

**ROTHERHAM METROPOLITAN BOROUGH COUNCIL**



**STATUTORY  
CONTAMINATED LAND  
INSPECTION STRATEGY  
2010 -2013**

**FRAMEWORK DOCUMENT**

**Revised JULY 2010**

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<b>CONTENTS</b>	<b>PAGE</b>
<b>Executive Summary</b>	
<b>Strategic Approach</b>	
<b>1.0 Introduction</b>	<b>1</b>
1.1 Background	
1.2 National Objectives	
1.3 Local Objectives	
1.4 Regulatory Context	
1.5 Definition of Contaminated Land under Part IIA	
1.6 Special Sites	
1.7 Situations to Which the Contaminated Land Regime Does Not Apply	
1.8 Development of the Strategy	
<b>2.0 Characteristics of Rotherham</b>	<b>8</b>
2.1 Geographical Context	
2.2 Description and History of the Area	
2.3 Geology of the Area	
2.4 Hydrogeology and Hydrology of the Area	
2.5 Known Information on Contamination	
2.6 Land owned by Rotherham Metropolitan Borough Council	
<b>3.0 Overall Aims And Objectives Of The Strategy</b>	<b>12</b>
3.1 Introduction	
3.2 Objectives of the New Regime:	
3.3 Priorities of Rotherham MBC	
3.4 Aims of Rotherham MBC	
<b>4.0 Local Authority Priority Actions And Timescales</b>	<b>14</b>
4.1 Production of Strategy Document	
4.2 Acquisition of Geographical Information System (G.I.S.) Semi-quantitative Screening Tool and Databases Containing Information on Receptors, Pathways and Targets	
4.3 Operation of Risk Assessment Methodology Programme	
4.4 Detailed Site Inspections	
4.5 Dealing with Urgent Sites	
<b>5.0 General Liaison And Communication Strategies</b>	<b>17</b>
5.1 Liaison with Statutory Bodies	
5.2 Liaison with Interested Parties (Stakeholders)	
5.3 Communication	
5.4 Public Register	
5.5 The Environmental Information Regulations 1992	
5.5 Provision of information to The Environment Agency	
5.6 Use of Information by Other Services Within Rotherham MBC	

## **Implementation**

<b>6.0</b>	<b>Procedure For Identifying Potentially Contaminated Land</b>	<b>23</b>
6.1	Internal Management Arrangements for Inspection and Identification	
6.2	Principles of Risk Assessment	
6.3	Requirements for Strategic Approach	
6.4	Information Collection	
6.5	Information Evaluation	
6.6	Information and Complaints	
6.7	Methods of Inspection	
6.8	Site Investigations	
6.9	Potential Special Sites	
6.10	Site Specific Risk Assessment	
<b>7.0</b>	<b>Procedure For Regulating Contaminated Land</b>	<b>31</b>
7.1	Introduction	
7.2	Formal Notification: Declaration of Contaminated Land	
7.3	Responsibility for Remediation and Liability	
7.4	Enforcement Action: the Remediation Notice	
7.5	Remediation by the Council	
7.6	Follow-up Action	
7.7	Considering Rotherham MBC's Own Interests in Land	
<b>8.0</b>	<b>Review Mechanisms</b>	<b>37</b>
8.1	Review of assumptions and information	
8.2	Review of Strategy Document	
<b>9.0</b>	<b>Information Management</b>	<b>38</b>
9.1	General Principles	
9.2	Information Storage Systems	

## **Glossary**

## **References**

## **Appendices**

1	Special Sites
2	Pollution of Controlled Waters
3	Potential Receptors & Categories of Significant Harm
4	Categories of Potential Contaminative Land Uses
5	Powers of Entry & Appointment of Suitable Persons
6	Enforcement Concordat
7	Map of Rotherham

## EXECUTIVE SUMMARY

This document details how Rotherham MBC will inspect its land for contamination, under the requirements of regulations included in the Environmental Protection Act 1990. The strategy was first adopted by the Council and published on the 2<sup>nd</sup> July 2001. This document revises the Inspection Strategy and covers the period 2010-2013.

The Council uses all available information and employs a risk based approach, both in the initial screening process and during detailed inspection of sites, in order to identify contaminated land. A list of all potentially contaminated sites based on available information has been compiled, and the inspection programme started in 2006 (it is always the case that urgent priorities will be addressed when they arise). The Council has a duty to publish a public register of any land designated as statutorily contaminated. No land to date has been designated as statutorily contaminated in Rotherham.

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 people, the environment, water and property.

The strategy has been revised to take account of work undertaken before 2010 and to provide revised timescales for completion of the inspection process.

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

This Contaminated Land Strategy has been developed by Rotherham Metropolitan Borough Council as part of its obligations defined in Section 78 B(1) of Part IIA of the Environmental Protection Act 1990. As part of this duty the Council will instigate the inspection of the Borough from time to time for the purpose of:

- Identifying contaminated land; and
- Identifying Special Sites.

Contaminated Land, as defined in the Act, is land that:

- May be causing significant harm or
- Pollution of controlled waters.

The Council have adopted a Strategic Approach to the identification of contaminated land with the emphasis being on:

- Human health
- Ecosystems
- Property and the built environment

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 a legacy of potential environmental problems.

In line with standard practice, the Council will adopt a 'suitable for use' approach to the management of contaminated land. Risk assessments will be based upon the Pollutant-Pathway-Receptor scenario and the establishment of linkages between pollutants and vulnerable receptors.

The key stages of the Strategy are defined and explained within this document and include:

- Site Prioritisation;
- Site Inspection;
- Site Investigation;
- Site Remediation;
- Post Remediation Management.

The procedures detail how the Council will identify and inspect land that may be contaminated. The strategy demonstrates how the Council will deal with sites that are found to be significantly contaminated such that they pose a risk to people, the environment or built structures. The Council is responsible for identifying who is liable for remediating contaminated sites. This is not a simple matter but there is a prescribed process for attributing liability between various groups or individuals who have an interest in the land. Where the land in question is in the ownership of the Borough Council, it will be responsible for its remediation.

The Council will maintain a Register of information relating to contaminated land, which will be available for public inspection although some information may be declared commercially confidential. The strategy details how this information will be handled to ensure those parties who need to know will have access to the information under the Environmental Information Regulations.

The Council will establish formalised links both internally (between Council departments) and externally (with other organisations such as the Environment Agency and DEFRA and more locally with community organisations and industry where appropriate). This will ensure efficient consultation, transfer of information, and transfer of regulatory control. Periodic monitoring of the implementation of the strategy will be undertaken by the Environment Agency as part of a 'State of the Environment' Report.

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: INTRODUCTION**

### **1.1 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 20<sup>th</sup> 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 IIA - The Contaminated Land Regime (referred to herein as 'the Part IIA provisions').

The Contaminated Land (England) Regulations 2000 came into force in April 2000 and provide a framework against which to develop a strategy for considering and addressing land contamination within a local authority's area.

### **1.2 National Objectives**

The implementation of the new regime is seen by the Government as an essential tool to provide an effective framework to deal with the regulation of contaminated land. 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 mean a full 'clean up operation'.

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

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

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.

### **1.3 Local Objectives**

The implementation of Part IIA of the Environmental Protection Act 1990 will have a direct influence on the strategy and policy 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'.

The initial part of the strategy requires each local authority to prepare and publish a strategy on how it will ensure that all those affected by and involved with contaminated land inspection clearly understand the rationale behind it, the methods which will be used to assess it and the time-scales involved. The strategy must be justified and transparent and detail the arrangements and procedures to ensure compliance with the legislation.

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.

The Council has a Policy and Performance Agenda as part of its strategic framework. Of these, the following Corporate Priorities are an integral part of the ethos behind remediation of contaminated land:

- Rotherham Safe;
- Rotherham Alive;

There are also a number of key cross-cuttings issues which underpin the themes. One of the major issues is Sustainable Development, to which Rotherham Metropolitan Borough Council is committed. The Local Agenda 21 Strategy provides a framework for future action on sustainable development at local level. It recognises the need to improve the current environment and to protect it for the future generations who will inherit it.

