Rotherham Metropolitan Borough Council

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

CONTAMINATED LAND INSPECTION STRATEGY - REVIEW June 2025 – June 2030

As required by Part 2A of the Environmental Protection Act 1990

Document Control

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This document supersedes all previous Statutory Contaminated Land Inspection Strategies prepared by Rotherham Metropolitan Borough Council

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EXECUTIVE SUMMARY

The Borough of Rotherham consists of mixed residential and industrial areas with substantial rural areas. Traditional industries such as coal mining, iron and steel production, engineering and other heavy industry have declined since the 1980s leaving behind a legacy of potential land contamination issues.

Under Part 2A of the Environmental Protection Act 1990, the Local Authority is identified as the primary regulator for dealing with land contamination problems. The Council therefore has a statutory duty to inspect its area for land contamination. The process of investigating and remediating land aims to ensure that all land in the Borough is suitable for the use it is put to and does not pose unacceptable risks to human health, the environment, controlled waters and property.

This document details how Rotherham MBC will continue to identify and inspect its land for contamination, under the requirements of regulations included within the Environmental Protection Act 1990. The strategy was first adopted by the Council and published on the 2nd July 2001. This document is the fourth revision of the Contaminated Land Inspection Strategy and covers the period June 2025 – June 2030. Strategies are to be reviewed at least every 5 years and this document will therefore be reviewed in 2030 or sooner if required by changes to the inspection strategy itself or changes in legislation.

The Council uses all available information and employs a risk-based approach in order to identify contaminated land. A list of 'Sites of Potential Concern' (SPCs) has been compiled, and the inspection programme started in 2006. Approximately 1765 SPCs have been identified within the Rotherham Borough Area that need to be investigated. A considerable number of these sites have been investigated through the planning regime primarily for the redevelopment of former industrial land. Where necessary remediation/mitigation works have been undertaken.

Government funding for the investigations of SPCs under Part 2A legislation was withdrawn in 2013. This funding was available to Local Authorities for the investigation and remediation of sites where the original polluter could not be found. The withdrawal of government funding has restricted Rotherham Council and other Councils nationally, from being able to investigate SPCs due to the constant financial pressures they face and an annual decrease in revenue funding from Central Government. As a consequence, this Council has been and will continue to concentrate on addressing sites where contamination may exist through the Planning Regime.

The Council has a duty to publish a public register of any land designated as statutorily contaminated land. No land to date has been designated as statutorily contaminated within the Rotherham Borough Area and there are, therefore, no entries on the register.

Rotherham Metropolitan Borough Council is committed to developing and promoting the Borough as a safe and attractive place to live and work in. The Council will seek to promote sustainability and minimise environmental pollution through its own activities and its influence on others.

This contaminated land strategy will ensure that the Council meets its obligations to protect human health, property and the wider environment. It will also drive the remediation of contaminated sites and encourage the re-use of brownfield land in line with the sustainability policies of the Council.

CHAPTER 1: Background and Regulatory Context

1.1 Regulatory Context

Part 2A of the Environmental Protection Act (EPA) 1990 came into force on 1 April 2000. This provided a new regulatory regime for the identification and remediation of land contamination within a Local Authority area.

Under Part 2A each Local Authority has a duty to inspect its area for Contaminated Land. The strategy was first adopted by Rotherham Council and published on the 2nd of July 2001, which provided information on how it was going to do this.

The new regime was introduced in DETR Circular 02/2000 which provided guidance on how regulators should implement the Part 2A Regime, in line with the Contaminated Land (England) Regulations 2000.

At that time all Local Authorities had a statutory duty to prepare a Contaminated Land Inspection Strategy. This strategy was prepared by Rotherham Council in July 2001.

On 6 April 2012, new Statutory Guidance came into force, replacing the previous DETR Circular 02/2000 guidance. This guidance sets out how Local Authorities should decide whether land is contaminated or not. For non-radioactive contamination, the advice to regulators is contained within DEFRA's Contaminated Land Statutory Guidance dated April 2012 and the Contaminated Land (England) Regulations 2006 (as amended by Subsequent Statutory Instruments).

A legal framework for dealing with radioactive contaminated land in England was introduced through the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2006 and the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (as amended by Subsequent Statutory Instruments). The advice to regulators is contained within the Department of Energy and Climate Change's Radioactive Contaminated Land Statutory Guidance dated June 2018, which came into force on 22 June 2018.

This review has been undertaken in accordance with all current guidance to update the strategy and to reflect the latest changes in the regime. This document replaces the July 2001, 2010 and 2024 Contaminated Land Inspection Strategy.

Please note here that Part 2A should only be used where no other appropriate solution exists. Other regimes which can be used to address potential contamination of land are discussed later in this document.

1.2 Background

It has been widely known for a number of decades that past industrial development has left a legacy of land contamination. Many industrial practices may have led to substances being in, on or under land, for example heavy metals, organic compounds such as tars, asbestos, acids, alkalis, etc. In addition, the needs of society are such that large volumes of refuse have had to be disposed of to landfill in the past.

This problem has become particularly evident in the late 20th century, where demographic shift of populations has resulted in the large-scale redevelopment of many previously industrialised areas, often for more sensitive uses. Many of these previously used ('brownfield') sites have substances which may cause contamination, some of which may be harmful to the health of persons, damaging to buildings, crops, ecosystems, etc and polluting to the water environment.

Previous guidance on contaminated land was limited in its application and set prescriptive standards which were not based on actual quantifiable risks. As a consequence, some remediation to address the problems highlighted above may have been unnecessary and costly, whilst areas that required further consideration were not addressed in sufficient detail. The first legislation specifically addressing contaminated land was published in June 1995 in Section 57 of The Environment Act 1995. This amended The Environmental Protection Act 1990 by introducing a new Part 2A - The Contaminated Land Regime (referred to herein as 'the Part 2A provisions').

1.3 National Objectives

The implementation of Part 2A provides a means of identifying and remediating land that poses a significant risk to health or the environment where there is no alternative solution. It is based upon the principles of site remediation being to a standard 'suitable for use', and of 'the polluter pays', when assessing liability. The approach is 'risk based' and must embody the principle of 'sustainable development'. 'Suitable for use' does not always mean a full 'clean up operation'.

There are three key governmental objectives which underlie the 'suitable for use' approach to contaminated land remediation:

i) To identify and remove **unacceptable risks** to human health and the environment

ii) To seek to bring back contaminated land into beneficial use and is made suitable for its **current use.**

iii) To seek to ensure that the cost of the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of **sustainable development.**

The ‘polluter pays principle’ embodies an objective to ensure that, where feasible (and subject to certain limitations), any person who caused or knowingly permitted the contamination in the first instance will be the ‘appropriate person’ to pay for and undertake remediation. If this is not possible, only then does the responsibility pass to the current owner or occupier of the land.

In the United Kingdom, sustainable development means safeguarding natural resources and protecting and enhancing the environment as a key issue to be considered when considering the safeguarding of the standards of living and quality of life. Greenfield development is limited in its availability and if possible, Government policy is to ensure appropriate redevelopment of ‘brownfield’ land. As well as improving environmental standards, this also helps to contribute to social and economic regeneration of the area.

