

# Tendring District Council

Environmental Services



## Statutory Contaminated Land Strategy

(Revised October 2005)

(Revised text added in blue print)

Required under the provisions of the  
Environmental Protection Act 1990 Section 78B

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# INTRODUCTION

## i.1 - BACKGROUND TO THE LEGISLATION

Industrial change and demographic shift during the 20th century resulted in the need for large scale re-organisation of our towns and cities. Industries moved out or disappeared altogether leaving large, 'brown field', gaps in our urban landscape. At the same time, changes in heating methods, and the advent of the consumer society, has had a significant effect on the type and volume of refuse it has been necessary to landfill. Inevitably, these changes have left behind a legacy of contaminated land which, in some cases, may be harmful.

The Government, in its response to the 11th report of the Royal Commission on Environmental Pollution in 1985, announced that the Department of the Environment was preparing a circular on the planning aspects of contaminated land. The draft of the circular stated that:

*Even before a planning application is made, informal discussions between an applicant and the local planning authority are very helpful. The possibility that the land might be contaminated may thus be brought to the attention of the applicant at this stage, and the implications explained.*

Thus suggesting that it would be advantageous for the planning authorities to have available a list of potentially contaminated sites.

In 1988, the Town & Country Planning (General Development) Order required local planning authorities to consult with waste disposal authorities if development was proposed within 250m of land which had been used to deposit refuse within the last 30 years.

In January 1990, the House of Commons Environment Committee published its first report on contaminated land. This document, for the first time, expressed concern that the Government's suitable for use approach, "... may be underestimating a genuine environmental problem and misdirecting effort and resources". The committee produced 29 recommendations, including the proposals that:

*The Department of the Environment concern itself with all land which has been so contaminated as to be a potential hazard to health or the environment regardless of the use to which it is to be put, and;*

*The Government bring forward legislation to lay on local authorities a duty to seek out and compile registers of contaminated land.*

Immediately following the House of Commons report, the Environmental

Protection Act 1990 had, at section 143, a requirement for local authorities to compile, 'Public registers of land which may be contaminated'. If enacted, this would have required local authorities to maintain registers of land which was, or may have been, contaminated as a result of previous (specified) uses. In March 1992, however, the concern about the blighting effect of such registers resulted in a press release published by the Secretary of State delaying the introduction of section 143 stating:

*The Government were concerned about suggestions that land values would be unfairly blighted because of the perception of the registers.*

Subsequently, in July 1992, draft regulations were released with significantly reduced categories of contaminative uses, "... to those where there is a very high probability that all land subject to those uses is contaminated unless it has been appropriately treated". It was estimated that land covered by the registers would be only 10 to 15% of the area previously envisaged. This, however, still did not satisfy the city so, on the 24th of March 1993, the new Secretary of State (Michael Howard) announced that the proposals for contaminated land registers were to be withdrawn and a belt and braces review of land pollution responsibilities to be undertaken.

This resulted in the Department of the Environment consultation paper, *Paying For our Past* (March 1994), which elicited no less than 349 responses. The outcome of this was the policy document, *Framework for Contaminated Land*, published in November 1994. This useful review emphasised a number of key points:

- The Government was committed to the "polluter pays principle" and "suitable for use approach".
- Concern related to past pollution only (there were effective regimes in place to control future sources of land pollution).
- Action should only be taken where the contamination posed actual or potential risks to health or the environment and there are affordable ways of doing so.
- \* The long-standing statutory nuisance powers had provided an essentially sound basis for dealing with contaminated land.

It was also made clear that the Government wished to:

- Encourage a market in contaminated land;
- Encourage its development; and
- That multi functionality was neither sensible nor feasible.

The proposed new legislation was first published in June 1995 in the form of section 57 of the Environment Act which amended the Environmental Protection Act 1990 by introducing a new Part IIA. After lengthy consultation on statutory guidance this came into force in April 2000.

## **i.2 - EXPLANATION TERMS**

The legislation and guidance is very heavily punctuated with many complex and often unusual terms. To assist in the interpretation of these, an extensive glossary has been included in DETR Circular 2/2000, *Environmental Protection Act 1990: Part IIA - Contaminated Land*. (For convenience this has been reproduced at Appendix 7).

## **i.3 - NATIONAL OBJECTIVES OF THE NEW REGIME**

The Government believes contaminated land to be, “an archetypal example of our failure in the past to move towards sustainable development”. The first priority has therefore been specified as the prevention of new contamination via the pollution control regimes.

Secondly, there are three stated objectives underlying the suitable for use approach as follows:

- a) to identify and remove unacceptable risks to human health and the environment;
- b) to seek to bring damaged land back into beneficial use; and
- c) to seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.

The suitable for use approach recognises that risk can only be satisfactorily assessed in the context of a specific use with the aim of maintaining an acceptable level of risk at minimum cost, thereby, “not disturbing social, economic and environmental priorities”.

The specific stated objectives of the new regime are:

- a) To improve the focus and transparency of the controls, ensuring authorities take a strategic approach to problems of land contamination;*
- b) to enable all problems resulting from contamination to be handled as part of the same process (previously separate regulatory action was needed to protect human health and to protect the water environment);*
- c) to increase the consistency of approach taken by different authorities; and*
- d) to provide a more tailored regulatory mechanism, including liability rules, better able to reflect the complexity and range of circumstances found on individual sites.*

In addition to providing a more secure basis for direct regulatory action, the Government considers that the improved clarity and consistency of the new regime, in comparison with its predecessors, is also likely to encourage voluntary remediation. It is intended that companies responsible for contamination should assess the likely requirements of regulators and plan remediation in advance of regulatory action.

There will also be significant incentive to undertake voluntary remediation in that the right to exemption to pay Landfill Tax will be removed once enforcement action has commenced.

The Government also considers the new regime will assist developers of contaminated land by reducing uncertainties about so called, “residual liabilities”, in particular it should:

- a) reinforce the suitable for use approach, enabling developers to design and implement appropriate and cost-effective remediation schemes as part of their redevelopment projects;*
- b) clarify the circumstances in which future regulatory intervention might be necessary (for example, if the initial remediation scheme proved not to be effective in the long term); and*
- c) set out the framework for statutory liabilities to pay for any further remediation should that be necessary.*

#### **i.4 - LOCAL OBJECTIVES**

The Tendring District Council welcomes the introduction of Part IIA of the Environmental Protection Act 1990 which complements the Council’s own Corporate aims and objectives.

The **Tendring Corporate Plan** was published in 2000. The plan **identified** themes, some of which are particularly relevant to this strategy document, as follows:

- 1) Strategic objective to promote public health.
- 2) Seeking to improve the health and well being of residents.
- 3) Developing a strategy to identify land that may be contaminated by 2001.

Similarly, the Local Plan (1998) **identified** three strategic aims:

1. To ensure that an adequate supply of land is available in suitable locations to cater for future development requirements of all kinds.

2. To conserve natural resources and to protect the environment through maintaining control policies.
3. To provide necessary design guidance for new developments to be carried out in a way that enhances the district.

#### The Essex and Southend on Sea Replacement Structure Plan (RSP) 2001

1. The RSP promoting more sustainable forms of development emphasising the need to reuse land.
2. Applying a sequential approach when considering development requirements and proposals so as to give performance within urban areas.
3. Recycling of vacant, derelict, degraded and under used land to accommodate new development.

Other relevant policies which relate to this strategy include

1. LA21
2. [Community Strategy](#).

The identification and safe re-use of contaminated land therefor plays a key part in the sustainable development of the area.

### **i.5 - ABOUT THIS STRATEGY**

The Act itself states at section 78B (1) that:

Every local authority shall cause its area to be inspected from time to time for the purpose -

- a) of identifying contaminated land; and
- b) of enabling the authority to decide whether any such land is land which is required to be a special site (see appendix 1).

Section 78B (2) states that the authorities must act in accordance with guidance issued by the Secretary of State in this respect. Statutory guidance has now been published within Department of the Environment Transport & Regions Circular 02/2000, dated 20<sup>th</sup> March 2000. Specific technical guidance on the drafting of Inspection Strategies has now been published (May 2001).

The statutory guidance makes clear that in order to carry out this duty Authorities

must produce a formal contaminated land strategy document which clearly sets out how land which merits detailed individual inspection will be identified in an ordered, rational and efficient manner, and in what time scale.

The strategy must be completed, formally adopted by the Council, and published, by July 2001. Copies of the final document must also be forwarded to the Environment Agency. Subsequently the strategy must be kept under periodic review.

In order to satisfy the far reaching objectives of the new regime it will be necessary to investigate land throughout the whole of the District and collate significant volumes of information. This will ultimately enable the Authority to make the sometimes difficult, and inevitably complex decisions relating to the land's condition, the risks it presents and who may be liable for it at law. This Strategy is the commencement of that process and seeks to express as clearly as possible how each stage will be addressed.

It should be noted that there is no formal mechanism in place for approval of local authority strategies. However, the Environment Agency, County Council, English Nature, English Heritage, Department for Environment, Food and Rural Affairs (DEFRA), and, any statutory regeneration bodies, should be consulted (see appendix 2 for details of consultees).

## **i.6 - ROLES AND RESPONSIBILITIES**

The primary regulator in respect of these new powers are the **local authorities**. In the Tendring District, the production of the strategy and the discharge of the functions will be the responsibility of the Head of Environmental Services. It should be noted that this is a complex and demanding enforcement role which will be carried out in accordance with the Council's Statutory duty, enforcement policy and the Cabinet Office Enforcement Concordat March 1998. The statutory guidance states: "The local authority has the sole responsibility for determining whether any land appears to be contaminated land."

[This raises the question of who is competent to make these decisions. With more complex sites, it may be necessary to employ specialist consultants to assist the Council with the decision-making process.](#)

This is a significant responsibility which reflects existing local authority duties under the statutory nuisance regime and the development control functions under the Town & Country Planning, legislation. The role in broad terms includes:

- To cause the area to be inspected to identify potentially contaminated sites
- To determine whether any particular site is contaminated (by definition)
- To determine whether any such land should be designated a 'special site'
- To act as enforcing authority for contaminated land not designated as a 'special site'

There are two main occasions where the **Environment Agency** can provide site specific guidance to local authorities for sites determined as Contaminated Land:

- In connection with the seriousness of pollution of controlled waters and;
- Where the Agency elects to use its powers under S78V, which covers any aspect of remediation, including apportionment of liability between appropriate parties.

Where the presence of contaminated land has been confirmed the enforcing authority must:

- Establish who should bear responsibility for remediation
- Decide after consultation what must be done in the form of remediation and ensure it is effectively carried out
- Determine liability for the costs of the remedial works
- Maintain a public register of regulatory action in relation to contaminated land

## **i.7 - OUTLINE OF THE STATUTORY PROCEDURE**

Contaminated land is defined as:

**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 -**

**Significant harm is being caused or there is a significant possibility of such harm being caused; or**

**Pollution of controlled waters is being, or is likely to be caused**

What may and may not constitute the various categories of harm is described in the statutory guidance. Controlled waters include inland freshwater, groundwater and coastal waters (see appendix 3).

Local authorities must search their Districts for land which has both sensitive receptors and sources of potential contamination. Where they have good reason to believe these both exist, they must undertake a formal risk assessment in accordance with established scientific principles in order to establish whether there is the potential for them coming together and causing harm or pollution as described. This is known as a pollutant linkage.

Where they are satisfied that significant harm is occurring, or there is a significant possibility of such harm, or pollution of controlled waters, they must declare that a

significant pollutant linkage exists and that the land is therefore contaminated land by definition. In every case where the land does not fall within the category of a special site, they must commence regulatory action.

This involves a series of complex procedures which must include:

- A formal written record of the determination
- Formal notification of all interested parties
- Determination the physical extent of the land
- The extent and seriousness of the risks (need for urgent action)
- The number and type of pollutant linkages
- The effect each significant pollutant may have on controlled waters (if any)
- The most appropriate and cost effective remedial scheme for each significant pollutant linkage
- Identification of liability groups and, appropriate persons, for each pollutant linkage
- Assessment of hardship in the case of each, appropriate person
- Effective remediation of the site and recovery of costs where appropriate

[The Council will fully consult with English Nature and English Heritage at appropriate stages and wherever relevant as stated in DETR Circular 02/2000.](#)

A series of consultations must also be carried out at each stage with the ultimate aim of securing voluntary remediation (without the need for enforcement action). Where the land does fall within the definition of a special site the Environment Agency become the enforcing authority. In these cases, however, the local authority must still make the determination and formally notify the interested parties.

