



Contaminated Land Strategy

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i.1 - BACKGROUND TO THE LEGISLATION

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

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

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

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

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

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

"The Department of the Environment concern itself with all land which has been so contaminated as to be a potential hazard to health or the environment regardless of the use to which it is to be put, and; The Government bring forward legislation to lay on local authorities a duty to seek out and compile registers of contaminated land."

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

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

Subsequently in July 1992, draft regulations were released with significantly reduced categories of, contaminative uses, "... to those where there is a very high probability that all land subject to those

uses is contaminated unless it has been appropriately treated". It was estimated that land covered by the registers would be only 10 to 15% of the area previously envisaged. This, however, still did not satisfy the City, so on the 24th of March 1993 the new Secretary of State (Michael Howard) announced that the proposals for contaminated land registers were to be withdrawn and a belt and braces review of land pollution responsibilities to be undertaken.

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

- The Government was committed to the, "polluter pays principle", and, "suitable for use approach".
- Concern related to past pollution only, there being effective controls under the IPC regimes administered by local Authority Environmental Health Officers and the Environment Agency to control current and 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 administered by Local Authority Environmental Health Officers 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 and encourage its development.

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..

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 administered by Local Authority Environmental Health Officers and the Environment Agency.

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 Waveney District Council welcomes the introduction of Part IIA of the Environmental Protection Act 1990 which compliments the Council's own Corporate aims and objectives.

Waveney District Council currently identifies the following themes relevant to this strategy document;

- To improve the quality of the Urban and rural environment within Waveney by the use of statutory powers, financial incentives and positively promoting and encouraging a high quality built environment.
- To improve the quality of the environment within Waveney, working in partnership with relevant agencies to control sources of environmental stress in the community at large including the control of risks to health nuisances and other sources of environmental pollution.
- To contribute to the economic well being of the Council and its area by the best use of assets.
- Implementation of national policies to promote waste reduction, biodiversity, energy efficiency and other sustainable initiatives.

Waveney Local Plan

The Waveney Local Plan, the Broads Local Plan and the Suffolk Structure Plan together provide the statutory development plan for the District. The following extracts from the Waveney Local Plan have particular relevance for this Strategy:

- Ground Water Protection – "Development which poses an unacceptable risk to the quality of groundwater will not be permitted." (policy - ENV17)
- Hazardous Development - "In considering proposals concerning hazardous development, development in the vicinity of hazardous installations and the development of contaminated sites, account will be taken of the amount, type, location of hazardous substances present and the need for special precautions or restrictions to protect future users of the site and any affected land." (4.6 - E8) "Where advised that a risk to the surrounding population would be involved, controls over development or suitable precautions will be enforced." (4.61)
- Sustainable Development - "Local Plans have a responsibility to ensure that policies and proposals are drawn up in such a way as to ensure sustainable development... This is particularly the case where land is a finite resource. We need to use land efficiently and effectively for all our needs whilst at the same time protecting what we value most about our surroundings." (1.26)

It will be important to ensure that land allocations take into account for example the following:

- a) the use of underused/derelict land without destroying the character of urban areas and avoiding town cramming;
- b) development should be well related to public transport routes or main communication networks;
- c) development should be located so as to minimise car journeys;
- d) encouragement should be given to pedestrians and cyclists;
- e) avoiding important landscape and wildlife areas;
- f) avoiding the best and versatile agricultural land." (1.27)

The Plan is currently being reviewed to the year 2016. Current national, regional and County Structure Plan policies dictate that the revised Plan will place even greater emphasis on achieving sustainable development by focussing development on the main urban areas and the development of brownfield land. To this end an Urban Capacity Study is being undertaken to identify the potential brownfield capacity in the District. The consideration of potential sites to allocate in the Local Plan will take place in consultation with the Environment Agency and Waveney District Portfolio Manager (Environmental Services).

Broads Local Plan

Aquifer Protection - "Development will not be permitted which the Broads Authority considers would create an unacceptable risk to the quality of ground water.." (Policy INF 8)

Suffolk Structure Plan

The overall aim of the Structure Plan for Suffolk is to sustain and enhance the health, quality and integrity of the built and natural environment, and to ensure that development does not result in material damage to critical environmental resources.