1.4 Local Objectives

The implementation of Part 2A of the Environmental Protection Act 1990 will have a direct influence on the strategy and policy objectives of Rotherham Borough Council. The regime requires each local authority to ‘cause its area to be inspected from time to time for the purpose of identifying contaminated land’.

Like many other areas in the United Kingdom, Rotherham has been associated with large amounts of industry which have had significant potential to cause land contamination issues.

The Council Plan 2020-2025

The vision for Rotherham in 2025 is to be a place where people want to live, work, study, invest or visit. We want to develop a **sustainable economy** that builds on our strengths in advanced manufacturing, culture and innovation and we want local people to live healthily fulfilling lives in a place where local assets are used to their full potential.

The Council Plan is the core document that underpins the Council’s overall vision. The Plan sets out the headline priorities, outcomes for the coming years along with the key performance measures that will demonstrate the delivery of the vision. The Plan is framed around five themes:

- Every neighbourhood thriving
- People are safe, healthy and live well
- Every child able to fulfil their potential
- Expanding economic opportunity
- A cleaner, greener local environment

The implementation of Part 2A contributes to the above themes and goes some way to meeting these priorities. Whilst Part 2A is a statutory function, as opposed to a strategic function, the duties undertaken will contribute to fulfilling these priorities.

Within the Regeneration and Environment Directorate, the specific aim is to develop and provide Rotherham as a great place to live, work and visit. This means

more jobs, a vibrant cultural sector, good quality green spaces and clean, safe welcoming environments.

1.5 Regulation of Part 2A

Local Authorities primarily have the regulatory responsibility for this regime. However, the Environment Agency is required to provide a supporting role, along with the provision of site-specific guidance to local authorities where necessary and particularly where concerns around water pollution are raised.

Role of Rotherham Metropolitan Borough Council

Under the new Part 2A provisions, the regime requires local authorities to:

- To prepare and publish a strategy for inspecting their area for Contaminated Land
- To implement the strategy
- To determine which sites meet the definition of Contaminated Land and whether such sites should be designated as a '**special site'**.
- To ensure appropriate remediation of Contaminated Land takes place
- To maintain a public register of Part 2A regulatory action

The statutory guidance requires local authorities to produce a formal contaminated land strategy document clearly setting out, details of how the Council plans to implement its inspection duties under Part 2A of the Act. This document had to be formally adopted by the Council and published within 15 months of April 2000. The document referred to here is this document (revised).

Once land is considered to be statutorily contaminated, the local authority will be required to:

- Establish who should bear responsibility for remediation
- Decide (after consultation) what remediation is required and to ensure this takes place
- Where a Remediation Notice is served or the Local Authority undertakes the work itself, to determine the proportions of the liability for meeting the costs of the work
- To record certain information that is required about regulatory actions, on a Public Register.

Role of the Environment Agency

The main roles of the Environment Agency are:

- Regulation of special sites, including producing and maintaining a public register of special sites remediation
- Inspection of land that, if found to be contaminated, would be a special site (at the request of, and on behalf of a local authority)
- To provide information to the Council on land contamination
- The provision of advice to a local authority on identifying and dealing with pollution of controlled waters, including site specific advice on site remediation where appropriate
- To assist local authorities in identifying contaminated land
- To publish periodic reports on state of the environment and contaminated land in England and Wales.

Regulation 2(2) of the Contaminated Land (England) (Amendment) Regulations 2012 amends the circumstances set out in regulation 3 (Pollution of Controlled Waters) in the Contaminated Land Regulations 2006, in which contaminated land affecting controlled waters is required to be designated as a special site.

1.6 Definition of Contaminated Land under Part 2A

Under Section 78A(2) of Part 2A, the legal definition of contaminated land is defined as follows:

'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 significant possibility of such harm being caused; or

(b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused

In relation to radioactivity, as per Regulation 5(1) of The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, the legal definition of contaminated land is defined as follows:

'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) Harm is being caused, or
(b) There is the significant possibility of such harm being caused

The definition uses the suitable for use approach and is underpinned by the principles of risk assessment, where risk is a combination of two elements:

a) probability (i.e., how likely is it that something will happen)
b) magnitude of consequences (i.e., if it does happen, how serious will it be)

The guidance prescribes the 'receptors' to which 'harm' may be caused, what is meant by 'harm', and what a local authority can consider is 'significant harm' or 'significant possibility of such harm' and significant pollution of controlled waters.

The following factors need to be considered to determine the significance of harm:

- the nature and degree of harm
- the susceptibility of the receptors to which the harm might be caused
- the time scales within which the harm might occur.

A site cannot be identified as contaminated land solely by the presence of a contaminative substance being present in, on or under the land. It uses the concept of a 'pollutant linkage' to determine if land is contaminated. There must be a linkage between a 'contaminant' and a 'receptor' by means of a 'pathway'.

CONTAMINANT
Can be defined as a solid, liquid or gas, which is situated in, on or under the land that has the potential to cause significant harm or significant pollution of controlled waters.

PATHWAY
A pathway is one or more plausible routes by which the contaminant can reach the receptor, such that the contaminant is causing significant harm, or significant possibility of such harm, to the receptor.

RECEPTOR
A receptor is something which can be significantly impacted upon by the contaminant. There are four main receptors identified within the legislation. These are:

a) Human beings
b) Controlled waters
c) An ecological system within various designations and/or protection
d) Property (including buildings, crops and livestock) which could be harmed by a contaminant

Under the **radioactive** contaminated land regime, a receptor is limited to **human beings only.**

Where all these three aspects of contaminant, pathway and receptor are thought to exist, the local authority must then satisfy itself that such a pollutant linkage does exist and that it is:

- resulting in significant harm being caused to the receptor; or
- there is a significant possibility of significant harm being caused to the receptor; or
- significant pollution of controlled waters is or is likely to occur

If this is the case, then there is said to be a **significant pollutant linkage** and the land is judged as appearing to be statutorily contaminated land. A site needs at least **one** significant contaminant linkage to exist to be determined as contaminated land.

It is important to note that the definition does not include all types of harm, nor all types of receptors, but is designed to address identification of land where the contamination is causing unacceptable risks to specific targets, such as human health and water pollution.

1.7 Special Sites

There are circumstances when a local authority considers a site to be contaminated land that it may be a 'special site'. Such sites have the Environment Agency as the enforcing body, and detailed investigation of any potential special site is carried out by the Environment Agency, on behalf of the local authority.

CHAPTER 2: CHARACTERISTICS OF ROTHERHAM

2.1 Geographical Context

Rotherham Metropolitan Borough Council is located in South Yorkshire with neighbouring local authorities including Barnsley Metropolitan Borough Council, Doncaster City Council, Sheffield City Council, Northeast Derbyshire District Council, Bolsover District Council and Bassetlaw District Council. In addition, the Shire Counties of Derbyshire and Nottinghamshire also border Rotherham.

Outside Rotherham's urban centre, there are substantial populations based in Anston, Aston, Dinnington, Kiveton Park, Maltby, Rawmarsh, Swinton and Wath-upon-Dearne. Seventy percent of the Borough is rural, particularly to the north-west and the south of the Borough. The area is intersected by the two major motorway networks of the M1 and M18, and the major rivers of The Don, and Rother flow through it. It comprises an area of 300,760 hectares.

