

Statement by the Environment Agency on legal procedures relating to contaminated land and groundwater applicable to St Leonard's Court, Sandridge, revised 28 May 2010

Introduction

1. This note provides information on the way in which legislation is being applied by the Environment Agency to the contaminated land at St Leonard's Court which has led to the presence of bromate and bromide in nearby groundwater. Its purpose is to clarify for individuals who own or occupy houses at St Leonard's Court, and have no involvement in the issue other than through their ownership or occupation, the potential for the situation to affect their interests. Please note that the law will not necessarily apply in the same way to other sites or circumstances.
2. The note is complex and may require legal expertise to draw out its implications in particular circumstances. In any event readers who believe their interests may be affected should obtain their own independent legal advice, and should not enter into any financial transaction on the basis of this document.
3. All statements below are based on the information currently available.
4. Background information on the history of the bromate issue and on the investigation of the St Leonard's Court site is given in Appendices 1 and 2.

Legislation

5. The principle behind the legal procedures applicable to contaminated land is that, if possible, the 'polluter' should pay for any necessary clean-up.
6. The legal regime which is being applied to the situation at St Leonard's Court is the Environmental Protection Act 1990, Part IIA and the Contaminated Land (England) Regulations 2006 (SI 2006/1380). This legislation requires land to be designated by the local authority as 'contaminated land' if it meets certain legal criteria. Further, it specifies procedures which may lead to a 'remediation notice' being served on one or more 'appropriate persons' who are identified as being responsible in law for any ongoing or likely pollution or for any 'significant harm' caused. Such a notice requires the person on whom it is served to undertake, and pay for, measures (which must be 'reasonable') to prevent the pollution or significant harm. In many cases the District Council enforces these procedures. However, if the site meets further criteria it can be additionally designated as a 'special site'. Enforcement then becomes the responsibility of the Environment Agency.
7. Any action that is required of a 'polluter' by a remediation notice has to take account of the likely costs and benefits.

Health issues

8. The Hertfordshire Health Authority issued the following statement in September 2001

"After discussions between Health Authority officers, Chemical Incident Response Service staff, and Komex personnel, the Health Authority's officers have advised St Albans District Council that, subject to the site being reviewed on an agreed continuing basis to allow for future unexpected fluctuations of contaminants, and to check for adequate underfloor ventilation and

preservation of the integrity of the concrete raft underlying the houses, risks to health would be extremely remote.”

Implementation of contaminated land legislation

9. The site was determined as a contaminated land site by St Albans District Council on 20 June 2002. On 8 August 2002 it was designated a special site, thereby transferring responsibility for enforcement from the Council to the Environment Agency.
10. Following extensive consultation with potential appropriate persons, as required by legislation, on 14 November 2005 the Environment Agency served a remediation notice on two companies, Crest Nicholson Residential PLC (Crest) and Redland Minerals Limited (Redland). Both companies appealed against the notice. As a ground for appeal they can name another person or body as an appropriate person. They did this for each other but not for Beechgrove (Sandridge) Management Ltd, or the present owners or occupiers of St Leonard’s Court.
11. The notice was suspended while the appeal was determined. The appeal was heard at a public inquiry held over 13 days between 16 April and 8 May 2007. The Secretary of State for the Environment issued a decision on 22 July 2009. The decision upheld the notice that we recommended to the Inspector at the appeal hearing in respect of the remediation actions, but varied it slightly in respect of the division of responsibility between Crest and Redland. The notice is available for inspection on the Environment Agency’s public register together with a substantial ‘decision document’ setting out our arguments on liability.
12. The remediation notice requires actions to investigate and monitor the contamination, an action to remove contamination from the aquifer by ‘scavenge pumping’ from Veolia Water’s Hatfield borehole, and a further action to investigate the potential for similar scavenge pumping closer to St Leonards Court.
13. Crest and Redland challenged the Secretary of State’s decision in the High Court by way of judicial review. Their applications were refused at a hearing in the High Court on 3-4 February 2010. The remediation notice issued by the Secretary of State therefore came into force on 4 February 2010. Crest and Redland are now undertaking the actions assigned to them in the notice.
14. We can serve further notices, which can also be appealed. However, the fact that Beechgrove and the owners or occupiers of St Leonard’s Court have not been named as an appropriate person in the appeals makes it extremely unlikely that they will be so named in an appeal against a subsequent notice. Nevertheless, the possibility still exists. Additionally, it should be noted that in order for a person to incur liability it must be shown that they ‘caused or knowingly permitted’ the pollution.

