

Statutory Contaminated Land Inspection Strategy

Stratford-on-Avon District Council

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

Environmental Health
and Housing Department

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Contents

	Page
<u>Introduction</u>	
i.1 Background to the legislation	3
i.2 Explanation of terms	4
i.3 National objectives of the new regime	4
i.4 Local objectives	6
i.5 About this strategy	7
i.6 Roles and responsibilities	7
i.7 Outline of the statutory procedure	8
i.8 Situations where this regime does not apply	10
i.9 Land under the ownership of the enforcing authority	11
i.10 The need for team working	12
i.11 Financial and manpower implications	12
<u>The Strategy</u>	
Part 1 – Description of the area and how its particular characteristics impact on the inspection strategy	13
Part 2 – Identification of potentially contaminated sites and their prioritisation according to risk	19
Part 3 – Obtaining further information on pollutant linkages and the risk assessment process	22
Part 4 – The written record of determination and formal notification	25
Part 5 – Liability and enforcement	26
Part 6 – Data handling and access to information	29

Part 7 –	Quality control, performance indicators and arrangements for review	31
Part 8 –	Projected costs and timetable	33

Appendices

1	–	Special sites	34
2	–	List of consultees and contact points	35
3	–	Pollution of controlled waters	40
4	–	List of potentially contaminative uses	42
5	–	Powers of entry and the appointment of “suitable persons”	44
6	–	Examples of Preliminary and Stage 1 & 2 assessments	49

<u>Annex</u>	–	Glossary of terms	51
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<u>Index</u>		58
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INTRODUCTION

i.1 – BACKGROUND TO THE LEGISLATION

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

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

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

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

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

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

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

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

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

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

Subsequently, in July 1992, draft regulations were released with significantly

reduced categories of contaminative uses, “... to those where there is a very high probability that all land subject to those uses is contaminated unless it has been appropriately treated”. It was estimated that land covered by the registers would be only 10 to 15% of the area previously envisaged. This, however, still did not satisfy the City, so on the 24th of March 1993 the new Secretary of State announced that the proposals for contaminated land registers were to be withdrawn and a belt and braces review of land pollution responsibilities to be undertaken.

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

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

It was also made clear that the Government wished to:

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

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

i.2 – EXPLANATION OF TERMS

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

Annex to this strategy).

i.3 – NATIONAL OBJECTIVES OF THE NEW REGIME

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

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

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

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

The specific stated objectives of the new regime are:

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

better able to reflect the complexity and range of circumstances found on individual sites.

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

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

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

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

i.4 – LOCAL OBJECTIVES

The Stratford on Avon District Council welcomes the introduction of Part IIA of the Environmental Protection Act 1990 which complements the Council's own Corporate aims and objectives.

The Council's existing Corporate Strategy, entitled "Forward Together," was first published in 1997. The plan currently identifies three key themes:

- building local democracy;
- supporting the local economy;
- promoting environmental sustainability;

the second and third of which are particularly relevant to this strategy document through their aim to secure the promotion and defence of socially and economically sustainable communities by encouraging appropriate developments in the local economy under the "suitable for use" approach for land use.

The conservation of energy and resources, and the reduction of pollution, are aims also highlighted. Corporate objectives include ensuring that communities are environmentally and socially sustainable.

The Council's Supporting Local Economy Panel is currently considering mechanisms that may be used to encourage land affected by contamination to be brought into effective use, in support of the local economy. Land identified as worthy of investigation may be considered under the Panel's objectives notwithstanding its failing the statutory definition and so not requiring formal action by the Council.

Similarly the Stratford-on-Avon District Council Local Plan, 2000, embraces the concept of environmental sustainability. Cross-referencing with the Council's Local Agenda 21, the Plan seeks the re-use of derelict land for positive purposes taking into account the location and characteristics of the site. The Plan details its policies for protecting water resources and in particular not allowing development on contaminated land unless it can be demonstrated that watercourses will not be polluted. It also states the policies with regard to farmland, nature conservation and geology, ecological and geological site enhancement, and archaeological sites. The Plan considers the re-use of sites with a history of causing environmental conflict. The Authority will not be unsympathetic to proposals for redevelopment of such sites if they will result in demonstrable environmental improvement, and other policies of The Local Plan are satisfied.

The Warwickshire County Structure Plan Alterations 1989–2001 establishes a strong environmental emphasis and also encourages the redevelopment of derelict or vacant land.

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

i.5 – ABOUT THIS STRATEGY

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

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

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

Section 78B (2) states that the authorities must act in accordance with guidance issued by the Secretary of State in this respect. Statutory guidance has been published within Department of the Environment Transport & Regions Circular 02/2000, dated the 20th of March 2000. Specific technical guidance on the drafting of Inspection Strategies was circulated in draft form for consultation on the 7th of April 2000.

The statutory guidance makes clear that in order to carry out this duty Authorities must produce a formal contaminated land strategy document which clearly sets out how land which merits detailed individual inspection will be identified in an ordered, rational and efficient manner, and in what time scale.

The strategy must be completed, formally adopted by the Council, and published, within a period of fifteen months from the publication of the guidance (by July 2001). Copies of the final document must also be forwarded to the Environment Agency. Subsequently the strategy must be kept under periodic review.

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

It should be noted that there is no formal mechanism in place for approval of local authority strategies, though the Environment Agency, County Council, English Nature, English Heritage, MAFF, and any statutory regeneration bodies, should be

consulted (see Appendix 2 for details of consultees).

i.6 – ROLES AND RESPONSIBILITIES

The primary regulator in respect of these new powers are the **local authorities**. For Stratford on Avon District Council the strategy will be under the control of the Director of Environmental Health and Housing and the Planning and Regulation Committee. It should be noted that this is a complex and demanding enforcement role which will be carried out in accordance with the Council's enforcement policy and the Cabinet Office Enforcement Concordat March 1998.

The statutory guidance states: "The local authority has the sole responsibility for determining whether any land appears to be contaminated land."

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

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

The **Environment Agency** also has four main roles:

- To assist local authorities in identifying contaminated land (particularly where water pollution is involved). Information has been provided under the Memorandum of Understanding between the Agency and the Local Government Association, protocol for contaminated land.
- To provide site specific guidance to local authorities on contaminated land where requested
- To act as enforcing authority for contaminated land designated a 'special site'
- To publish periodic reports on contaminated land

Where the presence of contaminated land has been confirmed the enforcing

authority must:

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

i.7 – OUTLINE OF THE STATUTORY PROCEDURE

Contaminated land is defined as:

Any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that–

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

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

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

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

Where they are satisfied that significant harm is occurring, or there is a significant possibility of such harm, or pollution of controlled waters, they must declare that a significant pollutant linkage exists and that the land is therefore contaminated land by definition. In every case where the land does not fall within the category of a special site they must commence regulatory action.

This involves a series of complex procedures which must include:

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

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

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

- Urgent action is necessary (see Part 5 and Appendix 5)
- There is no appropriate person
- The authority is precluded from taking enforcement action (specified reasons)
- The authority agrees to carry out the works on behalf of an appropriate person
- A remediation notice has not been complied with

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

The enforcing authority must at all times consider the potential for hardship and

undertake cost benefit analysis in respect of all remedial actions. Where remedial actions are undertaken in default of a notice, the enforcing authority has the power to recover costs in certain circumstances.

i.8 – SITUATIONS WHERE THIS REGIME DOES NOT APPLY

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

- a) **Integrated Pollution Prevention and Control** (Environmental Protection Act 1990 Part I / Prescribed Processes and Substances Regulations 1991 Schedule 1 Part A) – under this legislation certain processes were prescribed for a pollution control regime known as Integrated Pollution Control (IPC). This is enforced by the Environment Agency and includes prevention of pollution to land. Section 27 of the Act gave the Environment Agency power to take action to remedy harm caused by a breach of IPC controls, including land contamination. The same circumstances apply now that the new Pollution Prevention & Control Act, 1999 / Pollution Prevention and Control (England and Wales) Regulations 2000 are in force.
- b) **Waste Management Licencing** (Environmental Protection Act 1990 Part II) – All waste disposal and processing sites (including scrap yards) should be subject to licencing. Contamination causing harm, or pollution of controlled waters, should be dealt with as a breach of the conditions of the licence. In exceptional circumstances, where the problem arises from an unlicensed activity, it is possible that Part IIA could apply. An example of this would be a leak from an oil tank outside the tipping area.

