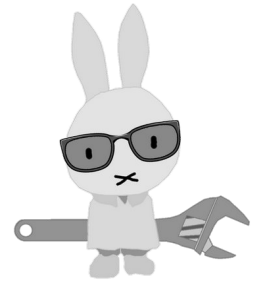


'Forgotten, but not gone'

How governments have deliberately ignored the safety of contaminated sites in England – *and why climate change makes this worse*

Paul Mobbs, *The 'Meta-Blog'*, issue no.18, 25th October 2021



This is an over thirty-year long story about my involvement with contaminated sites, and helping communities to get action to clean them up. It's innately connected to my home town, Banbury: An average small town, on the border between the Midlands and the South East; yet in the 1980s, this place taught me about the issues of waste disposal and land contamination. Not because it was exceptional, but because these issues affect almost every community across Britain.

Generations of my family have lived here, from at least the early Nineteenth Century. By word of mouth I learned about local industrial sites, what they did, and where their waste was buried.

The problem with today's highly mobile society is that such local knowledge is increasingly rare; and before the late 1970s, records of waste or pollution releases were rarely kept. Despite warnings about the issues of contaminated land since the 1960s, governments have failed to act to create a comprehensive system to track down, assess, and where necessary decontaminate these sites.

Just like other major ecological issues – such as climate change – the obstacle to change are the economic vested interests that pressure decision-makers not to act. Valuing profit over the lives of ordinary people, they prevent effective action.

'What's past is prologue'

Climate change is important, but it has pushed other pressing ecological issues off the agenda. Like climate change, land contamination is a direct result of historic industrialisation. *It is done.* Now we have to manage those impacts. Unfortunately, climate change will make those impacts far worse.

At the centre of Banbury, along the river, is Spiceball Park. At the end of the Nineteenth Century a local butcher, [Thomas Hankinson](#), donated money to

landscape a park for the '*poor of Banbury*'; money he made from the local delicacy he used to make and sell – seasoned faggots called '*spice balls*'.

Spiceball Park is reclaimed land. Bought by the local corporation in the 1880s, it was filled with spoil, and the ash from waste and coal burning, dumped on the low-lying land to raise it up. This carried on for almost a century until 1974.

That date is significant.

In 1974, the [Control of Pollution Act](#) was enacted, which commenced the first true regulation of waste disposal in Britain. Many sites like this were closed before the law took effect. Most were then quietly forgotten about.

Over a century after Hankinson's gift to the town, the park is very nicely landscaped. Though occasionally the Environment Agency put up warnings not to touch the river water due to toxic contamination – *but that's a separate issue.*

Delve into the undergrowth, though, especially where the rabbits have excavated the soil beneath, and you will find incinerated Victorian and Edwardian waste: Broken glass; small bottles; clinker or charred brick and stone; and melted metal. And the soil itself is very black.

The particular problem here are the levels of metals, especially lead. This waste was burnt well before the advent of plastics and chemical polymers,

At the more 'extreme' end of my past work, an [unlawful dump site](#) for chemical and radioactive materials, from UKAEA Harwell, I discovered at Sutton Courtenay in 1992





Rabbit-excavated burned waste, including a melted glass bottle, in Spiceball Park

and so the types of contamination here are fairly 'inorganic'. Even so, it's not the sort of stuff that should be dug up and moved elsewhere. But that's exactly what happened in the early 1990s.

The contractor building the new link road to the M40 excavated the spoil from the park and used it to reclaim farmland a short distance away. Then things turned nasty, and litigious, once it was discovered what that spoil contained.

Since 1979, the government's *Interdepartmental Committee on the Remediation of Contaminated Land* had recommended standards be adopted for the management of contaminated sites. The [Royal Commission on Environmental Pollution](#) also addressed the issue in its report on 'tackling pollution' in 1984. Without a legal framework, though, that could not happen consistently across the country.