To achieve this aim, the control and promotion of development will need to:

- a) protect and enhance natural assets, including the countryside, coast, wildlife, air and water, and the best features of the built environment.
- b) increase the attraction of the towns as places to live and work;
- c) reduce the necessity to travel, and favour journeys by public transport, cycling and walking in preference to use of private motor vehicles to meet travel needs, particularly in towns and for journeys to work;
- d) encourage renewal in built-up areas; and the use of derelict or spoiled land to meet development needs;
- e) reduce consumption of non-renewable raw materials, energy and land;
- f) promote renewable energy sources and reduce waste.

As far as Waveney is concerned most housing and employment growth to 2016 is directed towards brownfield land in the towns and in particular to Lowestoft.

With respect to housing, a national target of 60% has been set for the number of new dwellings to be built on brownfield land by 2008. A figure of 50% has been set at the Regional and Suffolk County level.

The Structure Plan proposes 335 additional dwellings in Waveney each year. It is intended that most of this development should be on brownfield land and that large sites of 10 or more dwellings, or greater than 0.4ha in size, should be identified in the revised Local Plan. A significant proportion of the additional dwellings are likely to be on small 'windfall' sites that come forward through the normal operation of the development control process.

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 now 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 has been circulated.

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 strategy is the commencement of that process and seeks to express as clearly as possible how each stage will be addressed.

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

i.6 - ROLES AND RESPONSIBILITIES

The primary regulators in respect of these new powers are the local authorities. In the Waveney District the strategy will be under the control of Portfolio Manager (Environmental Services). It should be noted that this is a complex and demanding enforcement role, which will be carried out in accordance with the Environmental Services enforcement policy.

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 duties of the Local Authority Environmental Health Officer under the statutory nuisance regime and Planning Officers under the Town & Country Planning Acts and development control Acts and Building Control Officers under the Building Regulations.

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 provide assistance, upon request of the local authority, to identifying contaminated land where water pollution is involved
- To act as enforcing authority for contaminated land designated as 'special sites' as defined by The Contaminated Land (England) Regulations 2006 de fine "Special Sites", which includes land associated with the following situations:
 - pollution of controlled waters as defined in the Regulations
 - chemical weapons manufacture

- o atomic weapon manufacture
- o biological weapon manufacture
- o radioactivity
- o contamination by waste acid tars
- o refining of petroleum
- o manufacture of explosives
- o nuclear sites
- o land owned by the Ministry of Defence
- o land on which prescribed processes designated for central control have been carried out

The local authority has the sole responsibility for determining whether any land appears to be contaminated land. Not the Environment Agency.

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 –

- i. Significant harm is being caused or there is a significant possibility of such harm being caused; or
- ii. 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".

Contamination arising from the interaction of two separate sources of contamination which "together" may cause "significant harm" or pollution of controlled waters may also be determined as "Contaminated Land" even though, in isolation they may not meet the criteria. (Section 78X(1)).

In addition to this, land outside a Local Authority's area which causes significant harm etc. within the area may be dealt with as if it were in the Authority's area. (section 78X(2)).

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 the very case where the land does not fall within the category of a special site, they must commence regulatory action.

This involves a series of complex procedures which must include:

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

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

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

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

In non-urgent cases where a remediation notice is necessary and all the required consultations have been completed, the notice must be served on the appropriate person(s) no sooner than three months after the contaminated land has been determined or declared a special site. The notice itself may require further investigation of the site and as a result more pollutant linkages may be identified.

Where that is the case the enforcing authority must go through the same processes again to identify appropriate persons and remedial actions.

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

i.8 - SITUATIONS WHERE THIS REGIME DOES NOT APPLY

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

a) Pollution Prevention and Control Permits (Environmental Protection Act 1990 Part I / Prescribed Processes and Substances Regulations 1991 Schedule 1 Part A) - There are certain processes prescribed under the above regulations, for a pollution control regime known as, Pollution Prevention and Control (PPC).