In certain circumstances the local authority may carry out the remedial works. In general terms it has this power where:

- Urgent action is necessary (see part 5 and appendix 5)
- There is no appropriate person

- The authority is precluded from taking enforcement action (specified reasons)
- The authority agrees to carry out the works on behalf of an appropriate person
- A remediation notice has not been complied with

In non urgent cases where a remediation notice is necessary and all the required consultations have been completed, the notice must be served on the appropriate person(s) no sooner than three months after the contaminated land has been determined or declared a special site. The notice itself may require further investigation of the site and as a result more pollutant linkages may be identified. Where that is the case the enforcing authority must go through the same processes again to identify appropriate persons and remedial actions.

The enforcing authority must at all times consider the potential for hardship and undertake cost benefit analysis in respect of all remedial actions. Where remedial actions are undertaken in default of a notice the enforcing authority has the power to recover costs in certain circumstances.

#### **i.8 - SITUATIONS WHERE THIS REGIME DOES NOT APPLY**

As stated in i.3 above, the primary aim of the Government is to prevent new contamination occurring. There are several situations therefore where existing pollution control legislation would apply to control the effects of land contamination:

- Integrated Pollution Control** (Environmental Protection Act 1990 Part I / Prescribed Processes and Substances Regulations 1991 Schedule 1 Part A) - There are certain processes prescribed under the above regulations, for a pollution control regime known as, Integrated Pollution Control (IPC). This is enforced by the Environment Agency and includes prevention of pollution to land. [Section 27 of the Act gives the Environment Agency power to take action to remedy harm caused by a breach of IPC controls, including land contamination.](#)
- Integrated Pollution Prevention and Control** (Pollution Prevention Control Act 1999 and Pollution and Control Regulations 2000) [applies to Part A1 and A2 activities/installations.](#) The Integrated Pollution Prevention and Control regime, which came into force on the 1<sup>st</sup> October 2000 [and deals only with contamination which has originated from the process authorised, rather than general land contamination,](#) requires a site report to be submitted as part of an application . The site report will describe the condition of the land and, in particular, identify any substances in, or under the land that may be a pollution risk. The report will aid the regulator in deciding whether the site is suitable and in setting appropriate conditions. It will then act as a reference point used to identify any change in the condition of the site on surrender of the permit and any necessary remediation to achieve that pre-existing level. The local authority will need to investigate whether there is a requirement to take action

under Part IIA for a pre-existing contamination on submission of the IPPC application or surrender of the IPPC permit.

- c) **Waste Management Licensing** (Environmental Protection Act 1990 Part II) - All waste disposal and processing sites (including scrap yards) should be subject to licensing. Contamination causing harm, or pollution of controlled waters, should be dealt with as a breach of the conditions of the licence. In exceptional circumstances, where the problem arises from an unlicensed activity, it is possible that Part IIA [may be applicable e.g. historical contamination that has occurred prior to the issue of a Waste Management Licence](#).

Where there has been an illegal tipping of controlled waste (fly tipping) this should also be dealt with under the Environmental Protection Act 1990 Part II ([section 59](#)).

- d) **Pollution of Controlled Waters not arising from land** (Water Resources Act 1991 section 161) - Where a pollution incident has occurred and the pollutant is discharged directly into the body of water, or it has left land and it is entirely in the body of water (i.e. the land is no longer causing pollution), the Water Resources Act 1991 will apply.
- e) **Discharge Consents** (Water Resources Act 1991 Part III) - No remediation notice can require action to be taken which would affect a discharge authorised by consent.
- f) **Change of Land Use** - Where land becomes a risk to potential new receptors as a result of a change of use, the Town & Country Planning Development Control regime will continue to apply as before.
- g) **Risk of Harm to Employees** - Where there is a risk of harm to persons at work from land contamination, this should be dealt with under the Health and Safety at Work etc Act 1974. The enforcing authority will be either the Health & Safety Executive or this Council depending on the work activity.
- h) **Risk of Harm Following an Incident at a COMAH Site** (Control of Major Accident Hazard Regulations 1999) - Where there has been a release, explosion or other major incident, which has caused land contamination, the restoration should be carried out as part of the COMAH on site / off site emergency restoration plan.

**In addition there are several other situations where the relationship with Part IIA needs clarification:**

- i) **Contaminated Food** (Food Standards Act 1999) - Part I of the Food and Environment Protection Act 1985 gave Ministers emergency powers to prevent the growing of food on, *inter alia*, contaminated land. Following the

establishment of the Food Standards Agency this power is now vested in the Secretary of State. Where the Council suspects crops may be affected from contaminated land to such an extent they may be unfit to eat, they will consult the Food Standards Agency and DEFRA to establish whether an emergency order may be necessary. It should be noted, however, that remediation of the site if necessary would be carried out through the new powers in Part IIA. [The Food Standards Agency has responsibility for advice on food safety, including food produced in domestic gardens and allotments, food collected from the wild, as well as commercially produced foods.](#)

- j) **Radioactivity** - Part IIA does not apply to contamination caused by radioactivity, but the Secretary of State does have the power to make Regulations to that effect. Until such Regulations are created and brought into force, the Council will liaise with the Environment Agency where radioactive contamination is suspected or confirmed.
- k) **Organisms** - Part IIA does not apply to contamination caused by organisms such as bacteria, viruses or protozoa, as they do not fall within the definition of substances. This could affect land contaminated with Anthrax spores, E-coli, etc. The Council will liaise with the Environment Agency in relation to MOD land and the DEFRA on all other sites. It should be noted that even though contaminated sites used in connection with biological weapons must be designated Special Sites (see appendix 1), this applies only to non biological contamination.
- l) **Statutory Nuisance** - (Environmental Protection Act 1990 Part III) - The relationship between Part IIA and statutory nuisance is not straightforward. Suffice to say if land is declared contaminated land by definition, it cannot be considered a statutory nuisance. This is understandable and ensures there is no duplication or confusion between the two regimes. If however the land is investigated and found not to be contaminated land but, "land in a contaminated state" (defined as land where there are substances in, on or under the land which are causing harm, or there is a possibility of harm being caused), it also cannot be considered a statutory nuisance for the purposes of Part III of the Act. Precisely in what circumstances might land be declared, "in a contaminated state", remains to be seen. Where land is not *contaminated land* or in a, *contaminated state*, but is causing a nuisance from smell, it could be considered a statutory nuisance as before.

## **i.9 LAND UNDER OWNERSHIP OF AN ENFORCING AUTHORITY**

Where land owned by a local authority is found to be contaminated land, unless a special site, there will be no enforcing authority. Local Council's must, however, carry out their duties as though they were the enforcing authority, undertake the same consultations, assessments and seek appropriate remedial works as necessary, [unless it is a Special Site. The Council is not, however, required to serve a remediation notice on itself.](#)

To this end a formal relationship should be maintained between the Department

responsible for enforcement of the new regime and that responsible for Council owned land. All information relating to the identification, assessment and remediation of Council owned land must be fully reported to satisfy the needs for transparency. See also i.10 below.

Where contaminated land is located outside the District boundaries but affecting receptors within the District, the Council will treat that land as if it were situated within its area. Prior liaison will, however, take place between the two concerned Councils to ensure that the most appropriate enforcing authority carries out any relevant action.

## **i.10 - THE NEED FOR TEAM WORKING**

This Strategy impacts on potentially all departments of the Council, in particular:

**Regeneration, Planning and Community** - the inspection of the District will identify areas of potentially contaminated land which may be developed, awaiting development, derelict, protected or green belt. This may result in the need to re-examine past development control files or identify development routes for contaminated sites which may subsequently impact on the Local Development Plan.

**Building Control**- have the duty to enforce protection measures in new build projects to mitigate the impact of contamination on property. Information they hold will be essential to quantify risks.

**Legal Services** - this is a highly complex piece of legislation which could have significant implications for the Council, landowners and occupiers. **Legal advice** may be required on many aspects including those relating to enforcement, liability, powers of entry, data protection, access to information etc.

**Essex County Council Highways**- land under highways, pavements, verges and common areas may be contaminated and present a risk to potential receptors. Highways Authorities must maintain registers under Part III of the New Roads and Street Works Act 1991 regarding, amongst other things, streets with, "special engineering difficulties". This includes risks from contamination.

**Information Technology**- significant volumes of data will need to be held both on database and geographical information systems. Support will be required on the use of these systems and data protection.

**Amenities and Housing**- land in use and controlled by these departments may be contaminated and require remediation. The Arboricultural Officer may need to be consulted on remediation and tree growth. The Conservation Officer on impacts on eco-receptors.

**Property**- the Head of Environmental Services will lead the Council on the remediation of any contaminated sites it is found to be responsible for.

**Finance-** this legislation can have significant resource implications for the Council, both as an Enforcing Authority and land owner (see also i.11 below).

The need for close corporate team working to ensure the smooth implementation of the Strategy cannot therefore be overstressed.

### **i.11 - FINANCIAL AND MANPOWER IMPLICATIONS**

The Explanatory and Financial Memorandum to the Environment Bill stated that the creation of the new contaminated land regime would have neither financial nor manpower implications. In the light of responses received to the draft guidance, however, the Government acceded that successful operation would necessitate considerable resources.

Accordingly, as part of the Government spending review in July 1998, a sum of £50M was made available to local authorities nationally over three years to develop inspection strategies, carry out site investigations and take forward enforcement action. In addition £45M is to be spent on remediation over the same period through the contaminated land Supplementary Credit Approval (SCA) programme.

Funding aspects of the Strategy are considered in Part 8.

# THE STRATEGY

## PART 1

### DESCRIPTION OF THE TENDRING AREA AND HOW ITS PARTICULAR CHARACTERISTICS IMPACT ON THE INSPECTION STRATEGY

#### 1.1 Introduction

The Tendring peninsula is situated to the East of Colchester nestling between the two major rivers of the Colne to the South West of the district and the Stour to the North.

It is a largely rural area with the main concentrations of populations within the district lying in the string of coastal towns of Clacton-on-Sea, Frinton-on-Sea, Walton-on-the-Naze, the Port of Harwich with Dovercourt and the smaller towns of Brightlingsea, Lawford, Manningtree and Mistley. In addition there are some 27 villages in the rural hinterland.

The census figure of 1991 show that less than a quarter of the districts population live in the rural areas whilst Clacton-on-Sea has nearly 2/5 of Tendring's population making it easily the largest urban area.

There is a growing population of approximately 138,000, the growth due mainly to people of retiring age being attracted to the coastal area.

The extensive Tendring coastline is the key to its distinctive character. Apart from Harwich International Port there are smaller ports of Mistley and Brightlingsea on the Stour and Colne estuaries.

The development of the coastal resorts may be attributed to the sandy North Sea coastline which contribute attractions to water sports enthusiasts and provides a variety of habitats for wildlife. In addition the coastal character is fundamental to the local economy.

Tourism has traditionally been the economic backbone of the coastal resort towns, with summer visitors swelling the resident population.

#### 1.2 Sites of Importance

There are currently 21 sites recognised as sites of special interest (SSSI) as laid out in the local plan ranging from marshland, estuarine areas and woods through to coastal cliffs, some of which have now been recognised as sites of international importance and designated special protection areas.

English Nature have identified (1992) 55 ancient woodlands at locations across the district.

Both of the above list of sites are to be found within Tendring District's local Plan.

There are 18 ancient monuments as identified by English Heritage (1995) set out in the aforementioned Local Plan.

### 1.3 Natural Features/Geology

The area generally consists of London clay and this deposit, together with the Lower London Tertiary deposits, actually overlies the Chalk, which is classified as a major aquifer. The Groundwater Vulnerability Map also indicates the presence of minor sand and gravel aquifers which overlie the London Clay. These are predominantly located in the West and South of the district and absent in Hamford Water, Frinton on Sea areas in the East of the district.

The area is bordered by two major rivers and criss-crossed by many brooks and ditches feeding into the main rivers, and into coastal marshland.

## STRATEGIC APPROACH TO THE IDENTIFICATION OF CONTAMINATED LAND IN THE TENDRING DISTRICT

1.4 In developing a strategic approach it is necessary to consider -

- The extent to which any specified receptors are likely to be found in the District;
- The history, scale and nature of industrial or other potentially contaminative uses;

1.5 Land can only be considered contaminated if it impacts in a certain way on specified receptors, these are:

a) Human beings

b) Eco systems:  
[Areas](#) of special scientific interest

Wildlife & Countryside Act 1981 section 28

## National / local nature reserves

Wildlife & Countryside Act 1981 section 35 / National Parks & Access to the

Countryside Act 1949 section 21

## Marine nature reserves

Wildlife & Countryside Act 1981 section 36

## Areas for the special protection of birds

Wildlife & Countryside Act 1981 section 3

## Special areas of conservation & special protection areas

Conservation (Natural Habitats etc) Regulations 1994 regulation 10

## Any candidate special areas of conservation or potential special protection areas

## Any habitat or site afforded planning policy protection

Planning Policy Guidance Note 9 - Nature Conservation, para 13

### c) Property:

Buildings (including below ground)

Ancient monuments

All crops including timber

Produce grown domestically or on allotments for consumption

Livestock

Other owned or domesticated animals

Wild game subject to shooting or fishing rights

### d) Controlled Water:

Territorial sea water (to three miles)

Coastal waters

Inland fresh waters (rivers, streams, lakes, including the bottom / bed if dry)

Ground waters

Water Resources Act 1991 s104 (see also appendix 3)

1.6 In undertaking its duties to inspect the District under section 78B (1) of the Act, the Council will take into consideration the particular characteristics of the area, including:

Relevant geology, hydro geology and hydrology

The location of: sensitive water receptors

sensitive property receptors

relevant ecological receptors

all existing human receptors, and;

potential sources of contamination

1.7 Consideration will also be given to the existence of sites and receptors which if found to be contaminated land would be designated special sites (see appendix 1).

