Chapter Two

FIRST FEW STAGES OF A CONTAMINATED LAND "SPECIAL SITE" – A REGULATORY PERSPECTIVE[1]

Introduction:

1. This paper focuses on the first few stages of a special contaminated land site, looking specifically at *identifying* potential appropriate persons and *determining* liability of potential appropriate persons. The paper does not aim to delve into topics such as characterising remediation actions; excluding members of a liability group and apportioning liability between members of a liability group etc. I have concentrated on the stages and the issues that have come to the attention of lawyers working on such sites based in the Thames Region. New issues will probably also come our way and how these issues are tackled are bound to change as the regime, and the players involved within the regime, progress.

2. This paper aims to do two things:

    a. to explain why things may not happen as quickly as expected; and
    b. to forewarn others – of what you can do, to make your roles smoother.

3. I propose to do this by looking at an imaginary site.

Background:

4. The site was part of a much larger residential area identified by Springfields District Council, in their inspection strategy, as one of their priority areas for inspection. It was identified on the basis of "drums" being encountered during

[1] Martha Grekos - This was written when the author worked as Advisory and Prosecuting Counsel for the Environment Agency. She is now practicing at the private Bar from No5 Chambers, in the Environmental, Planning and Public Law Group (London-Birmingham-Bristol). Comments are welcomed on this article: mg@no5.com

garden landscaping and service installation in the vicinity. The Local Authority, have undertaken the inspection of this priority area and identified that an undeveloped area of the estate was historically used to deposit a substance called Bartums. This is a well known substance that causes significant harm to humans, the first symptom is the skin pigmentation changes to bright yellow. Then the hair can fall out, leaving a strangely shaped head, or it turns blue and defies gravity.

5. The site (100 hectares in size) was formerly an undeveloped area of open field. A sand extraction pit within the site area has been infilled over the period of approximately 1937 to 1995, with wastes from various sources.

6. The site is currently open space and rough ground, used by the inhabitants of the residential properties close by. There has been gas migration under Evergreen Terrace, especially the home of H Simpson & family.

Inspection

7. Following inspection, in 2001 the determination of the site as contaminated land was made on the basis of the following significant pollutant linkages (SPL's). These are recorded on the Determination Notice with its plan:

SPL1:- Simpson (a) Pain via ingestion, inhalation and direct contact to residents
SPL2: - Bartane Methane via migration through the ground to housing

Contaminant	**Pathway**	**Receptor**
Simpson (a) Pain	Inhalation, Ingestion and direct contact	Residents (Also has been known to eat my shorts!)
Bartane Methane	Migration	Housing

8. The site has been designated as a Special Site due to the presence of an IPC authorisation for the production of XX, which was found to generate Bartums, under Regulation 2(1)(d). Bartums were only identified, as causing significant harm to human health, in 1993.

Practical issues:

9. This is the ideal scenario that the contaminated land has properly been defined: all SPLs have been identified, the extent of the contaminated land is clearly delineated on a map, s78B notices have been served on by the local authority to the Environment Agency (and/or owner of the land, occupier of land, each person who appears to the authority to be an appropriate person) and that the land has been determined correctly in order for it to be a Special Site under s78C.[2]

10. However, on a practical level we sometimes encounter problems:

    a. All the local authorities in the country have different resource demands and training. As additional funding for Part IIA was not ring fenced, Part IIA needs have had to compete with other local authority functions and needs such as education. It has been difficult to ensure that sufficient resources are consistently provided. Also, local authority officers do not have such close links with their counterparts working for other authorities as happens within the Environment Agency, so it is harder for them to build up a collective pool of experience. For example, mistakes can sometimes be made with the designation e.g. regarding the description of the SPLs present. SPLs can be quite technical and sometimes they are very complicated. If this is spotted, then it might be possible to address the matter. An example would be if the Environment Agency's contractors undertake an external review of the technical information gathered to date. There is no guarantee that

[2] References here are to sections of Part IIA of the Environmental Protection Act 1990 as inserted by the Environment Act 1995.

such mistakes will be spotted and corrected, whether by the Environment Agency or the local authority. Once again, this does slow things down. The Environment Agency and local authorities have to work more closely together, as it has also been the case that review of the files revealed that some local authorities had misfiled or delayed their formal written request to the Environment Agency to inspect the site and that other procedural steps had not been followed carefully.

b. B.20[3] sets out that a "detailed inspection may include **any or all** of the following:

   i. the collation and assessment of documentary information, or other information from other bodies;
   ii. a visit to the particular area for the purposes of visual inspection and, in some cases, limited sampling (for example of surface deposits); or
   iii. intrusive investigation of the land (for example by explanatory excavations)."