2.2 Description and History of the Area

Approximately 265,411 residents live within the Rotherham Metropolitan Borough Council area with 119,722 residential properties. Rotherham is a Borough of contrasts and diversity. Almost three quarters of the Borough has a rural land use, comprising a mixture of highly productive agricultural land, remnants of large rural estates, parkland and villages. Even within built-up areas, the countryside is often reflected in parks and gardens.

Settlement in Rotherham dates back to prehistoric times and the local iron ore was exploited by the Romans, who built a fort by the River Don at Templeborough. The monks from Kirkstead Abbey mined and smelted iron ore at Thundercliffe from the 12th century. During the later 17th Century and into the 18th Centuries the Dukes of Leeds and Kiveton Park and the Wentworth's at Wentworth wielded much national political clout backed by agricultural and industrial foundations. Nevertheless, Rotherham remained a rural environment and it was not until the industrial revolution of the 19th century and the arrivals of the railways from the 1840's that Rotherham became primarily an industrial town largely as a result of its position between Sheffield and the ports on the East Coast amongst other things. Major coal mining (and associated industries such as chemical and coking works), and steel manufacturing industries developed, particularly in the areas of Wath/Manvers, Kiveton Park, Dinnington, Maltby, Thurcroft, Treeton and Templeborough. The majority of the traditional heavy industries were rapidly lost from the area from the mid-1980s, and major redevelopment has already taken place on many of the major steel making and coal mining sites, plus a number of other individual colliery sites. In addition to industrial use, a large part of the Borough is rural and agricultural. Current diversification includes more light industry and high-tech business parks, particularly on the former industrial brownfield sites. Typical of this historical change has been the fortunes of Kiveton Park: during the 17th and 18th Century Kiveton Hall surrounded by a few farmsteads, was home to the Osbournes, Dukes of Leeds. The 1st Duke of Leeds was instrumental in the Glorious Revolution of 1688 and setting Britain on a political course that was trade and mercantile. The arrival of railways in the 1840s resulted in the sinking of the first mine shaft in the 1860s turning Kiveton Park from its rural identity, into a heavy industrial landscape. In just over a century the pit was closed resulting in rapid

industrial decline. The site has now been replaced with leisure and services industries.

There are 3 country parks, 10 urban parks, numerous parish council and miners' welfare areas of public open spaces maintained by the Council. There are 514 listed buildings in the Borough and 36 Scheduled Ancient Monuments.

The 15th century Parish Church of All Saints which stands prominently in the centre of town is one of the finest examples of perpendicular architecture in Yorkshire. Erected in 1483 during the reign of Richard III is the Chapel of Our Lady on Rotherham Bridge, one of only four of its kind remaining in the country. Roche Abbey is a dramatic ruin dating from 1147. It lies approximately 12 miles to the east of the town, near the village of Maltby. Situated in a meadow by a stream, its surroundings were landscaped in the 1770's by Capability Brown. On the north-west side of the Borough lies Wentworth Woodhouse, the former country home and seat of the Earls Fitzwilliam. Its façade is the longest of any stately home in Britain, and, while the house is a private residence, its outward splendour can be viewed from footpaths through the surrounding park. In the vicinity of Wentworth Woodhouse are several follies and monuments such as Hoober Stand (erected at the highest point in the Borough), Keppel's Column the Needle's Eye and Rockingham Mausoleum. Boston Castle, another folly dating from the 18th century, is situated in Boston Park just beyond Rotherham town centre.

There are 5 local nature reserves in Rotherham, found at Catcliffe Flash, Firsby Reservoirs, Keppels Field/Scholes Coppice/Brays Plantation, Warren Vale and Maltby Common. Rotherham contains 4 Registered Historic Parks, 25 Conservation Areas, 77 Ancient Woodlands and 7 Sites of Special Scientific Interest. Rotherham's Heritage Site Register, which includes not only specific protected sites, but all sites with a known interest, contains around 670 sites. These include sites registered for natural history, ancient woodland, Regionally Important Geological Sites, landscape, archaeology, listed buildings and local social history.

2.3 Geology of the Area

The geology of the area may be a major influence on pollution linkages, as pathways may be created or limited by the underlying geology, for example, with gravels and clays respectively. Certain geological strata may be contamination receptors such as aquifers, or may indeed be a source of contamination, for example, radon emissions from granites and limestones and arsenic in Coal Measures.

The geology of Rotherham comprises sandstones, shales and coal seams of the Lower, Middle and Upper Coal Measures, which generally dip to the east, where they are overlain unconformably by limestones and marls of the Permo-Trias. In general, they compromise a thick sequence of rocks (up to 1500 metres) which are characterised by the repeated sequence of mudstone, siltstone, sandstone, seat earth, coal. Each sequence is rarely more than 15 metres, but where a greater thickness occurs it is due to a greater thickness of sandstone. The Coal Measures are extensively faulted. There are minor outcrops at the extreme east of the Borough of the Permian Marls and Sands. The Lower Magnesian Limestone consists of thin bedded to massive dolomitic limestones up to 60 metres thick. Geological faults cross the area, trending in a northwest to southeast or northeast

to southwest direction, with the bedrock being covered in parts by newer deposits of alluvium and boulder clay. Along the major river valleys of the Don and Rother, superficial deposits of Alluvium, 1st. Terrace, Sands and Gravels are found. These are often areas where industrial development occurs, both currently and historically.

2.4 Hydrogeology and Hydrology of the Area

Groundwater is used throughout the Northeast Region of England for many purposes from small private domestic wells abstracting less than 10 cubic metres per day to major public supply boreholes abstracting over 10,000m^3/d. In Rotherham, two water companies supply public water, namely Yorkshire Water plc and Severn Trent Water plc.

Through the Borough, the major rivers of the Don and Rother flow, with their confluence in Rotherham town centre. Downstream, and to the northern boundary of the Borough, the River Dearne meets the Don. There are a number of reservoirs in the Borough, primarily forming part of the Country Park resources. The South Yorkshire Navigation Canal passes through the centre of the Borough to the north, and to the south, the Chesterfield Canal is found.

Aquifers provide a base-flow component for the flow of many of the region's rivers. For the Pennine rivers this may be quite low, and they respond flashily to rainfall and run-off.

The Lower Magnesian Limestone is a Major Aquifer and lies to the east of the Borough.

The Lower and Upper Magnesian Limestones are separated by the Middle Permian Marls and form locally important aquifers. Aquifer properties are very variable due to lateral and vertical variations in lithology. However, fissuring of the Limestone, often associated with faulting, and sometimes Karstic conditions may provide large borehole yields, but also results in the aquifer being susceptible to pollution. Extensive quarrying of the Limestone provides an increased pollution risk because of the reduction in thickness of the unsaturated zone and removal of overburden.

The Coal Measures, though classed as a minor aquifer, may provide good borehole yields and many industrial supplies rely on them. The major sandstones are the aquifers, but groundwater flow is extensively affected by the faulting and fissuring of the rocks, and also by the results of coal mining and associated dewatering activities. Across the borough, dewatering has stopped and minewater levels are considered to be stable in parts of Rotherham, whilst other areas are still under the influence of rising levels.

Because of the complex, and often poorly understood, hydrogeology it is impossible to subdivide the Coal Measures into aquifers and non-aquifers except on a very detailed level and the whole sequence must therefore be considered in general terms an aquifer.