This is enforced by the Environment Agency and includes prevention of pollution to land. Section 27 of the Act gives the Environment Agency power to take action to remedy harm caused by a breach of PPC controls, including land contamination.

b) Waste Management Licensing (Environmental Protection Act 1990 Part II) - All waste disposal and processing sites are subject to regulation. Contamination causing harm, or pollution of controlled waters, should be dealt by conditions of 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 historical contamination that occurred prior to the issue of a Waste Management Licence.

Where there has been an illegal tipping of controlled waste (fly tipping) this should also be dealt with under the Control of Pollution (amendment) Act 1989 (as amended by the Anti -Social Behaviour Act 2003), the Environmental Protection Act 1990 , the Clean Neighbourhoods & Environment Act 2005 and the Environment Act 1995.

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 (i.e. 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 the Council's Environmental Health Officers, 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:

- i. Contaminated Food (Food Standards Act 1999) - Part I of the Food and Environment Protection Act 1985 gave Ministers emergency powers to prevent the growing of food on, inter alia, contaminated land. Following the establishment of the Food Standards Agency this power is now vested in the Secretary of State. Where the Council suspect crops may be affected from contaminated land to such an extent they may be unfit to eat, they will consult the Food Standards Agency and DEFRA to establish whether action is necessary under Food Safety legislation. It should be noted, however, that remediation of the site if necessary would be carried out through the powers in Part IIA.
- ii. Radioactivity - Part IIA applies to contamination caused by radioactivity by virtue of the Radioactive Contaminated Land (Enabling Powers)(England)Regulations 2005 and Radioactive Contaminated Land (Modification of Enactments)(England)Regulations 2006. The Council will liaise with the Environment Agency where radioactive contamination is suspected or confirmed.
- iii. 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 Department for Environment, Food and Rural Affairs 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 the non-biological part of any contamination.
- iv. 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 as "contaminated", 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" but is "in a contaminated state", (a distinctly different category defined by the Part IIA regime), it still 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, and subjected to enforcement action by the Council's Environmental Health Officers under Part III of the Act.

i.9 - LAND UNDER OWNERSHIP OF AN ENFORCING AUTHORITY

Where land owned by a local authority is found to be contaminated land, unless a special site, there will be no enforcing authority. Local Council's must, however, carry out their duties as though they were the enforcing authority, undertake the same consultations, assessments and seek appropriate remedial works as necessary. Indeed, DETR circular 02/2000 para.26 recommends that the Local

Authority retains its enforcement duties under these circumstances, which would require it to prepare a remediation statement.

To this end a strictly 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 on potentially all departments of the Council, in particular :

Environmental Health – identifying potential sources of historical contamination, pollutant linkages, performing risk assessments, determining "significance" of risk and priorities for action and implementing the enforcement process will rely heavily upon existing appropriately qualified and experienced staff.

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

Building Control - Building Control - have the duty to enforce protection measures for building works to avoid danger to health caused by substances found on or in the ground covered by a building.

Legal - this is a highly complex piece of legislation which could have significant implications for the Council, landowners 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.

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

Information Technology – significant amounts of data will need to be held as computer records in databases. Qualified, expert, central support will be required on the use of these systems to proper standards of corporate data management and data protection. Part 6 refers.

Amenities and Housing - land in use and controlled by these departments may be contaminated and require remediation. The relevant Portfolio Manager may need to be consulted on remediation and tree growth.

Property - the relevant Portfolio Manager will need to lead the Council on the remediation of any contaminated sites for which it is found to be responsible.

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

There is a clear need for close corporate team working.

i.11 - FINANCIAL AND HUMAN RESOURCE 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.

PART 1

DESCRIPTION OF THE WAVENEY DISTRICT COUNCIL AREA AND HOW ITS PARTICULAR CHARACTERISTICS IMPACT ON THE INSPECTION STRATEGY INTRODUCTION

1.1 General

Historically the economy of the District developed around the fishing industry and agriculture. The River Waveney played an important role in this early development. Wherries could sail the river as far as Beccles and Bungay carrying goods such as coal, timber and malt. Since their origins the market towns of Beccles, Bungay, Halesworth and Southwold have all diversified and developed into important service centres serving a large rural hinterland. All, with the exception of Bungay, have purpose built industrial estates.

