



Environment
Agency

Part 2A EPA 1990: Significant Pollution of Controlled Waters

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Changes to legislation

⇒ Water Act 2003.

- ⇒ Commencement Order No 11 – 2012.
- ⇒ Comes into force in England on 6th April 2012.

⇒ Contaminated Land (England) Amendment Regs 2012.

⇒ Contaminated Land (Wales) Amendment Regs 2012.

⇒ Revised Part 2A statutory guidance.

- ⇒ Regs & Stat Guidance in England laid before Parliament on 07/02/12.
- ⇒ Regs in Wales laid before NAW on 07/02/12.
- ⇒ Regs expected to come into force on 6th April 2012.
- ⇒ Stat Guidance expected to be issued on, or after 6th April 2012.

Definition of contaminated land (CW)

➔ “**contaminated land**” 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 –

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

Pollution of controlled water

- ⇒ Pollution of controlled waters = the entry into CW of any poisonous, noxious polluting matter or any solid waste matter.
 - ⇒ For Part 2A this includes territorial waters (3 miles), coastal waters, inland freshwater and groundwater below water table.
- ⇒ Part 2A = most serious pollution
 - ⇒ Harmful to HH, or aquatic ecosystems etc.
 - ⇒ Damage property.
 - ⇒ Impair or interfere with amenities/legitimate uses.



SPoCW is being caused

- ➔ Significant pollution of controlled waters:
 - ➔ Pollution equivalent to Environmental Damage under ELD.
 - ➔ Deterioration of the quality of water where additional treatment required to make it safe to drink.
 - ➔ A breach of a statutory surface water EQS (directly or indirectly).
 - ➔ Input of a substance into groundwater resulting in a significant and sustained upward trend in concentration of contaminants.

SPoCW is being caused

- ➔ The following types of pollution may also be considered significant:
 - ➔ Significant concentrations of hazardous or non-hazardous pollutants in groundwater; significant concentrations of priority hazardous substances, priority substances or other specific polluting substances in surface water; at an appropriate risk based compliance point.
 - ➔ The local authority should only conclude that the pollution is significant if it considers that treating the land meets the broad objectives of the regime.

SPoCW – determination?

- ➔ Land meets significance clause = grounds for determination on basis that SPoCW is being caused.
- ➔ Land should not be considered CL where:
 - ➔ Substances are merely entering water and none of the conditions for SP are being met.
 - ➔ Substances are entering water in compliance with an discharge authorised under the EPR.

SPoCW – determination?

- ⇒ Before determination LAs should be satisfied that:
 - ⇒ Substance(s) in question are continuing to enter controlled waters; or
 - ⇒ Have done and are likely to do again in such a manner to constitute ongoing pollution.

- ⇒ Land should not be determined where:
 - ⇒ Substance(s) already present in controlled waters.
 - ⇒ Entry of substance(s) from the land has ceased.
 - ⇒ It is not likely that further entry will take place.

SPoSPoCW

- ➔ Decide “Possibility” first.
- ➔ Then decide if given possibility is significant or not?
- ➔ Positive legal test.

SPoSPoCW

- ➔ Likelihood, evidence & uncertainty.
- ➔ Impact.
- ➔ Timescale.
- ➔ Remediation – feasible and of benefit.
- ➔ Which category would land fall into?

SPoSPoCW – determination?

- ⇒ Category 1 & 2 (Water) – Robust science based evidence that significant possibility of significant pollution exists.
 - ⇒ Category 1 = Strong & compelling case. This would include cases where it is likely that high impact pollution would occur if nothing was done.
 - ⇒ Category 2 = Sufficient concern.
 - ⇒ Both grounds for determination.

SPoSPoCW – determination?

- ⇒ Categories 3 & 4 (Water) – significant possibility of significant pollution does not exist.
 - ⇒ Category 3 = very unlikely that serious pollution would occur or low likelihood of less serious pollution.
 - ⇒ Category 4 = No risk or low risk.
 - ⇒ No grounds for determination.

Special Sites

- ➔ Described in the Contaminated Land Regulations.
- ➔ Regulation 3
 - ➔ Sets out three types of Special Site which apply specifically to controlled waters.

Special Sites

➔ Regulation 3(a): drinking waters.

➔ No change.

➔ Regulation 3(b): surface water standards.

➔ Regulations made under sec 82 of the WRA (1991)

➔ Will now include some protected areas under Directive 2000/60/EC.

➔ Regulation 3(c): important aquifers by specific substances.

➔ Minor change - definition of groundwaters

How to decide SPoCW

- ➔ Risk assessment same as PoCW.
- ➔ Risk is combination of:
 - ➔ (a) the **likelihood** that harm, or pollution of water will occur as a result of contaminants in, on or under the land; and (b) **the scale and seriousness** of such harm or pollution if it did occur.
 - ➔ Now considered before determination.
- ➔ Phased approach.
 - ➔ Preliminary RA, GQRA, DQRA.

What happens next?

- ⇒ Working to produce guidance.
 - ⇒ Approach as for PoCW.
 - ⇒ Explanation of significance.
 - ⇒ Technical aspects of risk assessment.