## 1.8 POTENTIAL SOURCES OF CONTAMINATION

a) **INDUSTRIAL HISTORY** - A comprehensive list of potentially contaminative uses has been reproduced at Appendix 4. The first step in the process of identifying potentially contaminated sites will be to closely examine historical data in the form of old Ordnance Survey plans and photographs from the early part of the century to the present day. These will be obtained from this Council's archives and the County records office. A lot of past industry will also still be within recent memory so local knowledge will be important at this stage. To aid this process all the Town and Parish Council's will be consulted.

b) **CURRENT INDUSTRY** - The present industrial areas of the District are potential sources of contamination and these will be inspected in accordance with the statutory guidance to establish whether there is a potential of contamination to exist, and, if there is, whether it is controlled by another agency.

c) **ENVIRONMENTAL PROTECTION ACT 1990 Part I - 'Part B' processes** authorised for air pollution control by this Council.

There are currently 35 processes authorised by the Council under Part I of the Act. These range from waste oil burners to paint spraying and cement batching plants. Many of these processes have the potential to pollute the land but there are no other statutory methods of control.

d) **ENVIRONMENTAL PROTECTION ACT 1990 Part I - 'Part A' processes** authorised for integrated pollution control (IPC) by the Environment Agency.

There are two operators with Part A processes within the District. These are operated by Exchem plc and by Petrochem Carless and are authorised by the Environment Agency under Part I of the Act. The IPC regime should control unauthorised discharges to land but their presence will need to be noted and the potential for long term pollution assessed, particularly post closure.

e) **HAZARDOUS SUBSTANCES** - this Council is a Hazardous Substances Authority for the purposes of the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 1992. This legislation requires consent to allow the presence on land of hazardous substances above a specified quantity. These regulations were recently amended by the Planning (Control of Major Accident Hazards) Regulations 1999 (SI 981) to take account of the new COMAH Regulations (see f below). There is currently 3 authorised sites in the District. A register is maintained for this purpose by Planning Services.

f) **COMAH sites** - The Control of Major Accident Hazards Regulations 1999 (SI 743) are enforced by the Environment Agency and Health & Safety Executive (joint competent authority) to control both on and off site risks from industries with a high potential for disaster from dangerous substances (flammable, toxic or explosive). There are currently 3 sites within the District.

g) It should be noted that all sites notified to the HSE under the Notification of Installations Handling Hazardous Substances Regulations 1982 (NIHHS sites)

and COMAH sites, will be held on the hazardous substances register, so there should be no need to consult with the HSE on their location.

h) EXPLOSIVES - are not directly covered by the hazardous substances regulations but are controlled by Essex County Council Trading Standards under licences issued under the Explosives Act 1875. Any licensed sites will be identified.

i) CURRENT LANDFILL AND SITES COVERED BY A WASTE MANAGEMENT LICENCE - are licensed by the Environment Agency under the provisions of Part II of the Environmental Protection Act 1990. Details of all these sites have already been provided by the Agency for this purpose.

j) CLOSED LANDFILL SITES - are a potentially significant source of risk, especially those which operated before the licensing requirements of the Control of Pollution Act 1974. All closed landfills in the District will be identified and their association with any specified receptors considered in detail.

k) SEWAGE WORKS AND LAND USED FOR THE DISPOSAL OF SEWAGE SLUDGE - land utilised for the disposal of sewage sludge is notified to the Environment Agency under the, Sludge (Use in Agriculture) Regulations 1989. This land, together with all operating and redundant sewage works will be identified and assessed.

l) MINES AND MINERALS EXTRACTION - the geology of the area is such that there are little known areas used for the extraction of minerals. There has been some aggregate quarrying. Most quarries are filled with refuse or other materials once their useful life has expired. These can present a particular risk to water resources. An attempt will be made to identify all past quarrying sites and assess the risk they present.

m) WASTE OR DERELICT LAND - often owned by the utilities, railways or local authorities is left seemingly abandoned because it has no particular use or is difficult to access. These areas can accumulate unwanted materials and can be used to dispose of wastes and effluents illegally.

n) MINISTRY OF DEFENCE LAND - there are no areas occupied by Defence Agencies.

o) PREVIOUSLY DEVELOPED CONTAMINATED SITES - the inspection of the District will identify many potentially contaminated sites which have been developed over the years. In some cases the methods and extent of remediation may be unknown, in others it may be known but the remediation suspected of being inadequate.

p) LAND CONTAMINATED BY VIRTUE OF RADIOACTIVITY - under proposals to extend Part IIA of the Environmental protection Act 1990 to include radioactivity local authorities will have a duty to inspect sites where there are

reasonable grounds for believing land to be contaminated by virtue of radioactivity. It is also proposed that any such sites so identified would be special sites with the Environment Agency acting as the enforcing authority.

As mentioned above, a more comprehensive list of previous uses considered potentially contaminative are listed in appendix 4 for information. Any site with the potential to cause pollution will be identified at this preliminary stage.

## 1.9 POTENTIAL SPECIFIED RECEPTORS

a) HUMAN - The present population of the District is approximately 138,000 distributed amongst the 9 main population centres. The remainder distributed throughout the many villages and smaller settlements of the rural area. Human receptors may therefore be present to some degree at almost any location within the District. The potential for persons either living on or frequenting a potentially contaminated site will be considered in every case, but priority will be given to sites with infants.

b) PROPERTY. BUILDINGS - All buildings and underground services (within the footprint of the building) are potential receptors and will be considered in every case where contamination and buildings exist.

c) PROPERTY. ANCIENT MONUMENTS - as listed by English Heritage will be specifically identified as part of the strategy and the potential impact of contaminants considered. A full list of scheduled Ancient Monuments is provided in Appendix 7 of the Statutory Local Plan.

d) PROPERTY. AGRICULTURAL AND HORTICULTURAL CROPS - Being a largely rural area crop growing regions will not be specifically identified but taken into consideration as necessary. Where contamination is known or suspected associations with poor yield and crop failure will be investigated.

e) PROPERTY. TIMBER CROPS - There are several areas of the Borough growing timber. Crop failure as a result of contamination is, however, most unlikely except perhaps where trees have been planted on contaminated land as part of a remediation programme.

f) PROPERTY. HOME GROWN PRODUCE - There are many acres of allotments within the District and these will all be identified and their potential for contamination considered as a result of previous uses or activities. Similarly any domestic gardens likely to be contaminated will be identified and assessed.

g) PROPERTY. AGRICULTURAL LIVESTOCK, GAME AND OTHER OWNED ANIMALS - Again being a largely rural area the presence of livestock in an area will not be specifically identified but taken into consideration as necessary.

h) ECOLOGICAL RECEPTORS - All receptors listed in 1.5 (b) above will be identified as part of the inspection strategy. There are several specified sites including SSSIs and other areas of ecological importance. Significant impact of contamination is unlikely but all areas will be identified, examined and any risks carefully quantified with English Nature and the Environment Agency.

i) WATER. AQUIFERS - All aquifers will be specifically identified with their location, depth and vulnerability according to cover. Potential risks from identified sources of contamination will be considered carefully with the Environment Agency.

j) WATER. PUBLIC WATER SUPPLIES - All public water supply abstraction points will be identified with their location, depth, strata / surface water supply they draw from and volume of supply. [Where a potential pollution linkage includes a public water supply source as a receptor, the responsible water company will be immediately notified.](#)

k) WATER. PRIVATE WATER SUPPLIES - There are many private water supplies in the District which are often drawn from shallow sources. The protection of these is particularly important due to the heavy reliance paid on them by local communities. This Council already monitors these as part of its duties under the Water Industry Act 1991 Part II and Private Water Supplies Regulations 1991.

l) WATER, OTHER AUTHORISED ABSTRACTION POINTS - All authorised abstraction points will be identified such as those used for agricultural or recreational use.

m) WATER, OTHER SPECIFIED RECEPTORS - All other water receptors such as rivers, streams, tributaries, reservoirs, lakes etc will be identified as part of the inspection strategy.

Details of statutory and non statutory consultees and contact points are included in appendix 2.



(Then a [significant](#) pollutant linkage exists)

iv) A good chance that the pollutant linkage will result in significant harm to one of the specified receptors, or, pollution of controlled waters.

2.6 The strategy for identification will therefore be based on a desk top survey of the District to identify areas of land where:

- a) Previous uses indicate contamination may exist
- b) There is no existing pollution control regime in place
- c) There are known receptors within a determined area of influence

Previous uses considered potentially contaminative are listed in appendix 4.

2.7 Potentially contaminated land shall, prior to detailed investigation, be listed and categorised according to a **preliminary assessment** of risk. The method used will be based on that described in DETR Contaminated Land Research Report 6, entitled, 'Prioritisation & Categorisation Procedure for sites which may be Contaminated' (CLR 6). This is to ensure all further investigative work relates directly to seriousness of the potential risk and therefore the most pressing problems are identified and quantified first.

2.8 CLR6 was published in 1995 and the terminology is not ideal for this purpose therefore some of the wording has been slightly changed in the description of the Priority Categories below, new words have been identified by underlining.

2.9 CLR 6 describes four Priority Categories (PCs):

Priority Category 1 - Site likely not to be suitable for present use and environmental setting.  
Contaminants probably or certainly present and very likely to have an unacceptable impact on key targets.  
Urgent assessment action needed in the short term.  
(N.B. [Urgent Remediation Action can only take place once a site has been designated as Contaminated Land](#)).

Priority Category 2 - Site may not be suitable for present use and environmental setting.  
Contaminants probably or certainly present and likely to have an unacceptable impact on key targets.  
Assessment action needed in the medium term ([should the site be designated as Contaminated Land](#)).

Priority Category 3 - Site considered suitable for present use and environmental setting.  
Contaminants may be present but unlikely to have an unacceptable impact on key targets.  
Assessment action unlikely to be needed whilst the site remains in present use or otherwise remains

undisturbed.

Priority Category 4 - Site considered suitable for present use and environmental setting.

Contaminants may be present but very unlikely to have an unacceptable impact on key targets.

No assessment action needed while site remains in present use or undisturbed.

2.10 To assist in the prioritisation procedure a simple scoring system has been devised as follows:

Likelihood of *contaminants* on the site: 1 - most unlikely  
5 - good chance  
10 - known to be present

Existence of *receptors* within area of influence: 1 - most unlikely  
5 - good chance  
10 - known to exist

Likelihood of impact of contaminants on receptors (*pathway*): 1 - most unlikely  
5 - good chance  
10 - certain

2.11 This preliminary process is known as a CRP (contaminant receptor pathway) assessment. Initial trawls may identify sites where either particular contaminants are likely or known to exist, or sensitive receptors are known to exist. No assessment should be undertaken unless both are suspected or confirmed. Where there is doubt the situation will be kept under review.

CRP Score	PC
26-30	1
21-25	2
16-20	3
10-15	4

Relationship of CRP score to Priority Category:

2.12 How this system is used can best be demonstrated by examples and several are shown in appendix 6 using a simple multi-stage assessment form

2.13 As Priority Category 1 sites are likely not to be suitable for their present use, these will be investigated as soon as reasonably practicable after they become known to the Council.

## **COMPLAINTS FROM THE PUBLIC**

2.14 Complaints will continue to be received about fly tipping, accumulations, and the potential for contaminated land. These will be investigated in accordance with existing protocols to establish whether the complaint is justified. If so, the particular circumstances will be evaluated to establish which enforcement process would be most appropriate. See also i.8 above, where the new contaminated land regime does not apply.

2.15 Complaints may also be received about the fact that a particular site has been identified for further investigation. This could give rise to concern, especially where a potential sale has failed as a direct result of the suggestion that the land may be contaminated. Those so affected may seek an early investigation to clarify their position, thereby seeking to circumvent the prioritisation process. Such requests for priority inspection will, where resources allow, be dealt with as considerately as possible. This is considered also in Part 6 on data handling and access to information.