On some occasions, as soon as the local authority thinks a site is a special site it contacts the Environment Agency and tends to just carry out the desk-top study. It leaves the Environment Agency to do the intrusive inspection. Funding for the Environment Agency for Part IIA is given as additional grant in aid, additional to the Environment Agency's normal budget. Local authorities can access the same fund, but because of the way they are financed they get it as a loan. Some English local authorities either can not, or chose not to, avail themselves of this fund. It is not available for Welsh sites. The Environment Agency therefore does not have extra funds to carry out the intrusive inspections. There is no extra funding available for this and it cannot recoup any costs, though the Environment Agency can receive some funding for some of this from DEFRA. It takes time to

[3] Of the Statutory Guidance, DETR Circular 02/2000

gather sufficient information and does not have funds for this, unless it can claim funds from the capital project.

c. In addition, it is worth noting that unlike flood defence work, the Environment Agency does not have an emergency workforce waiting for sites to come their way, so they can immediately work on remediation. With work relating to contaminated land, the Environment Agency will usually have to get tenders in, let contracts etc., in addition to following through with the consultation procedure. Planning permissions, consents etc. might be needed and all this takes time.

Information

11. In addition to the record of Determination the following information has been obtained from local authority records.

12. After reasonable enquiry, a number of individuals have been identified who have been associated with the site and associated activities. It has not been possible to identify any owners of the land prior to 1937. In 1937 it is recorded that the site was under the ownership of Montgomery Burns' brother, Mr A.B. Sconder. Between 1937 and 1993 Mr A.B. Sconder produced Bartums under an IPC licence. The licence was surrendered, in order to quarry the sand. Rumours have it that perhaps as a small child Mr A.B. Sconder had longed for his own sand pit, and finally realised this ambition by build a mega one – leaving a hole to infill. Mr A.B. Sconder then operated an illegal waste disposal facility at the site until 1995. The substance Bartums was successfully buried in this sand pit and other wastes are known to have been deposited by:-

    a. Messers P.A. Aitch and Sons Ltd, a local tar producer company, still in existence;
    b. The Muck and Brass Company Ltd who operated the neighbouring brass foundry;

c. Other sources of wastes are also suspected, especially as Mr A.B. Sconder agreed to take waste from the surrounding towns, Shelbyville and NorthhaverBrook.

13. There is of course the question of whether Police Chief Wigum looked the other way when all this illegal activity was going on!

14. In the end of 1995, Mr A.B. Sconder, sold his interests in the land to the Kwick-E-Mart owner, Apu, who had thought about expanding his business (to his disappointment, his attempt to bridge the gap between East and West with tofu dogs and curry crullers met with resounding disinterest from customers). Mr A.B. Sconder died in 1996. After reasonable inquiry it can be assumed that this individual no longer exists.

15. In 1996, planning permission was granted to the Springfield District Council for restoration works for the pit. These involved some removal of the substance Bartums. These were safely disposed of off site and are not causing any harm, unlike the ones that remain. The Muck and Brass Company Ltd were dissolved in 1994.

Practical issues:

16. You should note that at least this level of information will be needed before the EA officer starts to apportion liability, exclude people and decide if the site is a possible orphan site. Decisions should not be taken without adequate checks having been made in conjunction with legal services.

