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Joint Circular from the
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DEVELOPMENT OF CONTAMINATED LAND

1. The Government wishes to encourage full and effective use of land in urban areas and the re-use of sites which have previously been developed. Initiatives such as the Urban Programme, Derelict Land Grant, Land Registers and Urban Development Grant all help to bring land back into use: in 1986, almost half of all new development was on previously used land. The new Urban Regeneration Grant and the establishment of new Urban Development Corporations, in addition to those in the London Docklands and on Merseyside, will also stimulate the re-use of land in urban areas. Recycling of land helps to revitalise urban areas and reduces the need to use new sites outside built-up areas, thus assisting the protection of the Green Belt and safeguarding of the countryside. The re-use of contaminated land can contribute towards these objectives.

2. The purpose of this Circular and its Annex is to provide advice and guidance to local authorities and developers on the identification, assessment and development of contaminated land. It updates and replaces Department of the Environment Circular 49/77 (Welsh Office Circular 3/77) which announced the establishment of the Inter-Departmental Committee on Redevelopment of Contaminated Land (ICRCL). It also consolidates and expands the advice on development of contaminated land contained in recent Circulars dealing with Structure and Local Plans, Planning Conditions and Derelict Land.

3. Examples of contaminated sites and their typical, but not necessarily only, hazards include:—

- (i) old sewage works and farms where the concentrations of metals in the soil may be high;
- (ii) land previously used for industrial purposes where a very wide range of hazardous substances may be found; and
- (iii) completed domestic and industrial landfill sites where combustion might be readily induced and settlement, generation of leachate and emission of gases may occur.

4. Contamination may give rise to hazards which put at risk people working on the site, the occupiers and users of the buildings and land, the buildings themselves and water services. If precautions are not taken, contaminants may escape from the site to cause air and water pollution; the emission of landfill gas may be particularly hazardous. If these hazards are not identified and assessed properly, there may be a direct threat to health and safety. Should remedial action be needed in an emergency, there may be additional costs and difficulties. A balance has to be struck between these risks and liabilities and the need to bring the land into beneficial use.

5. Contamination, or the potential for it, is a material planning consideration which needs to be taken into account at various stages of the planning process including the preparation of development plans and the determination of planning applications. The best way of minimising any associated risks is to ensure that areas of potentially contaminated sites are identified at the earliest stage of planning. The necessary investigations can then be carried out before the particular form of development is decided. This should enable cost-effective solutions to be devised, so reducing the need for urgent and expensive emergency action.

6. A summary of existing advice and guidance and a note on the identification of potentially contaminated site is given in Appendix A.

7. It is not considered that this Circular has additional public expenditure or manpower implications for local government. It merely re-states and clarifies advice and guidance given elsewhere and as such should assist local authorities in carrying out their statutory responsibilities rather than impose any additional burden upon them.

8. The Secretary of State looks to local planning authorities and developers to implement the advice and guidance given in this Circular. This should ensure that, in most instances, contaminated land is identified at an early stage in the planning process, appropriate policies are developed for its use and planning applications are decided on the basis of adequate information. Undesirable consequences should thus in future be reduced to a minimum. The specific policies and practices to be adopted by local planning authorities are, however, for them to decide given the particular local circumstances in their areas.

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The Chief Executive

County Councils } in England and Wales
District Councils }

The Town Clerk, City of London

[DOE CDEP/479/26]

[WO WEP/109/126/1]

GENERAL APPROACH

1. Whenever it is proposed to purchase, reclaim, re-use or extend the use of land previously used for industrial purposes or waste disposal, and in some cases adjacent land, the possibility of contamination should be considered by taking into account information on the site history. The site should be investigated if necessary to assess its condition. If this is not done, and if the site is subsequently found to be contaminated, there is a distinct risk that one or more of the following undesirable consequences may occur:

- (a) there may be risks to the health and safety of those working on the site or living near it; (eg. from direct contact with contaminants or consumption of contaminated garden produce).
- (b) there may be concern about the safety of a proposed or an existing development; (eg. from the effect of aggressive chemicals on building materials and services, fire and explosion or settlement).
- (c) there may be other detrimental environmental effects as a result of the disturbance of contaminants; (eg. air and water pollution; difficulty in establishing plant growth).
- (d) there may be delays while contamination problems are being remedied: in extreme cases, emergency action may have to be taken or redevelopment schemes may have to be abandoned. Such action may be very expensive.
- (e) the value of the land may be affected: both buyers and sellers of land may form unrealistic views of the costs of development;

2. Very few sites are so badly contaminated that they cannot be reused at all, but the choice of new use may be restricted by contamination as well as by other planning considerations and the usual financial implications. Each site must be considered on its merits and if necessary treated with caution. Where the previous history of the site suggests that contamination may have occurred, an investigation to assess the condition of the site and identify any particular problems or hazards will normally need to be undertaken by the prospective developer before deciding the most appropriate use for the land. The findings of the investigation should enable the most suitable use to be selected: the development should then be designed to minimise the risks. The specific precautions needed will depend on the degree of risk and the sensitivity of the potential target(s) to the hazards.