## **CONCLUDING COMMENTS ON IDENTIFICATION AND PRIORITISATION**

2.16 It must be understood that the assessments at this preliminary stage are made on a limited amount of incomplete basic data and information, such as old surveys, maps, geological information etc. As more knowledge of the site is obtained, these assessments will be revised and their Priority Category may change. The assessment of a site as Priority Category 1 does not necessarily infer the existence of a significant risk to one of the specified receptors, but it does identify the need for priority assessment of risk potential.

## PART 3

### OBTAINING FURTHER INFORMATION ON POLLUTANT LINKAGES AND THE RISK ASSESSMENT PROCESS

3.1 The Council has the sole responsibility for determining whether any land appears to be contaminated land, it cannot delegate this responsibility. This applies even where the Environment Agency has carried out an investigation on behalf of the Council (see 3.11 below).

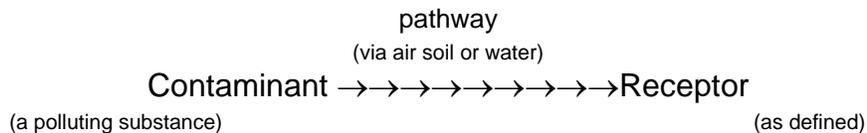
3.2 Once the Council become aware of the (possible) existence of a pollutant linkage they must, in accordance with their prioritisation procedure, commence the risk assessment process. The definition of contaminated land (see i.7 above) is based on the principles of risk assessment. For the purposes of the guidance risk is defined as the combination of:

- a) the probability, or frequency, of occurrence of a defined hazard; and
- b) the magnitude of the consequences.

There are two steps in applying the definition of contaminated land:

#### 3.3 STEP 1

The Council must satisfy itself that at least one pollutant linkage exists -



*pollutant linkage*

This, for the purposes of this strategy is termed a **stage 1 risk assessment**.

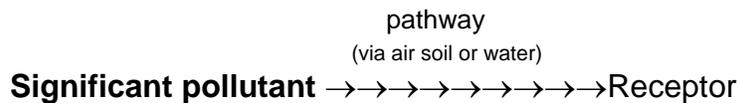
The contaminant(s) must have the potential to have a defined detrimental impact on the receptor(s) and the pathway has to be plausible. It is not necessary for direct observation of the pathway but if a reasonable scientific assessment suggest the two could come together then a pollutant linkage is said to exist and the authority must proceed to step two.

### 3.4 STEP 2

At this stage a more detailed investigation must be undertaken to confirm that the pollutant linkage identified is:

- resulting in significant harm (or the significant possibility of such harm) being caused to the receptor(s), or
- resulting in (or likely to result in) the pollution of controlled waters

If either of these are confirmed then the land becomes contaminated land by definition and the pollutant linkage becomes, 'significant'.



*significant pollutant linkage*

This, for the purposes of this strategy, is termed a **stage 2 risk assessment**.

3.5 The detailed investigation of contaminated land is invariably a very time-consuming and expensive process, therefore it must be emphasised that all investigations will be carried out on a phased approach and terminated immediately it is clear that no significant pollutant linkage exists.

3.6 In cases where imminent risk of serious harm or serious pollution of controlled waters has been confirmed, the Council will authorise urgent action in accordance with paragraph 5.13 of this strategy.

3.7 **OBTAINING DESK TOP INFORMATION** - As has been explained in the introduction to this strategy, the suggestion that land may be contaminated can have a significant impact on the way others view it and, in particular, its perceived value. The Council will therefore seek to obtain as much information as possible about a suspected site without causing unnecessary alarm. This may involve detailed inspection of historical data in its possession such as Planning and Building Control files. Also the consultation of others who may possess information such as:

The Environment Agency  
Department for the Environment, Food and Rural Affairs  
The Health & Safety Executive

English Nature  
English Heritage  
Developers  
Previous occupiers  
and others

Details of several sources of information are listed in 1.8 above.

Once sufficient information has been obtained which confirms a pollutant linkage does not exist, or, if it does, it is not significant, then the investigation will cease and no further action will be taken. It may be, however, that circumstances will be identified whereby a significant pollutant linkage could occur at some time in the future. Then arrangements will be made to keep the situation under review.

**3.8 INSPECTION OF LAND** - Where evaluation of all available data suggests a significant pollutant linkage may exist, it may be necessary to visit the site and carry out some form of on site testing, or take away samples for analysis. In every case this will be carried out by a, "suitable person", adequately qualified to undertake the work (see appendix 5). The utmost discretion will be used at all times to minimise the effect on occupiers of the land.

Intrusive investigations will be carried out in accordance with appropriate technical procedures to ensure:

- a) They are effective;
- b) do not cause any unnecessary damage or harm [including water pollution or damage to natural resources or features of historical or archaeological interest](#); and
- c) do not cause pollution of controlled waters.

To ensure the most appropriate technical procedures are employed the Council will have regard to the most up to date guidance available.

**3.9 POWERS OF ENTRY** - Statutory powers of entry are conferred on the Council to enable it to carry out its functions under Part IIA. These are also considered in appendix 5. [The Council will NOT NORMALLY](#) use these powers to obtain information about the condition of land, where:

- It can obtain the information from third parties without the need for entering the site; or
- A person offers to provide the information within a reasonable and specified time, and does so.

**3.10 LAND WHICH MAY BE A SPECIAL SITE** (see appendix 1) - Where the Council is aware that land it intends to investigate would, if declared

contaminated land, be a special site, it will notify the Environment Agency in writing requesting any information it may have on the land and the likelihood of pollutant linkages. According to the wishes of the Environment Agency, it may [undertake an investigation on behalf of the Local Authority](#).

Where the Environment Agency (or their agents) wish to carry out formal investigation on behalf of the Council the [Agency will nominate a person to exercise the powers of entry conferred by section 108](#). The Environment Agency does not have the power under Part IIA to investigate land which may be contaminated land without the authorisation of the Council.

3.11 DETERMINING LAND IS CONTAMINATED - There are four possible grounds for determining land contaminated:

- a) Significant harm is being caused
- b) There is a significant possibility of significant harm being caused
- c) Pollution of controlled waters is being caused
- d) Pollution of controlled waters is likely to be caused

In making any determination the Council will take all relevant information into account, carry out appropriate scientific assessments, and act in accordance with the statutory guidance. The determination will identify all three elements of the pollutant linkage and explain their significance.

3.12 In an attempt to ensure the situation can be understood as widely as possible, a simple conceptual model (initially in diagrammatic form) will be produced for all relevant pollutant linkages, and multi-stage assessment forms completed, which clearly demonstrates the decision making process. Examples are produced in appendix 6.

3.13 WHERE THE SIGNIFICANCE OF A POLLUTANT LINKAGE CANNOT BE ADEQUATELY DETERMINED - Situations may arise where, on the information available, it is not possible to determine whether a pollutant linkage is significant in accordance with the statutory guidance. In such case the Council will determine that, on the balance of probabilities, it would seem the land does not fall within the statutory definition of contaminated land, but the situation will be kept under review and reopened at any time new information becomes available.

3.14 Similarly, inspection may identify contamination that would form a significant pollutant linkage should new receptors be introduced. In such circumstances this information will be carefully recorded and the site monitored where the introduction of relevant new receptors seems likely. Should such a site be identified for future development the information obtained during the investigation will be made available to the planning officer and the developer.

## PART 4

### THE WRITTEN RECORD OF DETERMINATION AND FORMAL NOTIFICATION

4.1 Once an area of land has been declared contaminated by statutory definition, the Council will prepare a written record to include:

- a) a description of the pollutant linkage(s) confirmed, including conceptual model;
- b) a summary of the evidence which confirms the existence of the pollutant linkage(s);
- c) a summary of the risk assessment(s) upon which the pollutant linkage(s) were considered to be significant;
- d) a summary of the way the requirements of the statutory guidance were satisfied.

4.2 The Council will then formally notify in writing all relevant parties that the land has been declared contaminated, these to include:

- a) the owner(s)
- b) the occupier(s)
- c) those [who appear to be responsible](#) for any remediation ('appropriate persons' in the guidance)
- d) the Environment Agency

4.3 At the notification stage it may not be possible to identify all the relevant parties, particularly the appropriate persons. The Council will, however, act on the best information available to it at this time and keep the situation continually under review as more information comes to light.

4.4 If the Council [suspects](#) that contaminated land is a special site, the Environment Agency [will be consulted to obtain their view](#). [If the Council is then of the opinion that the contaminated land is a special site \(see appendix 1\) it will inform the Environment Agency of that decision. The Agency will then consider whether it agrees that the land should form a special site. If it does not agree it will notify the Council and the Secretary of State within 21 days, with a comprehensive statement explaining its reasons.](#) The Council will then refer the decision to the Secretary of State.

4.5 If the Environment Agency agrees with the Council, or it fails to notify the Council it disagrees within 21 days, the land will be designated a special site. The responsibility for securing remediation then passes to the Environment Agency, though the Council must complete the formal notification process.

4.6 The legislation and statutory guidance has been designed to try to encourage voluntary remediation (without the need for enforcement action). The formal notification procedure commences the process of consultation on what remediation might be most appropriate. To aid this process the Council will therefore provide as much information to the relevant parties as possible, including where available:

- a) a copy of the written record of determination;
- b) copies of site investigation reports (or details of their availability)
- c) an explanation of why the appropriate persons have been chosen as such
- d) details of all other parties notified

4.7 The appropriate persons will also be provided with written explanations of the test for exclusion and apportionment.

4.8 It may be at this stage that the Council will need further information on the condition of the site to characterise any significant pollutant linkages identified. If that is the case an informal attempt will be made to obtain this information from the appropriate persons already identified.

## PART 5

### LIABILITY & ENFORCEMENT

5.1 These procedures are complex and cumbersome. The process commences with the establishment of liability groups. All appropriate persons for any one linkage are a, 'liability group'. These may be class 'A' or class 'B' persons.

APPROPRIATE PERSONS - Class 'A' - These are, generally speaking, the polluters, but also included are persons who "knowingly permit". This includes developers who leave contamination on a site which subsequently results in the land being declared contaminated.

APPROPRIATE PERSONS - Class 'B' - Where no class 'A' persons can be found liability reverts to the owner or the occupier. These are known as class 'B' persons.

The Council will make all reasonable enquiries to identify class 'A' persons before liability reverts to innocent owner occupiers.

5.2 The matter of appropriate persons must be considered for each significant pollutant linkage. Therefore where a site has had a series of contaminative uses over the years, each significant pollutant linkage will be identified separately and liability considered for each.

5.3 APPORTIONMENT OF COSTS - Generally speaking the members of a liability group will have the total costs falling on the group as a whole apportioned between them. It may also be necessary to apportion costs between liability groups. There are three basic principles which apply to exclusion and apportionment tests:

- i) the financial circumstances of those concerned have no relevance;
- ii) The Council must consult persons affected to obtain information (on a reasonable basis having regard to the cost). If someone is seeking to establish an exclusion or influence an apportionment to their benefit then the burden of providing the Council supporting information lies with them.
- iii) Where there are agreements between appropriate persons the local authority has to give effect to these agreements.

5.4 LIMITATION ON COSTS TO BE BORNE BY APPROPRIATE PERSONS - There are six tests specified to identify Class 'A' groups who should be excluded from liability. These will be applied in sequence and separately for each pollutant linkage. The exclusion of Class 'B' persons is much less complex, the single test

merely excludes those who do not have an interest in the capital value of the land. Tenants therefore are excluded.

5.5 When the Council has apportioned the costs of each remediation action and before serving remediation notices, it will consider whether any of those liable may not be able to afford it. If, after taking into consideration the statutory guidance it decides that one or more of the parties could not, it will not serve a remediation notice on any of the parties. The Council will instead, consider carrying out the work itself and produce and publish a remediation statement

## THE ENFORCEMENT PROCESS

5.6 Before remediation notices are served the extensive consultation process will be completed and ample encouragement given to arrive at an informal solution. The Council will do all in its power to consult the appropriate person(s), owners, occupiers etc about their views on the state of the land. This could be a difficult and most protracted process and cause delays. Where a housing estate is affected for example, it would be reasonable to expect house owners, land owners, developers, lenders, insurers, surveyors, geotechnical engineers, residents groups, etc all to have differing views according to their position.

5.7 Remediation notices are served only as a last resort (not withstanding urgent cases), and then only after this lengthy consultation process has been exhausted. Notices will be authorised after two tests are satisfied:

- That the remediation actions will not be carried out otherwise.
- That the Council has no power to carry out the work itself.

5.8 If these are met the Council will serve a remediation notice on each appropriate person. It cannot be served less than three months after formal notification that the land is Contaminated unless the urgent action is deemed necessary (where there is imminent risk of serious harm).

