

Work undertaken by Spelthorne Borough Council in response to the Tragedy at Thameside in February 2014

As a former landfill site, the land behind Thameside is present on the Council's database of former land uses that may result in land contamination. Prior to the tragedy the land was not at the top of the priority list on the database, the ranking of which is based upon a risk rating assigned by specialist software.

The Part 2A Statutory Guidance does allow for a site to be reprioritised in the event of an incident. This was the case with the land behind Thameside following the tragedy and the site was prioritised for a Phase 1 Desk Study.

The purpose of a Phase 1 Land Contamination Assessment or Preliminary Risk Assessment (PRA) is to establish the previous uses of the land under consideration or land nearby or adjacent to it, and to identify potential sources of contamination, receptors and pathways. The Phase 1 Desk Study, dated October 2015, did consider hydrogen cyanide including within the research into the historic use of the land based on available records, and also the results of the landowners' site investigations, which did not identify cyanide compound at the site. The Part 2A Guidance states that the risk assessment process should normally continue until it is possible for the local authority to decide: (a) that there is insufficient evidence that the land might be contaminated land to justify further inspection and assessment; and/or (b) whether or not the land is contaminated land (see paragraph 3.12).

For a significant possibility of significant harm to be present a source – pathway – receptor contaminant linkage must be present. The Phase 1 Desk Study concluded that the investigation had not clearly identified an unacceptable risk but had instead only identified a 'moderate' risk. Section 7.4 of the Study states:

“A key output from the preliminary risk assessment is to judge whether any unacceptable risks with the contaminant linkages can be identified. An unacceptable risk is defined in the Statutory Guidance as meaning “a risk of such nature that it would give grounds for land to be considered contaminated land under Part 2A” (Defra, April 2012). Therefore an unacceptable risk is where there is a significant possibility of significant harm. A Moderate risk classification, where it is relatively unlikely that possible harm would be severe or any harm is more likely to be relatively mild, does not clearly identify an unacceptable risk.

For land to proceed to the next stage of risk assessment there should be evidence that an unacceptable risk could reasonably exist.”

The Study stated that it was appropriate that the site be kept under review and that evidence from other parties, specifically from the Environment Agency and Brett Aggregates, at the inquest should be reviewed and the risk assessment updated once that information was available.

The additional site investigation information presented to the Inquest by other parties did not conclude that there was a presence of cyanide or hydrogen cyanide, therefore the updates would not be expected to have altered the outcome of the original assessment. The Coroner's findings and Conclusions did not attribute the cause of the tragedy to hydrogen cyanide in particular or any land contamination.

The Phase 1 Desk Study was completed in accordance with statutory and best practice guidance and was reviewed by an external expert. It was presented to the Inquest together with a briefing paper on the chemistry of cyanide compounds and migration into buildings compiled by external experts.

The following text from the Statutory Guidance is of relevance to the Council's decision making regarding further investigation of the land.

'It may become apparent during the course of detailed inspection of land that the assumptions that led to the prioritisation of the land prove to be incorrect, and that the risks posed by the land are lower than expected. In such cases the authority should consider whether (and if so how) to proceed with its inspection, having regard to the need to prioritise inspection activities in accordance with Section 2. There may be good reason to continue until a decision can be taken on whether or not the land is contaminated land. However, as soon as it becomes clear to the authority that the land is unlikely to be contaminated land, it should bring its inspection and risk assessment to an end and redirect its efforts to the inspection of other land in line with its approach to prioritisation.'

'In the course of risk assessment the authority may consider possible exposure scenarios or situations which are very unlikely to occur. However, regulatory decisions should be based on what is reasonably likely, not what is hypothetically possible.'

'If the local authority intends to carry out an inspection using statutory powers of entry under section 108 of the Environment Act 1995 it should first be satisfied that there is a reasonable possibility that a significant contaminant linkage may exist on the land.'

The authority should not use statutory powers of entry to undertake intrusive investigations, including the taking of sub-surface samples, if: (a) it has already been provided with appropriate, detailed information on the condition of the land (e.g. by the Environment Agency or some other person such as the owner of the land) which provides sufficient information for the authority to decide whether or not the land is contaminated land; or (b) a relevant person (e.g. the owner of the land, or a person who may be liable for the contamination) offers to provide such information within a reasonable and specified time, and then provides such information within that time.'