Significant contamination occurs on many old mining sites, especially where there were coking plants and also on old gas works and these may cause surface and groundwater problems. Deep mining has also left a legacy of poor groundwater

quality on parts of the Coal Measures. As dewatering from deep mines ceases this poor quality water is likely to find its way to the surface and cause contamination of surface waters. Older parts of the coalfield, such as those below Rotherham, have longstanding problems from a number of minewater discharges in the South Yorkshire area.

2.5 Known Information on Contamination

By virtue of the past industrial heritage of the area and the large-scale closure of these sectors of industry from the mid 1980s, the Council is aware of the significant likelihood of contamination across major areas of the Borough. As part of the urban regeneration programme in the 1990's early 2000's, the Council has undertaken a number of major rolling programmes of site investigation and reclamation in the Wath/Manvers, Catcliffe/Orgreave and Templeborough areas, plus a number of other discrete schemes particularly on colliery and town gasworks sites. At that time both the Environment and Development Services and Neighbourhood and Adult Services were pro-active in addressing those sites. As a result, a number of site investigation reports and reclamation schemes are held on file in the form of paper records by the two Services.

It is recognised, however, that due to the nature of the industrial usage of the area, other sites may contain contaminants associated with these and other industries, together with possible contamination from a number of former landfill sites, typical of the urban area.

2.6 Land owned by Rotherham Metropolitan Borough Council

The Council either owns or has owned a wide-ranging portfolio of land and property. Unfortunately, there is no one overall listing of all Council owned land, as all details are held by individual Directorates. The land owned by the Council includes housing, car parks, parks, woodland, allotments, commercial premises, and landfill sites.

In order to ensure that as much relevant information as possible is obtained, and to ensure that all the responsibilities in relation to Council-owned land are fulfilled, liaison with all relevant Council Services takes place.

Where the Council itself may be responsible for contaminated land, then the relevant Directorate will be advised, to enable it to commence investigations, as part of the prioritised inspection procedure adopted by this Service.

CHAPTER 3: AIMS AND OBJECTIVES OF THE STRATEGY

3.1 Introduction

The Statutory Guidance requires the Council to set out its aims, objectives and priorities with respect to the inspection strategy. The strategy complements the Council's key themes and the objectives of sustainability.

The governments key objectives, as detailed in paragraph 1.4 of the Statutory Guidance are as follows:

- To identify and remove unacceptable risks to human health and the environment
- To seek to ensure that contaminated land is made suitable for its current use
- To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development

It is the Council's responsibility to deliver on these requirements and this will be achieved primarily through the Planning regime and by using its powers under Part 2A of the EPA Act 1990 where necessary and proportionate to do so.

3.2 Priorities of Rotherham MBC

The priorities of the Council when, dealing with contaminated land, are to:

- protect human health
- protect controlled waters
- protect specified ecosystems
- prevent damage to property (livestock, buildings, etc)
- prevent further land contamination
- encourage voluntary remediation
- encourage re-use of brownfield and contaminated land sites where appropriate
- Seek funding for investigation and remediation works

CHAPTER 4: Strategy Outline and Work Programme

4.1 Current Situation

The Contaminated Land Inspection Strategy was formally adopted by the Council on 2nd July 2001. To identify SPCs, the Council used a significant digital data and a geographical information system (G.I.S.) package, utilising MapInfo, to facilitate this. A semi-quantitative risk screening tool was then used to ensure that the information concerning receptors and potential contaminants could be matched and prioritised, to ensure that the potentially worst-case situations would be investigated first.

It is important to note here that due to advances in technology, this dedicated GIS System needs a significant upgrade as the software is no longer compatible with inhouse technology. This is currently being reviewed and it is hoped a new upgrade will be available within 2025.

Over 1765 sites have been identified as SPCs. Using a manual method of prioritisation, these sites have been ranked in order of priority for detailed inspection. This ranges from former large industrial sites to former colliery and coking works, landfill sites and to sites of less concern, including infilled railway cuttings/ponds. The prioritisation process was completed in 2006.

This list of sites has to be updated frequently to take account those sites which have/are being addressed through the planning process or via voluntary remediation.

The list of SPCs **is not** available to the general public as this has the potential to cause blight to an area/site which may appear on the list. For those sites yet to be investigated, they have only been identified with a potential for contamination to be present due to known historical uses, in order to rank into a priority order for possible inspection.

It should be noted that Part 2A addresses the risk based on the current land use. Whilst sites may have been noted as inspected/remediated, this does not stop work being required in the future should a more sensitive land use be proposed which might create a risk for end users.

4.2 Detailed Site Inspections

Inspections are required to obtain sufficient information to be able to determine if the land appears to be contaminated land (and in particular, evidence of the actual presence of a pollutant), and if so, if it falls within the definition of a special site. This will be based on a phased information gathering exercise.

If these investigations confirm that the pollutant linkage is significant (contaminant resulting in significant harm or the significant possibility of such harm being caused to the specified receptors or resulting in or likely to result in pollution of controlled waters), then the land will be statutorily defined as contaminated, and the procedures in the following chapters will be followed. In order to undertake this level detail of individual sites, it is anticipated that this process will be ongoing until completion of investigation of all sites considered appropriate.

Part 2A adopts a precautionary approach in terms of risks posed by contamination. The Statutory guidance provides more detail on the actual specifics of risks assessment and the procedures for deciding whether land meets the legal definition of contaminated land resulting in determination. Any inspection by the Council carried out under Part 2A would follow the requirements set out in the legislation and Statutory Guidance at that time.

Where land has been identified as meeting the Statutory definition of contaminated land the Local Authority has a duty to ensure remediation of the land is undertaken.

4.3 Dealing with Urgent Sites

If at any stage during the process of prioritisation and inspection work, it is considered that:

- There is an imminent danger of serious harm or serious pollution of controlled waters, being caused; and
- It is necessary for the authority to carry out the remediation itself to prevent that harm or pollution; or
- the site is referred by the Environment Agency for determination as a special site,

then these will take priority over the routine programmed work. The Council will use its powers under Part 2A to reactively deal with contaminated land where there is clear evidence that a problem exists or is likely to exist.

4.4 Provisional Programme 2025-2030

The inspection of SPCs under the Part 2A regime is very costly and resource intensive for Rotherham MBC and other Local Authorities. At present there is only one full time member of staff with other significant designated responsibilities and consequently work in this area has been limited.

DEFRA previously provided a grant system to Local Authorities via a bidding system, to finance site investigations and the remediation thereof when required if the responsible persons could not be identified. This scheme was withdrawn in 2013 and no replacement funding has been put in place since to assist Local Authorities in the undertaking of their duties.

Both site investigation and remediation works can be costly as per investigations carried out on Council owned land located adjacent to the Gulliver's Valley Theme Park. By way of example these costs were in excess of £77k and further site investigations are still required at an estimated cost of £30k. These costs prohibit Part 2A work. However, when investigating SPCs, the Council will always seek to identify those persons responsible for the contamination (i.e. polluter pays principle).

The Statutory Guidance states that Local Authorities must seek to minimise unnecessary burdens on the taxpayer. In the absence of any external funding and the financial costs involved, Rotherham Council at this time, is not able to proactively undertake Part 2A detailed inspections of SPCs. This indeed has been the case since 2013, with the exception of the works carried out on land adjacent to the Gullivers Theme Park.