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

- c) **Pollution of Controlled Waters not arising from land** (Water Resources Act 1991 section 161) – Where a pollution incident has occurred and the pollutant is discharged directly into the body of water, or it has left land and it is entirely in the body of water (ie the land is no longer causing pollution), the Water Resources Act 1991 will apply.
- d) **Discharge Consents** (Water Resources Act 1991 Part III) – No remediation notice can require action to be taken which would affect a discharge authorised by consent.
- e) **Change of Land Use** – Where land becomes a risk to potential new receptors as a

result of a change of use, the Town & Country Planning Development Control regime will continue to apply as before.

- f) **Risk of Harm to Employees** – Where there is a risk of harm to persons at work from land contamination, this should be dealt with under the Health and Safety at Work etc Act 1974. The enforcing authority will be either the Health & Safety Executive or this Council depending on the work activity.
- g) **Risk of Harm Following an Incident at a COMAH Site** (Control of Major Accident Hazard Regulations 1999) – Where there has been a release, explosion or other major incident which has caused land contamination, the restoration should be carried out as part of the COMAH on site / off site emergency restoration plan.

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

- h) **Contaminated Food** (Food Standards Act 1999) – Part I of the Food and Environment Protection Act 1985 gave Ministers emergency powers to prevent the growing of food on, *inter alia*, contaminated land. Following the establishment of the Food Standards Agency this power is now vested in the Secretary of State. Where the Council suspects crops may be affected from contaminated land to such an extent they may be unfit to eat, they will consult the Food Standards Agency and Ministry of Agriculture Fisheries and Food to establish whether an emergency order may be necessary. It should be noted, however, that remediation of the site, if necessary, would be carried out through the new powers in Part IIA.
- i) **Radioactivity** – Part IIA does not apply to contamination caused by radioactivity, but the Secretary of State does have the power to make Regulations to that effect. Until such Regulations are created and brought into force, the Council will liaise with the Environment Agency where radioactive contamination is suspected or confirmed.
- j) **Organisms** – Part IIA does not apply to contamination caused by organisms such as bacteria, viruses or protozoa, as they do not fall within the definition of substances. This could affect land contaminated with Anthrax spores, E-coli, etc. The Council will liaise with the Environment Agency in relation to MOD land and the Ministry of Agriculture Fisheries and Food on all other sites. It should be noted that even though contaminated sites used in connection with biological weapons must be designated Special Sites (see Appendix 1), this applies only to

non biological contamination.

- k) **Statutory Nuisance** – (Environmental Protection Act 1990 Part III) – The relationship between Part IIA and statutory nuisance is not straightforward. Suffice to say if land is declared contaminated land by definition, it cannot be considered a statutory nuisance. This is understandable and ensures there is no duplication or confusion between the two regimes. If however the land is investigated and found not to be contaminated land but, “land in a contaminated state” (defined as land where there are substances in, on or under the land which are causing harm, or there is a possibility of harm being caused), it also cannot be considered a statutory nuisance for the purposes of Part III of the Act. Precisely in what circumstances might land be declared, “in a contaminated state”, remains to be seen. Where land is not *contaminated land* or in a *contaminated state*, but is causing a nuisance from smell, it could be considered a statutory nuisance as before.

i.9 LAND UNDER OWNERSHIP OF AN ENFORCING AUTHORITY

Where land owned by a local authority is found to be contaminated land, unless a “special site”, it retains its responsibilities as the enforcing authority. In such cases local authorities shall not serve a remediation notice. Local Councils must, however, carry out their duties as the enforcing authority, undertake the same consultations, assessments and seek appropriate remedial works as necessary.

To this end a formal relationship should be maintained between the Department responsible for enforcement of the new regime and that responsible for Council owned land. All information relating to the identification, assessment and remediation of Council owned land must be fully reported to satisfy the needs for transparency. See also i.10 below.

i.10 – THE NEED FOR TEAM WORKING

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

Planning (Policy and Development Control) – the inspection of the District will identify areas of potentially contaminated land which may be already developed, identified for future development, vacant or unused land with or without development potential, situated within designated areas such as Green Belt or AONB, or protected as Ancient Monuments, SSSIs etc. This may result in the need to re-examine past development control files or identify development routes for contaminated sites which may subsequently impact on the Local Development Plan.

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

Legal and Admin Services– this is a highly complex piece of legislation which could have significant implications for the Council, land owners and occupiers. The Solicitor’s advice may be required on many aspects including those relating to enforcement, liability, powers of entry, data protection, access to information etc.

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

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

Technical and Amenity Services – land and property in use and controlled by this department may be contaminated and require remediation. The responsible Officer will need to lead the Council on the remediation of any contaminated sites it is found to be responsible for. The Arboricultural Officer may need to be consulted on remediation and tree growth

Finance – this legislation can have significant resource implications for the Council,

both as an Enforcing Authority and as land owner (see also i.11 below).

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

i.11 – FINANCIAL AND MANPOWER IMPLICATIONS

The Explanatory and Financial Memorandum to the Environment Bill stated that the creation of the new contaminated land regime would have neither financial nor manpower implications. In the light of responses received to the draft guidance, however, the Government acceded that successful operation would necessitate considerable resources. Accordingly, as part of the Government spending review in July 1998 a sum of £50M was made available to local authorities over three years to develop inspection strategies, carry out site investigations and take forward enforcement action. In addition £45M is to be spent on remediation over the same period through the contaminated land Supplementary Credit Approval (SCA) programme.

Funding aspects of the strategy are considered in Part 8.

THE STRATEGY

PART 1

DESCRIPTION OF THE STRATFORD-ON-AVON DISTRICT COUNCIL AREA AND HOW ITS PARTICULAR CHARACTERISTICS IMPACT ON THE INSPECTION STRATEGY

INTRODUCTION

1.1 Stratford on Avon District Council is one of the largest district councils by area in the country. It covers over 97,000 hectares (378 sq. miles) – nearly half of the geographical area, and located in the south of the county of Warwickshire. Approximately 114,000 people live in the 113 parishes of the district with one fifth living in the largest town, Stratford-upon-Avon.

1.2 The area is predominantly rural with tourism the largest source of employment, though agriculture plays a major part in the local economy. Commercial activity is concentrated in Stratford-upon-Avon but there are significant business areas within the smaller towns and villages of Alcester, Bidford-on-Avon, Henley-in-Arden, Shipston-on-Stour, Southam, Studley and Wellesbourne. There is little history of heavy industrial uses of land in the area. Agriculture is by far the major land use though in recent years a number of industrial estates have become established. As a result, there has been a gradual transition which has seen isolated pockets of industry amalgamated on to the newer estates. With the area's central location offering good access to the region's road network, warehousing/distribution centres have also become established. Two large Ministry of Defence sites occupy significant areas of land. Industry profiles most typical of the area are garage workshop/filling stations, scrapyards, landfills, food processing, sewage treatment works and a variety of industry types. The availability of land for landfill purposes, typically after quarrying activities have ceased, has resulted in approximately 100 sites being informally listed following consultation with Town and Parish Councils in 1989. 13 of these are recorded as "open", a figure which is likely to be inaccurate as a number of these sites are now closed.

1.3 The District Council currently has 217 entries on its property, terrier, schedule. Most notably the schedule includes 3 of the larger closed landfills, 26 units on one industrial estate and all of another industrial estate in Stratford upon Avon. Throughout the district there are currently 40 statutorily designated nature

conservation sites, of which 37 are Sites of Special Scientific Interest, and 75 scheduled Ancient Monuments. Parts of the district are known to be of significant archaeological importance and any remedial actions will take this into account.

1.4 GEOLOGY – Solid and Drift Geology sheets indicate that the area of the district running from the north–east to the south–west is underlain by the Lias Group of Clays, predominantly the Lower Lias. There are areas of River Terrace Gravels and Boulder Clays overlying these clays. To the north and north–west of the district Mercia Mudstone, overlain by River Terrace Gravels and Boulder Clays, is the dominant geological formation. Pockets of Arden Sandstone and Limestones are also present. The rivers Alne Arrow, Avon, Dene, Itchen and Stour, and their tributaries, run through the district. Associated areas of alluvial deposits are prevalent around these watercourses. There are approximately 450 properties in the district served by private water supplies – via wells, springs and boreholes. The majority of these are located to the north–west and to the south–east of Stratford–upon–Avon. A number of site investigations across the district, as preliminary to development, have revealed elevated levels of naturally occurring Arsenic. Numerous sites have been subjected to clean–up works, prior to their development, as part of the Planning process in order to satisfy “suitable for use” criteria.

