

# **STATES OF JERSEY**



## **REVIEW OF JERSEY'S ENVIRONMENTAL LEGISLATION ENCOMPASSING CONSIDERATIONS RELATING TO WATERFRONT LAND HISTORICALLY CONTAMINATED WITH ASH**

---

**Presented to the States on 16th February 2009  
by the Minister for Planning and Environment**

---

**STATES GREFFE**

# REPORT

## Introduction

On 9th September 2008 Deputy Anne Pryke – Assistant Minister for Planning and Environment, gave a commitment to the States that she would review Jersey's environmental legislation and relate her findings to waterfront land historically contaminated with ash.

This report will briefly summarise Jersey's historical position regarding the disposal of incinerator ash, before reviewing the Island's current framework of environmental legislation with regard to its adequacy in minimising pollutants from contaminated land entering the environment. Areas of legislation not covered within a Jersey framework will be highlighted and solutions where required will be proposed to fill gaps, thereby ensuring ongoing appropriate regulation of polluting activities.

## Historic ash disposal

It is widely understood that incinerator ash, both bottom ash and fly ash, have been disposed of historically in coastal reclamation sites in Jersey and further, that the disposal methods employed for the earlier deposits would not be deemed acceptable in modern times.

Descriptions of historic disposal methodologies are outlined in "P.96/2008 – Comments" which was presented to the States by the Council of Ministers on the 7th July 2008 in response to Proposition "P.96/2008" made by Senator Syvret requesting a committee of inquiry into "Toxic Incinerator Ash Dumping in the St. Helier Waterfront Land Reclamation Schemes"

## Historic controls

Mitigating procedures in place when the materials were deposited were not as rigorous as those which are required now. The method of deposit was either in excavated but unlined trenches or by spreading the deposit over a wider area. Whilst the latter method ensures minimal concentration of contaminants it results in a greater lateral spread, the effect being contamination to a reduced degree of a larger surface area. There were no controls implemented by independent Environmental Regulators but advice was available from government departments as to preferred disposal methodologies.

## Controls now possible under the Waste Management (Jersey) Law 2005

Disposal of incinerator ash is now covered by the Waste Management (Jersey) Law 2005. This legislation is in the process of being implemented and requires that any facility receiving these wastes for disposal must have applied for a Waste Management Licence. When awarded, these licences will contain conditions to require best practice and mitigate against the possibility of environmental pollution. This licensing process will be complete for all the island's waste management facilities in 2009.

Transport and Technical Services (TTS) are the States operators of the site receiving ash from the incineration process. Transport and Technical Services have complied with the requirements of the Waste Management (Jersey) Law 2005 by applying for a waste management licence including the submission of a "Working Plan". This document details that these materials will be accepted for disposal, and Planning and Environment are now working with TTS to determine whether the methods proposed are adequate to minimise any potential pollution to the surrounding environment. These are assessed both in light of UK accepted best practice and the island context.

## Controls imposed under planning requirements for development sites

Planning requirements in respect of site development have historically been reviewed by Environmental Protection to enable mitigating works to be requested. In many instances including developments on waterfront land these encompass requirements regarding excavation of the site, the haulage of the waste arisings, the

potential recovery of a percentage of the materials and ultimately the disposal of the resultant residual wastes. Protocols have been put in place to ensure that detrimental environmental effects are minimised and mitigated against. These have to date been agreed through the planning process between developers, Environmental Protection, the Health and Safety Inspectorate and Health Protection.

Similar methodologies will be required for any other developer proposing to unearth, excavate, transport and dispose of contaminated materials from the waterfront area. Method statements are requested as part of an environmental impact assessment (EIA) process or independently in standard planning applications.

### **Contaminated land development controls**

Prior to development of land that has the potential to be contaminated by previous industrial or contaminating use, it is necessary under planning guidance for the developer to satisfy the requirements of regulators from Health Protection and Planning and Environment. This is done by means of a phased approach by quantifying the type and level of contamination. This includes an initial desk based study and then, where necessary, an intrusive investigation into ground conditions. Should it then be required a proposal for the remediation of that land is submitted. Following remediation a “sign off” is submitted by the developer to the regulators determining that that land is indeed clean to the best of their knowledge and efforts. This approach is and will be followed as development proceeds at the Waterfront.

### **Water pollution control**

The Water Pollution (Jersey) Law 2000 prohibits a person from causing or knowingly permitting polluting matter from entering controlled waters. The seas around the La Collette waste management facility are classified as controlled waters under the Law by virtue of the fact that they are within the 12 mile territorial limit.

Water pollution issues are reviewed in planning, EIA, and waste management licensing discussions and developers are required to give thought as how best to undertake the requirements of the regulator in this respect.

### **Food and Environment Protection Act 1985 (Jersey) Order 1987**

FEPA, amongst other things, controls the deposit of any material into the marine environment. Depending on the ultimate fill strategy for the remnant areas for coastal reclamation at La Collette, it may be necessary to ensure that the backfill falls within the requirements of the FEPA legislation. This could be the case regarding the disposal of any materials should their fate lie below the mean high water mark.

### **Specific reference to points b and c of P.96/2008 as queried by States Members**

Queries were raised by States Members to points b and c of the proposition –

- b.** The responsibility for monitoring for the effect on Human Health of toxins in this instance lies with the Health and Safety Inspectorate for operators and workers on the site and, for public concerns, Health Protection are the relevant agency.
- c.** Historically, effects on the marine environment have been taken into consideration as alluded to in “P.96/2008 – Comments”. In applications made and EIAs submitted by developers and operators, these same issues are considered by Planning and Environment, and where necessary, mitigating works are required.

### **Areas of control not available through Jersey legislation**

#### *Air Quality Legislation*

The island has no legislation specifically in place for the purpose of regulating emissions to air. This is being reviewed in the upcoming strategic plan and discussions are underway regarding with which department the responsibility to implement the legislation should sit.

### *Contaminated Land Legislation*

The need for contaminated land legislation is currently under review. At present the States have the ability to require that contaminated land is remediated through development control. Supplementary planning guidance exists which broadly follows the requirements of the UK's contaminated land regime in the Environmental Protection Act, Part 2A [in action though not in respect of the instigation of these requirements]. The review will focus on whether there is a need to create similar legislation to insist upon areas of contaminated land being remediated by the polluter or the land holder outside of development control.

### *Integrated Pollution Prevention Control (Process Control)*

Jersey does not have legislation which regulates the potentially polluting emissions of industrial processes in the way that the rest of Europe and the UK does. The UK's legislative medium for this type of control is known as Integrated Pollution Prevention and Control. In terms of the processes this type of framework is intended to regulate, Jersey does not have industries on a comparable scale to those common in neighbouring countries. Therefore this type of legislative coverage is disproportionate to the Island's environmental requirements.

### **Conclusion**

Jersey's Environmental Legislation allows, among other things, environmental controls to be placed on the development of land, including contaminated land, as well as affording the authorities control over waste management operations. While these functions have not been in place until relatively recently and are, to an extent in their infancy, they are currently being used to good effect and will continue to be so during the course of developments of major projects such as the waterfront construction. The Island's raft of legislation is however lacking in some areas when compared with neighbouring countries. These areas are however already being given consideration at strategic and departmental business plan level, and will result in appropriate legislation being drafted and implemented at a later date.