If further funding becomes available, then Part 2A work will resume. The Council will however continue to ensure that historical contamination is addressed appropriately through the planning regime and any voluntary remediation schemes proposed. It is accepted that Part 2A and the planning regime are interconnected.

4.5 Wider Approach

Outside of Part 2A there are other existing regulatory regimes that will be used to continue to address and deal with land contamination issues. These include:

(a) <u>The Planning Process</u>

The main function of the planning process is to ensure that land is made suitable for its proposed future use. The National Planning Policy Framework (NPPF) aims to encourage sustainable development and the reuse of brownfield land. All planning applications (including prior approval applications) have to be considered for potential contamination issues to ensure compliance with the Town and Country Planning Act 1990, the NPPF and the Council's Local Plan. The NPPF states that 'Planning Policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or wider to impacts that could arise from the development' (Department for Levelling Up, Housing & Communities, December 2023).

The NPPF was published in 2019 and was revised in 2021, December 2023 and December 2024. Paragraphs 125, 187, 196 and 197 detail the requirements for addressing potential contamination:

NPPF - Ground conditions and pollution:

Paragraph 125
Planning policies and decisions should: a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside; b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production; c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, proposals for which should be approved unless substantial harm would be caused, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land; d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks,

lock-ups and railway infrastructure)50; and e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions – including mansard roofs – where the development would be consistent with the prevailing form of neighbouring properties and the overall street scene, is well-designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers. A condition of simultaneous development should not be imposed on an application for multiple upward extensions unless there is an exceptional justification.

Paragraph 187
Planning policies and decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate; d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs; e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Paragraph 192
To protect and enhance biodiversity and geodiversity, plans should: a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity68; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation69; and b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.

Paragraph 196
Planning policies and decisions should ensure that: a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation); b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990; and c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

Paragraph 197
Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rest with the developer and/or landowner.

Rotherham Council's Local Plan - Sites and Policies Document adopted in June 2018 supports the delivery of the Council's Core Strategy. Policy SP54 will be applied and followed during the planning process:

SP54 - Contaminated and Unstable Land

Where land is known to be or suspected of being contaminated, or development may result in the release of contaminants from adjoining land, or there are adverse ground conditions caused by unstable land, development proposals should: a. demonstrate there is no significant harm, or risk of significant harm, to human health or the environment or of pollution of any watercourse or ground water; b. ensure necessary remedial action is undertaken to safeguard users or occupiers of the site or neighbouring land and protect the environment and any buildings or services from contamination during development and in the future; c. demonstrate that adverse ground conditions have been properly identified and safely treated; and d. clearly demonstrate to the satisfaction of the Local Planning Authority, that the land is suitable for its current or proposed use.

The above policy will be applied during the planning application process. Planning conditions, planning obligations and Community Infrastructure Levy will be used, where appropriate, to ensure protection, enhancement and appropriate long-term management and maintenance of any green infrastructure, landscaping, sustainable urban drainage scheme or improvements to the public realm.

Currently the approach for addressing potentially contaminated land sites is through the planning regime. A large number of applications are received each year. There is, therefore, potential for a larger number of sites to be investigated that could not be under the Part 2A regime. The use of alternative means to address potential contamination **is supported** by the Statutory Guidance.

By way of example the following SPCs (former **major priority** industrial sites) have been addressed or are being addressed under the planning regime, and include but are not limited to the following sites:

- Former **Croda Chemical Works** at Kilnhurst – Now Carlisle Residential Development Park
- Former **Guest & Chrimes Site** – Now the home to Riverside House and New York Stadium
- Former **Forge Island Site** – Now a site for leisure complex comprising of cinema, restaurants and public open space
- Former **Pit House West Coking and Colliery Site and Opencast Site** – Now home to Gullivers Valley and Hotel Resort
- Former **Orgreaves Colliery and Coking Works and Opencast Site** – Now a residential park with secondary academy school, and an advanced science park

(b) Building Control Regime

Contaminated land is a consideration within the Building Control Regime. Regulation 6 of the Building Regulations 2010 identifies resistance to contaminants as being a requirement to certain material changes of use. The Building Control Service is required to ensure that reasonable precautions are undertaken to avoid danger to health and safety caused by contaminants on or in the ground covered, or to be covered by the building, and any land associated with that building. This includes taking account of any substance which is or may become harmful to persons or buildings, including substances which are corrosive, explosive, flammable, radioactive or toxic.

Approved Document C 'Site Preparation and Resistance to Contaminants and Moisture, provides guidance for addressing potential contamination with the Building Control Regime.

(C) The Environmental Permitting Regime

The Environmental Permitting (England and Wales) Regulations 2016 and subsequent amendments provides a regime for the regulation of prescribed industrial and waste management activities.

Where significant harm or pollution of controlled waters comes from a process regulated under the above regime, a remediation notice under Part 2A of the EPA 1990 cannot be served if the powers are available under the relevant Environmental Permitting regime to address the harm or pollution of controlled waters.

(a) Voluntary Remediation

Voluntary Remediation of land by landowners is a further means to addressing land contamination issues. The Council should prioritise resources to any landowner or polluters who are willing to work with the Local Authority to agree a programme of inspection and remediation of contaminated land sites within the borough.

In line with Section 78H(5)(a) of the Act the enforcing authority should consider not serving a remediation notice if it is satisfied that appropriate measures are being taken by way of remediation.

The former Gas Works Site at Station Road, Wath Upon Dearne was remediated by the landowner under voluntary remediation.

The Former Croda Chemical Works site was remediated under Voluntary Remediation.

(b) The Environmental Damage Regulations

Under the provisions of the Environmental Damage (Prevention and Remediation) (England) Regulations 2015, there is strict liability for environmental damage to land, water, protected species and habitats caused by certain polluting activities. This includes for sites with environmental permits, water abstraction, storage of chemicals and waste operations.

Land remediation must remove, control, contain or dimmish contaminants so that the land no longer poses any significant risk of adverse effects on human health. The standard of remediation should consider the lawful current use or any planning permission in existence at the time of the damage.

Remediation of damage to natural resources other than land must remove any significant risk to health. The objective is to achieve the same level of natural resources or services as would have existed if the damage had not occurred.

CHAPTER 5: GENERAL LIAISON AND COMMUNICATION WITH THIRD PARTIES

5.1 Liaison with Statutory Bodies

As and when available, site-specific information will be provided to the following bodies of any findings following detailed inspections or relevant updates to the strategy:

- The Environment Agency
- Natural England
- English Heritage
- Department for Environment, Food and Rural Affairs (DEFRA)
- Other Local Authorities

5.2 Liaison with Other Interested Parties (Stakeholders)

As and when necessary, site-specific information will continue to be provided to all relevant Council Departments (e.g., planning, forward development, legal services, asset management, estates etc) as the implementation of the strategy progresses. All information provided will feed into the Council's priorities and objectives for land contamination within the borough.

5.3 Yorkshire and Lincolnshire Pollution Advisory Group (YALPAG)

Rotherham Council is a member of YALPAG, a voluntary run organisation comprising of several local authorities throughout the Yorkshire and Lincolnshire Area and beyond. YALPAGs primary aim is to provide support to local authority officers, encourage dialogue with the wider industry and deliver consistency in the regulation of environmental pollution matters.