17. The Environment Agency would be working through the legislation and Chapter D of the Statutory Guidance to identify appropriate persons and determine liabilities. The procedure comprises five stages:-

    a. Identifying potential appropriate persons and liability groups
    b. Characterising Remediation actions
    c. Attributing responsibility between liability groups

d. Excluding members of a liability group
e. Apportioning liability between members of a liability group

Identifying potential appropriate persons and liability groups

18. The Statutory Guidance is quiet as to how to go about finding who the appropriate person ("AP") is. In addition, historically there have been many cases on what causing means. However, as an AP can be liable for either causing or knowingly permitting, it will be necessary to examine both. This paper does not aim to discuss the meaning of "causing" and "knowing permitting", as this area creates an interesting debate which is best reserved as the subject of another talk. However, the following can therefore be said to be examples of how the Environment Agency would go about making reasonable enquiries (such enquiries would also assist potential APs to gather information to show to the Environment Agency why they might be able to rely on an exclusion test:[4]

    a. Company search
    b. Land registry search
    c. Check names
    d. Electoral rolls
    e. Whether have access to all information and complete file from the local authority
    f. Local search
    g. Legal follow-up to chase after the local authority
    h. Interviews from APs - ask them to give more information (use the Environmental Information Regulations)
    i. Talk to colleagues within the Environment Agency
    j. Write to water companies (Do they have any monitoring information?).
    k. For each contaminant, link it into each site. Not isolate them. Technical and legal element to be put together
    l. Public Records Office

[4] I will deal with this further below.

m. Interviews/ asking people in the community
n. Contact local historian – document items, local history society, publications, local papers, etc
o. Go to local library – local history archives.
p. Customs & Excise; Inland Revenue; Health and Safety Inspectorate; Conveyancing type searches; regulatory bodies (e.g. coal authority) etc.

19. It will take time to gather such information together, so the process cannot happen overnight, neither will it always be a smooth and a simple process. Once information is received, and if it is received, then this has to be analysed and considered. Further investigation/analyses might also be needed before the information is unearthed.

20. An example worth mentioning is of a case where a former employee has a distant memory that he buried mustard gas on a site. The problem here is that the Environment Agency is only acting on someone's 'hazy' memory. There are also issues concerning whether the Environment Agency should investigate and sub-issues flowing if there is any puncturing of the buried gas tank. However, here, it would be necessary to interview the employee and for the Environment Agency to form its own view. This highlights the benefits of a lawyer to be more involved. This regime requires that lawyers are more proactive rather than just having a reactive attitude.

Determine Liability of Appropriate Persons and Apportion Costs

21. I want to focus on the procedure for determining liabilities of who is an AP, as this is a complex matter.

22. The Statutory Guidance sets out that under section 78F(2):-

> "The enforcing authority should identify all of the persons who would be appropriate persons to pay for any remediation action which is referable to the pollutant which forms part of

> the significant pollutant linkage… To achieve this, the enforcing authority should ***make enquiries*** ***to find all those who have caused or knowingly permitted*** ***the pollutant in question to be in, on or under the land***. Any such persons constitute a "Class A liability group" for the significant pollutant linkage"[5]

23. In this scenario, it would be quite clear in identifying the liability group for each SPL:

SLP 1 – Simpson (a) pain

24. Anecdotal evidence suggests that various companies (Springfields District Council and Muck and Brass) deposited other types of waste in the pit, but the only company known to have deposited waste, that could contain Simpson (a) Pain, is Messers P. A. Aitch and Sons Ltd, a company still in existence. Messers P. A. Aitch and Sons Ltd is therefore a Class A person by virtue of causing the substances to be present at the site. Mr A.B. Sconder who owned and operated the pit as a landfill site is dead and hence cannot be found for the purposes of this legislation. Appropriate persons under s78F will also include those who knowingly permitted the substances to remain there. Simpson (a) Pain has been linked to the presence of the bartums. Springfields District Council clearly knew of the existence of the bartums and had the ability to do something about these. Mrs Marge Simpson started making repeated complaints in 1993 to Springfields District Council because she noticed her family skin colour was changing. These complaints increased in 1994 when they experienced very bad hair days. However, the family then achieved celebrity status, partly due to their unique appearance, the complaints stopped, and so did the work on remedying the problem in 1996/7, the commissioning of which was due to be debated at the next council meeting.

[5] paras D.10-11 – my own emphasis.