It is recognised that the development of a strategy and its implementation must be accountable and will be subject to the requirements of the access to the Environmental Information Regulations 1992.

It is also envisaged that the regime will be implemented following and with due consideration of the views of other stakeholders, businesses and community groups and involve such groups in the consultation process whenever possible.

## **1.4 Regulatory Context**

Local Authorities and The Environment Agency share the regulatory responsibilities for this regime. A glossary of the commonly used terms associated with this legislation is found at the back of the strategy.

### **Role of Rotherham Metropolitan Borough Council**

Under the new Part IIA provisions, each local authority must 'cause its area to be inspected from time to time for the purpose of identifying contaminated land.'

The regime requires local authorities to:

- Identify the problem;
- Assess the risks;
- Determine the appropriate remediation requirements;
- Consider the costs;
- Establish who should pay;
- Implement and remediate;
- Decide if a contaminated site requires designating as a 'special site'. Details of what this means can be found at appendix 1.

Local authorities must act in accordance with guidance issued by the Secretary of State in respect of these requirements and statutory guidance has been published by the Department of Environment, Food and the Rural Affairs (DEFRA), in the form of DEFRA Circular 01/2006

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 IIA 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.



In order to carry out the inspection duty, it will be necessary to undertake a strategic approach to the identification of land which may be contaminated, in order to target those areas that are considered to represent the greatest risk first.

## **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 (see appendix 1).
- 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. Details of what pollution of controlled waters may include can be found at appendix 2;
- To assist local authorities in identifying contaminated land;
- To publish periodic reports on state of the environment and contaminated land in England and Wales.

### **1.5 Definition of Contaminated Land under Part IIA**

Under Section 78A (2) of Part IIA, 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) pollution of controlled waters is being, or is likely to be, caused (appendix 2).’

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’. Appendix 3 details these.

The following factors need to be taken into account 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.

It uses the concept of ‘pollutant linkage’ to determine if land is contaminated. There must be a linkage between a ‘contaminant’ (i.e. the substance which has the potential to cause harm) and a ‘receptor’ (i.e. something or someone that may be adversely affected by the contaminant), by means of a ‘pathway’ (i.e. a route by which the contaminant can reach the receptor).

In order for land to be determined as appearing to be statutorily contaminated, therefore, there must exist a 'significant pollutant linkage'. This consists of:

- a 'contaminant' situated in, on or under the land with a potential to cause harm or to cause pollution of controlled waters (appendix 4 lists land uses that have the potential to result in contaminants in, on or under the land, and the potential severity of such uses);
- 'a receptor', which is either a living organism or group of living organisms including human beings, controlled waters and certain ecological systems) or property (including buildings and livestock) which could be harmed by a contaminant;
- 'a pathway' which means one or more plausible routes between the source and receptor, such that the contaminant is causing significant harm, or significant possibility of such harm, to the receptor.

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
- presenting a significant possibility of significant harm being caused to the receptor; or
- resulting in pollution of controlled waters; or
- likely to result in such pollution.

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.

It is important to note that the definition does not include all types of harm, nor all types of receptor, 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.

## **1.6 Special Sites**

There are circumstances when a local authority considers a site to be contaminated land that it may be a 'special site'. The descriptions of the types of land which are required to be designated as special sites are detailed in appendix 1. 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.

## **1.7 Situations to Which the Contaminated Land Regime Does Not Apply**

There are situations where existing legislation would address the implications and impact of contamination. These include:

- New development: the potential implications of contamination on new developments should be considered as part of the Town and Country Planning requirements and ultimately planning permission would take

account of issues of contaminated land. When development is taking place, it is the responsibility of the developer to carry out the necessary remediation, in connection with Building Control requirements;

- Integrated pollution control: certain processes prescribed under Part I of the Environmental Protection Act 1990 must meet a specific pollution control regime enforced by the Environment Agency. This includes the IPPC (Integrated Pollution Prevention and Control) regime;
- Waste Management Licensing: all waste disposal and processing sites are subject to licensing, and contamination causing harm or pollution of controlled water will be dealt with as a breach of the licence conditions where appropriate;
- Pollution of controlled waters not arising from land: under the Water Resources Act 1991, where a pollution incident has occurred and the pollutant has discharged directly into controlled water or has left the land and is entirely in controlled waters, then this legislation will apply;
- Discharge consents: under the Water Resources Act 1991, any discharge to water which is authorised by consent cannot be the subject of a Remediation Notice under the Part IIA regime;
- Organisms: the land must be contaminated by a substance and this does not include living organisms;
- Control of Major Accident Hazards (COMAH) Regulations 1999: where there has been an incident at a COMAH site, the requirements include off-site/on-site emergency plans that address restoration plans;
- Significant harm as a result of a work activity: harm to the public and employees from contamination arising from a work activity would be addressed by the Health and Safety at Work, etc Act 1974.

In addition it should be noted that the statutory nuisance action under the Environmental Protection Act 1990, which enabled land contamination causing a nuisance as well as being prejudicial to health, is no longer permitted. Therefore, if the land is found to be 'contaminated' in a common sense meaning of the word, but is not causing significant harm, or there is no plausible pathway between the pollutant and receptor, for example, then it is not classed as statutorily contaminated. Whilst it may still cause nuisance, it is no longer possible to address the issue under either the statutory nuisance or Part IIA provisions. In such cases, the land may be considered to be 'land in a contaminated state'.

## **1.8 Development of the Strategy**

The lead role for implementation of the strategy is taken by Community Protection Unit, which undertakes the traditional Environmental Health and Anti-Social Behaviour functions of the Council and is part of the Neighbourhood and Adult Services Directorate. The responsibility for developing the strategy is assigned to the Community Protection Manager (South) and the Scientific Development Officer within the Community Protection Unit.

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 will take place. Liaison with other organisations, such as the Environment Agency, Natural England etc. will also be taking place.

Detailed inspections of sites which may be contaminated are undertaken using a risk-based approach, ensuring that the sites which are the current highest priority are addressed first.

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

## **CHAPTER 2: CHARACTERISTICS OF ROTHERHAM**

### **2.1 Geographical Context**

Rotherham Metropolitan Borough Council is located in South Yorkshire and comprises of one of the four Metropolitan Councils of South Yorkshire. The neighbouring local authorities are Barnsley Metropolitan Borough Council, Doncaster Metropolitan Borough Council, Sheffield City Council, North East Derbyshire District Council, Bolsover District Council and Bassetlaw District Council. In addition, the Shire Counties of Derbyshire and Nottinghamshire border Rotherham, and are the Waste Planning Authorities for the local authorities in their areas. A simple map is found at appendix 7.

Outside Rotherham's urban centre, there are substantial populations based on Anston, Aston, Dinnington, Kiveton Park, Maltby, Rawmarsh, Swinton and Wath-upon-Deane. 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 249,000 residents live within the Rotherham Metropolitan Borough Council area with 106,135 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 12<sup>th</sup> century. During the later 17<sup>th</sup> Century and into the 18<sup>th</sup> Centuries the Dukes of Leeds and Kiveton Park and the Wnetworth'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 19<sup>th</sup> 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 17<sup>th</sup> and 18<sup>th</sup> Century Kiveton Hall surrounded by a few farmsteads, was home to the Osbournes, Dukes of Leeds. The 1<sup>st</sup> 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 15<sup>th</sup> 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 Hooper 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 18<sup>th</sup> 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 comprise 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 north west to south east or north east to south west 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, 1<sup>st</sup>. 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 North East 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<sup>3</sup>/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. Particularly in the north of the Borough, dewatering has stopped and minewater levels are rising in the old workings. In the south of the Borough, dewatering is continuing to protect continuing mining.

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, it has undertaken a number of major rolling programmes of site investigation and reclamation in the Wath/Manvers, Catcliffe/Orgreaves and Templeborough areas, plus a number of other discrete schemes particularly on colliery and town gasworks sites. Both Environment and Development Services and Neighbourhood and Adult Services have been pro-active in addressing these 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.