It is intended that liaison with environmental consultants and developers will improve the standards of investigation and increase awareness of the requirements within the planning process.

Within YALPAG, the Land Technical Group have published a set of guidance documents. These include:

- **Development on Land Affected by Contamination' Version 11.2, June 2020.** The purpose of this guidance is to assist developers, landowners and consultants who intend to introduce a vulnerable end use (e.g. a residential development) to land, or wish to redevelop or significantly change the use of land/buildings which could potentially be contaminated. The guidance specifies what information should be submitted to the Local Planning Authority.
- **Verification Requirements for Cover Systems**, Version 3.4, November 2017

- **Verification Requirements for Gas Protection Systems**, Version 1.1, December 2016

5.4 Provision of Information to Public and Contact Information

Anyone wishing to discuss this strategy, or contaminated land in general, can contact the following:

Community Protection and Environmental Health, Regeneration & Environment Services, Riverside House, Floor 2, Wing B, Main Street, Rotherham S60 1AE.

Telephone: 01709 823172
Email: env.health@rotherham.gov.uk.
Visit our website: http://www.rotherham.gov.uk

5.5 Information from Detailed Inspection

Once a particular site has been declared contaminated by statutory definition, the Council will prepare a written record which will include:

- A description of the confirmed pollution linkage(s) including a conceptual model (plus information about any investigation reports available)
- A summary of evidence confirming existence of the pollutant linkage(s)
- A summary of risk assessment(s) upon which the pollutant linkage(s) were considered to be significant
- A summary of how the requirements of the statutory guidance were satisfied
- An indication of why the person is considered to be an appropriate person
- Information about any other person also notified and the capacity in which they were notified
- Information about the tests for exclusion from and apportionment of liability.

This formal notification will be provided to all relevant parties, including:

- Owners of the land
- Occupiers of the land
- Those liable for remediation (the appropriate persons)
- The Environment Agency

It is, however, accepted that there will be times when not all those who may be relevant to the proceedings will be identifiable at the initial stages. Steps will be taken to ensure that if further information is obtained which identifies other persons, then they are brought into the formal notification and consultation stages as soon as practicable.

5.6 Part 2A Public Register

In accordance with the requirements of Part 2A of the Environmental Protection Act 1990, the Council is required to maintain a public register of information relating to contaminated land. The register includes details of any land determined as contaminated land, remediation notices, appeals and site-specific guidance. Currently, there are no entries on the register. At present, the register is not available online, but it can be viewed by appointment at the Councils Offices. Please contact the Community Protection and Environmental Health Department via 01709 823122 to arrange access.

5.7 Provision of information to The Environment Agency

The Council is required to provide the Environment Agency with site specific information under the following circumstances:

- When formal action taken with regard to contaminated land takes place
- When the Council considers the site is likely to be designated as a special site
- When the Council considers there to be an issue with respect to pollution of controlled waters or to radioactive contamination
- If the Council considers land contamination at the site should be dealt with by the Environment Agency under another regulator regime

In addition, summary information is required to be provided to the Environment Agency, in order to assist it in assessing the regulatory effort directed at Part 2A nationally and from time to time to prepare a report on the state of contaminated land in England.

5.8 Use of Information by Other Services within Rotherham Council

Where the Council itself may be responsible for contaminated land, then the relevant Service will be advised, to enable it to commence investigations itself, in advance of the prioritised inspection procedure adopted by this Service. The Directorate responsible for the land in question may need to consider what remedial action is appropriate and seek financial means to undertake this. Technical advice will be provided, where appropriate to do so, by Environmental Health, but in the pursuance of equity, any Service Area that finds itself responsible for contaminated land will be dealt with in a manner similar to that which a private individual or organisation would be.

CHAPTER 6: Prioritising Sites for Inspection

6.1 Inspection Strategy Development

The responsibility for the ongoing development and implementation of the strategy will be undertaken day-to-day by the Environmental Protection Principal Officer and Scientific Officer, under the management of the Service Manager for Regeneration and Enforcement.

6.2 Information Evaluation

All information concerning potential sources of contaminants and potential pathways / receptors have been assessed utilising a geographical information system, for receptors on, within 50m and 250m of a potential contaminant. Each of the five categories of receptor (human beings, ecological systems, property in the form of buildings, property in the form of crops and livestock and controlled waters) was given a scoring number reflecting the sensitivity, typical pathways likely and the priority that the Council has assigned it. Each land use that may contain contaminants was similarly assigned a scoring number to reflect the likely hazards that may exist due to the typical contaminants associated with the particular land use.

The scores for all components were referenced to a number of matrices, per receptor, and a 'risk ranking number' obtained. Those sites with the highest scores have been prioritised first for more detailed investigation and assessment.

It is important to note that the Council will also need to consider future evidence relating to existing schemes of remediation for contaminated land that have already been undertaken as part of planning process or rolling programmes of reclamation. This will be used in order to determine if there is a need to amend any ranking that has been made without the benefit of the knowledge of remediation. Previous remediation schemes may still need to be assessed in detail as part of the programme of investigation, to consider the remediation that was undertaken, in light of current best practice and risk assessment principles.

6.3 Method of Inspection

Following the identification of the SPCs, the sites were prioritised for inspection utilising the screening tool previously discussed.

Detailed inspection is the next phase to be undertaken for sites where a possible pollutant linkage may exist. Site specific risk assessment must be undertaken to determine the existence of a contaminant linkage and its significance.

The Environment Agency's 'Land Contamination Risk Management' guidance document (July 2023) must be followed when assessing and managing the risks from contamination and other up-to date good practice guidance.

Detailed inspection follows a phased approach, that is standard practice for assessing the risks posed by land contamination. The phased risk assessment approach comprises the following activities:

Preliminary Risk Assessment (PRA)
The purpose of a PRA is to obtain a good understanding of a site's history, its setting and its potential to be affected by contamination. The PRA will comprise a desk study review of available information, a site walkover, development of an initial conceptual site model and preliminary qualitative risk assessment to identify possible contaminant linkages.

Generic Quantitative Risk Assessment (GQRA)
Comprises of intrusive site investigation, targeting the possible contaminant linkages identified in the PRA. Site data is then compared to generic assessment criteria (if applicable) and refinement of the CSM is undertaken, based on which possible contaminant linkages may be significant.

Detailed Quantitative Risk Assessment (DQRA)
Comprises further intrusive site investigation and monitoring as necessary in order to obtain the required data to support a DQRA. The DQRA allows for the derivation of site-specific assessment criteria for key contaminant linkages and further refinement of the CSM to determine whether significant contaminant linkages exist or not.

Detailed inspection is often time consuming and expensive and will be undertaken on a phased basis, terminating as soon as it becomes clear that no significant pollutant linkage exists. Any such inspection will cease once sufficient information has been obtained to confirm that the site can be determined as contaminated land, or where there is no longer a reasonable possibility that a significant contaminant linkage exists. All information obtained will be kept on file for potential review in the future.

It is likely that **external consultants** will be used to undertake intrusive investigations which can be a costly exercise. Where remediation is required, the Council will always seek to identify those persons responsible for the contamination and therefore liable for the costs of remediation.

