



# WHO PAYS FOR HISTORIC POLLUTION?



# HISTORIC POLLUTION

Many businesses rely on the protection afforded to them in UK law that the polluter pays for historic pollution. In reality, this is not always the case. For example, where the 'polluter' cannot be found or has gone into liquidation, the owner or occupier of the property can become liable for clean-up.

## CHEMICAL WORKS

A former chemical works was sold and developed for housing in the late 1980s. During the redevelopment, rainfall caused bromide and bromate pollutants already in the soil to gradually migrate into groundwater, and over time a number of offsite drinking groundwater abstraction boreholes were forced to close.

The former land owner and developer were served a remediation notice making them liable for the remediation costs. Total liability issues are estimated to be in the order of £50M.

The case demonstrates that all property owners and businesses should be aware of the potential environmental liability they might be incurring when they are purchasing land, and also highlights the potential for remobilisation of contamination during construction works.

## GAS WORKS SITES

### Transfer of Liability

In 2001, significant contamination was found under a housing estate built over a former gas works. Further investigation identified the contamination as being a risk to human health and groundwater.

The Environment Agency remediated the site at a cost of £695,782, averaging £63,253 per property, and served a remediation notice on the National Grid Gas plc, the successor to the privatised gas boards. National Grid appealed this decision.

The Lords found that the liabilities imposed on British Gas upon privatisation in 1986 related to those at the date of transfer, and it could not be found liable for costs imposed retrospectively under Part 2A of the Environmental Protection Act 1990.

In this case the costs were borne by central and local government.

## LANDFILL

A 2017 Court of Appeal judgement held that a local county council was not liable for pollution associated with a landfill site operated by its statutory predecessor council after it ceased to exist. This meant that the innocent landowner was the only appropriate person that could be found. The judgment has significant implications for landowners and occupiers of historic council landfill sites.

## TALK TO OUR TEAM

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