5.9 SPECIFYING REMEDIATION - The lead officer will specify what remediation measures are to be carried out in the remediation notice. These will be both appropriate and cost effective employing what the statutory guidance terms, 'best practicable techniques'. The aim of the remediation will be to ensure that the land is no longer contaminated, taking the shortest and lowest cost route. This means in most cases attention will be focussed on the pathway, rather than the contaminant or receptor.

5.10 The "reasonableness" of the requirements are, however, paramount, a concept which is considered at some length in the guidance. It is determined in relation to the cost of carrying out the remediation against the cost of failing to (i.e. the costs, or potential costs, resulting from the continuing pollution). [Where the significant harm considered is "an ecological system effect", the Council will take into account any advice received from English Nature.](#)

## REMEDIATION BY THE LOCAL AUTHORITY

5.11 Before the Council can serve a remediation notice it will first determine whether it has the power to carry out any of the remediation actions itself. There are five specified circumstances where this may be the case:

- Where urgent action is required (see below)
- Where no appropriate person can be found
- Where one or more appropriate persons are excluded (on grounds of hardship)
- Where the local authority has made an agreement with the appropriate person(s) that it should carry out the remediation
- In default of a remediation notice

## ORPHAN LINKAGES

5.12 Orphan sites are those where it is not possible after 'reasonable' enquiries to find anyone responsible for them (Class A or Class B persons) or where persons can be found but they are exempt from liability for specified reasons. These are described in the statutory guidance as '**orphan linkages**'.

Exemptions apply where:

The land is contaminated by reason of pollution of controlled waters only and no Class A persons can be found (this means Class B persons cannot be held liable for polluting water from land).

The land is contaminated by reason of the escape of a pollutant from one piece of land to another and no Class A persons can be found.

The land is contaminated land by reason of pollution of controlled waters from an abandoned mine.

The person was acting in a 'relevant capacity' (insolvency practitioner/official receiver etc).

In such cases, the enforcing authority should bear the cost of the remediation in accordance with Secretary of State's guidance.

## URGENT ACTION

5.13 Urgent action must be authorised where the Council is satisfied that there is imminent danger of serious harm or serious pollution of controlled waters being caused as a result of contaminated land. In such circumstances the procedures identified in the statutory guidance will be followed which may involve the forced entry into the premises (see also appendix 5).

5.14 The terms “imminent” and “serious” are unfortunately not defined, local authorities are advised to use the normal meaning of the words. There is, however, guidance on what may constitute “seriousness” when assessing the reasonableness of remediation.

5.15 The Council will undertake the remediation in urgent cases where it is the enforcing authority if it is of the opinion that the risk would not be mitigated by enforcement action. In the case of a special site the Council will declare the land contaminated land in accordance with the statutory procedure, and then notify the Environment Agency who will then be responsible for the remediation.

5.16 In appropriate cases the Council will seek to recover costs of remediation works it has completed.

## PART 6

### DATA HANDLING AND ACCESS TO INFORMATION

6.1 The Council is required by Statute to produce this Contaminated Land Strategy and formally publish it by the end of June 2001. Subsequently it must maintain a register of regulatory action taken under Part IIA, which must be made available for public inspection at all reasonable times (see 6.13 below).

#### THE ENVIRONMENTAL INFORMATION REGULATIONS (EIR) 2004

6.2 Implementation of the Strategy will, however, also result in significant volumes of data which will be held on computer databases and geographical information systems, as well as in paper form. There is no statutory obligation in the Environmental Protection Act 1990 to disclose this information therefore the Council must comply with the requirements of the Environmental Information Regulations when dealing with requests for disclosure.

6.3 These Regulations require local authorities to make any environmental information they hold available upon request, subject to certain exemptions. These are complex but it would be likely that the Council will have to respond to requests for information on land it has identified as part of, for example, the inspection of the District, as outlined in Part 2 of this strategy. See also 2.15 above on complaints about information held.

6.4 Below are the exemptions to the availability of environmental information. In all circumstances where there is doubt, the Solicitor to the Council will be consulted. [Subject to the public interest test, authorities may refuse to disclose information to the extent that its disclosure would adversely affect:](#)

- [international relations, defence, national security or public safety;](#)
- [the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;](#)
- [intellectual property rights;](#)
- [the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;](#)
- [the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;](#)
- [the interests of the person who provided the information where the person-](#)
  1. [was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority](#)

2. did not supply it in circumstances such that that or any other public authority is entitled apart from the EIR to disclose it, and
3. has not consented to its disclosure.

- the protection of the environment to which the information relates.

There are also five 'stand alone' exceptions where if one applies a local authority may choose to withhold information, if it satisfied that the public interest in maintaining the exception outweighs the public interest in disclosing the information:

- the information requested is not held by or for the authority at the time when the request is received;
- the request is manifestly unreasonable;
- the request is formulated in too general a manner and the authority has complied with its duty to assist the applicant to reformulate the request;
- the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- the request involves the disclosure of internal communications.

6.5 "Information", for the purposes of the Regulations includes records, registers, reports, returns, and information on computers.

6.6 It has been suggested that information held as a result of the Council's initial inspection of the District and subsequent prioritisation for further investigation, could be classified as, 'a record which is in the course of completion', for the purposes of the Regulations, and therefore not be disclosed. Whilst this interpretation is appealing, it should be understood that sites should not be so identified unless there are sound reasons, based on scientific judgement, that a pollutant linkage may exist. Also once the preliminary inspection of the District has commenced, each assessment about each and every site, could constitute a, 'record', in itself.

6.7 More significantly, however, should a third party purchase land following a refusal on the part of this Authority to supply information requested on its condition, and the Authority had identified it at that stage as potentially contaminated land, that party may wish to seek a remedy against the Council should the site be subsequently declared contaminated land and lose value as a result.

6.8 Requests for information will therefore be dealt with promptly and no later than 20 days after they are made. A charge will be made for the supply of information in accordance with the Regulations and Tendring District Council's scale of charges. Where the Council must refuse a request for any of the reasons

stated in the Regulations it will provide details of the reason(s) in writing at no cost to the applicant.

## THE DATA PROTECTION ACT 1998

6.9 The Data Protection Act applies to all personal data that is processed automatically, by electronic means and to some data processed manually. The Act seeks to give some protection to persons (known as data subjects) in respect of three potential dangers:

- The use of personal information that is inaccurate, incomplete or irrelevant
- The possibility of access to personal information by unauthorised persons
- The use of personal information in a context or for a purpose other than that for which the information was collected

6.10 Personal data is defined as data consisting of information which relates to a data subject who can be identified from the information, or from that and other information in the possession of the data user (the Council). Every individual member of the public can be considered a data subject, [regardless of age](#).

6.11 It should be noted that just about all information held on computers is considered as being, 'processed automatically', for the purposes of the Act, as well as any recently compiled paper records.

6.12 The implications of holding information relating to the condition of potentially polluted property and the persons associated with that property and pollution, could be significant. The matter will therefore be considered in detail with the Council's Solicitor and Data Protection Administrator before records begin to be compiled.

## CONTENTS OF FORMAL CONTAMINATED LAND REGISTERS

6.13 The only information required to be stored on a formal register is that relating to regulatory action and remediation. The contents are specified at length in schedule 3 of the Contaminated Land (England) Regulations 2000. This formal contaminated land register will be maintained at the offices of the [Environmental Health Service](#). Members of the public will be able to view the register free of charge during normal office hours. Requests for copies of documents must be made to Environmental Services and will be charged in accordance with Tendring District Council Council's scale of charges.

## PART 7

### QUALITY CONTROL, PERFORMANCE INDICATORS AND ARRANGEMENTS FOR REVIEW

7.1 The Government has stated -

“The DETR (now incorporated into defra) will be developing performance indicators to assess overall progress in the task of identifying and remediating our inherited legacy of contaminated land”.

7.2 Two new environmental Best Value performance indicators came into effect on 1 April 2005:

BV 216a-Number of ‘sites of potential concern’ (within the local authority area), with respect to land contamination; and

BV216b-Number of sites for which sufficient detailed information is available to decide whether remediation of the land is necessary, as a percentage of all ‘sites of potential concern’.

7.3 COMPLAINTS AND INFORMATION FROM MEMBERS OF THE PUBLIC - This is also considered in 2.14 and 2.15 above. Procedures are in place to:

- Record that information or a complaint has been received;
- Demonstrate an appropriate officer has designated to deal with the request;
- Record the request and response; and
- Ensure appropriate records are maintained.

#### REVIEW

7.4 Whilst the Council has a duty to inspect the District, ‘from time to time’, to identify contaminated land, the frequency of inspection is not prescribed. In practice inspection may be a continuum, balancing a systematic approach with the availability of resources. The Council has a duty to review its inspection strategy on a regular basis and to meet its statutory responsibilities two main aspects of review need to be built into this strategy:

- Triggers for reviewing inspection decisions, and
- Review of the inspection strategy

7.5 In addition to the routine review of inspection findings (see 2.11, 2.16, 3.8,

3.14, 3.15, 4.3 above) there will be situations which will trigger re-assessment including:

- Change of use of surrounding land (introduction of new receptors)
- The potential for pollutant linkages to become significant or urgent as a result of unplanned events (e.g. flooding, subsidence, spillages etc), or a change in circumstances
- Identification of a localised effect which could be associated with the land
- Responding to new information

7.6 The Strategy as a whole will be reviewed by the Head of Service at least annually and any proposed changes will be incorporated as necessary. Particular matters that will be kept under review include:

- The content of the strategy generally
- Priorities for further investigation of potentially contaminated sites
- The potential for the introduction of new receptors
- The potential for new contamination
- Progress on voluntary remediation
- The enforcement process generally and the identification of appropriate persons particularly
- Identification of special sites
- Progress with the implementation

## PART 8

### PROJECTED COSTS AND TIMETABLE

8.1 As outlined in i.10 above, the Government has identified that to implement this highly complex and demanding piece of legislation will involve local authorities in considerable expenditure. As a result some £95M has been made available over three years as part of the standard spending assessment (£12M each year), with the rest available through the contaminated land supplementary credit approval (SCA) programme (since replaced by funding available from Defra's contaminated land capital projects programme).

8.2 No additional staff have been employed at this Council to implement the requirements of Part IIA. This Strategy has been produced with the help of consultants at a cost of £500 plus staff time.

8.3 The next stage is the inspection of the District, identification of potentially contaminated sites, and their prioritisation for further more detailed inspection. The budget allocation for the financial year 2001/2002 is £15,000 and 0.5 of a full-time equivalent officer has been included in the time allocation for contaminated land purposes. The ability to commit this amount of staff time will depend upon the maintenance of existing staff levels. It should be borne in mind that, at this stage, it is very difficult to provide estimates of likely cost and time that this exercise may involve.

8.4 Subsequently potentially significant sums may be required to make more detailed investigation of sites and, possibly take enforcement action and carry out remediation action. It is very difficult at this stage to estimate what the full inspection of the District will reveal, and how much further work it will necessitate. It is therefore proposed to allow a further six years after the full inspection of the District to complete detailed investigations. Depending upon this outcome, further bids for resources will probably be required at the appropriate time.

8.5 Should a significant investigation and / or remediation be identified, it would be anticipated that an application for funding to Defra's contaminated land capital projects programme would be made specifically relating to that site.

8.6 It should be noted that these arrangements relate specifically to the Council's enforcement role and not that as land owner. Should land in possession of the Council be identified as contaminated land then funding of remediation will be considered on a case by case basis. In the event of significant costs being involved it is likely that an application will also be made via the contaminated land SCA scheme (since replaced by funding available from Defra's contaminated land capital projects programme).

PROPOSED TIMETABLE FOR THE IMPLEMENTATION OF PART IIA

Duty	Year
Production and publication of statutory contaminated land strategy	By July 2001
Inspection of the District, identification of potentially contaminated sites and prioritisation for further investigation	End of 2002
Detailed inspection and assessment of priority category 1 sites	As soon as possible after they become known to the Council
Detailed inspection and assessment of remaining potentially contaminated sites	2002 - 2005

# APPENDICES

## APPENDIX 1

### *SPECIAL SITES*

1. Once a local authority has identified land as contaminated land by definition, it must also consider whether it falls into the category of a special site. Special sites are sites where, more often than not, the Environment Agency have had, or still have, an enforcement role.