POWERS AND RESPONSIBILITIES

3. The responsibility for assessing whether or not land is suitable for a particular purpose, including whether it is contaminated, rests primarily with the developer. It is, in any case, in the developer's interests to do so since the presence and extent of any contamination will affect the value of the land and the costs of developing the site. When determining a planning application for land which it has reason to believe might be contaminated, it will be necessary for the local planning authority to consider whether the proposal takes proper account of contamination.

4. Local Authorities are empowered, under the Town and Country Planning Act 1971 to control most forms of development, including the development of land which may be contaminated. Section 65 of the 1971 Act, as amended by Section 46 of the Housing and Planning Act 1986, gives

powers for local planning authorities to require the proper maintenance of privately-owned land in their area where the amenity of an area is adversely affected by the condition of the land in question. The Public Health Act 1936 and the Building Act 1984 give local authorities the power to serve abatement notices where premises are in such a state as to be prejudicial to health or a nuisance and to impose conditions on the demolition of buildings. Local Authorities are also responsible, under the Building Regulations, and the Housing Acts, for controlling particular aspects of development. Approved Inspectors, under the Building Regulations, also have responsibilities where they have been retained to supervise building work.

5. The Control of Pollution Act 1974 (COPA) and Control of Pollution (Special Waste) Regulations 1980 is the principal legislation controlling the disposal of waste. The deposit of controlled waste (Section 30(1) of COPA) on land is an offence unless licenced by the Waste Disposal Authority. The developer should ensure that any contaminated material removed from the site is properly disposed of, and for Special Waste (Section 17 of COPA), he is required to notify the Waste Disposal Authority.

6. The Health and Safety at Work etc. Act 1974 places a duty on every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees. This is particularly relevant to those involved in site investigations and preparations. It also requires employers and the self-employed to conduct their undertaking in such a way that other persons (eg. visitors, neighbours and members of the public) are not exposed to risks to their health or safety. The Health and Safety Executive (HSE) is responsible for enforcing this Act and the associated legislation in the development situations covered by this Circular. HSE may be informally consulted by developers or local authorities about a particular site or the safety of personnel working on it.

7. Under the Occupiers Liability Act 1957, landowners owe a duty of care to all lawful visitors that their premises are reasonably safe and also to prevent injury to trespassers.

8. Statutory Undertakers responsible for providing essential services to sites have a duty to protect and maintain the quality of their supplies. In order to do this, they may need to take special measures to ensure the integrity of their underground services and installations. Water Authorities and Companies may also have powers under their bye-laws to protect ground and surface water from contamination. Under Section 46 of COPA, Water Authorities also have power to carry out operations necessary to forestall or remedy pollution and to recover the costs of so doing from those responsible.

PLANNING

9. *Development Plans and Policies*

In preparing their development plans local planning authorities need to take into account the environmental consequences of contaminated land. Development plans provide an opportunity to set out policies for the reclamation and use of contaminated land.

10. Local plans and Part II of Unitary Development Plans could include detailed criteria which will be applied in determining planning applications. They may also set out any site-specific proposals for land use in these areas, so that they may be readily identifiable to landowners and prospective purchasers or developers.

11. General guidance on the preparation and modification of development plans is published in DOE Circular 22/84 (WO Circular 43/84), "Memorandum on Structure and Local Plans". The transitional arrangements for London and the former Metropolitan Counties are published in DOE Circular 30/85. Advice on the format and procedures for the preparation of Unitary Development Plans will be issued in due course.

Determining Planning Applications

12. Even before an application is made, informal discussions between a potential developer and the local planning authority can be very helpful. If the local planning authority has reason to believe that there is a possibility that the land might be contaminated, this may be brought to the attention of the developer at this stage, and the implications explained. The applicant can then design his scheme so as to take full account of the likely requirements of the planning authority. Applications need not, however, be delayed pending an investigation by the developer to establish the nature and extent of contamination unless there is good reason to suppose that the land in question is actually contaminated. In districts which contain a significant number of potentially contaminated sites (see Annex), the local planning authority may find it useful to include a question on contamination on their standard application form and a note to applicants on the subject. If an application is received without prior discussion and the authority suspects that the site may be contaminated, it would be of benefit to all parties concerned to advise the applicant that the land may be contaminated and of the factors which will be taken into account in determining the application. The applicant may then wish to consider whether or not to proceed.