25. In this instance, the statutory exemptions do not apply so the membership of the liability group remains the same. The liability group for SPL1 (Simpson (a) pain) will be as follows:

Liability Group 1

CLASS A PERSONS

Messers P.A. Aitch and Sons Ltd (Causer)

Springfield District Council (Knowing permitter)

CLASS B PERSONS

These do not need to be identified because Class A persons can be found. For sake of completeness, class B persons would be the owners or occupiers, i.e. Apu. The Simpsons family and their immediate neighbours are not owners or occupiers (their house is not on top of the landfill, nor is their house/land adjoining the site in order to also be a special site under Regulation 2(1)(l)).

SLP 2 – Bartane Methane

26. Anecdotal evidence suggests than a number of companies' wastes were deposited in the tip and were the causers of the bartane methane being present. This waste had come from Shelbyville and NorthhaverBrook. Nonetheless, no company or person can be traced as the towns and people have been wiped-out due to a nuclear explosion. Mr A.B. Sconder who owned and operated the pit as a landfill site is dead and hence cannot be found for the purposes of this legislation. However, available information suggests that the principal source of bartane methane being generated is waste from a local brass foundry, operated by Muck and Brass Company Ltd. A search of Companies House revealed that the company was dissolved in 1994. If the company had still been in existence, it would have been a Class A person. Appropriate persons under s78F will also include those who knowingly permitted the substances to remain there. No evidence has been found that Springfields District Council knew of the disposal of the waste and the presence of Bartane Methane.

27. In any event, as no Class A person can be found, the appropriate person would be the owner or occupier of the land.[6] In this case, it is Apu and he will have to bear responsibility for the things which are to be done by way of remediation.

28. In this instance, the statutory exemptions do not apply so the membership of the liability group remains the same. The liability group for SPL2 (Bartane Methane) will be as follows:

    Liability Group 2

    CLASS A PERSONS
    None that can be found

    CLASS B PERSONS
    Apu (owner)

Practical issues:

29. It should be noted, though, that if there is imminent danger of serious harm, for example, then the Environment Agency will endeavour to deal with the matter swiftly (e.g. S.78N(3)(a) allows the Environment Agency to carry our remediation where it considers it necessary to do anything itself to prevent the serious pollution of controlled waters of which there is imminent danger. This is an important issue since funding through Capital Projects to carry out remediation may be available if this section applies). However, the majority of the sites will have been contaminated for many years. Some contamination dates back to the early days of the industrial revolution, so investigating sites and identifying potential APs will take some unravelling. If things do not appear to be happening very quickly, then this is because there is a lot of activity taking place "behind the scenes". For instance, the Environment Agency:

[6] See ss. 78F(4) and (5) of the Act.

a. will possibly be completing a file entry for each stage;
b. will be carrying out a visual inspection and possibly an intrusive inspection;
c. will be carrying out a 'Proper and reasonable enquiry' – this will take up a great deal of time and there will be a huge paper chase. I note below that a fuller and clearer exchange of information early on, will help to speed up the process;
d. will have its lawyers and area officers sitting down to scope out what needs to be done for each site – this involves not only considering legal issues but also the technical issues;
e. will start to document the decision-making process; work on the remediation strategy will be started – defining when this will happen and how;
f. will activate and maintain communications outside and internally – i.e. a dialogue being created between the local authority, APs etc. and the Environment Agency.

30. However, there are practical problems in identifying who is a "causer" or "knowing permitter":

a. The potential APs (or bodies/people from which/who information is sought) will have to give a great deal of information to the Environment Agency in order for the AP to be able to show that liability has been passed on to someone else. In litigation, there is a duty on parties to disclose everything, but there is nothing like that under the contaminated land regime, as the scheme is based on trying to solve matters without going down the litigation route (though there is the availability of an appeal regarding the Remediation Notice). The Environment Agency cannot therefore 'force' potential APs to disclose information (unless, for example, the information is potentially disclosable to the public under the Environmental Information Regulations 2004.[7] However, it is in the interest of potential APs to

[7] S.I.. 2004/3391

disclose information if they want to show, for example, that assets, rights and liabilities have been acquired by someone else (e.g. through reorganisation). This should happen during or before any consultation on the draft remediation notice. It can start as soon as Part IIA starts. Naturally, this will take a great deal of time as it takes quite a while to acquire the information and for various parties to consider such information.

