
STATUTORY INSTRUMENTS

2006 No. 1380

The Contaminated Land (England) Regulations 2006

Grounds of appeal against a remediation notice

7.—(1) The grounds of appeal against a remediation notice under section 78L(1) are any of the following—

- (a) that, in determining whether any land to which the notice relates appears to be contaminated land, the local authority—
 - (i) failed to act in accordance with guidance issued by the Secretary of State under section 78A(2), (5) or (6); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably identified all or any of the land to which the notice relates as contaminated land;
- (b) that, in determining a requirement of the notice, the enforcing authority—
 - (i) failed to have regard to guidance issued by the Secretary of State under section 78E(5); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably required the appellant to do any thing by way of remediation;
- (c) that the enforcing authority unreasonably determined the appellant to be the appropriate person who is to bear responsibility for any thing required by the notice to be done by way of remediation;
- (d) subject to paragraph (2), that the enforcing authority unreasonably failed to determine that some person in addition to the appellant is an appropriate person in relation to any thing required by the notice to be done by way of remediation;
- (e) that, in respect of any thing required by the notice to be done by way of remediation, the enforcing authority failed to act in accordance with guidance issued by the Secretary of State under section 78F(6);
- (f) that, where two or more persons are appropriate persons in relation to any thing required by the notice to be done by way of remediation, the enforcing authority—
 - (i) failed to determine the proportion of the cost stated in the notice to be the liability of the appellant in accordance with guidance issued by the Secretary of State under section 78F(7); or
 - (ii) whether, by reason of such a failure or otherwise, unreasonably determined the proportion of the cost that the appellant is to bear;
- (g) that service of the notice contravened a provision of subsection (1) or (3) of section 78H (restrictions and prohibitions on serving remediation notices) other than in circumstances where section 78H(4) applies;
- (h) that, where the notice was served in reliance on section 78H(4) in circumstances where section 78H(1) or (3) has not been complied with, the enforcing authority could not reasonably have taken the view that the contaminated land in question was in such a condition by reason of substances in, on or under the land, that there was imminent danger of serious harm or serious pollution of controlled waters being caused;

- (i) that the enforcing authority has unreasonably failed to be satisfied, in accordance with section 78H(5)(b), that appropriate things are being, or will be, done by way of remediation without service of a notice;
 - (j) that any thing required by the notice to be done by way of remediation was required in contravention of a provision of section 78J (restrictions on liability relating to the pollution of controlled waters);
 - (k) that any thing required by the notice to be done by way of remediation was required in contravention of a provision of section 78K (liability in respect of contaminating substances which escape to other land);
 - (l) that the enforcing authority itself has power, in a case falling within section 78N(3)(b), to do what is appropriate by way of remediation;
 - (m) that the enforcing authority itself has power, in a case falling within section 78N(3)(e), to do what is appropriate by way of remediation;
 - (n) that the enforcing authority, in considering for the purposes of section 78N(3)(e) whether it would seek to recover all or a portion of the cost incurred by it in doing some particular thing by way of remediation—
 - (i) failed to have regard to any hardship which the recovery may cause to the person from whom the cost is recoverable or to any guidance issued by the Secretary of State for the purposes of section 78P(2); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably determined that it would decide to seek to recover all of the cost;
 - (o) that, in determining a requirement of the notice, the enforcing authority failed to have regard to guidance issued by the Environment Agency under section 78V(1);
 - (p) that a period specified in the notice within which the appellant is required to do anything is not reasonably sufficient for the purpose;
 - (q) that the notice provides for a person acting in a relevant capacity to be personally liable to bear the whole or part of the cost of doing any thing by way of remediation, contrary to the provisions of section 78X(3)(a);
 - (r) that service of the notice contravened a provision of section 78YB(1) (which makes provision regarding the interaction of Part 2A of the 1990 Act with other enactments), and—
 - (i) in a case where subsection (1) of that section is relied on, that it ought to have appeared to the enforcing authority that the powers of the Environment Agency under section 27(2) might be exercised;
 - (ii) in a case where subsection (3) of section 78YB is relied on, that it ought to have appeared to the enforcing authority that the powers of a waste regulation authority or waste collection authority under section 59(3) might be exercised; or
 - (s) that there has been some informality, defect or error in, or in connection with, the notice, in respect of which there is no right of appeal under the grounds set out in sub-paragraphs (a) to (r).
- (2) A person may only appeal on the ground specified in paragraph (1)(d) in a case where—

(1) Section 78YB was amended, in relation to England and Wales, by S.I.2000/1973, regulation 39 and Schedule 10, Part 1, paragraphs 2 and 6.

(2) Section 27 was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 60.

(3) Section 59 was amended, in relation to England and Wales, by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 43(2).

- (a) the enforcing authority has determined that he is an appropriate person by virtue of subsection (2) of section 78F and he claims to have found some other person who is an appropriate person by virtue of that subsection;
 - (b) the notice is served on him as the owner or occupier for the time being of the contaminated land in question and he claims to have found some other person who is an appropriate person by virtue of that subsection; or
 - (c) the notice is served on him as the owner or occupier for the time being of the contaminated land in question, and he claims that some other person is also an owner or occupier for the time being of the whole or part of that land.
- (3) If and in so far as an appeal against a remediation notice is based on the ground of some informality, defect or error in, or in connection with, the notice, the Secretary of State must dismiss the appeal if he is satisfied that the informality, defect or error was not a material one.