## **CHAPTER 3: OVERALL AIMS AND OBJECTIVES OF THE STRATEGY**

### **3.1 Introduction**

The production of this strategy document is a requirement of the statutory guidance. It is designed to show that the approach to assessing land in the Borough for designating land as contaminated land:

- is rational, ordered and efficient;
- is proportionate to the seriousness of any actual or potential risk;
- ensures that the most pressing and serious problems are located first;
- ensures that resources are concentrated on investigating in areas the Council is most likely to identify contaminated land; and
- efficiently identifies requirements for the detailed inspection of particular areas of land.

It is also designed to inform all Stakeholders of the Council's intentions and to provide information to The Environment Agency for its reporting on contaminated land. The strategy should be compatible with the Council's key themes and the objectives of sustainability and is freely available to all Council Services and the public to inspect.

### **3.2 Objectives of the New Regime**

The overriding objectives are:

- to improve the focus and transparency of the controls in relation to contaminated land, ensuring that the Council takes a strategic approach to problems of land contamination;
- to enable all problems resulting from contamination to be handled as part of the same process;
- to increase the consistency of approach taken by different local authorities;
- 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 these objectives, there is also significant emphasis placed on voluntary remedial action, rather than through service of a Remediation Notice etc.

### **3.3 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; and
- encourage re-use of brownfield sites.

### 3.4 Aims of Rotherham MBC 2009-2012

- To meet the requirements of DEFRA Circular 01/2006;
- To follow DEFRA's advice and good practice
- To ensure that the strategy supports the Council's priorities;
- To undertake an assessment of land for which Rotherham MBC may itself be responsible for ('the appropriate person') and ensure that the Council is aware of any potential land contamination liabilities arising from its own portfolio of land, so as to enable appropriate action to be taken;
- To undertake assessments of contaminated land in accordance with *Development on Land Affected by Contamination: YAHPAC Technical Guidance for Developers, Landowners and Consultants* (March 2010)
- To identify statutory receptors and targets;
- To assess possible risk to those receptors, including evidence of actual harm or pollution of controlled waters;
- To evaluate information on possible presence of contamination;
- To justify inspection of particular areas;
- To check assumptions and specify priorities at appropriate intervals;
- To identify and address contaminated land in an ordered, rational and efficient manner, based on the principles of risk assessment;
- To deal with the issue of contaminated land in an open and transparent manner;
- To liaise efficiently and exchange information with other Council Programme Areas and other Stakeholders, particularly the Environment Agency;
- To do all it can to prevent any unnecessary 'blight' of land in the Borough;
- To ensure that any response is proportionate to the seriousness of actual or potential risk, and the specific circumstances of the case.

## **CHAPTER 4: LOCAL AUTHORITY PRIORITY ACTIONS AND TIMESCALES**

Based on the information contained in the previous chapters, the following broad phased plan to meet the regulatory requirements, together with the time-scales to be followed, is proposed. Much of the work described here is considered in detail in the chapters that follow.

### **4.1 Production of Strategy Document**

The Contaminated Land Inspection Strategy was formally adopted by Council on 2<sup>nd</sup> July 2001.

### **4.2 Acquisition of Geographical Information System (G.I.S.) Semi-quantitative Screening Tool and Databases Containing Information on Receptors, Pathways and Targets**

The Council uses a significant digital data and a geographical information systems package, utilising MapInfo, to facilitate this. The semi-quantitative risk screening tool is used to ensure that the information concerning receptors and potential contaminants can be matched and prioritised, to ensure that the potentially worst case situations are investigated first.

#### **Prioritisation Process:**

The prioritisation process was completed in 2006.

### **4.3 Detailed Site Inspections**

The next stage in the risk assessment process, is to inspect the sites in order of priority. Such 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, using any or all of the following:

- Collation and assessment of documentary information, or other information from other bodies;
- A visit to the particular area for visual inspection and in some cases, limited sampling, such as surface deposits;
- Intrusive investigation of the land, for example, exploratory excavations.

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. However, at this stage, it is not known how many such sites will require investigation, until all the relevant data has been inputted and assessment completed.

## Dealing with Urgent Sites

If at any stage of the process involved in the strategy production, prioritisation and inspection, 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.

### Provisional Programme 2010-2013

Investigation Programme	No of sites to be inspected
1/4/10-31/03/11	10
1/4/11-31/03/12	10
1/4/12-31/03/13	10

This is subject to the demands on the Community Protection Service.

## **CHAPTER 5: GENERAL LIAISON AND COMMUNICATION STRATEGIES**

### **5.1 Liaison with Statutory Bodies**

The following organisations were consulted with regard to the strategy and their comments taken into consideration before publishing the final strategy:

- The Environment Agency;
- Natural England
- Department for Environment, Food and Rural Affairs (DEFRA);

### **5.2 Liaison with Other Interested Parties (Stakeholders)**

In addition to the above statutory consultees, it is essential that all Services within Rotherham Metropolitan Borough Council help and play their part in developing and implementing the strategy, and will continue as the strategy develops. These include:

- RMBC Planning and Regeneration: The inspection of the Borough will ultimately identify areas of potentially contaminated land that may subsequently be identified for development. Numerous planning applications in the past have required contamination to be addressed, and reports of investigation and remediation will be held on file. Information concerning land use throughout the Borough, and the Unitary Development Plan are held by Planning Services;
- RMBC Legal & Democratic Services: The legislation is complex and will require legal interpretation and guidance as the regime progresses, both for enforcement purposes and in terms of liability for sites owned by the Council which may be resulting in or have resulted in contamination;
- RMBC Environment and Development Services and 2010 Rotherham Ltd.: May have in the past caused or currently be responsible for pollution, which subsequently requires addressing, or may have details of pollution sources;
- Land Development Service: Conveyancing and sale or purchase of land which may have the potential for contamination and the legal implications of this will require careful consideration;
- RMBC Children and Young Peoples Services: May currently own or lease land which could be subject to the contaminated land regime and require remediation;
- Chief Executive: There is potential for significant resource implications upon the Council as a result of the legislation, both in its regulatory role and as the owner of sites which may be considered to be contaminated;
- Neighbourhood and Adult Services: Not only in its role as regulator and the lead Service developing the strategy for contaminated land, but also in respect of existing knowledge of prior contaminated land assessments and remediation, as part of its statutory nuisance and planning consultee

role, plus urban regeneration activities, in conjunction with the other Council Directorates.

The following adjoining local authorities were consulted:

- Barnsley Metropolitan Borough Council;
- Doncaster Metropolitan Borough Council;
- Sheffield City Council;
- North East Derbyshire District Council;
- Bolsover District Council; and
- Bassetlaw District Council.

The Council will seek to assist bodies which work closely on joint projects. Organisations such as the Groundwork Partnerships and Yorkshire Forward contribute to the regeneration and environmental improvement of the Borough, and will be actively supported in this role.

### **5.3 Communication**

Anyone wishing to discuss this strategy, or contaminated land in general, can contact officers at:

Neighbourhood and Adult Services, Reresby House, Bow Bridge Close, Rotherham S60 1BY.

Telephone: 01709 823172  
Fax: 01709 823154  
e.mail: env.health@rotherham.gov.uk.

It is intended to keep owners, occupiers and all other interested parties and stakeholders fully informed at each stage of the process of identifying contaminated land. This will involve extensive consultation in order to attempt to arrive at an informal solution to any specific problems. The ethos is that effective remediation is more likely to be achieved with informal agreement by all parties involved than by formal enforcement processes. The new regime provides incentive to undertake voluntary remedial actions in preference to enforced remedial actions, which will be encouraged wherever possible.

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; and
- 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); 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.

As previously identified, the Council will be using a risk based approach to the identification of contaminated land and is likely to be obtaining and recording large amounts of risk based data. Officers will be available for discussions and meetings, as appropriate. Communication of the information by the Council will be in a form that:

- Is relevant to the group affected;
- Is relevant to those requesting the information;
- Is clear consistent and concise;
- Is not overly technical;
- Allows equal access to all;
- Includes all relevant stakeholders;
- Invites feedback; and
- Will be communicated objectively in a timely and transparent manner.