2. What exactly constitutes a special site is specified in the Contaminated Land (England) Regulations 2000. For a legal definition the Regulations must always be consulted. In simple terms, however, they include land:-

- Polluting controlled waters (in certain circumstances - see appendix 3);
- On sites subject to Integrated Pollution Control (see Environmental Protection Act 1990 Part I - Prescribed Processes and Substances Regulations 1991 schedule 1 part A);  
With waste acid tar lagoons (on sites used for refining benzole, used lubricants or petroleum);
- Used as an oil refinery;
- Used to manufacture or process explosives;
- Used to manufacture or dispose of atomic, chemical or biological weapons (non biological contamination only);
- Used for other nuclear purposes;
- Owned or occupied by a defence organisation for naval, military or air force purposes (not off base housing / NAFFI);

3. Contaminated land beyond the boundary of these premises (but contaminated by them) also forms part of the special site.

4. Procedure in relation to the investigation and declaration of special sites is covered in 3.11, 4.4, 4.5 and 5.15 above.

## APPENDIX 2

### *LIST OF CONSULTEES AND CONTACT POINTS*

#### COUNCILS

##### **1. Internal**

Regeneration, Planning and Community Services  
Council Offices  
Thorpe Road  
Weeley  
Essex. CO16 9 AJ

Legal Services  
Westleigh House  
Carnarvon Road  
Clacton-on-Sea  
Essex. CO15 1SE

Technical and Procurement Services  
Town Hall  
Station Road  
Clacton-on-Sea  
Essex. CO15 1SE

Financial Services  
Town Hall  
Station Road  
Clacton-on-Sea  
Essex. CO15 1SE

Leisure Services  
Town Hall  
Station Road  
Clacton-on-Sea  
Essex. CO15 1SE

Housing Services  
Town Hall  
Station Road  
Clacton-on-Sea  
Essex. CO15 1SE

## **2. County:**

Environmental Services Directorate  
Essex County Council  
County Hall  
Chelmsford  
Essex CM1 1QH

Tel: 01245 492211

### ENGLISH HERITAGE

- ( (Details of all Ancient Monuments in the area can be obtained from the Council's [Regeneration, Planning and Community Services](#)).

#### **Local contact for English Heritage:**

East of England Region  
62-74 Burleigh Street  
Cambridge  
CB1 1DJ

Tel: 01233 582700

#### **National contact:**

Mike Corfield  
Chief Scientist  
23 Saville Row  
London W1X 1AB

Tel: 0207 973 3321  
Enquiries: 0207 973 3000  
Fax: 0207 973 3001

Sites and Monuments Record  
Essex County Council  
Archaeology Team  
County Hall  
Chelmsford, Essex

### ENGLISH NATURE

The Council will consult and liaise with English Nature on matters relevant to the

organisation's various functions, particularly with regard to any proposed intrusive inspection of SSSI's and Nature 2000 sites.

**Local contact:**

[Essex, Hertfordshire & London Team](#)

Harbour House  
Hythe Quay  
Colchester CO2 8JF

Tel: 01206 796666

**Special advisory teams:**

Environmental Impacts Team (Taunton)  
English Nature  
Roughmoor  
Bishop's Hull  
Taunton  
Somerset TA1 5AA

Tel: 01823 283211  
Fax: 01823 272978

Environmental Impacts & Marine Team (Peterborough)  
English Nature  
Northminster House  
Peterborough  
Cambridgeshire PE1 1UA

Tel: 01733 455000  
Fax: 01733 568834

ENVIRONMENT AGENCY

The Council will consult and liaise with the Environment Agency on matters relevant to the Agency's various functions. It will also seek site specific advice where necessary in accordance with the Environment Agency's formal role.

This process will, as far as is reasonably practicable (taking into consideration the limitations on both parties), be carried out broadly in accordance with the Memorandum of Understanding.

**Area contaminated land officer:**

[Eastern Area Office](#)  
[Colchester Road](#)

Ipswich IP3 9JE

Tel: 01473 7277112

**Regional contaminated land officer:**

Anglian Region Office  
Goldhay Way  
Orton Goldhay  
Peterborough PE2 5ZR

Tel: 01733 371811

**National Part IIA process manager:**

Environment Agency South West  
Manley House  
Kestrel Way  
Exeter EX2 7LQ

Tel: 01392 444 000

Fax: 01392 444 238

**National Head Quarters**

Land Quality  
Rio House Waterside Drive  
Aztec West  
Bristol  
BS32 4UD

Tel: 01454 624 400

Fax: 01454 624 032

**National Centre for Groundwater and Contaminated Land**

Olton Court  
10 Warwick Road  
Solihull  
B92 7HX

Tel: 0121 711 2324

Fax: 0121 711 5925

**National Centre for Eco-toxicology and Hazardous Substances**

Evenload House  
Howberry Park  
Wallingford  
OX10 8BD

Tel: 01491 828 544  
Fax: 01491 828 427

### **National Centre for Risk Analysis and Options Appraisal**

Steel House  
11 Tothill Street  
London  
SW1H 9NF

Help desk: 0207 664 6897  
Fax: 0207 664 6911

### **FOOD STANDARDS AGENCY**

Contaminants Division  
Room 707c  
Aviation House  
125 Kingsway  
London WC2B 6NH

Tel: 0207 276 8726  
Fax: 0207 276 8717

### **HEALTH & SAFETY EXECUTIVE**

39 Baddow Road  
Chelmsford  
Essex  
CM2 OHL

Tel: 01245 706222

### **HER MAJESTY'S CUSTOMS AND EXCISE OFFICE**

Landfill tax is the responsibility of the Birmingham business centre:  
2 Broadway  
Broad Street  
Five Ways  
Birmingham  
B15 1BG

Tel: 0121 697 4000  
Fax: 0121 643 3454

DEPARTMENT OF ENVIRONMENT, FOOD AND RURAL AFFAIRS

**Local contact:**

Rural Development Service  
National Land Management Team  
Southgate Street  
Bury St Edmunds  
IP33 2BD

Tel: 01953 606838

**National Contact:**

Sustainable Agriculture Branch  
RMED  
DEFRA  
16 Palace Street  
London SW1EE 5FF

STATUTORY REGENERATION BODIES

**Regional Development Agency (RDA)**

East of England Development Agency  
Lees Smith House  
12 Loom Lane  
Bury St Edmunds  
IP33 1HE

Tel: 01284 701743

**English Partnerships Head Quarters**

Mr Emyr Poole  
National Environmental Policy Co-ordinator  
16-18 Old Queen Street  
London SW1H 9HP

Tel: 0207 976 7070  
Fax: 0207 976 7740

**English Partnerships Senior Projects Manager**  
(Contaminated Land)

Mr John Navaratnam  
Arpley House  
110 Birchwood Boulevard  
Birchwood  
Warrington WA3 7QH

Tel: 01925 651144  
Fax: 01925 644657

**The Countryside Agency Head Quarters**

John Dower House  
Crescent Place  
Cheltenham  
Gloucester  
GL50 3RA

Tel: 01242 521 381  
Fax: 01242 584 270

## APPENDIX 3

### *POLLUTION OF CONTROLLED WATERS*

1. Controlled waters are defined for the purposes of Part IIA as:

\*Coastal waters including docks

\*Relevant territorial waters (usually to three miles)

\*Inland fresh waters (relevant rivers, watercourses, lakes, ponds, reservoirs - including bottom / channel / bed, even if dry)

\*Ground water

(section 104 of the Water Resources Act 1991)

2. The pollution of controlled waters is simply defined as:

*The entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter*

3. There is no power in the Act to enable the Secretary of State to issue guidance on what degree of pollution may constitute pollution of controlled waters. This has been accepted as a potential area of conflict. When, however, considering cases where it is thought very small quantities of a contaminant are causing pollution, local authorities must consider what remediation it may be reasonable to require. This should act as a limiting factor thereby ensuring unrealistic demands are not made in relation to cases of very minor pollution.

4. Pollution of controlled waters will be dealt with by the appropriate enforcing authority. Below is a summary of the issues relating to controlled waters.

5. Where pollution of groundwater has occurred and the source cannot be identified, or the polluting substances are contained entirely within the body of water (and not in or on the land), then Part IIA does not apply and the matter would be dealt with by the Environment Agency under section Part III of the Water Resources Act 1991 (see also paragraph i.8 (c) above).

6. Where pollution has occurred from land which subsequently affects the wholesomeness of drinking water within the meaning of section 67 of the Water Industry Act 1991 (Water Supply [Water Quality] Regulations 1989 / Private Water Supplies Regulations 1991), then the land becomes a **special site**.

7. Where pollution has occurred from land which results in surface water failing to meet the criteria in Regulations made under section 82 of the Water Resources Act 1991, then the land becomes a **special site**:

The Surface Water (Dangerous Substances) (Classification) Regulations 1989  
The Bathing Waters (Classification) Regulations 1991

The Surface Water (Dangerous Substances) (Classification) Regulations 1992  
The Surface Water (River Eco System) (Classification) Regulations 1994  
The Surface Water (Abstraction for Drinking Water) (Classification) Regulations 1996  
The Surface Water (Fish life) (Classification) Regulations 1997  
The Surface Water (Shellfish) (Classification) Regulations 1997  
The Surface Water (Dangerous Substances) (Classification) Regulations 1997  
The Surface Water (Dangerous Substances) (Classification) Regulations 1998

8. Where the pollution of a specified aquifer\* is caused by any of the following contaminants the land becomes a **special site**:

Organohalogen compounds and substances which may form such compounds in the aquatic environment;  
Organophosphorus compounds;  
Organotin compounds;  
Substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment;  
Mercury and its compounds;  
Cadmium and its compounds;  
Mineral oil and other hydrocarbons;  
Cyanides.

\*Specified aquifers are those contained in the following rocks:

Pleistocene Norwich Crag;  
Upper Cretaceous Chalk;  
Lower Cretaceous Sandstones;  
Upper Jurassic Corallian;  
Middle Jurassic Limestones;  
Lower Jurassic Cotswold Sands;  
Permo-Triassic Sherwood Sandstone Group;  
Upper Permian Magnesian Limestone;  
Lower Permian Penrith Sandstone;  
Lower Permian Collyhurst Sandstone;  
Lower Permian Basal Breccias, Conglomerates and Sandstones;  
Lower Carboniferous Limestones.

9. This, in effect, leaves local authorities with the potential responsibility for the pollution of controlled waters where:

- a) Surface or coastal waters are affected but not breaching the Regulations in paragraph 7 above.
- b) Groundwater (other than a principal aquifer specified as in 8 above) is contaminated and the water is not used for drinking.

## APPENDIX 4

### LIST OF POTENTIALLY CONTAMINATIVE LAND USES

This list has been drawn up to provide a broad indication of the type of sites that are known to use, or to have used in the past, materials that could pollute the soil. It must be understood that the list is not exhaustive, also that inclusion on this list does not necessarily infer the existence of a pollutant linkage.

Abattoirs  
Adhesives manufacture  
Agriculture  
Aircraft manufacture  
Airports  
Animal burial  
Animal by-product processing  
Anodisers  
Anti-corrosion treatment  
Asbestos products  
Asphalt works  
Automotive engineering  
Battery manufacture  
Bearings manufacture  
Blacksmiths  
Boiler makers  
Bookbinding  
Brass and copper tube manufacture  
Brass foundries  
Brewing  
Car manufacture  
Carbon products manufacture  
Cement works  
Chemical manufacture and storage  
Chrome plating  
Ceramics manufacture  
Coal carbonisation  
Coal merchant  
Concrete batching  
Coppersmiths  
Descaling contractors (chemical)  
Detergent manufacture  
Distilleries  
Dockyards  
Drum cleaning  
Dry cleaners  
Dye works  
Dyers and finishers

Electricity generation  
Electrical engineers  
Electro platers  
Engineering works  
Explosives manufacture (including fireworks)  
Farms  
Fertiliser manufacture  
Fellmongers  
Fibre glass works  
Food processing  
Foundries  
Fuel manufacture  
Fuel storage  
Garages and depots  
Gas mantle manufacture  
Gas works  
Glass works  
Glue manufacture  
Gum and resin manufacture  
*Hospitals*  
Hatters  
Hide and skin processors  
Ink manufacture  
Iron founder  
Iron works  
Knackers yards  
Lacquer manufacture  
Laundries  
Leather manufacture  
Metal coating  
Metal manufacture  
Metal sprayers and finishers  
Mining  
Mirror manufacture  
Motor vehicle manufacture  
Oil fuel distributors and suppliers  
Oil merchants  
Oil refineries  
Oil storage  
Paint and varnish manufacture  
Paper works  
Pesticides manufacture  
Petrol stations  
Photographic film works  
Photographic processing  
Paper manufacture  
Plastics works  
Plating works  
Power stations

Print works  
Printed circuit board manufacture  
Radioactive materials processing  
Railway land  
Railway locomotive manufacture  
Refiners of nickel and antimony  
Resin manufacture  
Rubber manufacture  
Scrap metal dealers  
Sealing compound manufacture  
Sewage works  
Sewage sludge disposal areas  
Sheet metal merchants and works  
Ship breakers  
Ship builders  
Shooting grounds  
Skein silk dyers  
Small arms manufacture  
Smokeless fuel manufacture  
Soap manufacture  
Solvent manufacture  
Solvent recovery  
Steel manufacture  
Stove enamellers  
Synthetic fibre manufacture  
Tank cleaning  
Tanneries  
Tar and pitch distillers  
Textile manufacture  
Thermometer makers  
Timber treatment  
Timber preservatives manufacture  
Tin plate works  
Transport depots  
Tyre manufacture and retreading  
Vehicle manufacture  
Vulcanite manufacture  
Vulcanisers  
Waste disposal  
Waste recycling  
Waste treatment  
Zinc works

## APPENDIX 5

### POWERS OF ENTRY AND THE APPOINTMENT OF “SUITABLE PERSONS”

1. Section 108 of the Environment Act 1995 gives the local authority power to authorise, in writing, “suitable persons”, to investigate potentially contaminated land. These powers are extensive and will be considered in detail with the Council’s Solicitor prior to any resisted entry being attempted. It should be noted that these powers are not available to the Environment Agency. The powers which a person may be authorised to exercise include:

- \* To enter at any reasonable time (or in urgent cases, at any time, if need be by force) any premises / land to make such examination and investigations necessary.
- \* To take samples, photographs, carry out tests, install monitoring equipment etc.

