

# Summary of RICS contamination and environmental matters guidance

## Highlights

- **Contaminated land and environmental matters are unlike many of the other issues surveyors face. While there is a great deal of published material about the identification of contaminated land, knowledge is constantly evolving.**
- **Consumers and businesses are looking to professionals for guidance and reassurance in relation to environmental matters.**
- **RICS Appraisal and Valuation Standards, 5th Edition comments that Surveyors should: ‘...alert clients if they believe that contamination could have a significant impact on the valuation...’,**
- **The majority of chartered surveyors do not have the specialist skills to comment on environmental matters.**
- **Surveyors are unlikely to be insured by their professional indemnity insurance when completing questionnaires or informal letters from clients.**
- **Caveats may not be professionally safe or appropriate when reporting.**
- **Alternative commercial solutions such as value added reports can be used to comment and determine whether further specialist investigations are required.**

## Introduction

The RICS Guidance notes are seen as ‘best practice’ and by conforming to the practices recommended, surveyors should have at least a partial defence to an allegation of negligence by virtue of having followed those practices.

Public opinion, public policy and the law are placing more responsibilities, liabilities and controls upon those who cause or might cause pollution and those who seek to acquire an interest in property affected by it. Whatever the particular professional service the chartered surveyor is providing, and for whomsoever he or she is acting, that service will be incomplete or inappropriate if it were to ignore any contamination implications for the property or the users of it. *(Foreword)*

When an allegation of professional negligence is made against a surveyor, the court is likely to take account of the contents of any relevant guidance notes published by RICS in deciding whether or not the surveyor has acted with reasonable competence. *(Foreword)*

The majority of Chartered Surveyors do not have the specialist skills to investigate contamination. *(1.1.1)*

## Professional indemnity insurance

- 1.7.4 The Pollution Exclusion Clause: This policy shall not indemnify the insured against:  
"Any claim or loss (including loss of value) arising directly or indirectly from pollution..."

However, RICS does not consider that resort to caveats intended completely to exclude compliance with professional duties is likely to be a wholly reliable – or professionally acceptable – method of avoiding claims that may fall within the policy wording of the pollution exclusion.

- 1.7.6 Surveyors are unlikely to be insured through the medium of Professional Indemnity Insurance when completing Land Use Questionnaires provided by banks 3.3.2

## Definition of 'Contaminated land' under Part IIA of the Environmental Protection Act 1990

- 2.3.2 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:
- (a) Significant harm is being caused or there is a significant possibility of such harm being caused; or
  - (b) Pollution of controlled waters is being, or is likely to be caused'
- 2.3.11 Local Authorities are required to undertake investigations of their areas to ascertain whether or not land is 'contaminated land'.
- 2.10.4
- Where a person has acquired land that is already contaminated, he or she may be liable in nuisance for the effect of any pollution of which he or she was aware or which he or she might have discovered if he or she had carried out reasonable investigations (*Leakey v National Trust [1980]*). The amount of damages will depend on individual circumstances and the wealth of the defendant.
  - In some circumstances, an owner may be deemed to have knowledge of matters that his professional advisers could have discovered if they had carried out proper investigations (*Sedleigh-Denfield v O'Callaghan [1940]*).

## Identifying possible contamination: the surveyor's role

- 3.2.1 RICS terms surveyors with the specialist knowledge and expertise to investigate contamination 'chartered environmental surveyors'.
- 3.3.2 Surveyors should bear in mind that a number of banks have produced their own land use questionnaires or checklists for use particularly in valuations for loan security. Many of the questions in these documents are open-ended, with pitfalls for the unwary. A typical phrase used in such questions is 'to the best of your knowledge and belief...'. These questions are difficult and potentially dangerous to answer without a comprehensive report being completed. Extensive discussions have been held between the members of the PII market and RICS concerning these questionnaires and checklists. *Surveyors are unlikely to be insured through the medium of PII when completing these.* However, the insurance market does not regard the completion of an RICS property observation checklist, when simply completed as part of a surveyor's other professional engagements, to be an environmental assessment.

- 3.4.14 Alternative cost-effective commercial solutions to mitigate against your risk such as value added reports may be available from commercial value added resellers. These are commercial companies that sell data already interpreted, with an opinion given by a chartered environmental surveyor.

## Reporting

- 3.6.2 It is important that the surveyor agrees with the client, in advance, the basis of the report that the surveyor is being required to undertake and whether contamination is or is not to be considered.
- 3.6.3 RICS believes that reliance on the use of caveats, which have no basis in law, may not be entirely safe or professionally appropriate, when reporting to the client.
- 3.6.4 When reporting surveyors should not:
- Make any statement of fact about previous uses, other than the present or where a statement can be (and is) properly qualified so as to reveal the source of the information; nor
  - Make any statement of opinion as to the risk of contamination being present in relation to land and buildings except, where as a result of his or her specific knowledge or training, the surveyor knows that a building harbours contaminative material; nor
  - Misrepresent any statement of opinion or conclusions prepared by Chartered Environmental Surveyor or qualified Environmental Consultant, who has been commissioned to undertake a specific investigation of the property for contamination, and which statement provides appropriate conclusions concerning historic and current land use.
- 3.6.5 A selection of possible reporting phrases for use in the report are given below and the relevant circumstances.

### When a Client agrees not to investigate

- (a) 'We have been instructed not to make any investigations, in relation to the presence or potential presence of contamination in land or buildings, and to assume that if investigations were made to an appropriate extent then nothing would be discovered sufficient to affect value. We have not carried out investigation into past uses, either of the properties or any adjacent land, to establish whether there is any potential for contamination from such uses or sites, and have therefore assumed that none exists.'

### Value added report commissioned – No further investigations needed

- (b) In carrying out this work we have carried out various enquiries in order, so far as is reasonably possible, to establish the potential existence of contamination arising out of previous uses of the site and it's neighbours. The extent of our enquiries and the results are described in this report at [Appendix XX]

### Value added report commissioned – Further investigations needed

- (g) Indications of potential contamination were noted during our inspection (as reported in appendix (x) of this report) and we recommend that further investigations be undertaken by a suitably insured and qualified chartered environmental surveyor or environmental consultant to determine the extent and nature of the contaminants and the likely costs of remediation.

## Acquisitions

- 6.2.3 The surveyor should consider whether to recommend, at the least, initial environmental investigations.
- 6.2.4 Surveyors are reminded that government policy in the area of contamination and environmental matters is to '*let the informed buyer beware*'.

## Reflecting specialists' reports

- 10.1.2 "Unless the client has instructed or agreed that contamination is to be disregarded, it falls to the valuer in preparing valuations of contaminated land to exercise his or her judgement in reflecting the effect of contamination on the property to be valued"



[www.promap.co.uk](http://www.promap.co.uk)

Enviroscreen is an online environmental risk screening tool delivering a unique, cost effective and straightforward approach for tackling contamination and environmental issues – With clear unequivocal 'PASSED' or 'FURTHER ACTION' advice by a Chartered Environmental Surveyor Enviroscreen protects surveyors and their clients from potential liability and complies with RICS guidance.

For more information visit [www.promap.co.uk](http://www.promap.co.uk) or call 01491 413030



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