What finally precipitated action to create a legal framework was the need to enact European laws on waste and pollution. This was done through the [Environmental Protection Act 1990](#). These measures came too late, though, to prevent the contamination of land with the spoil from Spiceball Park.

The farce of 'Section 143'

[Section 143](#) of the *Environmental Protection Act* introduced new laws on contaminated land. It gave the government powers to say what 'contamination' was, and how it should be recorded. It also created an obligation on local authorities to investigate their areas, and draw up '*public registers of land which may be contaminated*'. [Section 61](#) of the Act also gave powers to local waste authorities to inspect closed landfill sites, and institute clean-up operations if they were deemed necessary.

For example, if such a public register had existed

then everyone should have known what was in Spiceball Park. The world would have been all the better for such a register.

In the event, though, the development industry and land-owning interests strangled it. Pressure from the industry forced not one, but three consultations on contaminated land registers between May 1991 and November 1994. There was also opposition from local authorities in former industrial areas. One authority with which I had a particularly involved relationship, Sandwell, objected as potentially 90% of their local areas would be designated as 'potentially contaminated'.

The second consultation, in May 1992, listed fewer types of land use, but didn't fare any better.

Then on the 24th of March 1993, the government capitulated to the pressure from development interests. Michael Howard, Secretary of State for the Environment, [announced that Section 143](#) would not be enacted, and all plans for public registers would be put on hold. In his written answer to the House of Commons he stated the review would consider:

"The powers and duties of public authorities which relate to the identification, assessment and appropriate treatment or control of land that could cause pollution of the environment or harm human health, having regard to the need to minimise the costs which existing and new regulatory burdens place on the private sector."

After a year-and-a-half of wrangling, a new consultation was issued in November 1994. New powers were then drafted in [The Environment Act 1995](#): Section 143 was repealed, as well as Section 61 which related to closed landfills; and a string of separately suffixed '*Section 78***' clauses were inserted as [a new 'Part 2A'](#), which created a convoluted system to protect land-owning interests.

As a last delaying measure, though enacted in July 1995, the new powers were not commenced in law [until 1st April 2000](#), almost five years later.

The result of the new framework was to weaken the power of regulators further, meaning developers have often won appeal cases, heaping the clean-up costs on local authorities:

In one case, the Environment Agency tried to get National Grid Gas to pay for the clean-up of a former gasworks site. On appeal, [the Lords ruled](#) that because it was not made clear the newly privatised

company would inherit the liabilities of the public companies, they could not be made to pay for past contamination. In another case, Sevenoaks Council tried to get a developer to pay for the clean-up of a housing development they built. [The High Court ruled](#) that even though evidence of land contamination existed, because they could not prove that the managers or directors of the company 'knew' this to be the case when they built the houses, they could not be held responsible for the costs.

By the early 2000s I had given up trying to work on contaminated land. In part, that was the result of my work on [the incinerator ash campaign](#) in Tyne-side: Where the council '[recycled](#)' [toxic incinerator ash](#) on parks and allotments; [poisoned local people](#) with cancer-causing compounds; and walked away without [any serious penalties](#) for [that negligence](#).

The 'official' obstacles were too great to make progress: Government closed ranks with the development industry; and local authorities just didn't want 'to know' about local sites in case it created financial liabilities for them.

Despite this, I knew I would return to this issue one day. It was so obvious that there would be disaster, and that one day I would be fated to walk into some people who had been subject to the multiple failures of this flawed system – and had suffered harm as a result.

Cameron & Osborne deregulate further

Just when it appeared [the compromise in The Environment Act](#) had settled-down, the Cameron government's deregulatory zeal weakened the system further. Not satisfied with just disbanding the advisory bodies who investigated these issues – such as the *Royal Commission on Environmental Pollution* – they took an axe to the regulations.

In 2012 the government published [a new 'statutory guidance'](#). This put emphasis on '*ensuring the burdens faced by individuals, companies and society as a whole*' were '*proportionate*' and '*manageable*'. Enforcing authorities were only to use the law where no appropriate alternative existed. Likewise local authorities are specifically forbidden from using their powers of entry to take samples, or enforcement action, if the owner or developer offered to voluntarily provide funding or information – creating an issue of how results might be validated.