i. An example of this is where three extensions of time were required. Further information had become available, so there was a need for additional time to explain the document. This is advantageous for all parties involved because if there is an appeal, and if the information came to light only then, then there would be a need to adjourn (and perhaps also an application for costs). Hence, it is better that there are extensions now. In addition, it is advisable to pass on information regarding other sources of potential contaminants in order for the other sides to look at and to allow the other side to dismiss it. However, there is no advice about drawing the line with regard to extensions under the consultation phase in the Statutory Guidance, and hence it is being approached at this stage on a case-by-case basis.

ii. At this point, it is worth stressing that co-operation by potential APs is important. If potential APs know, for example, that a company does not exist, or they have already tried to find them and they have failed, potential APs should share with the Environment Agency information such as where they looked and informing the Environment Agency of the results. This will prevent the Environment Agency making duplicate enquiries and speeding up the gathering of this essential information.

iii. Furthermore, if potential APs think they can benefit from an exclusion test then the onus is on them to prove this. Just

reciting that they benefit from the tests is insufficient. The more information the potential APs can provide, the sooner it will be possible to decide if they should be excluded. This also applies if potential APs think there are other APs out there. I have already mentioned above the sort of enquiries that can be made. Experience to date has shown that a fuller and clearer exchange of information early on will help clarify the areas and extent of any disagreement, so that both parties can do what they can to reach a settlement.

iv. Non-main players (such as those who might need to grant access to land next to a contaminated site) might be involved. Hence these non-main players, and others, might receive a letter from the Environment Agency about Part IIA. However, it does not automatically mean the Environment Agency will be asking them to remediate; there might be another role involved, such as requesting information in order to dismiss certain people as potential APs, or to even dismiss themselves as APs. Voluntary dissemination of information is therefore vital.

v. At the moment, progress is being made with identifying sites, and carrying out initial investigations. Although the Environment Agency are starting enquires, which will enable them to address these questions, it is too early to point to any underlying trends. A fuller and clearer exchange of information early on is important.

vi. It is worth bearing in mind that the Environment Agency handles a large quantity of information obtained/produced as a result of its environmental responsibilities. In respect of Part IIA duties this will include, for example, information which is:

1. obtained by/supplied to the Environment Agency to allow it to carry out the required technical decision-making;

2. relevant to the provision of advice to local authorities;
3. required to support provision of reports on the state of contaminated land;
4. generated by the Environment Agency e.g. statistical data;
5. supplied by third parties, such as "appropriate persons" or other interested parties.

vii. The exchange of information between the Environment Agency and local authorities is central to the regulatory activity under Part IIA. It is also clear that third parties will have an interest in obtaining information relating to contaminated land and that therefore requests will be made to the Environment Agency for the provision of such information. It is worth stressing that the Environment Agency is bound by rules regarding disclosure of information. *Some rules require it to disclose information and some prohibit it from doing so.* Of course, there is the interaction between these rules, which prohibit disclosure, and freedom of information. As such, it is worth speaking to a lawyer who is well versed in access to information law, as this matter is complex.

viii. Information handled by the Environment Agency in carrying out its statutory functions generally falls into one or more of the following categories:

1. information which must be included on the public register;
2. information which must not be included on the public register, because it is commercially confidential or may affect national security;
3. environmental information which, although it may not be required to be included on the public register, is

potentially disclosable to the public under the Environmental Information Regulations 1992;[8]

4. information which is potentially undisclosable under the Data Protection Act 1998;
5. information which is supplied to the Environment Agency on a confidential basis;
6. information which was covered historically by the Open Government Code of Practice.[9]

ix. This paper does not aim to go into an in-depth discussion about the legislation relating to environmental information; these legal provisions are complex and so this is best left as the subject for another talk. However, it is worth noting that the Environment Agency generally operates a policy of openness, which provides for disclosure of information *where such disclosure is permitted by the law.*

x. Information will be placed on the public register where this is required by Part IIA or the Regulations,[10] unless commercial confidentiality or national security provisions apply to require exclusion. In brief, the register must include:

1. Remediation Notices
2. Appeals against Remediation Notices
3. Remediation Declarations
4. Remediation Statements
5. Appeals against Charging Notices
6. Designation of Special Sites
7. Notification of Claimed Remediation
8. Conviction of Offences under Section 78M
9. Guidance Issued under Section 78V(1)

[8] S.I. 1992/3240.
[9] now superseded by the Freedom of Information Act 2000.
[10] Contaminated Land Regulations (England) Regulations S.I. 2000/227.

xi. It should be noted that the register is not intended to be a straightforward register of contaminated or potentially contaminated sites. It is intended to be a register of regulatory action following the service of a remediation notice (or designation in the case of special sites). Information should not be placed on the public register at the time contaminated land is identified by the local authority (apart from in Scotland).

xii. Regarding other disclosure, each case must of course be considered on its own facts, and the conclusion will always depend upon the specific nature of the information requested.

31. It is worth ending this paper by mentioning Part IIA's dual role in remediation, that of voluntary remediation. Voluntary remediation is being pursued by the majority of sites. The Environment Agency is working together, for example, with Managing Director/owner/occupier of contaminated land sites who are successfully managing the risks (environmental, financial etc.) with the help of the Environment Agency and on their own.

Practical issues – VOLUNTARY REMEDIATION:

32. Voluntary remediation requires commitment by all parties to resolve the issues as well as forward planning. Thinking not only depends on what use we are looking to achieve now, but also looking ahead in the future. Naturally, this will take a great deal of time. Lawyers, technicians, managing consultants, accountants, project managers etc will all be involved.

a. Time will be taken, for example, in preparing and publishing the Remediation Statement. In any case where no remediation notice may be served because appropriate remediation is taking place, or will take place without any such notice being served, ***the person responsible for***

the remediation is required to prepare and publish a remediation statement.[11]

b. S78H(7) requires the following information to be recorded in a remediation statement:

   i. The things which are being, have been, or are expected to be, done by way or remediation in the particular case;
   ii. The name and address of the person who is doing, has done, or is expected to do each of those things; and
   iii. The periods within which each of those things is being, or is expected to be done"

c. Thus, a great deal of forward planning and discussions are required with various players (see below). It is also worth pointing out that even if, for example, the planning applications change (for whatever reason, be it with what is proposed or when it is actually granted – or not - or when development starts etc), another remediation statement can be drafted (with the new dates, plans, proposals etc) which will supercede the previous one.

d. If the person who is required to prepare and publish the remediation statement fails to do so within a 'reasonable time', the Environment Agency, under section 78H(9) may do so itself and recover reasonable costs. 'Reasonable time' is not defined in the legislation or Statutory Guidance. Many site owners, for example, are not aware of the legislation. A practical way forward is therefore to inform them of the need to do this and to inform them that it might be best to seek advise from a solicitor/consultant. There is no duty on the Environment Agency to inform them, but this is a voluntary regime and very much one that involves a great deal of co-operation, liaison and negotiation

[11] Sections 78H(7) and 78H(8)(a) – note that this does not apply if enforcement action is underway or could be taken, which would remediate the land or waters or there is a matter of urgency.

between the Environment Agency and the people involved in the voluntary remediation.

e. The Environment Agency also keeps under review the remediation that is actually carried out, as well as keeping in mind whether any additional remediation is necessary. This is because if, at any time, the Environment Agency is not satisfied that appropriate remediation has been, is being, or will be, carried out it may need to serve a remediation notice.[12] The Environment Agency may cease to be satisfied if, in particular:

    i. there has been, or is likely to be, a failure to carry out the Remediation Statement, or a failure to do so within the times specified; or
    ii. further remediation actions now appear necessary in order to achieve the appropriate standard of Remediation for the relevant land or waters.

f. There is no definition on how long, or under what conditions, the Environment Agency can be satisfied that 'appropriate things are being done, or will be, done by way of remediation without the service of a remediation notice on that person'. Given the very nature of the expression it is clear that it is a judgment call for the Environment Agency, and the officers involved in each case, to make on a case by case and site specific assessment. Consequently there is no definition of what it means or any formulae for how to apply it, indeed there is no clear answer to the question of when or how long a voluntary remediation scheme remains viable since this will depend on the site specifics. Thus, things will take time if the responsible person for the remediation needs to apply for another licence or a planning application if a new remediation action is needed to achieve the appropriate standard of remediation.