2. At least seven days notice must be given to residential occupiers and to occupiers of land where heavy plant is to be used. Consent must be obtained to enter from the occupier, or failing that, a warrant obtained under Schedule 18 of the Act.

3. The Council will not normally use these powers to obtain information about the condition of land, where:

- \* It can obtain the information from third parties without the need for entering the site; or
- \* A person offers to provide the information within a reasonable and specified time, and does so.

#### URGENT ACTION

4. Urgent action must be authorised where the Council is satisfied that there is imminent danger of serious harm or serious pollution of controlled waters being caused as a result of contaminated land. In such circumstances the procedures identified in the statutory guidance will be followed which may involve the forced entry into the premises.

5. The terms “imminent” and “serious” are unfortunately not defined, local authorities are advised to use the normal meaning of the words. There is, however, guidance on what may constitute “seriousness” when assessing the reasonableness of remediation.

6. The Council will undertake the remediation in urgent cases where it is the enforcing authority if it is of the opinion that the risk would not be mitigated by enforcement action. In the case of a special site the Council will declare the land contaminated land in accordance with the statutory procedure, and then notify the Environment Agency who will then be responsible for the remediation.

7. In appropriate cases the Council will seek to recover costs of remediation works it has completed.

8. All intrusive investigations will be carried out in accordance with appropriate technical procedures to ensure:

- a) They are effective
- b) They do not cause any unnecessary damage or harm
- c) They do not cause pollution of controlled waters

## COMPENSATION

9. Schedule 18 of the Environment Act 1995 makes clear the circumstances when a local authority must pay compensation for loss or damage as a result of the use of these powers. The lead officer will ensure that only appropriate technical procedures are deployed, the utmost care is taken at all times, and the conditions carefully recorded before, during and after completion of the necessary works.

## “SUITABLE PERSONS”

10. The science and associated technical procedures relating to the investigation and assessment of contaminated land are extremely complex. Knowledge of several specialised disciplines is required together with an ability to interpret significant volumes of data and make a reasoned judgement, often in difficult circumstances.

11. The consequences of, ‘getting it wrong’, could, in many cases, have a major impact on the District and on people’s lives. On the one hand, an entire area could be unnecessarily blighted and homes rendered worthless over night, whilst on the other, a generation of children could be left at risk.

12. Neither the Act nor the guidance considers what may constitute a, “suitable person”, for the purposes of the investigation and assessment of contaminated land. There is no list of approved consultants or any professional organisation which oversees the training of contaminated land specialists. There is no minimum qualification and no recognised qualification.

Consultants come from a range of backgrounds including:

Environmental health  
Other environmental science disciplines (several)  
Surveyors  
Engineers  
Geologists  
Hydrologists  
Soil scientists  
Chemists  
etc

13. Ultimately, the responsibility for determining what land may and may not be declared contaminated, by definition, lies with the Head of Environmental Services. S/he will, however, often need to rely on the advice of appointed, "suitable persons". Under these circumstances criteria have been developed to assist in their selection.

#### PROCEDURE FOR THE APPOINTMENT OF "SUITABLE PERSONS" FOR THE PURPOSES OF PART IIA

14. There are two prerequisites to commencing the process of appointing suitable external consultant / contractors, firstly:

- Adequate funding to support the process; and secondly
- A well qualified person, 'in house', to act in the Client role

15. Such a person, as well as having sufficient knowledge and experience to specify the contract, must have sufficient time to monitor it also.

The Head of Environmental Services has been identified for this purpose.

16. The Client officer will produce a comprehensive, unambiguous but succinct draft specification for each contract which clearly identifies the work to be carried out, its purpose, timetable and Client / Contractor responsibilities. Then s/he will produce a list of appropriate companies, taking care to seek out those most prominent and successful in the field, rather than only those who promote themselves to the Council. Each of these will then be contacted in turn for an informal discussion as to their capability, expertise and experience. Prior to commencing this process the Client officer will produce a selection of questions relevant to the contract to ask each company. This should then hopefully result in a short list of six or so companies who will be asked to quote / tender for the work based on a final specification.

17. A checklist of information requirements is included at the end of this section.

18. Due regard will be had to the Council's Contract Procedures.

19. Once appointed the Client officer will be responsible for monitoring the contract to ensure:

- The contractors are kept fully aware of their responsibilities at all times
- Quality control requirements are met
- Amendments are quickly agreed and documented
- The timetable is strictly adhered to
- The aim of the contract is achieved

## CHECKLIST OF INFORMATION REQUIREMENTS

CLIENT'S INFORMATION REQUIREMENTS	REQUIREMENTS OF THE CONSULTANT
<b>1. GENERAL</b>	
1.1 Background on company capability	How long has company been operating? What kind of work were they originally set up to do - is this an add on? Who traditionally are their clients?
1.2 Numbers and qualifications of staff  1.3 CV and availability of key staff	If a large company, what are the interests / sympathies of those in control. Do they consider local authorities as a serious market?  How many staff are available for this type of work, will they need to subcontract? Who will actually be doing the job, what are their qualifications and experience? Practical experience is KEY. Do they really understand Part IIA? Knowledge of environmental law & local government systems an important requirement.
1.4 Details of QA systems including: Allocation of responsibilities Project Management Technical Procedures Technical review Training Assessment of external suppliers	Where appropriate, need details of quality management systems indicating whether accredited by a third party. What technical procedures to be used. Which staff responsible, which will undertake technical review. How will quality of subcontractors is to be ensured.

1.5 Management of Health & Safety	Identify H&S management procedures where appropriate. Do they understand the fundamental requirements of H&S legislation?
1.6 Track record on similar projects	Ever done similar work or is this a new departure?
1.7 Client references	Need several telephone numbers to enable rapid verification of statements made at interview.
1.8 Financial status	May not always be necessary but on large contracts where considerable financial outlay required need to demonstrate solvency. Bond may be required on large remediation contracts.
1.9 Details of insurance cover	Need to demonstrate insurance available 3 <sup>rd</sup> party liability and professional indemnity. Identify limitations / exclusions
1.10 Membership of professional and trade associations	May be necessary to make checks, Corporate membership of professional organisations, meeting CPD requirements?
1.11 Compliance with codes of practice	Can they demonstrate knowledge of the appropriate guidance, codes of practice etc relevant to the job?

<b>2. PROJECT SPECIFIC</b>	
2.1 Technical proposal	The proposal must make it absolutely clear that work will be carried out to comply with the requirements of the specification, what the results will be, and when they will be achieved.
2.2 Project management plan / working plan	A clear timetable must be available which states what stage will be reached by when and who will be responsible to deliver.
2.3 Details of sub contractors	Subcontractors will be necessary on large technical projects. Must state who they are, contact points and lines of responsibility.
2.4 Details of technical procedures	Again, the working plan must clarify all procedures and lines of responsibility.
2.5 Reporting	Reporting procedures must be made absolutely clear. It is essential not to have masses of reports landing on the desk of the client officer which puts the responsibility back on him / her. The responsibility for doing what has been agreed to the agreed standard must lie with the contractor.

<p>2.6 Programme &amp; 2.7 Financial proposal</p>	<p>It may be that the Contractor will want to provide a guide price or include large contingency sums. The programme of work and the quotation must not be ambiguous. A lot depends on the quality of the original specification. Stage payments and timetables must be firm and with perhaps penalty clauses if fail to deliver on time.</p>
<p>2.8 Conditions of engagement</p>	<p>Contracts need not be long and wordy, should define responsibilities of both parties, liabilities etc succinctly.</p>

## APPENDIX 6

### EXAMPLES OF PRELIMINARY, AND STAGE 1 & 2 RISK ASSESSMENTS

**Preliminary assessments** are those carried out at the time of the inspection of the District and are designed only to assess priorities for further investigation. See Part 2 above.

**Stage 1 risk assessments** are those which seek to confirm (or otherwise) that a suspected pollutant linkage actually does exist. See 3.3 above.

**Stage 2 risk assessments** are those which seek to confirm (or otherwise) that a confirmed pollutant linkage is significant. See 3.4 above.

**EXAMPLE 1** - Closed landfill with houses built on the site with no recognised capping

*Contaminant score* - 10 (As a landfill site contaminants are known to be present)

*Receptor score* - 10 (As persons are living on the site receptors are known to exist)

*Pathway score* - 10 (As persons are living on the site they are potentially able to access the contamination - a pathway exists)

TOTAL - 30 - PC1

This is a very simple example but it indicates why houses on a landfill site with minimal protection will always be PC1 as a *pollutant linkage* always exists.

**EXAMPLE 2** - Closed landfill site with houses built on the perimeter

*Contaminant score* - 10 (As a landfill site contaminants are known to be present)

*Receptor score* - 10 (As persons are living very close by receptors are known to exist within an area of influence of the site)

*Pathway score* - 6 (As persons are living so close there may be a presumption that there is a significant possibility that the contamination could impact on the receptors, maybe landfill gas)

TOTAL - 26 - PC1

In this case, if there was data to show that the pathway between the contaminant of concern (say landfill gas) and the receptors, had been effectively broken, then the pathway score may be significantly reduced or even become zero.

**EXAMPLE 3** - Closed landfill site in the country, no houses or property receptors nearby but watercourses identified on both sides of the site with leachate staining

*Contaminant score* - 10 (As a landfill site contaminants are known to be present)

*Receptor score* - 10 (The water courses are controlled waters and therefore specified receptors within an area of influence of the site)

*Pathway score* - 8 (It is very likely - possibly certain, that the contamination on this site will access the water courses)

TOTAL - 28 - PC1

**EXAMPLE 4** - Old derelict gas works site, no structures, no access to the public, clay geology, no significant deep aquifer, but PWS nearby. Recent sample results satisfactory.

*Contaminant score* - 10 (As a gas works site contaminants are known to be present)

*Receptor score* - 5 (Initial investigations seem to suggest the existence of sensitive receptors unlikely except the PWS)

*Pathway score* - 3 (Adverse impact on receptor unlikely but could not be ruled out in the long term - seems satisfactory at the moment from recent sample results)

TOTAL - 18 - PC3

**EXAMPLE 5** - Old power station site, now derelict, no structures, children play on the site, motorcyclists or [quad bike off road use](#). River adjacent and part of site a flood plain.

*Contaminant score* - 8 (As a power station site contaminants are very likely, including asbestos)

*Receptor score* - 10 (Person frequenting the site are receptors with direct access to any surface contamination. The river is controlled water and could be picking up contaminants from the site during periods of flood and heavy rain)

*Pathway score* - 5 (Chronic adverse impact on receptors possible)

TOTAL - 23 - PC2

## APPENDIX 7

### GLOSSARY OF TERMS

The statutory guidance (and other parts of this Circular) uses a number of terms which are defined in Part IIA of the 1990 Act, other Acts or in the guidance itself. The meanings of the most important of these terms are set out below, along with a reference to the section in the Act or the paragraph in which the relevant term is defined.

Terms which are defined in statutes (most in Section 78A of the 1990 Act) are shown with underlining.

**Animal or crop effect:** significant harm of a type listed in box 3 of Table A of Chapter A.

**Apportionment:** any determination by the enforcing authority under Section 78F(7) (that is, a division of the costs of carrying out any remediation action between two or more appropriate persons). Paragraph D.5(e).

**Appropriate Person:** defined in Section 78A(9) as:

“any person who is an appropriate person, determined in accordance with Section 78F..., to bear responsibility for anything which is to be done by way of remediation in any particular case.”