13. When it is known or strongly suspected that the site is contaminated to an extent which would adversely affect the proposed development, an investigation by the developer to identify any remedial measures required to deal with the hazards will normally be required before the application can be decided by the local planning authority. Certain aspects of such investigations, such as drilling boreholes, may require separate planning permission. If the information provided by the applicant is insufficient to enable the authority to determine the application, the applicant may need to be asked to provide further information by means of a direction under article 5(1) of the Town and Country Planning General Development Order 1977 as amended. Should the degree of contamination be such that remedial action is required to safeguard future users or occupiers of the site or neighbouring land, or protect any buildings or services from the hazards, then planning permission may be granted subject to conditions specifying the measures to be carried out.

14. Where there is only a suspicion that the site might be contaminated or where the evidence suggests that there is potentially only slight contamination, planning permission may be granted but conditions should be attached to make it clear that development will not be permitted to start until a site investigation and assessment has been carried out and that the development itself will need to incorporate all the measures shown in the assessment to be necessary.

15. The local planning authority may grant planning permission without conditions relating to contamination if it is satisfied on reasonable grounds that in the circumstances none are required.

16. The assessment of the significance of contamination and of the associated risks requires careful professional judgement. It is therefore recommended that the local planning authority should obtain advice from experts in other local authority departments (eg. environmental health, waste disposal, land reclamation, building control, surveying and engineering), and consult with Water Authorities and the Health and Safety Executive, when considering applications to develop contaminated or potentially contaminated sites.

17. Where planning permission is granted for a site on which the presence of contamination is known or suspected, a separate notice should be issued to the applicant(s) informing them that the responsibility for safe development and secure occupancy of the site rests with the developer. It should also warn the applicant that the local planning authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination.

18. If an appeal is made against a refusal of planning permission and contamination appears as a reason for refusal, the Secretary of State will consider the need to appoint a technical assessor to assist the Inspector in determining the appeal.

19. Guidance on the use of conditions in planning permissions is published in DOE Circular 1/85 (WO Circular 1/85). If a problem cannot be solved by imposing a planning condition, it may be possible to do so by concluding a voluntary agreement under Section 52 of the Town and Country Planning Act 1971.

BUILDING CONTROL

20. Where it is proposed to build on a contaminated site, particular attention should be paid to the requirements of the Building Regulations 1985. They require, *inter alia*, that foundations shall be capable of resisting any attack by sulphates or other deleterious matter present in the sub-soil, that the ground to be covered by the building shall be reasonably free of vegetable matter and that precautions shall be taken to avoid danger to health caused by substances on or in the ground to be covered by the building. Approved Document C of the Building Regulations includes practical guidance on identifying the possible presence of contaminants and relevant actions. Building Regulations approval should not be refused unless the contamination would directly affect the building or structure or the health and safety of occupiers or users of the building. When considering the requirements of the Building Regulations, consolidation of land together with possible disturbance of previously deposited materials should not be overlooked. Consolidation is particularly important on landfill sites.

21. If new information comes to light in the course of development which indicates that the risks from contamination are substantially greater than was previously assessed, powers under the Public Health Act 1936, the Housing Act 1957 and the Building Act 1984, which cover premises in such a state as to be prejudicial to health or a nuisance may be invoked by the local authority.

FINANCIAL ASSISTANCE

22. There are a number of grants from Central Government which may be available to help bring contaminated sites into beneficial use. Initial advice on whether a scheme might qualify for grant can be provided by the appropriate Regional Office of the Department of the Environment in England, or the Welsh Development Agency in Wales. The principal grants are outlined below.

23. *Derelict Land Grant (DLG)*. In England, DLG is available for the reclamation of land which because of previous development is incapable of beneficial use without treatment. The object is to bring this land back into beneficial use particularly where private sector development—housing, industry or commerce—will result. Local authorities, private developers and others can apply for grants: these can include the removal of contamination or treatment of contaminated land when this is required as part of a full scheme of reclamation. Grant is also available to investigate the nature and extent of contamination. For local authorities this may be separately from, and in advance of, the submission of a main reclamation scheme. The Government's priorities and objectives for the derelict land reclamation programme in England are set out in DOE Circular 28/85. Related information is given in the Department's DLG guidance notes and replaces the information contained in parts B and C of DOE Circular 17/77, which is now cancelled. In Wales the derelict land reclamation programme is managed by the Welsh Development Agency. Advice on objectives, definitions and procedures is given in the Welsh Office guidelines to the Agency for derelict land reclamation and environmental improvement functions issued in 1982 and 1984 respectively.

24. *Urban Development Grant (UDG)*. UDG is aimed at helping the economic and physical regeneration of inner urban areas by bringing about new private investment and strengthening the local economic base. It is available for capital investment projects which would not go ahead without public sector assistance but which, with that assistance, are commercially viable and help to deal with the problems of rundown urban areas. UDG is available through local authorities in England and Wales. Detailed Guidance Notes can be obtained from Regional Offices of the Department of the Environment in England and in Wales from the Welsh Office.