Register of contaminated land

15. St Leonard’s Court is recorded on a public register held by St Albans District Council as contaminated land. The Environment Agency is obliged to record on its public register details of the remediation notice. The public registers are also required to contain details of the appeals against the notice and of the appeal decision.

Further inquiries

16. Please contact Allison Riley, Technical Officer 1, Groundwater and contaminated Land Team A, Environment Agency, Apollo Court, 2 Bishop Square Business Park, Hatfield, Herts AL10 9EX, tel 01707-632585, e-mail allison.riley@environment-agency.gov.uk

Appendix 1. History of the bromate issue

Late May 2000.

Work had been in progress for several years in preparation for the new Drinking Water Regulations, coming into force in December 2003. These include bromate as a new parameter to be measured. In May 2000, when analysing samples to check the normal levels in the water supply, Three Valleys Water identified levels of bromate in their Hatfield source that would breach the future standard of 0.01 milligrams per litre (mg/l) [0.01mg/l = 0.01 parts per million = 10 micrograms per litre(µg/l)]. As a precaution the source was taken out of use for public supply.

June 2000

The Environment Agency, Three Valleys Water, St Albans District Council, Welwyn Hatfield District Council and Hertsmere Borough Council initiated a water monitoring programme. All private boreholes vulnerable to bromate pollution were tested and any with bromate above the proposed standard were taken out of use.

July – August 2000

Monitoring results pointed to a probable source in the Sandridge area. An investigation was carried out at St Leonard's Court by Komex, consultants to St Albans District Council, to look for bromate in soil and groundwater. Five boreholes were drilled through the soil to 7m below the water table.

November 2000

St Albans District Council issued a summary of the findings of the Komex investigation to residents of St Leonard's Court. The report identified the site as a likely source of groundwater pollution, but the covering letter stressed that there was no risk to residents.

November 2000 – May 2001

After discussion with the Environment Agency St Albans District Council asked us to carry out a further investigation. By February groundwater had risen to a level 2m higher than previously recorded, with associated flooding of roads, fields and the ground floors or basements of some buildings. Bromate work was delayed by the need to deal with this issue.

June – November 2001

A further investigation at St Leonard's Court, planned by the Environment Agency, was carried out in November 2001, with the object of providing evidence on which St Albans District Council could decide if the site is contaminated land as defined by the Environmental Protection Act 1990. Ten boreholes of depth 6-12m were drilled at St Leonard's Court, and two further boreholes off-site some 200m NW and 100m SE of the site.

December 2001 – April 2010

While the required legal processes were in progress (see paragraphs 9-14 above) the Environment Agency maintained a monitoring programme whose object was to detect any significant change in the boundaries or concentration of the pollution plume. In addition, since May 2006, Three Valleys Water (renamed Veolia Water Central Ltd from July 2009) and Thames Water have been cooperating in pumping contaminated groundwater from Veolia's Hatfield (Bishops Rise) borehole (scavenge pumping) and disposing of it via foul sewer after treatment to remove bromate.

May 2010 – present

From May 2010 the appropriate persons will monitor the plume and pay for the scavenge pumping at Bishops Rise as actions they are required to take under the remediation notice.

Appendix 2. History of the St Leonard's Court site

Before 1955.

Buildings on the site were used for storage of agricultural machinery.

1955.

Existing buildings started to be used for manufacture of chemicals described as 'industrial and pharmaceutical intermediates' including potassium bromate and organic bromine compounds

Around 1980.

The chemical works closed.

1981- 1986.

Buildings on site were demolished and pollution in the soil and groundwater was investigated. Any surface soil which was unacceptably contaminated was removed to a depth of approximately 1 metre and replaced with clean material.

1987.

The site was redeveloped as St Leonard's Court.