**Assessment action:** a remediation action falling within the definition of remediation in Section 78A(7)(a), that is the doing of anything for the purpose of assessing the condition of the contaminated land in question or any controlled waters affected by that land or any land adjoining or adjacent to that land. Paragraph C.8(e).

**Attribution:** the process of apportionment between liability groups. Paragraph D.5(e).

**Building:** any structure or erection and any part of a building, including any part below ground but not including plant or machinery comprised in a building. Table A.

**Building effect:** significant harm of a type listed in box 4 of Table A of Chapter A.

**Caused or knowingly permitted:** test for establishing responsibility for remediation under Section 78F(2); see paragraphs 9.8 to 9.14 of Annex 2 for a discussion of the interpretation of this term.

**Changes to substances:** an exclusion test for Class A persons set out in Part 5 of Chapter D. Paragraphs D.62 to D.64.

**Charging notice:** a notice placing a legal charge on land served under Section 78P(3)(b) by an enforcing authority to enable the authority to recover from the appropriate person any reasonable cost incurred by the authority in carrying out remediation.

**Class A liability group:** a liability group consisting of one or more Class A persons. Paragraph D.5(c).

**Class A person:** a person who is an appropriate person by virtue of Section 78F(2) (that is, because he has caused or knowingly permitted a pollutant to be in, on or under the land). Paragraph D.5(a).

**Class B liability group:** a liability group consisting of one or more Class B persons. Paragraph D.5(c).

**Class B person:** a person who is an appropriate person by virtue of Section 78F(4) or (5) (that is, because he is the owner or occupier of the land in circumstances where no Class A person can be found with respect to a particular remediation action). Paragraph D.5(b).

**Collective action:** a remediation action which addresses together all of the significant pollution linkages to which it is referable, but which would not have been part of the remediation package for every one of those linkages if each of them had been addressed separately. Paragraph D.22(b).

**Common action:** a remediation action which addresses together all of the significant pollution linkages to which it is referable and which would have been part of the remediation package for each of those linkages if each of them had been addressed separately. Paragraph D.22(a).

**Contaminant:** a substance which is in, on or under the land and which has the potential to cause harm or to cause pollution of controlled waters. Paragraph A12.

**Contaminated land:** defined in Section 78A(2) as:

“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 likely to be caused.”

**Contaminated Land (England) Regulations 2000:** regulations (S.I. 2000/227) made under Part IIA - [described in Annex 4](#).

**Controlled waters:** defined in Section 78A(9) by reference to Part III (Section 104) of the Water Resources Act 1991; this embraces territorial and coastal waters, inland fresh waters and ground waters.

**Cost recovery decision:** any decision by the enforcing authority whether:

(a) to recover from the appropriate person all the reasonable costs incurred by the authority in carrying out the remediation; or

(b) not to recover those costs or to recover only part of those costs. [Paragraph E.8](#).

**Current use:** any use which is currently being made or is likely to be made of the land and which is consistent with any existing planning permission (or is otherwise lawful under town and country planning legislation). This definition is subject to the following qualifications:

(a) the current use should be taken to include any temporary use permitted under town and country planning legislation to which the land is, or is likely to be, put from time to time;

(b) the current use includes future uses or development which do not require a new or amended grant of planning permission;

(c) the current use should, nevertheless, be taken to include any likely informal recreational use of the land, whether authorised by the owners or occupiers or not (for example, children playing on the land); however, in assessing the likelihood of any such informal use, the local authority should give due attention to measures taken to prevent or restrict access to the land; and

(d) in the case of agricultural land, however, the current agricultural use should not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land. [Paragraph A.26](#).

**Ecological system effect:** significant harm of a type listed in box 2 of Table A of Chapter A.

**Enforcing authority:** defined in Section 78A(9) as:

(a) in relation to a specified site, the Environment Agency;

(b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated.

**Escaped substances;** an exclusion test for Class A persons set out in Part 5 of

Chapter D. Paragraphs D.65 to D.67.

**Excluded activities:** an exclusion test for Class A persons set out in Part 5 of Chapter D. Paragraphs D.47 to D.50.

**Exclusion:** any determination by the enforcing authority under Section 78F(6) (that is, that a person is to be treated as not being an appropriate person). Paragraph D.5(d).

**Favourable conservation status;** defined in Article 1 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

**Hardship:** a factor underlying any cost recovery decision made by an enforcing authority under Section 78P(2). See paragraphs 10.8 to 10.10 of Annex 2 for a discussion of the interpretation of this term.

**Harm:** defined in Section 78A(4) as:

“harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.”

**Human health effect:** significant harm of a type listed in box 1 of Table A of Chapter A.

**Industrial, trade or business premises:** defined in Section 78M(6) for the purpose of determining the penalty for failure to comply with a remediation notice, as:

“premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process and premises which are used for industrial purposes where they are used for the purpose of any treatment or process as well as where they are used for the purpose of manufacturing.”

**Inspection using statutory powers of entry:** any detailed inspection of land carried out through use of powers of entry given to an enforcing authority by Section 108 of the Environment Act 1995. Paragraph B.21.

**Introduction of pathways or receptors:** an exclusion test for Class A persons set out in Part 5 of Chapter C. Paragraphs D.68 to D.72.

**Intrusive investigation:** an investigation of land (for example, by exploratory excavations) which involves actions going beyond simple visual inspection of the land, limited sampling or assessment of documentary information. Paragraph B.20(c).

**Liability group:** the persons who are appropriate persons with respect to a

particular significant pollutant linkage. [Paragraph D.5\(c\)](#).

**Local authority**: defined in Section 78A(9) as meaning any unitary authority, district council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

**Monitoring action**: a remediation action falling within the definition in Section 78A(7)(c), that is “making of subsequent inspections from time-to-time for the purpose of keeping under review the condition of the land or waters”. Paragraph C.8(g).

**Orphan linkage**: a significant pollutant linkage for which no appropriate person can be found or where those who would otherwise be liable are exempt by one of the relevant statutory powers. [Paragraphs D.12. D.14 and D.17](#).

**Owner**: defined in Section 78A(9) as:

“a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land or where the land is not let at a rack rent would be so entitled if it were so let.”

**Part IIA**; Part IIA of the Environmental Protection Act 1990.

**Pathway**: one or more routes or means by or through which a receptor:

- (a) is being exposed to or affected by a contaminant; or
- (b) could be so exposed or affected. Paragraph A.14.

**Payments made for remediation**: an exclusion test for Class A persons [set out in Part 5 of Chapter D](#). [Paragraphs D.51 to D.56](#).

**Person acting in a relevant capacity**: defined in Section 78X(4) for the purposes of limiting personal liability, as any of the following:

“(a) a person acting as an insolvency practitioner within the meaning of Section 388 of the Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act);

“(b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of Section 388 of the Insolvency Act 1986 if subsection (5) of that Section were disregarded;

“(c) the official receiver acting as a receiver or manager;

“(d) a person acting as a special manager under Section 177 or 370 of the Insolvency Act 1986;...

“(f) a person acting as a receiver or receiver and manager under or by virtue of any enactment or by virtue of his appointment as such by an order of a court or by any other instrument.”

**Pollutant:** a contaminant which forms part of a pollutant linkage. [Paragraph A.17.](#)

**Pollutant linkage:** the relationship between a contaminant, a pathway and a receptor. [Paragraph A.17.](#)

**Pollution of controlled waters:** defined in Section 78A(9) as:

“the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter.”

**Possibility of significant harm:** a measure of the probability or frequency of the occurrence of circumstances which would lead to significant harm being caused. [Paragraph A.27.](#)

**Receptor: either**

(a) a living organism, a group of living organisms, an ecological system or a piece of property which:

- (i) is in a category listed in Table 1 in Chapter A as a type of receptor; and
- (ii) is being or could be harmed by a contaminant; or

(b) controlled waters which are being or could be polluted by a contaminant. [Paragraph A.13.](#)

**Register:** the public register maintained by the enforcing authority under Section 78R of particulars relating to contaminated land.

**Related companies:** are those which are or were at the “relevant date” members of a group of companies consisting of a “holding company” and its “subsidiaries”. The “relevant date” is that on which the enforcing authority first served on anyone a notice under Section 78B(3) identifying the land as contaminated land and the terms “holding company” and “subsidiaries” have the same meaning as in Section 736 of the Companies Act 1985. [Paragraph D.46.](#)

**Relevant information:** information relating to the assessment of whether there is a significant possibility of significant harm being caused which is:

- (a) scientifically based;
- (b) authoritative;

(c) relevant to the assessment of risks arising from the presence of contaminants in soil; and

(d) appropriate to the determination of whether any land is contaminated land for the purposes of Part IIA in that the use of the information is consistent with providing a level of protection of risk in line with the qualitative criteria set out in Tables A and B of Chapter A. [Paragraph A.31.](#)

**Relevant land or waters:** the contaminated land in question, any controlled waters affected by that land and any land adjoining or adjacent to the contaminated land on which remediation might be required as a consequence of the contaminated land being such land. [Paragraph C.8\(d\).](#)

**Remedial treatment action:** a remediation action falling within the definition in Section 78A(7)(b) that is the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose:

(a) of preventing or minimising or remedying or mitigating the effects of any significant harm or any pollution of controlled waters by reason of which the contaminated land is such land; or

(b) of restoring the land or waters to their former state. [Paragraph C.8\(f\).](#)

**Remediation:** defined in Section 78A(7) as:

“(a) the doing of anything for the purpose of assessing the condition of:

“(i) the contaminated land in question;

“(ii) any controlled waters affected by that land; or

“(iii) any land adjoining or adjacent to that land;

“(b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose:

“(i) of preventing or minimising or remedying or mitigating the effects of any significant harm or any pollution of controlled waters by reason of which the contaminated land is such land; or

“(ii) of restoring the land or waters to their former state; or

“(c) the making of subsequent inspections from time-to-time for the purpose of keeping under review the condition of the land or waters.”

**Remediation action:** any individual thing which is being or is to be done by way of remediation. [Paragraph C.8\(a\).](#)

**Remediation declaration**: defined in Section 78H(6). It is a document prepared and published by the enforcing authority recording remediation actions which it would have specified in a remediation notice but which it is precluded from specifying by virtue of Sections 78E(4) or (5), the reasons why it would have specified those actions and the grounds on which it is satisfied that it is precluded from specifying them in a notice.

**Remediation notice**: defined in Section 78E(1) as a notice specifying what an appropriate person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

**Remediation package**: the full set or sequence of remediation actions within a remediation scheme which are referable to a particular significant pollutant linkage. Paragraph C.8(b).

**Remediation scheme**: the complete set or sequence of remediation actions (referable to one or more significant pollutant linkages) to be carried out with respect to the relevant land or waters. Paragraph C.8(c).

**Remediation statement**: defined in Section 78H(7). It is a statement prepared and published by the responsible person detailing the remediation actions which are being, have been or are expected to be done, as well as the periods within which these things are being done.

**Risk**: the combination of:

(a) the probability or frequency of occurrence of a defined hazard (for example, exposure to a property of a substance with the potential to cause harm); and

(b) the magnitude (including the seriousness) of the consequence. Paragraph A.9.

**Shared action**: a remediation action which is referable to the significant pollutant in more than one significant pollutant linkage. Paragraph D.21(b).

**Single-linkage action**: a remediation action which is referable solely to the significant pollutant in a single significant pollutant linkage. Paragraph D.21(a).

**Significant harm**: defined in Section 78A(5). It means any harm which is determined to be significant in accordance with the statutory guidance in Chapter A (that is, it meets one of the descriptions of types of harm in the second column of Table A of that Chapter).

**Significant pollutant**: a pollutant which forms part of a significant pollutant linkage. Paragraph A.20.

**Significant pollutant linkage**: a pollutant linkage which forms the basis for a determination that a piece of land is contaminated land. Paragraph A.20.

**Significant possibility of significant harm:** a possibility of significant harm being caused which, by virtue of Section 78A(5), is determined to be significant in accordance with the statutory guidance [in Chapter A](#).

**Sold with Information:** an exclusion test for Class A persons set out in Part 5 of Chapter D. Paragraph D.57 to D.61.

**Special site:** defined by Section 78A(3) as:

“any contaminated land -

“(a) which has been designated as such a site by virtue of Section 78C(7) or 78D(6)...; and

“(b) whose designation as such has not been terminated by the appropriate Agency under Section 78Q(4)...”.

**Substance:** defined in Section 78A(9) as:

“any natural or artificial substance, whether solid or liquid form or in the form of a gas or vapour.”

**Walkover Survey:** A preliminary survey of a site carried out by visual inspection. Normally the survey is guided by a checklist of areas or features to be inspected.