

**REPORT OF: HOUSING, HEALTH AND ENGINEERING SERVICES
MANAGER**

TO: POLICY AND RESOURCES COMMITTEE

DATES: 17th MARCH, 2022

Contact Details: Michael Duck
Tel. No: 01282 662009
E-mail: michael.duck@pendle.gov.uk

REVIEW OF THE COUNCIL'S CONTAMINATED LAND STRATEGY 2022-2027

PURPOSE OF REPORT

To seek approval and adoption of the reviewed Pendle Borough Council Contaminated Land Strategy 2022-2027

RECOMMENDATION

That the Policy and Resources Committee recommend that the Council approve and adopt The Contaminated Land Strategy 2022-2027 as set out in Appendix 1 of this report.

REASON FOR RECOMMENDATION

The Government recommends that Contaminated Land strategies are reviewed every 5 years. There have been no significant changes since the last review.

ISSUE

1. BACKGROUND TO REPORT

1.1 The Environmental Protection Act 1990 Part 2A Section 78B(1) requires local authorities to take a strategic approach to carrying out its duty for contaminated land. This approach is set out in the Contaminated Land Strategy ("The Strategy") 2015-2020 for Pendle Borough Council. With the Policy and Review Committee providing approval and adoption on 17th December 2015. A periodic review of the strategy must be undertaken to ensure that it remains up to date with Pendle Borough Council aiming to review its strategy every five years but due to the pandemic the last review was delayed

1.2 The objectives of the Governments policy on contaminated land and Part 2A regime are:

- To identify and remove unacceptable risks to human health and the environment.
- To seek to ensure contaminated land is made suitable for its current use.

- To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development.

1.3 The duty under Part 2A of the Environmental Protection Act 1990, place upon Pendle Borough Council is to:

- Inspect the area for contaminated land in accordance with statutory guidance;
- Determine whether any particular site meets the statutory definition of contaminated land;
- Act as enforcing authority for all contaminated land unless the site meets the definition of a ‘Special Site’, for which the Environment Agency is the enforcing authority;
- Consult with the Environment Agency on pollution of controlled waters;
- Ensure remediation of contaminated land; and
- Maintain a Public Register of contaminated and remediated land.

1.4 The Strategy 2022-2027 outlines the Council’s duties in dealing with potentially contaminated land within the Borough, outlining-

- How Pendle will investigate contaminated land;
- How land will be assessed and determined as contaminated;
- How Pendle will deal with contaminated land;
- The responsibilities of the Appropriate Person who has caused contaminated land; and
- The communication of findings following completion of the site investigation by categorising the risk of contamination.

2. PROPOSED STRATEGY

2.1 It is proposed that Pendle Borough Council adopt the Contaminated Land Strategy 2022-2027, as set out in Appendix A meets the statutory obligations under Part 2A of the Environmental Protection Act 1990.

2.2 The definition of Contaminated Land is set out in Section 82A(2) of Part IIA of the Environmental Protection Act 1990 is

“any land which appears to the Local Authority in whose area it is situated to be in such a 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 such harm** being caused; or

(b) **significant pollution of controlled waters** is being caused or there is a **significant possibility of such pollution being caused”**.

2.3 Under Part 2A for a relevant risk to exist there needs to be one or more contaminant-pathway-receptor or “contaminant linkage”, by which a relevant receptor might be affected by the contaminants in question. All three elements of a contamination linkage must exist in relation to a particular land before the land can be considered potentially to be contaminated land under Part 2A, including evidence of the actual presence of contaminants.

2.4 Presently, there is only one site in Pendle that has been designated as Contaminated Land under the Environmental Protection Act 1990 Part IIA, which is:

- **Site Location:** Green Works, Knotts Lane, Colne.

2.5 Pendle Borough Council's strategic approach to dealing with potential contamination involved the following stages as detailed below-

Stage 1: Identification of potential sites;
 Stage 2: Collection of all known site information;
 Stage 3: Collation of information in database format;
 Stage 4: Assessment of risk posed by sites which are then given a numerical value;
 Stage 5: Categorise and prioritise sites in order of risk importance;
 Stage 6: Review and refine further site information; and
 Stage 7: Take appropriate and important action.