For sites where there is potential significant pollution of controlled waters advice from the Environment Agency will be sought.

As mentioned previously, and due to the lack of funding, the Council will continue to address land contamination issues through forward development and the planning regime. **It is important to note here, that the Council will use its powers under Part 2A of the Environmental Protection Act 1990 to reactively deal with contaminated land where there is clear evidence that a problem exists or is likely to exist and would seek specific funding in that respect.**

6.4 Assessment of Chemical Data and Site-Specific Risk Assessment

Chemical analysis data provides information on contaminant concentrations in samples of soil and ground/surface waters obtained during a site investigation. This data is then compared to current government generic guideline values. If

contaminant concentrations are below guideline values, then the site is likely to be considered as safe, but if values are higher then further assessment will be required.

Different guidelines are applicable for different receptors and land uses. However, there are on occasions no suitable guideline values available, and advice is then sought from appropriate authoritative publications or organisations on the best way to assess contaminant data. The comparison is used to determine whether a contaminant is present in concentrations which could lead to significant harm, or significant pollution of controlled waters for non-radioactive contaminants (or harm in the case of radioactive contaminants. Comparisons with guidelines alone are not used as a substitute for risk assessment, further investigations / detailed risk assessment may be required.

6.5 Powers of Entry

Where the Council intends to undertake intrusive site investigation works, it will provide seven days' notice of intent to enter. If the current occupier refuses entry the Council will obtain a Magistrates warrant in order to gain access.

In accordance with Section 108 of The Environment Act 1995, this gives powers to a local authority to authorise a person to exercise specific powers of entry. It must, however, be satisfied that there is a reasonable possibility of a pollutant linkage at the site, and if intrusive investigations are planned, that it is likely that the contaminant is actually present and the receptor is actually or likely to be present. These powers will not be used where the information required can be obtained from third parties without the need for entering the land or the person offers to provide the information within a reasonable specified time and does so.

In cases where imminent risk of serious harm or serious pollution of controlled waters has been confirmed, then urgent action will be authorised by the Council forthwith. In line with Section 108 provisions, the Council may enter a site at any reasonable time without prior notice and, in emergency situations, powers of entry will be exercised immediately.

6.6 Potential Special Sites

Where the Council suspects that the land it intends to investigate could be defined as a special site, it will notify The Environment Agency in writing and request any information it may have on the land and the likelihood of pollutant linkages. The Environment Agency will conduct inspections of land on behalf of the local authority if identified as a potential special site by the Council.

CHAPTER 7: PROVISION OF INFORMATION

7.1 Introduction

Once detailed inspection has taken place and the risk assessment, which has been applied to a particular site, indicates that the land is designated as statutorily contaminated, there are specific procedures that must be followed.

7.2 Formal Notification: Declaration of Contaminated Land

Once a particular site has been declared contaminated by statutory definition, the Council will prepare a written record that will include:

- A description of the confirmed pollution linkage(s) including a conceptual model (plus information about any investigation reports available)
- A summary of evidence confirming existence of the pollutant linkage(s)
- A summary of risk assessment(s) upon which the pollutant linkage(s) were considered to be significant
- A summary of how the requirements of the statutory guidance were satisfied
- An indication of why the person is considered to be an appropriate person
- Information about any other person also notified and the capacity in which they were notified
- Information about the tests for exclusion from and apportionment of liability.

This formal notification will be provided to all relevant parties, including:

- Owners of the land
- Occupiers of the land
- Those liable for remediation (the appropriate persons)
- The Environment Agency

If the local authority considers that the contaminated land will also be a special site, it will inform the Environment Agency of that decision also. There are provisions laid down for addressing the situation where there is disagreement about this designation between the local authority and the Environment Agency.

It is, however, accepted that there will be times when not all those who may be relevant to the proceedings will be identifiable at the initial stages. Steps will be

taken to ensure that if further information is obtained which identifies other persons, then they are brought into the formal notification and consultation stages as soon as practicable.

The purpose of formal notification is primarily to engage with those persons or organisations that may be responsible for remediating the land in question or be able to provide guidance. The issuing of such a notice has the effect of starting the process of consultation regarding what remediation may be appropriate. The statutory guidance places emphasis on the voluntary remediation of land rather than through formal action. The agreed works to remediate the site will be formally agreed with all appropriate persons, and a Remediation Statement published.

The Remediation Statement will be placed on the Public Register.

The Council supports the initiative of voluntary remediation. Only when there have been 3 months of consultation with the appropriate person(s) and it does not appear likely that voluntary remediation will take place, will the Council resort to the formal course of action open to it, by the serving of a Remediation Notice.

7.3 Responsibility for Remediation and Liability

There may be more than one significant pollutant linkage on the site in question, which would require enforcement of liability. When all have been identified, the apportionment of liability will be needed. This will be undertaken by means of:

- Identifying potential appropriate persons and liability groups
- Characterising remedial actions
- Attributing responsibility to liability groups
- Excluding members of liability groups
- Apportioning liability between members of a liability group

There are two liability groups which may exist for each pollutant linkage:

Class A Liable Person(s) – generally these are the company/person responsible for the contamination or the developer of land, pays the costs of cleaning up the land under the polluter pays principle.

Class B Liable Person(s) – these exist where no Class A persons can be found and so the liability reverts to the owners or the occupiers of the site in question. Tenants are excluded from liability as a Class B person (but may be a Class A person).

The Local Authority has a duty to be reasonable and fair when recovering these costs.

7.4 Orphan Sites

Where the site is statutorily contaminated but after reasonable enquiries the Council cannot find any Class A or Class B persons responsible for it, or the persons who have been found are exempted from liability for specified reasons then the site is described as an 'Orphan Site'. The exemptions from liability are:

- the land is contaminated by virtue of pollution of controlled waters only and no Class A person can be found
- land is contaminated by virtue of the escape of a pollutant from one piece of land to another and no Class A person can be found
- the land is contaminated by virtue of pollution of controlled waters from an abandoned mine
- the person was acting in a 'relevant capacity', such as Official Receiver or Insolvency Practitioner, etc.

In such cases, the enforcing authority should bear the costs of the remediation.

7.5 Enforcement Action: Remediation Notices

Under the provisions of the Environmental Protection Act 1990, Part 2A, Section 78 E (I), in the case where contamination has been identified, this Authority can serve notice on all relevant persons for the remediation of that land. Except in urgent cases, Remediation Notices are only served as a **last resort**. Once the Council is satisfied, after this stage, that the remediation required will not be carried out unless a formal action is progressed and the Council has no power to carry out the work itself, then a Remediation Notice will be served on each appropriate person.

A Remediation Notice will contain details of the contaminated land, the remediation required (which must be appropriate and cost effective, employing best practical techniques, sustainable), the appropriate person, and the rights of appeal against the notice.

Any person served with a Remediation Notice by the Council has a right of appeal to the magistrates' court within 21 days of its service. If the notice is served by the Environment Agency, then the appeal is to the Secretary of State. The works required in the Notice are suspended (unless urgent action is deemed necessary) until the appeal has been determined.