#### **5.4 Public Register**

In addition to informal communications, the Council is required to maintain a register of the regulatory action taken under Part IIA. This will be a paper record, and available for public inspection at all reasonable times. The Register content is prescriptive and is required to include:

- Remediation Notices;
- Remediation Declarations;
- Remediation Statements and notifications of claimed remediation;
- Details of site reports obtained by the Council in relation to Remediation Notices;
- Designation of sites as Special Sites;
- Any appeals lodged against remediation and Charging Notices;
- Convictions;
- Information on contaminated land that the Council is responsible for;
- Other environmental controls;
- Agency site-specific guidance.

If the information obtained is, in the opinion of The Secretary of State, against the interests of national security, is commercially confidential or relates to the affairs of an individual or business, then this can be excluded from the Public Register.

The Public Register is kept at:

Neighbourhood and Adult Services, Reresby House, Bow Bridge Close, Rotherham S60 1BY

Telephone: 01709 823172

Fax: 01709 823154

e.mail: env.health@rotherham.gov.uk.

The register can be inspected between the hours of 09.30 and 16.30, Monday to Friday, free of charge. Requests for photocopies of documents will be charged for.

## **5.5 The Environmental Information Regulations 1992**

In addition to the Public Register, there will be a significant amount of environmental information held by the Council, as a result of implementing the Part IIA provisions. Requests for specific environmental information may be made by landowners, consultants, developers and members of the public, etc. This information will be made available unless there are 'compelling and substantive reasons to withhold it'. These reasons include:

- international relations, national defence, public security;
- legal proceedings;
- confidential deliberations;
- internal communications;
- unfinished documents;
- commercial confidentiality;
- statutory restrictions;
- personal information;
- volunteered information; and
- potentially damaging information.

Requests for information under the Regulations will be dealt with as soon as possible and in any case, within two months of receipt of the request and will either result in provision of the information requested or details of the reasons for refusal to provide the information. The information provided will be subject to a charge reflecting the costs of obtaining the information. Any information provided will be given to the best of the Authority's knowledge but cannot be relied upon to be complete or accurate and the enquirer will still need to satisfy themselves whether or not the information provided is complete or accurate.

## **5.6 Provision of information to The Environment Agency**

The inspection strategy document must be provided to The Environment Agency, who will summarise the overall findings and highlight the proportion of Authorities that have delivered strategies. It will not publish the details of any individual strategy.



The Council is also required to notify The Environment Agency if a site is determined to be contaminated land. This information is required to enable the Environment Agency to compile reports and also to assist in deciding whether or not it should provide site specific advice.

All formal action taken with regard to contaminated land must also be forwarded to The Environment Agency, as and when this takes place.

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 IIA nationally. Information concerning contaminated land which is considered to be (or likely to be) a special site would require information provision to the Environment Agency.

## **5.7 Use of Information by Other Services within Rotherham MBC**

Where the Council itself may be responsible for contaminated land, then the relevant Service will be advised forthwith, 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.

Land contamination or the potential for land contamination is a material consideration with respect to planning applications and must be considered by the local planning authority. Where land which is not designated as contaminated by statutory definition but which contains contaminants but no pathway or receptor, if a new receptor is introduced to the site, or a pathway for a pollutant linkage created, by virtue of a planning application, it may then become statutorily contaminated, unless appropriate measures are taken at the planning stage.

The provision of the G.I.S. information concerning the location of known potential contamination hazards, once the strategy's information gathering work has been undertaken, will be made available to the Planning Services. Planning applications received may be checked spatially against the G.I.S. information obtained by Neighbourhood and Adult Services. For development sites that have the potential to impact on or near known or potential sources of contamination, consultation should be made with the Community Protection Unit. Prior to planning permission being sought, the developer may need to investigate any hazards and propose remedial action which require consideration as to whether or not the proposed development is suitable. In a situation where a lesser hazard is perceived or the proposals are suitable, the investigation assessment and remedial measures may be made part of any planning permission. In addition, it is considered that 'added value' can be obtained from the planning process by giving additional advice on avoiding the creation of future land contamination, and having reference to Planning Policy Guidance PPG23 'Planning and Pollution Control'.

In addition to the planning system, the Building Control Service may require measures to be taken to protect buildings and occupants from the effects of contamination.

From time to time, other Services such as Estates Management may require information regarding land owned by the Council or to be purchased, in connection with contamination. This information would be provided when requested.

Provision will be required to ensure effective cross-reporting of the Council's enforcement activities.

## **CHAPTER 6: PROCEDURE FOR IDENTIFYING POTENTIALLY CONTAMINATED LAND**

### **6.1 Internal Management Arrangements for Inspection and Identification**

Within Rotherham Metropolitan Borough Council, the Community Protection Unit within Housing and Neighbourhood Services has been designated as the lead service with responsibility for implementing Part IIA of the Environmental Protection Act 1990, following the Environmental Health Committee Meeting of 25<sup>th</sup> February 1999 (minute K646 of the 24<sup>th</sup> March 1999 Council Meeting refers).

The responsibility for developing and implementing the strategy is part of the responsibility of the Community Protection Manager and Scientific Officer. There will need to be consideration of the logistics of investigating the actual sites which demonstrate a potential pollutant linkage once the initial screening has been undertaken.

Inspection and Assessment of contaminated land will be undertaken in accordance with *Development on Land Affected by Contamination: YAHPAC Technical Guidance for Developers, Landowners and Consultants* (March 2010)

### **6.2 Principles of Risk Assessment**

The principles of risk assessment underlie the method of interpreting the impact of any contaminant, via a pathway, on a receptor. They are designed to provide quantitative and qualitative assessment on a site specific basis, to ensure the protection of human health and the environment, without there being unnecessary expenditure on sites where the impact of the contamination is not significant, and conversely, to prevent insufficient action being taken on sites where the actual risk of harm is significant.

This approach requires determination of the actual use of the site as well as the pathways and contaminants, and it is clear that different uses will result in different degrees of risk from any source of contamination. Consequently, each site requires assessing on an individual basis as many factors are of relevance in determining whether or not the contaminant source will present significant harm or significant possibility of significant harm being caused.

### **6.3 Requirements for Strategic Approach**

Local Authorities are required to take a strategic approach to inspecting land in its area for contamination. Such an approach is required to:

- Be rational, ordered and efficient;
- Be proportionate to the seriousness of the actual or potential risk;
- Seek to ensure the most pressing and serious problems are addressed first;
- Ensure that resources are concentrated on investigating areas where the local authority is most likely to identify contaminated land; and
- Ensure that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land.

## 6.4 Information Collection

A large number of sources of information will need to be assessed to identify possible sources of contaminants, and to some degree at this stage, pathways. The local authority must then consider the location of specified receptors and the extent to which they are found in the area.

### Identifying Contaminants

The following sources of data will be considered when identifying possible sources of contaminants:

- Historical digital Ordnance Survey maps;
- Present day digital Ordnance Survey maps;
- Digital present aerial day photography;
- Geological maps of Solid and Drift, Made Ground and Superficial digital maps;
- Radon Areas maps;
- Agricultural Land Classification (ALC) surveys carried out by former MAFF;
- Current and Historic Landfill Sites Register (Council owned records);
- Landfill and Quarrying Records (Council owned records);
- Petroleum Records (past and present petrol filling stations);
- Electrical Sub-Stations (past and present);
- Scrap Yards;
- Trade Directories Information;
- Integrated Pollution Control Register (Environment Agency);
- Part B Processes Register and records (Council owned records);
- Environmental Health Records;
- Planning Services' Records; and
- Other Council Service Area's Records.