1.5 HYDROGEOLOGY – Information provided by the Environment Agency confirms that areas of the district are designated as minor aquifers. A number of groundwater sources are identified on the Source Protection Map for the area, each source having protection zones. Groundwater vulnerability maps, which identify areas where groundwater resources may be vulnerable from surface land use activities, will be used in conjunction with this data to prioritise site investigations.

STRATEGIC APPROACH TO THE IDENTIFICATION OF CONTAMINATED LAND IN THE STRATFORD ON AVON DISTRICT

1.6 In developing a strategic approach it is necessary to consider –

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

uses;

1.7 Land can only be considered contaminated if it impacts in a certain way on the following specified receptors:

a) Human beings

b) Eco systems: Areas of special scientific interest
Wildlife & Countryside Act 1981 section 28
National / local nature reserves
Wildlife & Countryside Act 1981 section 35 / National Parks & Access to the Countryside Act 1949 section 21
Marine nature reserves
Wildlife & Countryside Act 1981 section 36
Areas for the special protection of birds
Wildlife & Countryside Act 1981 section 3
Special areas of conservation & special protection areas
Conservation (Natural Habitats etc) Regulations 1994 regulation 10
Any candidate special areas of conservation or potential special protection areas
Any habitat or site afforded planning policy protection
Planning Policy Guidance Note 9 – Nature Conservation,

para 13

c) Property: Buildings (including below ground)
Ancient monuments
All crops including timber
Produce grown domestically or on allotments for human consumption
Livestock
Other owned or domesticated animals
Wild game subject to shooting or fishing rights

d) Water: Territorial sea water (to three miles)
Coastal waters
Inland fresh waters (rivers, streams, lakes, including the bottom / bed if dry)
Ground waters
Water Resources Act 1991 s104 (see also Appendix 3)

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

Relevant geology, hydrogeology and hydrology

The location of: sensitive water receptors
sensitive property receptors
relevant ecological receptors
all existing human receptors, and;

Potential sources of contamination

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

1.10 POTENTIAL SOURCES OF CONTAMINATION

- a) **INDUSTRIAL HISTORY** – A comprehensive list of potentially contaminative uses is reproduced at Appendix 4. The first step in the process of identifying potentially contaminated sites will be to closely examine historical data in the form of old Ordnance Survey plans and photographs from the early part of the last century to the present day. These will be obtained from this Council’s archives and the County records office. A lot of past industry will also still be within recent memory so local knowledge will be important at this stage. To aid this process all the Town and Parish Councils will be consulted.
- b) **CURRENT INDUSTRY** – The present industrial areas of the District are potential sources of contamination and these will be inspected in accordance with the statutory guidance to establish whether there is a potential for contamination to exist, and if there is, whether it is controlled by another agency.
- c) **ENVIRONMENTAL PROTECTION ACT 1990 Part I – ‘Part B’ processes** authorised for air pollution control by this Council. There are currently 40 processes authorised by the Council under Part I of the Act. These range from vehicle respraying to animal remains incineration. Some of these processes have the potential to pollute the land, but the authorisation process does not address that potential.

- d) ENVIRONMENTAL PROTECTION ACT 1990 Part I – ‘Part A’ processes authorised for integrated pollution control (IPC) by the Environment Agency. There is currently one process in the District authorised by the Environment Agency under Part I of the Act. The IPC regime should control unauthorised discharges to land but their presence will need to be noted and the potential for long term pollution assessed, particularly post closure.
- e) HAZARDOUS SUBSTANCES – this Council is a Hazardous Substances Authority for the purposes of the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 1992. This legislation requires consent to allow the presence on land of hazardous substances above a specified quantity. These regulations were recently amended by the Planning (Control of Major Accident Hazards) Regulations 1999 (SI 981) to take account of the new COMAH Regulations (see f below). There are currently 7 authorised sites in the District. A register is maintained for this purpose by the Director of Planning.
- f) COMAH sites – The Control of Major Accident Hazards Regulations 1999 (SI 743) are enforced by the Environment Agency and Health & Safety Executive (joint competent authority) to control both on and off site risks from industries with a high potential for disaster from dangerous substances (flammable, toxic or explosive). There are currently 2 sites within the District.
- g) It should be noted that all sites notified to the HSE under the Notification of Installations Handling Hazardous Substances Regulations 1982 (NIHHS sites) and COMAH sites, will be held on the Hazardous Substances Register, so there should be no need to consult with the HSE on their location.
- h) EXPLOSIVES – are not directly covered by the Hazardous Substances Regulations but are controlled by the Health & Safety Executive under licences issued under the Explosives Act 1875. Any licensed sites will be identified.
- i) CURRENT LANDFILL AND WASTE PROCESSING SITES – are licensed by the Environment Agency under the provisions of Part II of the Environmental Protection Act 1990. Details of all these sites have already been provided by the Agency for this purpose.
- j) CLOSED LANDFILL SITES – are a potentially significant source of risk, especially those which operated before the licensing requirements of the Control of Pollution Act 1974. All closed landfills in the District will be identified and their association with any specified receptors considered in detail.

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

- l) MINES AND MINERALS EXTRACTION – the geology of the area has resulted in areas being used for the extraction of minerals, particularly sand and gravel, many of the resulting quarries then being filled with refuse or other materials. These can present a particular risk to water resources. An attempt will be made to identify all past quarrying sites and assess the risks they present.

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

- n) MINISTRY OF DEFENCE LAND – there are a number of areas occupied by Defence Agencies. Their potential for contamination could be significant and they will, therefore, be investigated, in association with the Environment Agency as required, in accordance with the statutory guidance.

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

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

1.11 POTENTIAL SPECIFIED RECEPTORS

- a) HUMAN – The present population of the District is approximately 114,000 distributed amongst the main population centres of Alcester, Bidford-on-Avon, Henley-in-Arden, Kineton, Shipston-on-Stour, Southam, Stratford-upon-Avon, Studley and Wellesbourne. The remainder is distributed throughout the many villages and smaller settlements of the rural area. Human receptors may therefore be present to some degree at almost any location within the District. The potential for persons either living on or frequenting a potentially contaminated site will be considered in every case, but priority will be given to sites accessible to, or used by, infants.
- b) PROPERTY. BUILDINGS – All buildings and underground services (within the footprint of the building) are potential receptors and will be considered in every case where contamination and buildings exist.
- c) PROPERTY. ANCIENT MONUMENTS – as listed by English Heritage, will be specifically identified as part of the strategy and the potential impact of contaminants considered. A full list of scheduled Ancient Monuments is provided in Appendix 2 of the Stratford on Avon District Local Plan 2000.
- d) PROPERTY. AGRICULTURAL AND HORTICULTURAL CROPS – Being a largely rural area, crop growing regions will not be specifically identified but taken into consideration as necessary. Where contamination is known or suspected, associations with poor yield and crop failure will be investigated.
- e) PROPERTY. TIMBER CROPS – There are regions of the District growing timber. Crop failure as a result of contamination is, however, most unlikely except perhaps where trees have been planted on contaminated land as part of a remediation programme.

- f) PROPERTY. HOME GROWN PRODUCE – There are many allotments within the District and these will be identified and their potential for contamination considered as a result of previous uses or activities. Similarly, any domestic gardens likely to be contaminated will be identified and assessed.
- g) PROPERTY. AGRICULTURAL LIVESTOCK, GAME AND OTHER OWNED ANIMALS – Again, being a largely rural area, the presence of livestock in an area will not be specifically identified but taken into consideration as necessary.
- h) ECOLOGICAL RECEPTORS – All receptors listed in 1.5 (b) above will be identified as part of the inspection strategy. There are several specified sites including SSSI's and other areas of ecological importance. Significant impact of contamination is unlikely but all areas will be identified, examined and any risks carefully quantified with English Nature and the Environment Agency.
- i) WATER. AQUIFERS – As mentioned in 1.3 above, the area includes principal aquifers. All aquifers will be specifically identified with their location, depth and vulnerability according to cover. Potential risks from identified sources of contamination will be considered carefully with the Environment Agency.
- j) WATER. PUBLIC WATER SUPPLIES – All public water supply abstraction points will be identified with their location, depth, strata / surface water supply they draw from and volume of supply.
- k) WATER. PRIVATE WATER SUPPLIES – There are many private water supplies in the District which are often drawn from shallow sources. The protection of these is particularly important owing to the heavy reliance on them by local communities. This Council already monitors these as part of its duties under the Water Industry Act 1991 Part II and Private Water Supplies Regulations 1991.
- l) WATER, OTHER AUTHORISED ABSTRACTION POINTS – All authorised abstraction points will be identified, such as those used for agricultural or recreational use.
- m) WATER, OTHER SPECIFIED RECEPTORS – All other water receptors such as rivers, streams, tributaries, reservoirs, lakes etc will be identified as part of the inspection strategy.

