

Identifying those responsible for Contaminated Land in Camden

At the start of this stage we will have determined which land is contaminated land.

By the end of this stage we will have identified those persons (Appropriate Persons) we consider responsible for cleaning up (remediating) the land.

There are several stages involved in the identification process before a site can officially be classed as 'contaminated' - this is covered by the Inspection and Determination notes. Once a contaminated site has been identified, risks associated with the site need to be dealt with. A programme of remediation will normally carry this out. Before remediation can take place we have a duty under the legislation to identify the appropriate person to bear the responsibility for the clean up of the site.

It should be stressed that the purpose of remediation is to make the land safe by reducing any significant risks to an acceptable level (suitable for the current use). Remediation may not necessarily eliminate all possible future risks or remove all the pollutants e.g. a housing land use requires a stricter level of cleanup than an office development. Whilst the site may be suitable for use as an office, it may not be suitable for housing and will require remediation before it is developed for that purpose in the future.

Establishing the Appropriate Person

Under the legislation there are two classes of appropriate persons, Class A Appropriate Persons and Class B Appropriate Persons.

Class A Appropriate Persons

This is any person, or persons, who caused, or knowingly permitted, the contaminating substances to be in, on or under the land. If the Class A person can be found and held accountable for the presence of contamination on a site, it is they who will have to undertake the remediation and meet its costs.

Class B Appropriate Persons

This is the current owner or occupier of the land. If the Class A person for a site cannot be found the legislation states that the responsibility for the contaminated land passes to the Class B person.

Council Duties to Identify Appropriate Persons

- The legislation gives a duty to the Council to identify those who may be responsible for the contaminated land – either by causing or knowingly permitting the contamination to take place, or in the absence of the polluter, the current land owner.
- We have to make a 'reasonable enquiry' when identifying who may be responsible. Sources of information for a reasonable enquiry include Council records, information gathered from documentary evidence such as historical maps, old plans of a site, title documents and deeds indicating ownership and other sources.
- We will always try and enforce the 'Polluter Pays Principle' and try and identify the person that has caused the contamination and hold them responsible.
- Once we have identified the appropriate person, we will write to them and inform them that the land has been determined 'contaminated'.

- If at any stage it becomes apparent that another appropriate person exists, they will also be included, either as well as, or instead of those previously identified. Where this happens, we will notify all affected persons in writing.
- Once we have written to the appropriate person, this signifies the start of the consultation process on what remediation might be appropriate.

Information we will provide to appropriate persons

To help all appropriate persons understand why we are interested in them and the site, we will provide the following:

- (i) a copy of the written record of the determination made by the Council
- (ii) information on the availability of site investigation reports and
- (iii) an indication of the reason why particular persons appear to be appropriate persons.

We will also inform the appropriate persons about the tests for 'exclusion' from and 'apportionment' of liabilities – see policy note on Exclusion Test, Apportionment of Liabilities and Cases of Hardship.

For further information on identification of Appropriate Persons refer to

Department of the Environment, Transport and the Regions (DETR), Circular 02/2000, Environmental Protection Act 1990: Contaminated Land, 20th March 2000.

Chartered Institute of Environmental Health (CIEH): Local Authority Guide to the Application of Part IIA, Section D. July 2001