### Identifying Receptors

The following sources of data will be considered when identifying possible receptors:

- Present day digital Ordnance Survey maps;
- Digital present aerial day photography;
- Water abstraction maps (Public and private water abstractions from the Environment Agency);
- Groundwater vulnerability zone maps (aquifer vulnerability digital maps to identify controlled waters);
- Ground water source protection zone maps;
- Ecological areas (SSSIs, AONB, etc);
- Scheduled Ancient Monuments (County Sites and Monuments Record);
- Listed Buildings (Council owned records);
- Tree Preservation Orders (Council owned records);
- Ancient Woodlands (Council owned records);
- Private Water Supplies (Council owned records);
- Unitary Development Plan (held by Planning Services);
- Schools and Colleges (Council owned records);

- Recreation Grounds (Council owned records);
- Allotments (Council owned records); and
- Information on river quality objectives.

Receptors will be assessed within 50m and 250m of each potential source of contamination.

### **Identifying Pathways**

These will depend to a great extent on the specific contaminants and receptors, but may include ingestion, inhalation and direct contact with humans. In addition, to reach a receptor, the contaminant may travel along pathways in the soil, geological formations and man-made pathways such as sewers and mine-workings. It can be seen, therefore, that it is less simple to identify pathways from the initial screening tool, but will initially be undertaken by reference to land use data and information concerning physical properties of relevant contaminants (e.g. how mobile a contaminant is etc.)

## **6.5 Information Evaluation**

All information concerning potential sources of contaminants and potential pathways / receptors is correlated 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) is 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 will be similarly assigned a scoring number to reflect the likely hazards that may exist due to the typical contaminants associated with the particular land use (see appendix 4).

The scores for all components will then be referenced to a number of matrices, per receptor, and a 'risk ranking number' obtained. The higher the number, the greater will be the potential for significant harm or pollution of controlled waters, based on the desk study information used to run the model. Those sites with the highest scores will be prioritised first for more detailed investigation and assessment. This may involve site investigations and sampling, to confirm the presence of any of the contaminant, pathway or receptors necessary to create a pollutant linkage, and to obtain evidence of the actual presence of a contaminant.

At this stage, the Council will also need to consider 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.

## 6.6 Information and Complaints

It is envisaged that contacts from interested people will be received, regarding the potential for a site to be contaminated, in much the same way as other service requests.

Initially, all requests will be logged and recorded on a computer database and, if not taken personally by the relevant officer, the customer will be contacted within 5 working days to advise of its receipt and the likely course of action to be taken.

Upon receipt of a service request regarding a piece of land which is suspected to be contaminated, reference will be made to any existing information already held in determining whether or not land may be contaminated, i.e. is the information received already known to the Council and held in the Contaminated Land Database. If this is so, then the customer will be advised of the current position, in terms of the likely priority with which the site will be assessed further, having reference to any new information which might change the priority of the initial risk screening.

If the information is not currently known or changes what is already known, then there will be an initial desk-top investigation of the likely robustness of the evidence provided. If appropriate, an initial screening exercise will be undertaken, in the same manner as will have already taken place. Once this has been undertaken, the customer will be advised as to the likely time-scale for detailed investigation of the site in question, or the reasons why this is not being pursued.

There may be situations whereby land is considered by the public to contain contaminants, but which is not likely to be designated contaminated land by definition. This may be due to the need for proof of a viable pollutant linkage, as described earlier, or because of the low concentrations of contaminants that do not present significant risk to health. The reason for the Council reaching a decision not to pursue the information received further will need to be clearly explained, in terms of risk management.

Where the customer has an interest in the land, particularly a financial interest, for example if a property is to be sold, etc., there may be a request for early investigation. Whilst recognising the concern that this may cause, it is not the Council's policy for any such request to circumvent the risk screening exercise, where sites presenting a greater risk to human health etc will continue to have higher priority than financial/commercial concerns to individuals. Nevertheless, all assistance will be given to such customers were this is practicable, without causing deprioritisation of more urgent sites.

If the customer is not happy with the response received from the Service, then the Council has a formal complaints procedure which may be invoked, and in the event of concerns of maladministration, the complaint has recourse to the Local Government Ombudsman.

All customers will be asked for their name, address and telephone number and the address of the land giving rise to the complaint. This may be essential in order to follow up or clarify any of the information initially provided. As per normal Council policy, the details and identity of the customer will be kept confidential as far as legally possible. If, however, a remediation notice was appealed in Court and initial

designation of the land as contaminated was due to adverse health effects alleged on the customer, then the information regarding the customer may be made public. The Council does not normally undertake investigations based on anonymously supplied information, although in the case of land contamination, information received will be investigated in due course, having due regard to the detail of information and likely level of reliability, as part of the risk screening processes.

As discussed in detail later, and in appendix 6, the Council subscribes to the Local Government Association's Enforcement Concordat.

## **6.7 Methods of Inspection**

Following initial risk ranking of sites, detailed inspection may be considered necessary for a number of sites, based on possible pollutant linkages that may exist. Detailed inspection, prioritised in accordance with the screening tool, will be required, to obtain sufficient information:

- To determine in accordance with the guidance, whether that land appears to be contaminated land (i.e. that the pollutant linkage is significant); and
- To decide if the land requires designation as a special site.

Detailed inspection will include any or all of the following:

- Collation and assessment of documentary information, etc from other bodies;
- Visits to the site for the purpose of visual inspection and in some cases, limited sampling; and
- intrusive investigation of the land.

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 a pollutant linkage does not exist or is not significant, although the information obtained will be kept on file and under review in the future.

As much desk top information as possible will be obtained by the Council about a site which may be contaminated prior to making any detailed judgement upon this. This may involve detailed inspection of all historical data in its possession and other documents held within the Council and by other external bodies. This may include contact with:

- The Environment Agency;
- DEFRA;
- English Nature;
- Health and Safety Executive; and
- Developers, previous occupiers, etc.

As previously detailed, site specific liaison in the manner already highlighted will also take place with the current occupier/owner and anyone else considered to be an appropriate person or have any involvement. This may include DEFRA in the

case of agricultural land, or South Yorkshire Archaeology Service in the case of archaeological features at the site.

Once the initial desk top assessment has been undertaken and it is considered necessary to undertake further detailed inspection of the land in question, i.e. there is a reasonable possibility of a pollutant linkage, then on site testing, or the taking of samples from the site would be required. Having reference to the sensitivity of the assessment, it is clear that tact and discretion will be employed at all times to minimise the effect of such investigations upon owners and occupiers of land and adjoining land.

The Environment Act 1995 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.

## **6.8 Site Investigations**

Site investigations and inspections will only be carried out by adequately qualified personnel (from time to time, this work may be undertaken by external consultants), see appendix 5, in accordance with appropriate health and safety and technical procedures, in order to ensure that such investigations are:

- competent;
- effective;
- efficient;
- do not cause any unnecessary damage or harm (including to designated historic sites etc); and
- do not cause pollution of controlled waters.

Once again, investigations will be undertaken on an incremental basis and will usually involve an initial site visit and assessment visually for evidence of significant pollutant linkages. This may be followed by surface and near surface sampling and only where absolutely necessary, intrusive sampling at depth by means of trial pits and boreholes.

Contamination that is suspected and which may be on a site of national archaeological significance, or where the contamination is linked with former industrial sites that are scheduled, will require careful consideration before investigation commences. The Sites and Monuments Record of South Yorkshire Archaeology Service should be consulted to identify any such interests before any work starts.



There are statutory powers of entry conferred on the Council to enable it to carry out its functions under Part IIA.

## **6.9 Potential Special Sites**

Details of what determines if a site is a special site is found in the Contaminated Land (England) Regulations 2000, and a summary is provided in appendix 1. Where the Council is aware that the land it intends to investigate would be a special site if declared as contaminated land, 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 carry out inspections of land on behalf of the local authority if identified as a potential special site by the Council.

## **6.10 Site Specific Risk Assessment**

The purpose of this is to determine if the contaminant is:

- resulting in significant harm being caused to the receptor; or
- presenting a significant possibility of significant harm being caused to the receptor; or
- resulting in pollution of controlled waters; or
- likely to result in such pollution.

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.

To assist in determining this, DEFRA publishes a set of guidelines for contaminants, to assist in establishing whether a site poses an actual or potential risk to human health. If contaminant concentrations are below values which are likely to cause significant harm, then the site will be considered safe, but if values are higher then further assessments will be required. This model - The Contaminated Land Exposure Assessment (CLEA) uses a variety of Monte Carlo simulations in order to examine the various different pathways by which humans become exposed to soil contaminants.