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

In summary, for contaminated land to exist the following are pre-requisites:

- i) One or more contaminant substances
- ii) One or more specified receptors
- iii) At least one plausible pathway between contaminant and receptor
- iiii) (Then a pollutant linkage exists)
- iv) A good chance that the pollutant linkage will result in significant harm to one of the specified receptors, or, pollution of controlled waters.

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

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

Previous uses considered potentially contaminative are listed in Appendix 4.

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

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

2.9 CLR 6 describes four Priority Categories (PCs):

Priority Category 1 – Site likely not to be suitable for present use and environmental setting. Contaminants probably or certainly present and very likely to have an unacceptable impact on key targets. Urgent assessment action needed in the short term.

- Priority Category 2 – Site may not be suitable for present use and environmental setting. Contaminants probably or certainly present and likely to have an unacceptable impact on key targets. Assessment action needed in the medium term.
- Priority Category 3 – Site considered suitable for present use and environmental setting. Contaminants may be present but unlikely to have an unacceptable impact on key targets. Assessment action unlikely to be needed whilst the site remains in present use or otherwise remains undisturbed.
- Priority Category 4 environmental – Site considered suitable for present use and setting. Contaminants may be present but very unlikely to have an unacceptable impact on key targets. No assessment action needed while site remains in present use or undisturbed.

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

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

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

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

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

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

Relationship of CRP score to Priority Category:

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

2.13 As Priority Category 1 sites are likely not to be suitable for their present use, these will be investigated as soon as possible after they are identified.

COMPLAINTS FROM THE PUBLIC

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

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

CONCLUDING COMMENTS ON IDENTIFICATION AND PRIORITISATION

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

PART 3

OBTAINING FURTHER INFORMATION ON POLLUTANT LINKAGES AND THE RISK ASSESSMENT PROCESS

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

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

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

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

3.3 STEP 1

controlled waters has been confirmed, the Council will authorise urgent action in accordance with paragraph 5.13 of this strategy.

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

The Environment Agency
Ministry of Agriculture Fisheries and Food
The Health & Safety Executive
Developers
Previous occupiers
and others

Details of several sources of information are listed in Appendix 2.

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

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

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

a) are effective;

- b) do not cause any unnecessary damage or harm; and
- c) do not cause pollution of controlled waters.

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

3.9 POWERS OF ENTRY – Statutory powers of entry are conferred on the Council to enable it to carry out its functions under Part IIA. These are also considered in Appendix 5. The Council will not use these powers to obtain information about the condition of land where:

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

3.10 LAND WHICH MAY BE A SPECIAL SITE (see Appendix 1) – Where the Council are aware that land it intends to investigate would, if declared contaminated land, be a special site, it will notify the Environment Agency in writing, requesting any information it may have on the land and the likelihood of pollutant linkages. According to the wishes of the Environment Agency, it may be that a joint investigation will be undertaken.

Where the Environment Agency (or its agents) wish to carry out formal investigation on behalf of the Council, its officers will need to be appointed as “suitable persons”, in accordance with Appendix 5. The Environment Agency does not have the power under Part IIA to investigate land which may be contaminated land without the authorisation of the Council.

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

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

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

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

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

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

PART 4

THE WRITTEN RECORD OF DETERMINATION AND FORMAL NOTIFICATION

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

- a) a description of the pollutant linkage(s) confirmed, including conceptual model;
- b) a summary of the evidence which confirms the existence of the pollutant linkage(s);

- c) a summary of the risk assessment(s) upon which the pollutant linkage(s) were considered to be significant;
- d) a summary of the way the requirements of the statutory guidance were satisfied.

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

- a) the owner(s)
- b) the occupier(s)
- c) those liable for remediation ('appropriate persons' in the guidance)
- d) the Environment Agency

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

4.4 If the Council is of the opinion that the contaminated land is a "special site" (see Appendix 1) it will inform the Environment Agency of that opinion, also. The Agency will then consider whether it agrees that the land should be designated a "special site". If it does not agree, it will notify the Council and the Secretary of State within 21 days with a comprehensive statement explaining its reasons. The Council will then refer its decision to the Secretary of State.

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

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

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

d) details of all other parties notified

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

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

PART 5

LIABILITY & ENFORCEMENT

5.1 Land may be declared contaminated upon the identification of only one significant pollutant linkage. Full liability cannot therefore be determined until all significant pollutant linkages on the site have been identified (see also 3.6 above). When all significant pollutant linkages have been identified, the procedure relating to the apportionment of liability must commence. This has five distinct stages, as follows:

- ii) Identifying potential appropriate persons and liability groups
- iii) Characterising remediation actions
- iii) Attributing responsibility to liability groups
- iv) Excluding members of liability groups
- vi) Apportioning liability between members of a liability group

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

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

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

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

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

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

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

5.5 LIMITATION ON COSTS TO BE BORN BY APPROPRIATE PERSONS – There are six tests specified to identify Class 'A' groups who should be excluded from liability. These will be applied in sequence and separately for each pollutant linkage. The exclusion of Class 'B' persons is much simpler, the single test merely excluding those who do not have an interest in the capital value of the land. Tenants therefore are excluded.

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

THE ENFORCEMENT PROCESS

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

5.8 Remediation Notices are served only as a last resort (notwithstanding urgent cases), and then only after this lengthy consultation process has been exhausted. Notices will be authorised after two tests are satisfied:

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

5.9 If these are met the Council will serve a Remediation Notice on each appropriate person. The Notice cannot be served less than three months after formal notification that the land is contaminated, unless urgent action is deemed necessary (where there is imminent risk of serious harm).

5.10 SPECIFYING REMEDIATION – The Director of Environmental Health and Housing will specify what remediation measures are to be carried out in the Remediation Notice. These will be both appropriate and cost effective, employing what the statutory guidance terms ‘best practicable techniques’. The aim of the remediation will be to ensure that the land is no longer contaminated, taking the shortest and lowest cost route. This means that in most cases attention will be focussed on the pathway, rather than the contaminant or receptor.

5.11 The “reasonableness” of the requirements are, however, paramount, and the concept is considered at some length in the guidance. It is determined in relation to the cost of carrying out the remediation against the cost of failing to (ie the costs, or potential costs, resulting from the continuing pollution).

REMEDICATION BY THE LOCAL AUTHORITY

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

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

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

Exemptions apply where:

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

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

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

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

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

URGENT ACTION

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

forced entry into the premises (see also Appendix 5).

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

5.15 The Council will itself 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, before notifying the Environment Agency who will then be responsible for the remediation.

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

PART 6

DATA HANDLING AND ACCESS TO INFORMATION

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

THE ENVIRONMENTAL INFORMATION REGULATIONS 1992

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

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

above on complaints about information held.

6.4 Listed below are, broadly, the exemptions to the right of environmental information. In all circumstances where there is doubt, the Council's solicitor will be consulted.

Where held for judicial purposes.

Where disclosure would affect legal proceedings.

Where disclosure would affect international relations, national defence or public security.

Where disclosure would affect the confidentiality of deliberations by a relevant person, or the confidentiality of commercially sensitive matters.

Where it would involve the supply of a document or record which is still in the course of completion.

Where the information is not accessible.

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

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

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

6.8 Requests for information will therefore be dealt with promptly and no later than 5 working days after they are made. A reasonable charge will be made for the supply of information in accordance with the Regulations. Where

the Council must refuse a request for any of the reasons stated in the Regulations, it will provide details of the reasons in writing, at no cost to the applicant.

THE DATA PROTECTION ACT 1984

6.9 The Data Protection Act applies to all personal data, including written records, that is processed automatically, but not to data processed manually. The Act seeks to give some protection to persons (known as data subjects) in respect of three potential dangers:

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

6.10 Personal data is defined as data consisting of information which relates to a data subject who can be identified from the information, or from that and other information in the possession of the data user (the Council). Every individual member of the public can be considered a data subject – there is no age limit.

6.11 It should be noted that just about all information held on computers is considered as being ‘processed automatically’, for the purposes of the Act. Therefore, should the Council be unsure as to the legality of maintaining data on a computer, it will keep a paper record only.