Pockets of potentially contaminative industrial development have occurred over the last 150 years in the rural areas with, for example, the introduction of town gas. In the countryside however, agriculture remains the dominant land use.

The District occupies an area of land overlying the Norwich Crag and Chalk which are both classified as major aquifers. There are numerous watercourses, the main one being the river Waveney, with a large agricultural catchment draining via Be ydon Water and the river Yare, to the North Sea.

1.2.1 The Natural Environment

In general the countryside within Waveney is lowland, the majority of which is farmed. The north of the District is dominated by the River Waveney itself with most of the river valley designated as a Special Landscape Area and/or an Environmentally Sensitive Area. Much of this part of the District is adjacent to the Broads Authority area. The remainder of the rural area contains nationally and regionally recognised wildlife and landscape designations including the Suffolk Coast and Heaths Area of Outstanding Natural Beauty, Sites of Special Scientific Interest and a substantial number of County Wildlife Sites. The coastline south of Kessingland falls within the Suffolk Heritage Coast which is possibly the most vulnerable and sensitive part of Waveney's natural environment.

1.2.2 Heritage Coast

The Heritage Coast in Suffolk covers an area of coastline some 55 kilometres (34 miles) long and extends from Kessingland in the north to Felixstowe Ferry in the south. It lies fully within the boundary of the Suffolk Coast and Heaths AONB. The designation as Heritage Coast by the Countryside Commission recognises the national importance of its high scenic quality and its largely unspoilt nature and the need for these assets to be safeguarded.

1.3 The Built Environment

The District contains a number of Conservation Areas and Listed Buildings together with a diversity of building types.

1.4 Employment Structure

In 1981 Waveney was the most industrialised district in Suffolk with a higher proportion of its workforce in manufacturing than in Great Britain as a whole. This declined during the 1980s as the expansion of service industries emerged, although the growth in this sector was not as marked as elsewhere. Lowestoft's industries have tended to be based on traditional manufacturing, oil and gas, shipbuilding, fishing and food processing operations, dominated by a number of larger firms.

1.4.1 Lowestoft

Lowestoft is the main administrative centre of the District. Fishing and the offshore oil and gas supply and support industries are major employers. The traditional ship building industry has experienced a marked decline, particularly during the recession of the early 1990s.

Lowestoft has a long-standing association with the food processing industry. Unilever is the town's largest employer. Sanyo Industries Ltd have also invested heavily in their Lowestoft factory, manufacturing televisions.

Four main industrial areas serve the town, at Whaplod Road (the Beach Industrial Area), along the shores of Lake Lothing, Oulton and South Lowestoft Industrial Estates.

Historically Lake Lothing provided a navigational link from the River Waveney to the North Sea. As Lowestoft developed as a port, fishing and marine engineering industries, requiring quayside space, developed on its shores and around the harbour, forming the traditional industrial heartland of the town and contributing to its character today. Lowestoft's reputation as a port was built around the fishing industry and the handling of agricultural produce, supplemented more recently by oil and gas operations. Today Lake Lothing is flanked by a variety of major employers such as Associated British Ports (ABP), Aros, Jeld-Wen (formerly Boulton and Paul), Sanyo, SLP, the majority of whom have carried out major investment programmes to their sites and premises in recent years.

Lowestoft's economy grew following the creation of the port and the fish docks and as a seaside tourist resort. In the heyday of the herring fishing industry, before the start of the first world war, over 2,000 trawlers and drifters operated out of Lowestoft and Great Yarmouth.

1.4.2 Beccles

Fibrenyle, M & H Plastics and firms on the Common Lane North Industrial Estate provide the backbone of employment in Beccles.

Approximately 22 ha (56 acres) of serviced industrial land exists on the Ellough Business Park. The Beccles Area Local Plan allocated a small industrial site opposite M & H Plastics, at the junction of London Road with Cromwell Road. Historical areas of industrial development were located close to the railway station.