With regard to risk assessment for controlled waters, The Environment Agency's advice will be sought, and assessed in accordance with guidance laid down in the Methodology for the Derivation of Remedial Targets for Soil and Groundwater to Protect Water Resources document (Environment Agency R&D Publication 20, 1999).

## **CHAPTER 7: PROCEDURE FOR REGULATING CONTAMINATED LAND**

### **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. Throughout, the Council will follow the good practice required by the Enforcement Concordat, as detailed in appendix 6.

### **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; and
- 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); and
- 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 process regarding what remediation may be appropriate.

The statutory guidance places emphasis on the voluntary remediation of land rather than through formal action. There are exemptions from landfill tax for materials removed from site as part of voluntary remediation, and the remediation process remains under the control of the appropriate person, with mutual agreement between all parties. The agreed works to remediate the site will be formally agreed with all appropriate persons, and a Remediation Statement published. This will contain information detailing:

- The things which have been, are being or are expected to be done, by way of remediation in this case;
- The name and address of the person who has done, is doing or is expected to do each of those things;
- The time periods within which each thing is being, or is expected to be done.

Remediation includes:

- 'the doing of anything for the purpose of assessing the condition of the contaminated land in question, any controlled waters affected by that land or any land adjoining or adjacent to that land;
- 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 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 of restoring the land or waters to their former state; or
- the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.'

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, i.e. service 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:

- Appropriate Persons Class A – generally these a polluter or those who knowingly permit the pollution;

- Appropriate Persons Class B – 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).

All reasonable enquiries will be made by the Council to determine Class A persons before considering Class B persons. The method by which liability is apportioned both between persons and within liability groups is a complex issue which is discussed at length in the statutory guidance.

After considering the costs of remediation and its apportionment between persons in liability groups, the Council will consider whether any of those liable may not be able to afford the remediation action. After taking into consideration the statutory guidance, it may decide not to serve a Remediation Notice on any of the parties, but carry out the works itself and produce and publish a Remediation Statement. In cases where an owner-occupied dwelling is situated on contaminated land, and the owner-occupier is a Class B person who did not know, or could not have been reasonably expected to know that the land was adversely affected by a pollutant, then the Council will do what it can to mitigate any costs for remediation that become necessary.

### **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.

## **7.4 Enforcement Action: the Remediation Notice**

Except in urgent cases, Remediation Notices are only served as a last resort and only after the lengthy consultation described above has been exhausted. 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.

Remediation will be designed to ensure that the land is no longer contaminated for its current use, taking the shortest and lowest cost route to achieve this. The issues of 'reasonableness' is considered in detail in the statutory guidance, particularly in relation to the costs of carrying out the remediation against the

potential costs resulting from the continuing contamination. Remediation in the context of the Part IIA provisions includes further investigatory work and assessment to be undertaken prior to actual steps being taken to mitigate the contamination, and monitoring after the work has been undertaken, as well as the actual treatment action. Remediation Notices may be phased as part of an overall Remediation Scheme, for example, initially requiring further assessment actions, then in light of these, specifying a remediation scheme, etc.

A Remediation Notice will contain details of the contaminated land, the remediation required (which must be appropriate and cost effective, employing best practical techniques), the appropriate person, and the rights of appeal against the notice. Certain details on a Remediation Notice are required to be placed on the public register.

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.

### **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; and
- 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.

## **7.5 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.

## **7.6 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.

## **7.7 Considering Rotherham MBC's Own Interests in Land**

Rotherham Metropolitan Borough 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. Information as to ownership of Council land, both past and present, is held within the Estates Section of the Council. 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.

It will therefore be necessary for a formal relationship between the service responsible for the land in question and the Community Protection Service to be maintained, in order to ensure that the regime is fully implemented. Formal reporting to the relevant Council Cabinet will take place, and advice on what action the appropriate person is required to take will be provided to relevant officers.

In order to establish the potential liability for Council land it will be necessary to ascertain all land within the Borough, which:

- is or has been owned by the Council;
- is or has been occupied by the Council;
- is an area of land where the Council is the 'appropriate person' responsible for remediation under the legislation.

This information is likely to be dispersed throughout the Council, particularly for older records, which will be paper based, and its research is likely to be a lengthy process. As soon as information comes to light that there is potential for land that is the responsibility of the Council to be declared contaminated, this information will be formally advised to the relevant Service Unit in advance of detailed assessment in the priority ranking. This will enable the Council to 'put its own house in order' as quickly as practicable.

## **CHAPTER 8: REVIEW MECHANISMS**

### **8.1 Review of assumptions and information**

From time to time there may be occasions when inspections need to be undertaken outside the ranking order provided by the semi-quantitative screening tool, and be re-prioritised as appropriate. These include:

- unplanned events such as a spillage of material;
- introduction of new receptors, such as designation of a new protected ecosystem or evidence of regular trespass onto a site;
- identification of localised health effects which may relate to particular land;
- responding to information from other statutory bodies, members of the public, etc.

There will also be times when previous inspection decisions require reviewing, for example:

- significant changes in legislation;
- establishment of new case law, etc;
- review of guideline values for exposure assessment;
- provision of new information which changes some other relevant factor used to determine the initial inspection decision;
- programmed reviewing of sites previously determined as 'land in a contaminated state', but not statutorily contaminated.

Inspection procedures will be audited by the Community Protection Service, to ensure compliance with the legislation and appropriate levels of technical expertise are employed throughout.

### **8.2 Review of Strategy Document**

The strategy as a whole will be reviewed by the Council on an annual basis and any proposed changes incorporated as necessary. This may include potential for the introduction of new receptors or sources of contamination, identification of special site and progress with the implementation.



## **CHAPTER 9: INFORMATION MANAGEMENT**

### **9.1 General Principles**

A large amount of information will be held in the form of reports, maps, letters and other documents, inevitably with significant variation in formats and standards of the documents. Much information will be obtained, stored and used in digital format, via the G.I.S. computer package being used for the purposes of the Part IIA provisions. Much of this information will be available for members of the public, to have copies of, under the Environmental Regulations 1992, although there are specific exemptions that may prevent certain information being released.

In addition, the Public Register required under Part IIA will be maintained as required by statute, and will act as the full and permanent record of all regulatory action taken under the Part IIA provisions.

### **9.2 Information Storage Systems**

The G.I.S. is the major system for the storage, manipulation, analysis and visualisation of digital spatial data. The G.I.S. uses a database that allows spatial data information to be referenced and linked to attributed data (information about what is at the particular place in question). It is possible to link together both spatial and attributed data to enable simple analyses of significant amounts of data. It is the G.I.S. MapInfo package which will be used by Rotherham Metropolitan Borough Council upon which to enter all information concerning the land it is investigating as a result of the Part IIA provisions.

Environmental data sets, however, can be provided in both paper and digital form. It is likely that both forms will be utilised as part of the strategy assessment tools. However, data sets may contain errors and it is important that such errors can be quantified and assessed in order to enable meaningful results to be obtained.

National Geo-spatial Data Framework (NGDF) Standards for data logging are to be followed, to provide documentation in a recognised format. Information that will be stored as a dataset will be described as follows:

- Identification;
- Subject matter;
- Originator;
- Access, use and restrictions;
- Time of capture;
- Geographical extent; and
- Data supplier.

The computerised holding of data will be backed up via the Council's computer network each night, with tapes held on a 4-weekly rotation cycle.

## GLOSSARY OF TERMS

The statutory guidance and circular use a number of terms which are defined in Part IIA 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 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 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 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 is likely to be, 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 III (section 104) of the Water Resources Act 1991; this embraces territorial and coastal waters, inland fresh waters, and ground waters.

**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)

**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.

**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

**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 exempted by one of the relevant statutory provisions. 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

**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 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. 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 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 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.3

**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 consequences. Paragraph A.9

**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.

**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.

**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.

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## **APPENDIX 1 SPECIAL SITES**

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 often sites where the Environment Agency have had, or still have, an enforcement role.

