voluntary proposals are received, the enforcing authority serves a Remediation Notice on one or more Appropriate Persons, specifying what they must do by way of remediation, and the time scale in which the works must be completed. Any person receiving a Remediation Notice has 21 days to appeal against it. If the requirements of a Remediation Notice are not met, the enforcing authority has powers to carry out remediation itself and recover costs.

Where the cost of remediation outweighs the benefits to be gained, the standard of remediation is deemed not to be reasonable. Under such circumstances, a Remediation Notice may not be served. Instead, the enforcing authority is required to publish a Remediation Declaration, explaining the reasons why remediation has not been enforced.

This situation may also arise where the particular remediation action is not consistent with the Statutory Guidance, although this is likely to be a rare event.

A Remediation Declaration must also be published for cases where the Agency cannot serve a Remediation Notice because other legislation takes precedence.

## **What support is available from the Process Handbook?**

The following Procedural Activities within the Process Handbook outline the responsibilities of Agency personnel during the Remediation of Contaminated Land and Special Sites:

- REM 01: Prepare for consultation on remediation
- REM 02: Identify appropriate person(s)
- REM 03: Consult with relevant persons about remediation
- REM 04: Decide what needs to be done by way of remediation
- REM 05: Determine liability of appropriate persons and apportion costs
- REM 06: Deal with cases of voluntary remediation
- REM 07: Prepare and serve a remediation notice
- REM 08: Carry out remediation and recover costs
- REM 09: Prepare a remediation declaration
- REM 10: Record details of remediation on the public register
- REM 11: Process appeals on remediation and registers

These activities are described in Procedure Note 4 (Remediation), which is supported by a number of Supporting Manuals covering technical and legal issues related to these activities.

The Process Handbook also describes activities to be followed when providing site specific advice to local authorities on Contaminated Land. These are discussed in the following section.

## Box 5: Relevant parties under Part IIA

### Interested persons

It is an important principle of the Part IIA regime that remediation will be undertaken only after consultation with interested person(s). These are considered to be:

- ◆ those person(s) notified by the local authority that the land is Contaminated Land
- ◆ any additional person who appears to the Agency to be a potential appropriate person by virtue of causing or knowingly permitting the contaminants to be present
- ◆ any additional owner or occupier of the land in question
- ◆ any other person with a specific interest in the remediation of the Special Site
- ◆ other regulatory bodies.

### Appropriate persons

The responsibility for carrying out the remediation of Contaminated Land rests with parties identified as appropriate person(s). Appropriate persons are divided into two categories, referred to as Class A and Class B Persons.

**Class A Persons:** Those who caused or knowingly permitted the substances which make the land contaminated, to be present in, on or under the land.

**Class B Persons:** Owners or occupiers for the time being of the Contaminated Land. Class B persons are only considered if those belonging to Class A cannot be found.

The Statutory Guidance provides guidance on circumstances where two or more appropriate persons are liable to bear the responsibility for remediation. It also sets out the circumstances whereby appropriate persons may be excluded from liability, by the application of a number of exclusion tests, and how the cost of remediation should be apportioned between those who remain liable after such exclusion.

## Review Questions

1. What is the aim of remediation carried out under Part IIA?
2. Under Part IIA, what activities does the term 'remediation' encompass?
3. Why is it important to consult with relevant parties during the remediation planning?
4. What is a Remediation Notice?
5. In what circumstances is a Remediation Statement prepared instead?
6. What are the reasons for publishing a Remediation Declaration?
7. Who is responsible for carrying out the remediation of Contaminated Land?

8. What is an orphan linkage?
  
9. What are Class A and Class B persons?

#### **Research Questions**

- ◆ What are shared actions, and under what circumstances do Class B persons not have to bear the cost of a shared action?
- ◆ Under what circumstances would the Agency undertake remedial works itself? When would exceptions be made to these conditions?

## 9. Provision of Site-Specific Advice to Local Authorities

Under Section 78V of Part IIA, the Agency has a power to provide site-specific guidance to local authorities, with respect to land identified as Contaminated Land that has not been designated as a Special Site. The guidance may relate to any aspects of the local authorities' powers and duties under Part IIA, including the following:

- ◆ the seriousness of pollution of controlled waters
- ◆ what should be done by way of remediation
- ◆ the standard to which any land, or waters, are to be remediated
- ◆ what is reasonable to require for remediation
- ◆ identification of appropriate persons, including the application of the exclusion tests
- ◆ apportionment of liability
- ◆ recovery of costs

The local authority is required to have regard to the guidance issued by the Agency under Section 78V, but is not obliged to adhere to it.

The purpose of the power is to ensure that the Agency can assist local authorities in making enforcement decisions. It is not, however, intended to enable the Agency to take over the enforcement responsibility for sites that are not designated as Special Sites.