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

CONTENTS OF FORMAL CONTAMINATED LAND REGISTERS

6.13 The only information required to be stored on a formal register is that relating to regulatory action and remediation. The contents are specified at length in Schedule 3 of the Contaminated Land (England) Regulations 2000.

This formal contaminated land register will be maintained at the offices of the Stratford on Avon District Council, Environmental Health and Housing Department, Elizabeth House, Church Street, Stratford-upon-Avon, Warwickshire, CV37 6HX. Members of the public will be able to view the register free of charge during normal office hours. Requests for copies of documents must be made to the Environmental Health and Housing Department and will be charged at £1.00 per page.

PART 7

QUALITY CONTROL, PERFORMANCE INDICATORS AND ARRANGEMENTS FOR REVIEW

7.1 The Government have stated –

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

7.2 No such performance indicators have been developed to date, but it is suggested they will include:

- a) Measures of the scale of regulatory activities; and
- b) Indicators of the overall progress in the task of identifying and remediating contaminated land.

7.3 It is the Government’s intention in due course to establish targets for overall progress.

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

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

7.5 As part of this Council’s ongoing commitment to improving quality of service, the following performance criteria have been agreed:

Responses to service requests will be within 24 hours in cases of high priority and within 5 working days in cases of standard priority.

REVIEW

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

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

7.7 In addition to the routine review of inspection findings (see 2.16, 3.8, 3.14, 3.15, 4.3 above) there will be situations which will trigger re-assessment, including:

- Change of use of surrounding land (introduction of new receptors)
- The potential for pollutant linkages to become significant or urgent as a result of unplanned events (eg flooding, subsidence, spillages etc), or a change in circumstances
- Identification of a localised effect which could be associated with the land
- Responding to new information
- The strategy as a whole will be reviewed by the Director of Environmental Health and Housing at least annually and any proposed changes will be reported to the Planning and Regulation Committee and incorporated as necessary. Particular matters that will be kept under review include:
 - The content of the strategy generally
 - Priorities for further investigation of potentially contaminated sites
 - The potential for the introduction of new receptors
 - The potential for new contamination
 - Progress on voluntary remediation

- The enforcement process generally and the identification of appropriate persons particularly
- Identification of special sites
- Progress with the implementation

PART 8

PROJECTED COSTS AND TIMETABLE

- 8.1 As outlined in i.11 above, the Government has identified that to implement this highly complex and demanding piece of legislation will involve local authorities in considerable expenditure. As a result some £95M has been made available over three years. £12M has been added to the figure for Total Standard Spending for local authorities in each of the three years, with the rest available through the contaminated land supplementary credit approval (SCA) programme.
- 8.2 No additional staff have been employed at this Council to implement the requirements of Part IIA. This strategy has been produced with the help of consultants, at a cost of £500.
- 8.3 The next stage is the inspection of the District, identification of potentially contaminated sites, and their prioritisation for further, more detailed, inspection. Provision is to be made for a sum of £10,000 to be included in the budget for this work in the financial year 2001– 2002.
- 8.4 Subsequently, potentially significant sums may be required to make more detailed investigation of sites, and possibly take enforcement action and carry out remediation action. It is very difficult at this stage to estimate what the full inspection of the District will reveal, and how much further work it will necessitate. It is therefore proposed to allow a further three years after the full inspection of the District to complete detailed investigations. Additional funding will be subject to the Council's service planning process. Rollover of budget will be subject to approval of slippage.
- 8.5 Should a significant investigation and/or remediation be identified, it is anticipated that an application for SCA would be made specifically relating to that site.
- 8.6 It should be noted that these arrangements relate specifically to the Council's enforcement role and not that as landowner. Should land in the

possession of the Council be identified as contaminated land, funding of remediation will be considered on a case-by-case basis. In the event of significant costs being involved it is likely that an application will also be made via the contaminated land SCA scheme.

PROPOSED TIMETABLE FOR THE IMPLEMENTATION OF PART IIA

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

APPENDIX 1

SPECIAL SITES

1. Once a local authority has identified land as contaminated land by definition, it must also consider whether it falls into the category of a “special site”. These are sites where, more often than not, the Environment Agency have had, or still have, an enforcement role.
2. What exactly constitutes a special site is specified in the Contaminated Land (England) Regulations 2000. For a legal definition the Regulations must always be consulted. In simple terms, however, they include land:-
 - Polluting controlled waters (in certain circumstances – see Appendix 3);
 - On sites subject to Integrated Pollution Control (see Environmental

Protection Act 1990 Part I – Prescribed Processes and Substances Regulations 1991 Schedule 1 Part A);

- With waste sulphuric acid tar lagoons (on sites used for refining benzole, used lubricants or petroleum);
 - Used as an oil refinery;
 - Used to manufacture or process explosives;
 - Used to manufacture or dispose of atomic, chemical or biological weapons (non biological contamination only);
 - Used for other nuclear purposes;
 - Owned or occupied by a defence organisation for naval, military or air force purposes (not off base housing / NAFFI);
 - Held for the benefit of Greenwich Hospital.
3. Contaminated land beyond the boundary of these premises (but contaminated by them) also forms part of the special site.
4. Procedures in relation to the investigation and declaration of special sites is covered in 3.11, 4.4, 4.5 and 5.15 above.

APPENDIX 2

LIST OF CONSULTEES AND CONTACT POINTS

COUNCILS

1. Internal

Director of Planning

Chief Building Control Officer

Director of Legal & Administrative Services

Director of Technical & Amenity Services

Director of Personnel & Technology

Data Protection Administrator

Director of Finance

2. Warwickshire County Council

3. Town Councils

4. Parish Councils and Parish Meetings

5. Neighbouring Local Authorities – with particular regard to cross boundary contamination.

ENGLISH HERITAGE

Details of all Ancient Monuments in the District are available from the Director of Planning

Local contact: 112 Colmore Row Birmingham B3

National contact:

Mike Corfield
Chief Scientist
23 Saville Row
London
W1X 1AB

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

ENGLISH NATURE

Local contact:

Special advisory teams:

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

Tel: 01823 283211
Fax: 01823 272978

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

PE1 1UA

Tel: 01733 455000

Fax: 01733 568834

ENVIRONMENT AGENCY

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

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

Area contaminated land officer:

Michael Hughes
Environment Agency
Riversmeet House
Newtown Industrial Estate
Northway Lane
Tewkesbury
Glos, GL20 8JG
Tel: 01684 864447
Fax: 01684 276033

National Part IIA process manager:

Environment Agency South West
Manley House

Kestrel Way
Exeter
EX2 7LQ
Tel: 01392 444 000
Fax: 01392 444 238

National Head Quarters

Land Quality
Rio House Waterside Drive
Aztec West
Bristol
BS32 4UD
Tel: 01454 624 400
Fax: 01454 624 032

National Centre for Groundwater and Contaminated Land

Olton Court
10 Warwick Road
Solihull
B92 7HX
Tel: 0121 711 2324
Fax: 0121 711 5925

National Centre for Eco-toxicology and Hazardous Substances

Evenload House
Howberry Park
Wallingford
OX10 8BD
Tel: 01491 828 544
Fax: 01491 828 427

National Centre for Risk Analysis and Options Appraisal

Steel House
11 Tothill Street
London
SW1H 9NF
Help desk: 0207 664 6897
Fax: 0207 664 6911

FOOD STANDARDS AGENCY

Patrick Miller
Contaminants Division
Room 238
Ergon House
17 Smith Square
PO Box 31037
London
SW1P 3WG
Tel: 0207 238 5751
Fax: 0207 238 5331

HEALTH & SAFETY EXECUTIVE

5th Floor
Belgrave House
1 Greyfriars
Northampton
NN1 2BS
Tel: 01604 738300
Fax: 01604 738333

HER MAJESTY'S CUSTOMS AND EXCISE

Landfill tax helpline

Tel: 0845 912 8484

MINISTRY OF AGRICULTURE FISHERIES AND FOOD

Local contact:

Theresa M Phillips
Divisional Veterinary Manager
Government Buildings
Tigers Road
Wigston
Leicester
LE18 4UY
Tel: 0116 278 7451
Fax: 0116 277 0153

National policy advisor:

Roger Unwin
Farming & Rural Conservation Agency
Nobel House
17 Ómith Square
London
SW1P 3JR
Tel: 0207 238 6452
Fax: 0207

STATUTORY REGENERATION BODIES

Regional Development Agency (RDA)