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

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

Contaminated land beyond the boundary of these premises which is also contaminated by them forms part of the special site.

## **APPENDIX 2 POLLUTION OF CONTROLLED WATERS**

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);
- Groundwater (section 104 of the Water Resources Act 1991).

The pollution of controlled waters is defined as the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter.

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. However, when considering cases where 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.

Pollution of controlled waters will rarely be dealt with by the local authorities, without expert advice and guidance from the Environment Agency.

Where pollution of groundwater has occurred and the source can not 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 Part III of the Water Resources Act 1991.

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.

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 Regulation include::

- 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.

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 Corahhian;
- Middle Jurassic Limestones;
- Lower Jurassic Cotteswold Sands;
- Permo-Triassic Sherwood Sandstone Group;
- Upper Permian Magnesian Limestone;
- Lower Permian Penrith Sandstone;
- Lower Permian Cohlyhurst Sandstone;
- Lower Permian Basal Breccias, Conglomerates and Sandstones;
- Lower Carboniferous Limestones.

In effect, this leaves local authorities with the potential responsibility for the pollution of controlled waters where:

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

**APPENDIX 3  
POTENTIAL RECEPTORS & CATEGORIES OF SIGNIFICANT HARM**

**(A) Potential Receptors**

<b>RECEPTOR</b>	<b>LAND USE TYPE</b>
Human beings	<ul style="list-style-type: none"> <li>• Allotments</li> <li>• Residential with gardens</li> <li>• Residential without gardens</li> <li>• Schools and Nurseries</li> <li>• Recreational/parks, playing fields, open space.</li> <li>• Commercial/industrial</li> </ul>
Eco systems	<ul style="list-style-type: none"> <li>• Areas of special scientific interest (Wildlife &amp; Countryside Act 1981 section 28)</li> <li>• National / local nature reserves (Wildlife &amp; Countryside Act 1981 section 35 / National Parks &amp; Access to the Countryside Act 1949 section 21)</li> <li>• Marine nature reserves (Wildlife &amp; Countryside Act 1981 section 36)</li> <li>• Areas for the special protection of birds (Wildlife &amp; Countryside Act 1981 section 3)</li> <li>• Special areas of conservation &amp; special protection areas (Conservation (Natural Habitats etc) Regulations 1994 regulation 10)</li> <li>• Special areas of conservation or potential special protection areas</li> <li>• Any habitat or site afforded planning policy protection Planning Policy Guidance Note 9 - Nature Conservation, para 13</li> </ul>
Property	<ul style="list-style-type: none"> <li>• Buildings (including below ground)</li> <li>• Ancient monuments</li> <li>• All crops including timber</li> <li>• Produce grown domestically or on allotments for consumption</li> <li>• Livestock</li> <li>• Other owned or domesticated animals</li> </ul>
Water	<ul style="list-style-type: none"> <li>• Wild game subject to shooting or fishing rights</li> <li>• Territorial sea water (to three miles)</li> <li>• Coastal waters</li> <li>• Inland fresh waters (rivers, streams, lakes, including the bottom / bed if dry)</li> <li>• Ground waters, Source Protection Zones, Major Aquifers, Water Abstraction Points (Water Resources Act 1991 s104)</li> </ul>

## **(B) Categories Of Significant Harm And Description Of Harm To That Type Of Receptor That Is To Be Regarded As Significant Harm**

### **Type of Receptor:**

Human beings

### **Description of Harm that is to be Regarded as Significant Harm:**

Death, disease, serious injury, genetic mutation, birth defects or the impairment of reproductive functions. For these purposes, disease is to be taken to mean an unhealthy condition of the body or a part of it and can include, for example, cancer, liver dysfunction or extensive skin ailments. Mental dysfunction is included only insofar as it is attributable to the effects of a pollutant on the body of the person concerned. This description of significant harm is referred to as a 'human health effect'.

### **Type of Receptor:**

Any ecological system, or living organism forming part of such a system, within a location which is:

- an area notified as an area of special scientific interest under section 28 of the Wildlife and Countryside Act 1981;
- any land declared a national nature reserve under section 35 of that Act;
- any area designated as a marine nature reserve under section 36 of that Act;
- an area of special protection for birds, established under section 3 of that Act;
- any European Site within the meaning of regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994 (ie Special Areas of Conservation and Special Protection Areas);
- any candidate Special Areas of Conservation or potential Special Protection Areas given equivalent protection;
- any habitat or site afforded policy protection under paragraph 13 of Planning Policy Guidance Note 9 (PPG9) on nature conservation (ie candidate Special Areas of Conservation, potential Special Protection Areas and listed Ramsar sites); or
- any nature reserve established under section 21 of the National Parks and Access to the Countryside Act 1949.

### **Description of Harm that is to be Regarded as Significant Harm:**

For any protected location, harm which results in an irreversible adverse change, or in some other substantial adverse change, in the functioning of the ecological system within any substantial part of that location; or harm which affects any species of special interest within that location and which endangers the long-term maintenance of the population of that species at that location.

In addition, in the case of a protected location which is a European Site (or a candidate Special Area of Conservation or a potential Special Protection Area), harm which is incompatible with the favourable conservation status of natural habitats at that location or species typically found there.

In determining what constitutes such harm, the local authority should have regard to the advice of English Nature and to the requirements of the Conservation (Natural Habitats etc) Regulations 1994.

This description of significant harm is referred to as an 'ecological system effect'.

### **Type of Receptor:**

Property in the form of:

- crops, including timber;
- produce grown domestically, or on allotments, for consumption;

- livestock;
- other owned or domesticated animals;
- wild animals which are the subject of shooting or fishing rights.

**Description of Harm that is to be Regarded as Significant Harm:**

For crops, a substantial diminution in yield or other substantial loss in their value resulting from death, disease or other physical damage. For domestic pets, death, serious disease or serious physical damage. For other property in this category, a substantial loss in its value resulting from death, disease or other serious physical damage.

The local authority should regard a substantial loss in value as occurring only when a substantial proportion of the animals or crops are dead or otherwise no longer fit for their intended purpose. Food should be regarded as being no longer fit for purpose when it fails to comply with the provisions of the Food Safety Act 1990. Where a diminution in yield or loss in value is caused by a pollutant linkage, a 20% diminution or loss should be regarded as a benchmark for what constitutes a substantial diminution or loss.

This description of significant harm is referred to as an 'animal or crop effect'.

**Type of Receptor:**

Property in the form of buildings. For this purpose, 'building' means any structure or erection, and any part of a building including any part below ground level, but does not include plant or machinery comprised in a building.

**Description of Harm to that Type of Receptor that is to be Regarded as Significant Harm:**

Structural failure, substantial damage or substantial interference with any right of occupation.

For this purpose the local authority should regard substantial damage or substantial interference as occurring when any part of the building ceases to be capable of being used for the purpose for which it is or was intended.

Additionally, in the case of a scheduled Ancient Monument, substantial damage should be regarded as occurring when the damage significantly impairs the historic, architectural, traditional, artistic or archaeological interest by reason of which the monument was scheduled.

This description of significant harm is referred to as a 'building effect'.

## **(C) Significant Possibility Of Significant Harm**

### **Descriptions Of Significant Harm:**

Human health effects arising from the intake of a contaminant, or other direct bodily contact with a contaminant.

### **Conditions For There Being A Significant Possibility Of Significant Harm:**

If the amount of the pollutant in the pollutant linkage in question:

- which a human receptor in that linkage might take in, or
- to which such a human might otherwise be exposed, as a result of the pathway in that linkage, would represent an unacceptable intake or direct bodily contact, assessed on the basis of relevant information on the toxicological properties of that pollutant.

Such an assessment should take into account:

- the likely total intake of, or exposure to, the substance or substances which form the pollutant, from all sources including that from the pollutant linkage in question;
- the relative contribution of the pollutant linkage in question to the likely aggregate intake of, or exposure to, the relevant substance or substances;
- the duration of intake or exposure resulting from the pollutant linkage in question.