7.6 Urgent Remedial Action

In urgent cases, there is no requirement to consult, wait for the 3-month consultation period to expire, nor serve a Remediation Notice if the appropriate person is not easily identifiable, before the Council or Environment Agency carries out the remediation itself. Where urgent action is required, this must be authorised by the Council. In such circumstances, the procedures may involve forced entry to the premises. When the Council determines the urgent action is necessary for a special site, the Environment Agency will be notified immediately, who will then be responsible for remediation. In appropriate cases, the Council will seek to recover costs of remediation work that it has undertaken. Urgent remedial action may be required if:

- There is an imminent danger of serious harm or serious pollution of controlled waters, being caused
- It is necessary for the authority to carry out the remediation itself to prevent that harm or pollution.

In such cases, the enforcing body must publish a Remediation Statement.

7.7 Remediation by the Council

There are circumstances where the Council can carry out remedial actions itself. These include where:

- Urgent action is required
- No appropriate person can be found (‘orphan site’)
- One or more appropriate persons are excluded on ground of hardship
- The local authority has made an agreement with the appropriate person that it should carry out the remediation; or
- The person served with the Notice is in default of a Remediation Notice’s requirements

7.8 Follow-up Action

There is a need to ensure that the requirements of a Remediation Statement or Notice have been carried out adequately and satisfactorily. This will often be determined by reference to quality assurance and verification procedures specified in the remediation actions. In phased remediation schemes, the Council will also need to consider if and what further remedial action is needed. The person who carried out remediation that was required can notify the enforcing body of the action undertaken, and the details of the ‘claimed remediation’ are placed on the Register (but cannot be taken as being approved or accurate by the local authority).

If the agreed scheme in a Remediation Statement has not been undertaken, then the enforcing body will need to consider if it is now appropriate to serve a Remediation Notice.

If the requirements of a Remediation Notice have not been complied with, the enforcing body must decide whether to prosecute that person for failing to comply with a remediation Notice without reasonable excuse. They may also undertake the remedial works themselves and recover the reasonable costs from the appropriate person in so doing.

7.9 Rotherham Council's Land

As previously mentioned, Rotherham Council and its predecessors both own and have owned in the past a number of premises and property within the Borough. These may have or have had potentially contaminative activities. It may be that as well as being the owner or occupier of contaminated land, the Council no longer owns the land in question, but as the initial polluter etc, becomes the appropriate person for remediation requirements. Many Council Service Units may discover that they are responsible for contaminated land, for example, those that have a sensitive receptor, such as allotments and schools, or those that have potential to create contaminants, such as engineering and waste disposal matters.

If land for which the Council is itself responsible is found to be contaminated, there is no enforcing authority, unless the land is designated as a special site. However, in order to address such land, the local authority must carry out the same assessment and consultation as if they were the enforcing authority and then seek appropriate remedial works, as necessary.

Land under current ownership of the Council, or land which has been polluted by the Council, or its predecessors, cannot be prioritised over other identified sites. This includes historical landfill sites, Council Buildings and Parks.

CHAPTER 8: INSPECTION STRATEGY REVIEW

8.1 Review of Inspection Strategy

The Contaminated Land Strategy will be reviewed and updated at least once every five years, in line with statutory guidance, and no later than 2030. An earlier review may be undertaken if significant developments or changes arise within that period.

GLOSSARY OF TERMS

The statutory guidance and circular use a number of terms which are defined in Part 2A of the 1990 Act, other Acts or in the guidance itself. The meanings of some of these terms are used in the strategy document, and are set out below, along with a reference to the section in the Act or the paragraph in which the relevant term is defined.

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 any thing 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)

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

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

Class A liable 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 liable person: a person who is an appropriate person by virtue of section 78P(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)

Contaminant: a substance which is in, on or under the land and which has the potential to cause significant harm or to cause significant pollution of controlled waters for non-radioactive contamination (or harm for radioactive contamination).

Contaminated Linkage: the relationship between a contaminant, a pathway and a receptor

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-

For non-radioactive contamination:

(a) significant harm is being caused or there is a significant possibility of such harm being caused, or;
(b) significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused

For radioactive contamination:

(a) harm is being caused; or
(b) there is a significant possibility of such harm being caused

Contaminated Land (England) Regulations 2000: regulations (S.I. 2000/22 7) made under Part IIA.

Controlled waters: defined in section 78A(9) by reference to Part 3 (section 104) of the Water Resources Act 1991; this embraces territorial and coastal waters, inland fresh waters, and ground waters. For this purpose, controlled waters has the same meaning as in Part 3 of the Water Resources Act 1991, except that 'ground waters' does not include water contained in underground strata but above the saturation zone.

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 developments 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

Enforcing authority: defined in section 78A(9) as:
(a) in relation to a special 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.

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)

GIS: Geographical Information System

Hardship: a factor underlying any cost recovery decision made by an enforcing authority under section 78P(2).

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 for non-radioactive contamination.

For radioactive contamination, harm should be regarded as being caused where lasting exposure gives rise to doses that exceed one or more of the following: (a) an effective dose of 3 millisieverts per annum; (b) an equivalent dose to the lens of the eye of 15 millisieverts per annum; or (c) an equivalent dose to the skin of 50 millisieverts per annum. The skin limit shall apply to the dose averaged over any area of 1cm2, regardless of the area exposed.

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.

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.

Liability group: the persons who are appropriate persons with respect to a particular significant pollutant linkage.

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'.

Orphan linkage: a significant pollutant linkage for which no appropriate person can be found, or where those who would otherwise be liable are exempted by one of the relevant statutory provisions.

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 2A: Part 2A 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.

Pollutant: a contaminant which forms part of a pollutant linkage.

Pollutant linkage: the relationship between a contaminant, a pathway and a receptor.

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.

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 A 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.

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.

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 risk arising from presence of contaminants in soil &
(d) appropriate to the determination of whether any land is contaminated land for the purposes of Part 2A

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.

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.

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.

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.

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 consequences.

Significant harm: defined in section 78A(5). It means any harm which is determined to be significant in accordance with the statutory guidance

Significant pollutant: a pollutant which forms part of a significant pollutant linkage.

Significant contaminant linkage: a pollutant linkage which forms the basis for a determination that a piece of land is contaminated land.

Significant possibility of harm or 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 and Radioactive Contaminated Land Guidance

Significant Pollution of Controlled Waters: the following types of pollution should be considered to constitute significant pollution of controlled waters:

a) Pollution equivalent to ‘environmental damage’ to surface water or groundwater as defined by The Environmental Damage (Prevention and Remediation) Regulations 2009, but which cannot be dealt with under those regulations
b) Inputs resulting in deterioration of the quality of water abstracted, or intended to be used in the future, for human consumption such that additional treatment would be required to enable that use.

c) A breach of a statutory surface water Environmental Quality Standard, either directly or via a groundwater pathway
d) Input of a substance into groundwater resulting in a significant and sustained upward trend in concentration of contaminants (as defined in Article 2(3) of the Groundwater Daughter Directive (2006/118/EC)

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)...'.
The effect of the designation of any contaminated land as a special site is that the Environment Agency, rather than the local authority, becomes the enforcing authority for the land.

SPCs – Sites of Potential Concern

Substance: defined in section 78A(9) as any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour. For radioactive contamination, this covers only substances containing radionuclides which have resulted from the after-effects of a radiological emergency or have been processed as part of a past practice or past work activity.

Unacceptable Risk: a risk of such a nature that it would give grounds for land to be considered Contaminated Land under Part 2A.

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