English Partnerships Head Quarters

Mr Emyr Poole
National Environmental Policy Co-ordinator
16-18 Old Queen Street
London
SW1H 9HP
Tel: 0207 976 7070
Fax: 0207 976 7740

English Partnerships Senior Projects Manager

(Contaminated Land)
Mr John Navaratnam
Arpley House
110 Birchwood Boulevard
Birchwood
Warrington
WA3 7QH
Tel: 01925 651144
Fax: 01925 644657

The Countryside Agency Headquarters

John Dower House
Crescent Place
Cheltenham
Gloucester
GL50 3RA
Tel: 01242 521 381
Fax: 01242 584 270

APPENDIX 3

POLLUTION OF CONTROLLED WATERS

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

- Coastal waters including docks
- Relevant territorial waters (usually to three miles)
- Inland fresh waters (relevant rivers, watercourses, lakes, ponds, reservoirs – including bottom / channel / bed, even if dry)
- Groundwater
(section 104 of the Water Resources Act 1991)

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

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

3. There is no power in the Act to enable the Secretary of State to issue guidance on what degree of pollution may constitute pollution of controlled waters. This has been accepted as a potential area of conflict. When, however, considering cases where it is thought very small quantities of a contaminant are causing pollution, local authorities must consider what remediation it may be reasonable to require. This should act as a limiting factor thereby ensuring unrealistic demands are not made in relation to cases of very minor pollution.
4. Pollution of controlled waters will rarely be dealt with by the local authorities. Below is a summary of the issues relating to controlled waters.
5. Where pollution of groundwater has occurred and the source cannot be identified, or the polluting substances are contained entirely within the body of water (and not in or on the land), then Part IIA does not apply and the matter would be dealt with by the Environment Agency under section Part III of the Water Resources Act 1991 (see also paragraph i.8 (c) above).

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

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

The Surface Water (Dangerous Substances) (Classification) Regulations 1989

The Bathing Waters (Classification) Regulations 1991

The Surface Water (Dangerous Substances) (Classification) Regulations 1992

The Surface Water (River Eco System) (Classification) Regulations 1994

The Surface Water (Abstraction for Drinking Water) (Classification) Regulations 1996

The Surface Water (Fish life) (Classification) Regulations 1997

The Surface Water (Shellfish) (Classification) Regulations 1997

The Surface Water (Dangerous Substances) (Classification) Regulations 1997

The Surface Water (Dangerous Substances) (Classification) Regulations 1998

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

Organohalogen compounds and substances which may form such compounds in the aquatic environment;

Organophosphorus compounds;

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

*Specified aquifers are those contained in the following rocks:

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

9. This, in effect, leaves local authorities with the potential responsibility for the pollution of controlled waters where:
- a) Surface or coastal waters are affected but not breaching the Regulations in paragraph 7 above.
 - b) Groundwater (other than a principal aquifer specified as in 8 above) is contaminated and the water is not used for drinking.

APPENDIX 4

LIST OF POTENTIALLY CONTAMINATIVE LAND USES

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

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

Food processing	Plating works
Foundries	Power stations
Fuel manufacture	Print works
Fuel storage	Printed circuit board manufacture
Garages and depots	Radioactive materials processing
Gas mantle manufacture	Railway land
Gas works	Railway locomotive manufacture
Glass works	Refiners of nickel and antimony
Glue manufacture	Resin manufacture
Gum and resin manufacture	Rubber manufacture
Hatters	Scrap metal dealers
Hide and skin processors	Sealing compound manufacture
Ink manufacture	Sewage works
Iron founder	Sewage sludge disposal areas
Iron works	Sheet metal merchants and works
Knackers yards	Ship breakers
Lacquer manufacture	Ship builders
Laundries	Shooting grounds
Leather manufacture	Skein silk dyers
Metal coating	Small arms manufacture
Metal manufacture	Smokeless fuel manufacture
Metal sprayers and finishers	Soap manufacture
Mining	Solvent manufacture
Mirror manufacture	Solvent recovery
Motor vehicle manufacture	Steel manufacture
Oil fuel distributors and suppliers	Stove enamellers
Oil merchants	Synthetic fibre manufacture
Oil refineries	Tank cleaning
Oil storage	Tanneries
Paint and varnish manufacture	Tar and pitch distillers
Paper works	Textile manufacture
Pesticides manufacture	Thermometer makers
Petrol stations	Timber treatment
Photographic film works	Timber preservatives manufacture
Photographic processing	Tin plate works
Paper manufacture	Transport depots
Plastics works	Tyre manufacture and retreading

Vehicle manufacture
Vulcanite manufacture
Vulcanisers
Waste disposal
Waste recycling

Waste treatment
Zinc works

APPENDIX 5

POWERS OF ENTRY AND THE APPOINTMENT OF "SUITABLE PERSONS"

1. Section 108 of the Environment Act 1995 gives the local authority power to authorise, in writing, "suitable persons" to investigate potentially contaminated land. These powers are extensive and will be considered in detail together with the Council's Solicitor prior to any resisted entry being attempted. It should be noted that these powers are not available to the Environment Agency. The powers which a person may be authorised to exercise include:
 - To enter at any reasonable time (or in urgent cases, at any time, if need be by force) any premises / land to make such examination and investigations as necessary.
 - To take samples, photographs, carry out tests, install monitoring equipment etc.
2. At least seven days notice must be given to residential occupiers and to occupiers of land where heavy plant is to be used. Consent to enter must be obtained from the occupier, or failing that, a warrant obtained under Schedule 18 of the Act.
3. It should be noted that 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; or
 - A person offers to provide the information within a reasonable and specified time, and does so.

URGENT ACTION

4. Urgent action must be authorised where the Council is satisfied that there is

imminent danger of serious harm or serious pollution of controlled waters being caused as a result of contaminated land. In such circumstances the procedures identified in the statutory guidance will be followed, which may involve the forced entry into the premises.

5. The terms “imminent” and “serious” are unfortunately not defined but local authorities are advised to use the normal meaning of the words. There is, however, guidance on what may constitute “seriousness” when assessing the reasonableness of remediation.
6. The Council will itself 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, before notifying the Environment Agency who will then be responsible for the remediation.
7. In appropriate cases the Council will seek to recover costs of remediation works it has completed.
8. All intrusive investigations will be carried out in accordance with appropriate technical procedures to ensure that they:
 - a) are effective
 - b) do not cause any unnecessary damage or harm
 - c) do not cause pollution of controlled waters

COMPENSATION

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

“SUITABLE PERSONS”

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

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

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

Environmental health

Other environmental science disciplines (several)

Surveyors

Engineers

Geologists

Hydrologists

Soil scientists

Chemists

etc

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

PROCEDURE FOR THE APPOINTMENT OF “SUITABLE PERSONS” FOR THE PURPOSES OF PART IIA

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

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

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

Mike Yapp of the Environmental Health and Housing Department has been identified for this purpose.

16. Additional training will be required to provide an adequate foundation of knowledge upon which to carry out the role. This will be provided where and when appropriate and will be funded from the Council’s Training Budget.

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

18. A check list of information requirements is included at the end of this section.

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

The contractors are kept fully aware of their responsibilities at all times

Quality control requirements are met

Amendments are quickly agreed and documented

The timetable is strictly adhered to

The aim of the contract is achieved

CHECKLIST OF INFORMATION REQUIREMENTS

CLIENT'S INFORMATION REQUIREMENTS	REQUIREMENTS OF THE CONSULTANT
1. GENERAL	
1.1 Background on company capability	<p>How long has company been operating?</p> <p>What kind of work were they originally set up to do – is this an add on?</p> <p>Who traditionally are their clients?</p>
1.2 Numbers and qualifications of staff 1.3 CV and availability of key staff	<p>If a large company, what are the interests/sympathies of those in control. Do they consider local authorities as a serious market?</p> <p>How many staff are available for this type of work, will they need to subcontract?</p> <p>Who will actually be doing the job, what are their qualifications and experience? Practical experience is KEY.</p> <p>Do they really understand Part 11A?</p> <p>Knowledge of environmental law & local government systems an important requirement.</p>
1.4 Details of QA systems including: Allocation of responsibilities Project Management Technical Procedures Technical Review	<p>Where appropriate, need details of quality management systems indicating whether accredited by a third party.</p> <p>What technical procedures to be used.</p> <p>Which staff responsible, which will undertake technical review.</p> <p>How will quality of subcontractors be ensured.</p>