A common practise with these sites is that they are often owned by subsidiary or off-shore companies to manage the liability. This creates a problem if the authority tries to take enforcement action. The company can simply go insolvent, without affecting the main developer/owner, leaving the local authority to pick-up the bill. Off-shore companies can even [refuse to honour planning agreements](#) for after-care or restoration, since local authorities can't enforce those conditions abroad.

This is a problem as the guidance makes it clear the authority must '*seek to minimise unnecessary burdens on the taxpayer, businesses and individuals*', and, '*encourage voluntary action to deal with land contamination issues as far as it considers reasonable and practicable.*' In many cases that will require not taking any enforcement action at all.

For example, one notable post-war business in this area was *Banbury Buildings*. They produced prefabricated agricultural and industrial buildings clad in cemented-bonded asbestos. Each day a lorry or two would go to Watford and return with a load of asbestos sheets. The prefabrication process inevitably resulted in sheets being cut or broken, producing waste. *Where did the waste go?*

The high hills around Banbury are formed by a hard layer of 'ironstone'. This has been mined for iron production from at least Roman times, until the 1960s. It is still mined for aggregate. Large areas have been removed, but many small quarries are dotted around the area. Banbury Buildings used these small holes in the ground, and local disused railway cuttings, as convenient spots to get rid of their asbestos waste.

As Banbury and nearby villages get bigger, they push out across the ironstone slab, at which point

A former quarry and asbestos dump in Longford Park?



finding filled ground becomes more likely – including sites filled with Banbury Building's asbestos.

In the application for one recent development, the developer indicated that there was no documentary evidence – from a period in time when records were not required to be kept – that tipping had taken place on their site. In the circumstances, the council were not in a position to demand a detailed site investigation. The developer is believed to have found one of these asbestos sites when work started.

That's another issue here – [confidentiality](#). As developers proffer 'commercially confidential' information to local councils, in many cases councils may be unable to release those details to the public.

In reality though, the thousands of small contaminated sites across the country are a minor problem. If we look ahead, to a future where climate change makes our complex society more uncertain in terms of maintenance and regulation, there is a greater problem – *that isn't even regarded as such today*.

'High-tech' modern landfills are this generation's toxic legacy to future generations

Though former industrial sites or landfills are numerous, with a few exceptions from the more recent industrial past they are small. In contrast, today the economics of waste disposal mean that sites are large. Likewise, as pollution control processes have cleaned-up industrial emissions which would have once been emitted to the air or water, the concentrated toxins from those processes have to go somewhere – and often they end-up in landfill sites.

Most landfills in Britain today take 'inert' waste. A smaller number take a mixture of biodegradable and/or hazardous wastes. Biodegradable and hazardous waste sites operate on the 'dry tomb' principle: The site is lined with clay, and often a plastic liner; when filled, cells are covered with a clay and plastic liner; [gases](#) coming off the top are captured and burnt to reduce pollution; and the [leachate](#) produced by the waste is drained from the bottom of the site and treated to reduce its polluting impact.

As the inside of the cell becomes drier, gas and leachate production falls, and will eventually pretty much stop. That doesn't solve the problem though.

To keep the waste stable the impermeable liner has to be maintained, *forever*. If the cap fails, and water gets in, leachate and gas production will begin again. As the water level rises, it will then slowly

leak the pollution it contains. This means the site must be preserved in its highly engineered state for centuries or millennia to come; and in many cases kept clear of trees or scrub whose roots might damage the lined cells below.

There is just such a site to the north of Banbury – Alkerton Landfill Site. It sits inside a former iron-stone quarry. But at 175 metres/575 feet above sea level, it also sits well above the streams which feed the River Cherwell, and then The Thames. If the site becomes unstable and the cap sinks, or trees were to grow on top, water might penetrate and then leak from the site into the local environment.