2.7 Based upon Pendle Borough Council's database we have 1073 sites which are considered to be potentially contaminated. Which are prioritised into Band A to Band D:

Band	Number of Sites in Pendle
A	15
B	170
C	507
D	381

2.8 Any current and future inspection, identification and remediation of land to a suitable use is presently undertaken via the planning development control process. It is recognised that this the most appropriate and efficient way to address the issues associated with contamination is through the planning process. With the onus on the developer/applicant to provide a sufficient detailed assessment produced by competent consultants.

3. Strategy Review

3.1 Appendix A sets out a proposed Strategy. Appendix 2 lists the changes that are proposed to the existing strategy. These are minor changes but as it is some years since the previous Strategy was approved by Council it is recommended that Council approve the new Strategy.

3.2 It is the intention that this updated strategy will be updated and reviewed in five years from its adoption date.

IMPLICATIONS

Policy: The report proposes that an updated Strategy is adopted

Financial:

There are no financial implications arising from this report.

Legal:

The Environment Act 1995 introduced contaminated land legislation which had been incorporated as Part 2A of the Environmental Protection Act 1990. Part 2A established a legal framework for dealing with contaminated land in England and placed a responsibility on the local authority to inspect its land from time to time for contaminated land. The decision to designate land as contaminated under Part 2A of the Environmental Protection Act 1990 lies with the Authority.

Statutory guidance issued in 2012 placed a duty on the Authority to publish a contaminated land strategy to reflect the changes introduced in that guidance and review the strategy every 5 years.

This statutory guidance requires the Authority to take a “strategic approach” to inspecting their areas for contaminated land and to describe and publish this in a written strategy.

There is a need for the Strategy to reflect the current guidance and the risk based inspection process

Risk Management:

There is negligible risk and mitigation to the Council.

Health and Safety:

There are no health and safety implications arising from this report.

Climate Change:

There are no climate change implications arising from this report.

Community Safety:

There are no community safety implications arising from this report.

Equality and Diversity:

There are no equality and diversity implications arising from this report.

APPENDICES

Appendix 1- Updated Pendle Borough Council Contaminated Land Strategy 2022-2027
(can be found on the Council's website [Agendas, reports and minutes | Pendle Borough Council](#))

Appendix 2- Review and amendments to Pendle Borough Council Contaminated Land Strategy 2015-2020.

BACKGROUND PAPERS

1. The following background papers/information have been used in the compilation of this report and are available at the office of the author:

Environment Protection Act 1990 Part 2A Section 78
<http://www.legislation.gov.uk/ukpga/1990/43/contents>

2. The Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance April 2012

<https://www.gov.uk/government/publications/contaminated-land-statutory-guidance>

APPENDIX 2

Review of Contaminated Land Strategy 2022-2027

1. Page 1, replace “2015-2020” with “2022-2027”.
2. Page 3, replace “2015-2020” with “2022-2027”.
3. Page 8, at 1.5.2 remove ...”2015-2018” and replace with 2020-2023”.
4. Page 8, delete 3) “Ensuring a clean, healthier, safer and cohesive Pendle” and replace with “3) Helping to create and sustain resilient communities”.
5. Page 9, paragraph 2- replace the words “Economic Development” with “Engineering Services”.
6. Page 19, paragraph 6- remove “General Quality Assessment System (GQA)” and replace with “Biological Quality Elements”.
7. Page 19, paragraph 6- after “The highest quality stretch of water is Trawden Brook, graded A (very good quality suitable for fish)” add the following “Other highest achieving waterbodies in Pendle are Wanless Water, Pendle Water (headwaters to Colne Water) and Wycoller Beck which all achieved good status in 2019”.
8. Page 19, paragraph 7- after “Both are graded E” add “in 2019”...
9. Page 20, paragraph 4- replace “Environmental Health Services” with “Housing, Health and Engineering Services”.
10. Page 30, paragraph 2- include the following-

“Pendle Borough Council’s strategic approach to dealing with potential contamination involved the following stages as detailed below-

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11. Page 32, paragraph 1- replace "2007" with "2016".
12. Page 32, paragraph 4- replace "2007" with "2016".