[12] Section 78H(5)(b) of the Act.

33. The remediation work will be phased and so nothing might be seem to be done physically on the land, until much later on because many things are happening "behind the scenes". The following matters indicate what could be happening behind the scene:

    a. It will take time to come up with a remediation strategy – to define when this will happen and how; there will be a need to consider a schematic plan of the site as to how to proceed and go through the work;
    b. Risk assessments will need to carried out. Long-term management of site will need to be thought about: design, construction, filling etc of landfill;
    c. A remediation statement will need to be prepared and published on the public register;
    d. Remediation is also regulated by a number of statutory regimes, which need to be considered.

        i. Planning permissions (be it for excavation of contaminated soil, remediation and development etc.) need to be applied for and to be granted. The planning authority as well as the Environment Agency will need to agree the remediation methodology strategy: to include agreed remediation goals, phasing of work, testing during work, information collected etc. Planning applications will take time to be decided and granted by the planning authorities. Work so far indicates that this needs a great deal of forward planning and a great deal of time will be spent amending applications due to discussions instigated by the local authorities, hence reports will supersede details provided in application documents; documents will also include very detailed environmental statements to the specification of the local authority and consultants will be employed to scrutinise the process. It must be remembered that there might

be more than one local authority involved and several applications that need to be made simultaneously (see below);

ii. IPPC permission might be required, and this needs to be liaised with the Environment Agency;

iii. A water abstraction licence might be needed;

iv. If during demolition and clearance of structures from the site it is necessary to crush material, then a crushing plant will be the subject of a Mobile Plant Licence issued under the Waste Management Licensing Regulations 1994;[13]

v. Any applications of housing developments (future use) will also need to be made;

vi. Measure of control of noise and dust will need to be agreed with the Planning Authority prior to commencement of demolition/remediation work;

vii. Need to consider removal of newts, trees, vegetation etc.

viii. Need to consider whether the AP needs to appoint an internal manager for this (Project managers can get expertise from elsewhere – subcontract work as no technical expertise).

34. The Environment Agency, therefore, has to carefully balance between effective regulation and enabling those involved to do the voluntarily remediation themselves. This will be a difficult job, as issues of insolvency and hardship might arise; good communication links will need to be established between all parties involved; regular contact will need to be maintained etc.

Remediation packages

35. The Environment Agency will then need to consider what needs to be done by way of remediation. This will take up a great deal of time, as various remediation packages will need to be considered.

[13] or will be registered as exempt from the Regulations.

36. A remediation package/s need to be identified for the SPLs as there will probably be more than one way of tackling each SPL. Synergies and savings will also have to be thought about when looking at packages and schemes. This is best left as the subject for another talk, when more sites have reached this stage.

Conclusion

37. The Springfields case-study shows that many issues need to be thought through when identifying potentially APs and determining liability. The regime needs to be worked at in stages. There will be moments when it feels as if things are "going slow", but that is only because investigation/searches etc are going on behind the scenes and there are many hurdles that need to be overcome before an outcome is reached, as I have clearly indicated above. Most people probably want to avoid litigation and so it is important in getting all matters right first time round. Hence, it is vital that potential APs co-operate with the Environment Agency and a dialogue is created between us and them as well as a good and honest exchange of information. This is the best way forward.

38. The Springfields site could proceed through Part IIA (and therefore move on to the next stage of apportioning liability in order to be able to serve a remediation notice) or through the voluntary remediation process. The Environment Agency may be informed before or during the course of consultation on remediation requirements that the AP or some other person intends to carry out the particular remediation actions on a voluntary basis. Perhaps Apu would want to carry out the remediation on his land or another AP brings forward proposals to develop the land in order to fund necessary remediation. If the site goes along the voluntary remediation route, this will require commitment by all parties to resolve the issues as well as forward planning. The earlier lawyers/consultants etc. are on board, the quicker matters/issues can be thought about and resolved. The Environment Agency will continue to carefully balance between effective regulation and enabling those involved to do the voluntarily remediation themselves.