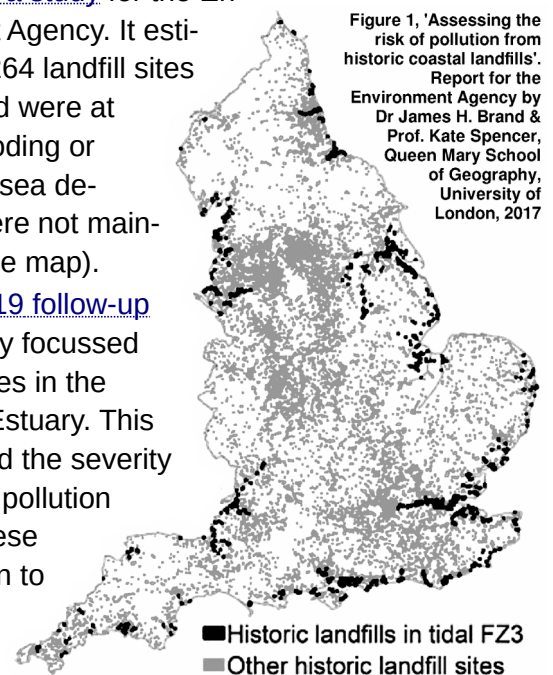
As climate change increases heavy rainfall that's not only a challenge for sites like Alkerton, but especially the many landfills built in gravel workings on flood plains. Here changing water levels and erosion might breach the site's liner system, mobilising the pollution they contain.

This isn't even the worst climate change-related aspect of landfill practise today.

Some of the cheapest land to buy is salt marsh, because of its low agricultural value. For decades, Britain has been 'landraising' on salt marshes (that is, heaping-up waste into low hills rather than filling in holes). With sea level rise, as these sites are at or just above sea level, they may soon be below sea level – where not only will water get in, but waves and storms can erode the waste cells and their impermeable liners, spilling their contents.

In 2017, researchers at the University of London [published a study](#) for the Environment Agency. It estimated 1,264 landfill sites in England were at risk of flooding or erosion if sea defences were not maintained (see map).

In a [2019 follow-up study](#), they focussed on two sites in the Thames Estuary. This highlighted the severity of marine pollution should these sites begin to erode.



The [Committee on Climate Change](#) is the government's chief adviser on climate change matters. In [their 2018 study](#) of the risks of sea level rise they considered the impact on coastal landfills. *Their estimate was that just 55 sites were at risk.* The University of London's 2017 study found that number just along the south coast; and contrast the CCC's figure, a more recent [study from 2020](#) put the estimate at 1,700 sites in England and Wales.

Those with close ties to government are failing to see how contaminated land and climate change impacts interact; arguably because of the economic group-think which dominates government today. In reality, this failure process has already started.

A number of coastal landfills [are already being eroded](#). Research in the Thames valley has found that many former landfill sites are already [leaching significant quantities](#) of pollution into the river as flooding increases.

At the end of September 2021 a new [global study of landfill risk](#) was published. Though just a snapshot of this global problem, it highlighted the major impact sea level rise would have on landfills in Germany and the Low Countries, as well as the USA. We may think we have a problem with plastics and waste in the ocean today. What happens in the future when each incoming flood-tide washes more eroded waste across coastal flood plains?

The meeting I knew I would have one day

In November 2014 I had a gig in Guildford. I'd been there over a decade before to help the local community with a proposed tyre-burning plant. Now I was back to talk about the latest local problem – unconventional oil and gas extraction.

During the meeting I talked to Kye Gbangbola and Nicole Lawler. In the Thames valley floods nine months before, their son, Zane, had died in his bed of heart failure. Kye was paralysed and now uses a wheelchair. Their symptoms were consistent with cyanide poisoning.

The case was exactly the kind of tragic event I knew would arise back in the 1990s, after Michael Howard cancelled Section 143:



© Nicole Lawler

Zane Gbangbola

Died in his home, February 2014, aged 7.