The question of whether an intake or exposure is unacceptable is independent of the number of people who might experience or be affected by that intake or exposure. Toxicological properties should be taken to include carcinogenic, mutagenic, teratogenic, pathogenic, endocrine-disrupting and other similar properties.

### **Descriptions Of Significant Harm:**

All other human health effects (particularly by way of explosion or fire)

### **Conditions For There Being A Significant Possibility Of Significant Harm:**

If the probability, or frequency, of occurrence of significant harm of that description is unacceptable, assessed on the basis of relevant information concerning:

- that type of pollutant linkage, or
- that type of significant harm arising from other causes.

In making such an assessment, the local authority should take into account the levels of risk which have been judged unacceptable in other similar contexts and should give particular weight to cases where the pollutant linkage might cause significant harm which:

- would be irreversible or incapable of being treated;
- would affect a substantial number of people;
- would result from a single incident such as a fire or an explosion; or
- would be likely to result from a short-term (that is, less than 24-hour) exposure to the pollutant.

### **Descriptions Of Significant Harm:**

All ecological system effects.

### **Conditions For There Being A Significant Possibility Of Significant Harm:**

If either:

- significant harm of that description is more likely than not to result from the pollutant linkage in question; or
- there is a reasonable possibility of significant harm of that description being caused, and if that harm were to occur, it would result in such a degree of

damage to features of special interest at the location in question that they would be beyond any practicable possibility of restoration.

Any assessment made for these purposes should take into account relevant information for that type of pollutant linkage, particularly in relation to the ecotoxicological effects of the pollutant.

**Descriptions Of Significant Harm:**

All animal and crop effects.

**Conditions For There Being A Significant Possibility Of Significant Harm:**

If significant harm of that description is more likely than not to result from the pollutant linkage in question, taking into account relevant information for that type of pollutant linkage, particularly in relation to the ecotoxicological effects of the pollutant.

**Descriptions Of Significant Harm:**

All building effects.

**Conditions For There Being A Significant Possibility Of Significant Harm:**

If significant harm of that description is more likely than not to result from the pollutant linkage in question during the expected economic life of the building (or, in the case of a scheduled Ancient Monument, the foreseeable future), taking into account relevant information for that type of pollutant linkage.



#### **APPENDIX 4: CATEGORIES OF POTENTIAL CONTAMINATIVE LAND USES**

The list overleaf 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. The list is not exhaustive, and inclusion on this list does not necessarily infer the existence of a pollutant linkage.

NB:

Animal burial and Animal by-product processing will not result in determination of contaminated land based on biological contaminants, as these are excluded from the definition of 'substances', but may only be relevant in the context of water pollution.

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 founders  
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  
Hatters  
Hide and skin processors  
Ink manufacture  
Iron founder  
Iron works  
Laquer 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 & works  
Ship breakers  
Ship builders  
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

## **APPENDIX 5 POWERS OF ENTRY AND APPOINTMENT OF SUITABLE PERSONS**

### **Powers of Entry**

Section 108 of the Environment Act 1995 gives the local authority power to authorise, in writing, 'suitable persons', to investigate potentially contaminated land. 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.

At least seven days notice must be given to residential occupiers and 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.

The Council will not 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;
- A person offers to provide the information within a reasonable and specified time, and does so.

### **Urgent Action**

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.

The terms 'imminent' and 'serious' are not defined, and 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.

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.

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

## **'Suitable Persons'**

The science and 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 amounts of data and make a reasoned judgement.

Neither the Act nor the statutory guidance defines 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.

At Rotherham, there will need to be training of staff in the disciplines associated with determining land as contaminated, including risk assessments and remediation, before such staff will undertake assessment and enforcement action. The base level of competency which it is considered will be necessary will be qualification to degree standard in Environmental Sciences (or similar) or qualification as an Environmental Health Officer and registration with EHORB, together with demonstration of continuing professional development and specific training and competency in contaminated land issues.

Consultants come from a range of backgrounds including:

- Environmental Health;
- Other environmental science disciplines;
- Surveyors;
- Engineers;
- Geologists;
- Hydrologists;
- Soil scientists;
- Chemists etc.

Ultimately, the responsibility for determining what land may or may not be declared contaminated lies with the Head of Environmental Health, who will often need to rely on the advice of appointed, 'suitable persons'.

The Head of Environmental Health is delegated with the power under this legislation, and will authorise officers accordingly to act on his behalf.

## **APPENDIX 6 ENFORCEMENT CONCORDAT**

### **1.0 Introduction**

Our aim is to protect the community and the environment. Clear and consistent enforcement also helps businesses to compete fairly.

We recognise that most businesses and individuals want to comply with the law. We will assist and advise wherever possible, but will take firm action against those who disregard the law or act irresponsibly. This policy sets out the issues we will consider before taking formal enforcement action such as issuing legal notices, cautions or prosecutions.

We have adopted the Government's Concordat on Good Enforcement and commit ourselves to the following aims and procedures: -

### **2.0 Aims**

#### **2.1 Standards**

We will consult about the services we provide, with business and the public. We will draw up clear standards setting out the level of service and performance that they can expect to receive. We will publish these standards and report on our annual performance against them.

#### **2.2 Openness**

We will provide accessible information and advice, in plain language, on the legislation that we enforce. We will be open about how we set about our work.

#### **2.3 Helpfulness**

We believe that prevention is better than cure and we will actively work with local business to advise and assist with compliance with the law. We will provide a courteous and efficient service and our staff will identify themselves by name. We will offer a contact point and telephone number to encourage further liaison.

#### **2.4 Complaints about our service**

All complaints will follow the council's formal complaint procedure, which is easily accessible to all service users, and which explains the rights of complaint and appeal, including the likely timescales involved.

#### **2.5 Proportionality**

We will, as far as the law allows, and where co-operation is given, work with businesses so that they can meet their legal obligations without unnecessary expense. We will take into account the costs of compliance for business by ensuring that any enforcement action we take or remedial action we require is proportional to the risks. In relation to small businesses, voluntary and community organisations, we will take particular care to help them meet legal obligations without incurring unnecessary costs.

## **2.6 Consistency**

We will carry out our duties in a fair, equitable and consistent manner. Whilst officers must exercise judgement in individual cases, we will have arrangements in place to promote consistency, including liaison with other authorities and agencies. We recognise that there are situations where there is a shared enforcement role. We will ensure that in those circumstances enforcement is effectively and efficiently co-ordinated to avoid duplication of resources.

## **3.0 Procedures**

Advice from an officer will be put clearly and simply, confirmed in writing on request, explaining why any remedial work is necessary and over what timescale. Legal requirements will be clearly distinguished from best practice advice.

Before formal enforcement action is taken, there will be an opportunity to discuss the circumstances of a case, unless immediate action is required (e.g. to prevent destruction of evidence or where there is an imminent risk to health and safety).

Where immediate action is taken, reasons for such action will be given at the time, and confirmed in writing in most cases within 5 working days, and in all cases within 10 working days.

Where there are rights of appeal against formal action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.

## **4.0 When Do We Prosecute?**

Before deciding whether a prosecution shall be taken against a business or individual, we will consider a number of factors in line with the Code for Crown Prosecutors. These factors may include the following:

- The seriousness of the alleged offence;
- The history of the party concerned;
- The willingness to prevent a recurrence of the problem and co-operate with officers;
- Whether it is in the public interest to prosecute;
- The realistic prospect of conviction;
- Whether any other action (including a formal caution) would be more appropriate or effective;
- The views of any customer and other parties with an interest in a prosecution.

(Note: These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.)

## **5.0 Application Of Our Policy**

Officers will take account of this policy when making enforcement decisions. It will be read in conjunction with relevant guidance on enforcement action which may be produced and regard will be given to any relevant quality procedure.

In cases of emergency or where exceptional conditions prevail, managers may suspend all or part of this policy where necessary to achieve effective running of the service and/or where there is a risk of injury or to health of employees or members of the public.

## **6.0 Review**

This document will be subject to an annual review with additional reviews introduced to accommodate changes in legislation and local needs.

**APPENDIX 7  
MAP OF ROTHERHAM**