25. *Urban Regeneration Grant (URG)*. URG helps to promote the economic and physical regeneration of older urban areas affected by industrial change, by enabling the private sector to redevelop large sites and refurbish large complexes of buildings, and by encouraging private sector investment in such areas. It differs from UDG mainly because it is specifically directed at large-scale schemes. Detailed Guidance Notes are available from Regional Offices of the Department of the Environment in England and in Wales from the Welsh Office.

26. *Urban Programme (UP)*. The UP assists selected urban local authorities which face exceptional problems resulting from structural, economic and social change. It is not intended to provide long-term funding for projects and priority is given to capital expenditure. In England, a wide range of projects may be supported within an individual authority's Inner Area Programme (IAP), including works to improve the appearance of sites and buildings. In Wales, projects which are complementary to an individual local authority's main programme may be supported.

27. *European Regional Development Fund (ERDF)*. The ERDF enables European Community funds to be used to correct regional imbalances in unemployment and regenerate declining industrial areas. Basic grants of 50 per cent are available for local and public authority infrastructure investment in Assisted Areas. ERDF also helps finance industrial projects which receive UK regional aid. (In England, applications for industrial schemes are administered by the Department of Trade and Industry). The Fund can also contribute to feasibility studies for potential projects.

Existing advice and guidance

A1. The Interdepartmental Committee on the Redevelopment of Contaminated Land (ICRCL) provides general guidance on assessment and redevelopment of contaminated land. The problems of particular types of contaminated sites are discussed in the following ICRCL papers, which are revised from time to time when new information becomes available:

- ICRCL 17/78 Notes on the redevelopment of landfill sites
- ICRCL 18/79 Notes on the redevelopment of gasworks sites
- ICRCL 23/79 Notes on the redevelopment of sewage works and farms
- ICRCL 42/80 Notes on the redevelopment of scrap yards and similar sites
- ICRCL 59/83 Guidance on the assessment and redevelopment of contaminated land
- ICRCL 61/84 Notes on the fire hazards of contaminated land
- ICRCL 64/85 Asbestos on contaminated sites.

A2. Local authorities wishing to obtain copies of these papers, or to seek general advice on the problems of contaminated sites, should address their enquiries as follows:

For sites in England:

The Secretary, Interdepartmental Committee on the Redevelopment of Contaminated Land
Department of the Environment
Room A342 Romney House
43 Marsham Street
London
SW1P 3PY

For sites in Wales:

The Scientific Adviser, Environmental Protection Branch
Welsh Office
New Crown Building
Cathays Park
Cardiff CF1 3NQ

A3. Detailed professional advice on the specific problems of individual sites can be obtained from specialist consultants with appropriate experience. The ICRCL may be able to assist in defining the needs for and terms of reference of investigations carried out to determine the nature and significance of the contamination on such sites.

Identification of potentially contaminated sites

A4. The site history is the principal factor that determines whether a site is likely to be contaminated or not. Knowledge of the previous uses of a site is therefore essential before deciding whether further investigation is needed, and if it is, to assist in designing suitable programmes of sampling and

analysis. Sites used by certain industries, of which the following are examples, are particularly likely to have been contaminated by their past or present uses; sources of guidance are given in brackets:

asbestos works (ICRCL 64/85);
chemical works;

docks and railway land, especially large sidings and depots;
gasworks, other coal carbonisation plants and ancillary by-products works (ICRCL 18/79; Problems arising from the redevelopment of gasworks and similar sites, 2nd Edition, DOE 1987);
landfills and other waste disposal sites (ICRCL 17/78; DOE Waste Management Paper No. 26, BRE Information Paper 2/87);
metal mines, smelters, foundries, iron and steel works, metal finishing;
munitions production and testing sites;
oil refineries, petroleum storage and distribution sites;
paper and printing works;
plants and heavy engineering installations eg. shipbuilding and shipbreaking;
installations involving the processing of radioactive materials;
scrap yards (ICRCL 42/80);
sewage works and farms (ICRCL 23/79);
tanneries;
industries making or using wood preservatives.

The British Standards Institution is to publish a Draft for Development for the Identification of Potentially Contaminated Land and its Investigation which will set out the currently agreed best practice for site investigations.

A5. The possibility of finding contamination may be checked by obtaining information on the site history: sources include both written and oral records of the previous ownership and uses. Provided that the information on the history of the site is adequate, and that it indicates that contamination is unlikely, it is reasonable to regard the site as "clean" and to develop it in the normal way. It is, however, still prudent to inspect the site carefully to check the historical information against the present condition.

A6. A survey has been carried out for the Welsh Office and Welsh Development Agency to record information about sites in Wales which are thought to be contaminated. A report, 'Survey of contaminated land in Wales', has been published and is available on request from the Welsh Office.