The landfill behind their house – from which the water flowing through their property was issuing – was not considered to be 'a landfill'; it was cut-off from the main site by the construction of the M3, and was not registered under the *Control of Pollution Act*. When the more stringent controls on registered sites were enacted in 1994, it passed un-noticed as it was considered to be an 'historic site'. And despite the Environment Agency internally flagging the landfill gas risk as part of its nearby lock house development, irrespective of the possible risks the local authority was not going to press for a thorough investigation – due to the dis-empowering nature of first Michael Howard's 1993, then David Cameron's 2012 contaminated land policies.

When the fire brigade entered the house their cyanide alarms activated. We now know, [from recent disclosures](#) by Public Health England, that further [testing did find cyanide](#) at levels sufficient to kill Zane and paralyse his father. They [did not find carbon monoxide](#). Despite this, Downing Street deliberately spun this event as a 'carbon monoxide poisoning' to cover up the facts known at that time. This 'official version' would be the determination of the much delayed inquest, where none of this information held by public agencies was presented.

The epidemiology of environmental toxins and ill health has a similar relationship to weather and the climate: You cannot relate a single death to the presence of pollution in the environment, just as a single weather event does not determine climatic trends. What we can say is that increases in pollution in the environment leads to progressively higher levels of ill-health across the population.

In this case, though, we have a death attributable to cyanide poisoning, in an area of Surrey where nearby landfills are known to have received cyanide-contaminated wastes. Zane's death could be the first where we can clearly point to climate trends amplifying the contamination of the environment by waste dumping. But from the Prime Minister's Office on down, there is evidence of intent to bury not only the cause of Zane's death, but more generally, any acknowledgement of the severity of the ecological crisis.

Conclusion: Solving this begins by valuing the future of our children, not abstract land values

As I said at the beginning, my understanding of land contamination has a lot to do with my relationship to the place I live. Its not that this place is exceptional, it is pretty much the rule everywhere; and from travelling to other places around Britain I have seen how these issues affect many communities across the nation. We are all put at risk by the government's willing ignorance in the face of the evidence, and clear intent to prioritise abstract economic values over their basic duty to protect the public's well-being.

This is fundamentally a human rights issue, not just a pollution one:

In failing to act to protect public health, and instead choosing consistently to favour the financial interests of politically-connected developers and large landowners, the government are failing to guarantee the public's right to life. This is because the right to life is not financially qualified; it cannot be traded against the abstract financial assets of their donors.

Given almost sixty years of consistent research –

This structural block in our political process, which serves a narrow economic sectional interest rather than general public well-being, is stalling action on the difficult issues we need to confront as part of climate adaptation. Yes, that means dealing with our past legacy of land contamination. However, what many politicians fail to consider is that increasing rainfall, flooding, and sea level rise, have the potential to turn the present generation's 'state-of-the-art' waste sites into future toxic millstones, as we struggle to maintain them against the changing climate. That process has already started. The death of Zane Gbangbola is but one example of the beginnings of this process of unravelling.

on both climate change and environmental pollution – to ignore this evidence shows a demonstrable bias in decision-making. The financial relationship between our mainstream politics and property development, though, and the evidence of a cover-up of the facts behind Zane's death, arguably changes this to an issue of corrupt practise, not simply a failure to weigh the evidence.

At the UN Human Rights Council's recent meeting in Geneva, a proposal to create a [human right to a 'clean environment'](#) was tabled for discussion. This would certainly mandate strong action on contaminated land. Two nation states were hostile to that idea: [The USA, and Britain](#).

Despite their opposition, this new right to a clean environment [was passed on the of 8th October](#). We wait, [expectantly](#), to see how this might affect future environmental laws.

At no point in this over-thirty-year saga of land contamination, and the influence of land lobby, has the government once discharged it's principal obligation: To protect the public's well-being. Instead it has consistently sided with the property rights lobby. A lobby that is currently providing [a quarter](#) to [a fifth](#) of the Conservative Party's financial contributions.