Training Assessment of external suppliers	
1.5 Management of Health and Safety	Identify H&S management procedures where appropriate. Do they understand the fundamental requirements of H&S legislation?
1.6 Track record on similar projects	Ever done similar work or is this a new departure?
1.7 Client references	Need several telephone numbers to enable rapid verification of statements made at interview.
1.8 Financial status	May not always be necessary but, on large contracts where considerable financial outlay required, need to demonstrate solvency. Bond may be required on large remediation contracts.
1.9 Details of insurance cover	Need to demonstrate insurance available, 3 rd party liability and professional indemnity. Identify limitations/ exclusions.
1.10 Membership of professional and trade associations	May be necessary to make checks. Corporate membership of professional organisations, meeting CPD requirements?
1.11 Compliance with codes of practice	Can they demonstrate knowledge of the appropriate guidance, codes of practice etc relevant to the job?
2. PROJECT SPECIFIC	
2.1 Technical proposal	The proposal must make it absolutely clear that work will be carried out to comply with the requirements of the specification, what the results will be, and when they will be achieved.
2.2 Project	A clear timetable must be available which states

management plan/ working plan	what stage will be reached by when and who will be responsible to deliver.
2.3 Details of sub contractors	Subcontractors will be necessary on large technical projects. Must state who they are, contact points and lines of responsibilities.
2.4 Details of technical procedures	Again, the working plan must clarify all procedures and lines of responsibility.
2.5 Reporting	Reporting procedures must be made absolutely clear. It is essential not to have masses of reports landing on the desk of the client officer which puts the responsibility back on him/her. The responsibility for doing what has been agreed to the agreed standard must lie with the contractor.
2.6 Programme & 2.7 Financial proposal	It may be that the Contractor will want to provide a guide price or include large contingency sums. The programme of work and the quotation must not be ambiguous. A lot depends on the quality of the original specification. Stage payments and timetables must be firm and with perhaps penalty clauses for failure to deliver on time.
2.8 Conditions of engagement	Contracts need not be long and wordy, should define responsibilities on both parties, liabilities etc succinctly.

APPENDIX 6

EXAMPLES OF PRELIMINARY, AND STAGE 1 & 2

RISK ASSESSMENTS

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

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

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

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

<i>Contaminant score</i>	–	10	(As a landfill site, contaminants are known to be present)
<i>Receptor score</i>	–	10	(As persons are living on the site, receptors are known to exist)
<i>Pathway score</i>	–	10	(As persons are living on the site, they are potentially able to access the contamination – a pathway exists)
TOTAL	–	<u>30 – PCI</u>	

This is a very simple example but it indicates why houses on a landfill site with

minimal

protection will always be PC1 as a *pollutant linkage* always exists.

EXAMPLE 2 – Closed landfill site with houses built on the perimeter

Contaminant score – 10 (As a landfill site, contaminants are known to be present)

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

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

TOTAL – 26 – PC1

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

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

Contaminant score – 10 (As a landfill site, contaminants are known to be present)

<i>Receptor score</i>	-	10	(The watercourses are controlled waters and therefore specified receptors within an area of influence of the site)
<i>Pathway score</i>	-	8	(It is very likely, possibly certain, that the contamination on this site will access the watercourses)
TOTAL	-	<u>28</u>	- PC1

EXAMPLE 4 – Old derelict gas works site, no structures, no access to the public, clay geology, no significant deep aquifer, but private water supply (PWS) nearby. Recent sample results satisfactory.

<i>Contaminant score</i>	-	10	(As a gas works site, contaminants are known to be present)
<i>Receptor score</i>	-	5	(Initial investigations seem to suggest the existence of sensitive receptors unlikely except the PWS)
<i>Pathway score</i>	-	3	(Adverse impact on receptor unlikely but could not be ruled out in the long term - seems satisfactory at the moment from recent sample results)
TOTAL	-	<u>18</u>	- PC3

EXAMPLE 5 – Old power station site, now derelict, no structures, children play on the site,

motorcyclists use it for scrambling. River adjacent and part of site a flood plain.

<i>Contaminant score</i>	-	8	(As a power station site, contaminants are very likely, including asbestos)
<i>Receptor score</i>	-	10	(Persons frequenting the site are receptors with direct access to any surface contamination. The river is controlled water and could be picking up contaminants from the site during periods of flood and heavy rain)
<i>Pathway score</i>	-	5	(Chronic adverse impact on receptors possible)
TOTAL	-	<u>23</u>	- PC2

ANNEX

Glossary of Terms

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

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

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

Chapter A.

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.

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

Caused or knowingly permitted: test for establishing responsibility for remediation, under

section 78F(2); see paragraphs 9.8 to 9.14 of Annex 2 in DETR Circular 02/2000 for a discussion of the interpretation of this term.

Changes to Substances: an exclusion test for Class A persons set out in Part 5 of

Chapter D. *Paragraphs D.62 to D.64.*

Charging notice: a notice placing a legal charge on land served under section 78P(3)(b) by

an enforcing authority to enable the authority to recover from the appropriate person any reasonable cost incurred by the authority in

carrying out remediation.

Class A liability group: a liability group consisting of one or more Class A persons.

Paragraph D.5(c).

Class A person: a person who is an appropriate person by virtue of section 78F(2) (that is,

because he has caused or knowingly permitted a pollutant to be in, on or under the land). *Paragraph D.5(a).*

Class B liability group: a liability group consisting of one or more Class B persons.

Paragraph D.5(c).

Class B person: a person who is an appropriate person by virtue of section 78F(4) or (5)

(that is, because he is the owner or occupier of the land in circumstances where no Class A person can be found with respect to a particular remediation action). *Paragraph D.5(b).*

Collective action: a remediation action which addresses together all of the significant

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

Common action: a remediation action which addresses together all of the significant

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

Contaminant: a substance which is in, on or under the land and which has the potential to

cause harm or to cause pollution of controlled waters. *Paragraph A12.*

Contaminated Land (England) Regulations 2000: regulations (S.I. 2000/227) made under Part IIA.

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

- (a) to recover from the appropriate person all the reasonable costs incurred by the authority in carrying out remediation, or
- (b) not to recover those costs or to recover only part of those costs.

Paragraph

E.8.

Current use: any use which is currently being made, or is likely to be made, of the

land and which is consistent with any existing planning permission (or is otherwise lawful under town and country planning legislation). This definition is subject to the following qualifications:

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

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

Enforcing authority: defined in section 78A(9) as:

- (a) in relation to a 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.

Escaped Substances: an exclusion test for Class A persons set out in Part 5 of Chapter D.

Paragraphs D.65 to D.67

Excluded Activities: an exclusion test for Class A persons set out in Part 5 of Chapter D.

Paragraphs D.47 to D.50

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

Paragraph D.5(d)

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

Hardship: a factor underlying any cost recovery decision made by an enforcing authority

under section 78P(2). See paragraphs 10.8 to 10.10 of Annex 2 in DETR Circular 02/2000 for a discussion of the interpretation of this term.

Harm: defined in section 78A(4) as:

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

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

Industrial, trade or business premises: defined in section 78M(6), for the purpose of

determining the penalty for failure to comply with a remediation notice, as

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

Inspection using statutory powers of entry: any detailed inspection of land carried out

through use of powers of entry given to an enforcing authority by section 108 of the Environment Act 1995. *Paragraph B.21.*

Introduction of Pathways or Receptors: an exclusion test for Class A persons set out in

Part 5 of Chapter D. *Paragraphs D.68 to D.72.*

Intrusive investigation: an investigation of land (for example by exploratory excavations)

which involves actions going beyond simple visual inspection of the land, limited sampling or assessment of documentary information. *Paragraph B.20(c).*

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

significant pollutant linkage. *Paragraph D.5(c).*

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”.

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

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

Payments Made for Remediation: an exclusion test for Class A persons set out in Part 5 of

Chapter D. *Paragraphs D.51 to D.56.*

Person acting in a relevant capacity: defined in section 78X(4), for the purposes of limiting

personal liability, as any of the following:

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

- (b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 if subsection (5) of that section were disregarded;
- (c) the official receiver acting as a receiver or manager;
- (d) a person acting as a special manager under section 177 or 370 of the Insolvency Act 1986;...
- (e) a person acting as a receiver or receiver and manager under or by virtue of any enactment, or by virtue of his appointment as such by an order of a court or by any other instrument.”