## **What support is available from the Process Handbook?**

The following Procedural Activities within the Process Handbook outline the responsibilities of Agency personnel when providing site specific advice to Local Authorities:

**ADV 01:** Provide site specific advice on pollution of controlled waters

**ADV 02:** Use power under s78V to provide site specific guidance

## 10. State of Contaminated Land Report

The Agency has a duty under Part IIA to provide a report on the state of Contaminated Land. The report will be based on available information held by the Agency, as well as that provided by the local authorities.

The report will provide an analysis of Contaminated Land statistics at a national level, and is expected to be of considerable national and international significance.

### What information is included?

The range of information used in preparing the report is expected to include:

- ◆ Local Authority Inspection Strategies
- ◆ records on the determination of sites as Contaminated Land, and subsequent designations as Special Sites
- ◆ information about numbers of sites inspected prior to determinations of Contaminated Land (including potential Special Sites)
- ◆ information on sites determined as Contaminated Land, including the number of:
  - notices, statements and declarations issued
  - sites requiring urgent action
  - sites for which the local authority is the appropriate person
  - sites for which appropriate persons have been identified as all Group A, all Group B, or mixed
  - orphan sites
  - appeals

- sites where cost recovery was employed, and those where this was prohibited by hardship
- and an analysis of:
- Class A persons by industry/market sector
  - the expected timescale for remediation.

### **Who is responsible for collating the report?**

The Head of Function is responsible for ensuring the preparation of the national report on the state of Contaminated Land, in accordance with Section 78U of Part IIA.

Information is provided by the Regional Contacts, who are responsible for collating information from Area Contacts. Any request to a local authority for information for the report will be issued by the Area Environmental Planning Manager.

The Area Contacts are responsible for ensuring that full records are maintained, and the Groundwater and Contaminated Land System is updated.

### **What support is available from the Process Handbook?**

The following Procedural Activity within the Process Handbook outlines the responsibilities of Agency personnel during the preparation of the State of Contaminated Land Report:

REP 01:            Prepare national report on state of Contaminated Land

## Review Questions

1. Under Section 78V of Part IIA, who does the Agency have a power to provide guidance to?
2. What is the main purpose of this power, and what is it not intended to do?
3. Give five examples of the type of advice the Agency may provide to local authorities under S78V of Part IIA.
4. What sources of information will the State of Contaminated Land report be based on?
5. List five types of information likely to be included in the report.
6. List the responsibilities of Agency Officers in preparing the State of Contaminated Land report.

## 11. Part IIA Training Workshop

As you know, you will be attending a training workshop covering the roles and responsibilities of Agency staff under the Part IIA regime. The workshop will seek to provide you with an understanding of:

- ◆ the various procedural and regulatory decision-making aspects of the regime
- ◆ the business systems which underpin the procedures; and
- ◆ the application of regulatory systems in a variety of land contamination situations

The training is aimed at Agency staff who will be responsible for the practical implementation of Part IIA. Whilst the material will be targeted at the core number of personnel who will be working on Contaminated Land issues on a regular basis, the training will be applicable to those staff involved less frequently, or in a technical advisory basis.

You will receive the training over a two-day period. The programme will comprise a series of modules interspersed with discussion sessions and illustrative case studies.

Following an overview of UK policy and regulation, Part IIA will be discussed in more detail, focusing on the information set out in the Process Handbook and Procedures.

The case studies will be re-introduced at appropriate intervals, serving to illustrate key activities and decisions that need to be made at each stage of the Part IIA process. The background to the case studies is summarised in Box 6.

#### Box 6: Background to the workshop case studies

Cleanwater District Council is developing its Contaminated Land Inspection Strategy. Land contamination has traditionally not been considered as a major hazard by the council. However, a weapons grade plutonium dump was recently discovered at a housing estate, located on a former MOD base,

Shortly afterwards, an Environmental Health Officer (EHO) was given the responsibility of tackling Contaminated Land in the district, including drafting an inspection strategy. The strategy has identified a number of areas within which detailed inspection of certain sites will be undertaken.

The EHO has written to you requesting information for the development of the draft inspection strategy.....

Following the workshop, you will undertake a six-week period of structured development activities, underpinned by a technical skill training log and a manager's guide. You will also be provided with one of the workshop case studies to complete during this period.

A one-day follow up workshop will then be held to assess your progress, identify future development activities, and enable you to discuss any issues or concerns which have arisen during the first few weeks of the regime.

A further follow up workshop will be held after approximately six months.

## 12. Summary

In this workbook you have looked at the roles and responsibilities of the Agency under Part IIA of the Environmental Protection Act 1990.

You will have become familiar with how the Agency supports the local authorities in developing their inspection strategies and in identifying Contaminated Land.

You will also have a broad understanding of the activities the Agency is required to follow in order to secure the remediation of Special Sites, and its obligation to report on the state of Contaminated Land.

Further instruction on individual activities will be provided during the Part IIA training workshop, including the opportunity to discuss any issues of concern. Following the workshop, technical training will be provided, and a series of follow up workshops held.

## 13. Notes