Pollutant: a contaminant which forms part of a pollutant linkage. *Paragraph A.17*

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

Paragraph A.17

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 risks arising from the presence of contaminants in soil; and
- (d) appropriate to the determination of whether any land is contaminated land for the purposes of Part IIA, in that the use of the information is consistent with providing a level of protection of risk in line with the qualitative criteria set out in Tables A and B of Chapter A. *Paragraph A.31.*

Relevant land or waters: the contaminated land in question, any controlled

waters affected

by that land and any land adjoining or adjacent to the contaminated land on which remediation might be required as a consequence of the contaminated land being such land. *Paragraph C.8(d)*

Remedial treatment action: a remediation action falling within the definition in section 78A

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

- (a) of preventing or minimising, or remedying or mitigating the effects of any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land, or
- (b) of restoring the land or waters to their former state. *Paragraph C.8(f)*

Remediation: defined in section 78A(7) as

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

- (i) the contaminated land in question;
- (ii) any controlled waters affected by that land; or
- (iii) any land adjoining or adjacent to that land;

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

- (i) of preventing or minimising, or remedying or mitigating the effects of any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or
- (ii) of restoring the land or waters to their former state; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Special site: defined by section 78A(3) as:

“any contaminated land –

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

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

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”.

Index

About the strategy	-	i.5
Ancient monuments		
As receptors	-	1.6
Identification of	-	1.10
Anthrax	-	i.8
Appropriate persons	-	i.7, 4.2, 4.7, 5.2, 5.5
Apportionment of costs	-	5.4
Aquifers	-	1.10, A3
Background to the legislation	-	i.1
Best practicable techniques	-	5.10
Building control	-	i.10, 3.8, A2
Characteristics of the area	-	Pt1
Client officer	-	A5
Compensation	-	A5
Complaints from the public	-	2.14, 2.15, 7.4
Conceptual model	-	3.13
Consultants (as suitable persons)	-	A5
Consultation		
On Ancient Monuments	-	1.10
On eco receptors	-	1.10
On remediation	-	4.6, 5.7
On risk assessment information	-	3.8
On special sites	-	3.11
On strategy	-	i.5, i.10, 1.10
On water receptors	-	see Environment Agency
Consultees	-	A2
Contaminant Receptor Pathway Assessment	-	2.10, A6

Contamination		
Sources of	-	1.9, A4
Contaminated land		
Assessment of	-	Pt 3, A6
Definition	-	i.7, 2.5
Determination of	-	3.12
(England) Regulations 2000	-	6.13, A1
Failure to determine	-	3.14
& Food	-	i.8
Harm in relation to	-	i.7
Identification of	-	1.5, Pt 2
Inspection of	-	3.9
Liability for	-	Pt 5
Notification of	-	Pt 4
Obtaining information on	-	Pt 3, 4.8
Outline of procedure	-	i.7
Record of	-	Pt 4
Research Report 6 (CLR6)	-	2.7
Significant harm	-	i.7
Uses in the past	-	A4
Controlled waters		
As a receptor	-	1.6,
As special site	-	A3
Definition	-	1.6, A3
Identification of	-	1.10
Pollution of	-	i.7, i.8, A3
Water supplies	-	1.10
Control of Major Accident Hazard Regs-		i.8, 1.9
Copyright		
Statement on	-	page 2
Corporate plan	-	i.4
Crops		
Food contamination	-	i.8
As receptors	-	1.6
Identification of	-	1.10
Costs	-	Pt 8
Countryside agency	-	A2
Data Protection	-	Pt 6

Department of the Environment		
Transport & Regions		
Circular 2/2000	-	i.2, i.5
Performance indicators	-	7.1
Description of the area	-	Pt 1
Development plans	-	i.4. i.10, 1.1
Discharge consents	-	i.8
Ecological systems		
As a receptor	-	1.6
Enforcement		
Concordat	-	i.6
Policy	-	i.6, 2.14
Process	-	Pt 5
English Heritage	-	1.10, A2
English Nature	-	1.10, A2
English partnerships	-	A2
Environment Agency		
Contacts	-	A2
Memorandum of Understanding	-	A2
Notification of	-	4.2
& pollution of controlled waters	-	A3
Role	-	i.6, i.7
Special sites	-	3.11, 4.4, 4.5, 5.15, A1
As 'suitable persons'	-	3.11, A5
Environmental Information (access to)-		Pt 6
Environmental Protection Act 1990		
Part I - LAPC (Part B)	-	1.9
Part I - IPC (Part A)	-	i.8, 1.9
Part II - Waste licensing	-	i.8
Section 143 registers	-	i.1
Explosives	-	1.9
Financial implications	-	i.11, Pt 8
Fly tipping	-	i.8, 2.14
Food Standards Agency	-	i.8, A2
'Framework for Contaminated Land'	-	i.1

Glossary	-	i.2
Government Policy	-	i.1, i.3
Hazardous substances	-	1.9
Health & Safety at Work etc Act 1974	-	i.8
Contact	-	A2
COMAH Regulations	-	1.9
NHISS Regulations	-	1.9
Highways	-	i.10
House Commons Environment Ctte	-	i.1
Humans		
As receptors	-	1.6
Identification of	-	1.10
Imminent danger / serious harm	-	see urgent action
Identification of contaminated land		
Strategic approach to	-	1.5
and prioritisation	-	Pt 2
Industry		
Current	-	1.9
History of	-	1.9
Integrated Pollution Prevent & Control	-	i.8
Land		
Derelict	-	1.9
in a contaminated state	-	i.8
MOD	-	1.9
owned by the local authority	-	i.9, i.10, 8.6
Landfill sites	-	1.9
tax	-	i.3
Livestock		
As a receptor	-	1.6
Identification of	-	1.10
Local authority		
Carrying out works	-	i.7
Departments of (team working)	-	i.10
owned contaminated land	-	i.9, i.10, 8.6
Role	-	i.6

Local consultation	-	A2, 1.9
Local Objectives	-	i.4
Memorandum of Understanding	-	A2
Mines and minerals	-	1.5
Ministry of Agriculture Fisheries & Food	-	i.8, A2
Ministry of Defence	-	1.9, A1
Monitoring contracts	-	A5
Multi stage assessment form	-	2.12, 3.13, A6
Objectives		
Local	-	i.4
National	-	i.3
Nuisance	-	i.8
Organisms	-	i.8
Outline of the Part IIA procedure	-	i.7
'Paying for our Past' (Consultation)	-	i.1
Performance indicators	-	7.1
Pets		
As a receptor	-	1.6
Identification of	-	1.10
Planning	-	see Town
Pollutant linkage	-	2.2, Part 3
Where can not confirm	-	3.14
Polluter pays principle	-	i.1, i.3
Pollution of controlled waters	-	see controlled waters
Potentially contaminative uses	-	A4
Power of entry	-	3.10, A5
Preliminary assessment of risk	-	2.7, A6

Property		
As a receptor	-	1.10
Identification of	-	1.10
Prioritisation of sites	-	Part 2
Quality control	-	Part 7
Radioactivity	-	i.8
Reasonableness	-	5.11, A3(3)
Receptors	-	i.7, 1.6
In pollutant linkage	-	Pts 2 & 3
Recovery of costs	-	5.16
Registers	-	6.13
Remediation	-	5.10, 5.11, A3(3)
Resource implications	-	i.11, Pt 8
Review	-	2.16, 3.8, 3.14, 3.15, 4.3, Pt 7
Risk assessment	-	Pt 3, A6
Roles and responsibilities	-	i.6, 5.10, Pt6, A5
Royal Commission	-	i.1
Selection criteria	-	A5
Sewage sludge	-	1.9
Situations where the regime does not apply	-	i.8
Special sites	-	i.7, 3.11, 4.4, 4.5, 5.15, A1, A3
Statutory guidance	-	i.5
Statutory nuisance	-	i.8
Statutory regeneration bodies	-	i.5, A2
Suitable for use approach	-	i.1
'Suitable persons'	-	3.11, A5

Supplementary credit approvals	-	i.11, 8.5, 8.6
Team working	-	i.10
Timetable	-	Pt 8
Town & Country Planning		
Change of use	-	i.8, 3.15
Department	-	i.10
Development plans	-	i.4, i.10
GDO 1988	-	i.1
Hazardous substances	-	1.9
Information from files	-	3.8
Urgent action	-	i.7, 3.7, 5.13, A5
Voluntary remediation	-	i.3, i.7, 4.6
Waste management	-	i.8, 1.9
Water		
Classification Regulations	-	A3
Industry Act 1991	-	1.10, A3
Resources Act 1991	-	i.8, 1.6, A3
& special sites	-	A3
Supplies	-	1.10, A3
Written record of contaminated land	-	Pt 4