1.4.3 Bungay

Clay's printers have a long-standing association with Bungay and, is by far the largest employer in the town. Apart from light industrial units on the former cricket bat factory on Southend Road there are no purpose built units or serviced industrial land in the Bungay area.

1.4.4 Southwold and Reydon

The Adnams brewery is the biggest employer in the area. Eight light industrial units are located on land to the north of Cox's Lane. Adjacent to this site, are the premises of Fountain Manufacturing Ltd.

1.4.5 Halesworth

Bernard Matthews plc have developed what has become an extensive food processing plant on the site of the former Holton Airfield, and they are now the largest employers in the area.

STRATEGIC APPROACH TO THE IDENTIFICATION OF CONTAMINATED LAND IN THE WAVENEY DISTRICT

1.5 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;
- Land can only be considered contaminated if it impacts in a certain way on specified receptors, these are:
 - Human beings
 - Eco systems: Areas of special scientific interest
 - i. Wildlife & Countryside Act 1981 section 28
 - ii. National / local nature reserves
 - iii. Wildlife & Countryside Act 1981 section 35 / National Parks & Access to the
 - iv. Countryside Act 1949 section 21
 - v. Marine nature reserves
 - vi. Wildlife & Countryside Act 1981 section 36
 - vii. Areas for the special protection of birds
 - viii. Wildlife & Countryside Act 1981 section 3
 - ix. Special areas of conservation & special protection areas
 - x. Conservation (Natural Habitats etc) Regulations 1994 regulation 10
 - xi. Any candidate special areas of conservation or potential special protection areas
 - xii. Any habitat or site afforded planning policy protection
 - xiii. Planning Policy Guidance Note 9 - Nature Conservation, para 13
- Property: Buildings (including below ground)
 - i. Ancient monuments
 - ii. All crops including timber
 - iii. Produce grown domestically or on allotments for consumption
 - iv. Livestock
 - v. Other owned or domesticated animals
 - vi. Wild game subject to shooting or fishing rights
- Water: Territorial sea water (to three miles)
 - i. Coastal waters
 - ii. Inland fresh waters (rivers, streams, lakes, including the bottom / bed if dry)
 - iii. Ground waters
 - iv. Water Resources Act 1991 s104 (see also appendix 3)

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

Relevant geology, hydro geology and hydrology

The location of:

- sensitive water receptors
- sensitive property receptors
- relevant ecological receptors
- all existing human receptors,
- potential sources of contamination

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

1.8 POTENTIAL SOURCES OF CONTAMINATION

a) **INDUSTRIAL HISTORY** - A comprehensive list of potentially contaminative uses is given in appendix 4. The first step in the process of identifying potentially contaminated sites was undertaken in 2001. A researcher employed by the Council to examine historical data, in the form of old Ordnance Survey maps and other contemporaneous records of economic and industrial activity. These were obtained from this Council's archives, public library and the County records office. A lot of past industry within recent memory formed an important source of information for this purpose.

b) **CURRENT INDUSTRY** - The present industrial areas of the District are potential sources of contamination and these will be inspected in accordance with the statutory guidance to establish whether there is a potential of contamination to exist, and, if there is, whether it is controlled by another agency. Existing information on the Standard Industrial Classifications of commercial premises in the district, held on UNIFORM.

c) **ENVIRONMENTAL PROTECTION ACT 1990 Part I** - 'Permitted processes' authorised for air pollution control by this Council. Details of these are currently held manually and are due to be transferred to UNIFORM by the end of 2008. There are currently 34 processes authorised by the Council under Part I of the Act. These range from petrol filling stations to printworks.

d) **ENVIRONMENTAL PROTECTION ACT 1990 Part I** - IPP processes authorised for pollution prevention control (PPC) by the Environment Agency. There are currently 8 processes permitted by the Environment Agency under Part I of the Act. The PPC 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). A register of Authorised Sites is maintained for this purpose by the Planning Officer.

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 no sites within the District.

g) HAZARDOUS SUBSTANCES - 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. There are no licensed sites within the district.

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 have been identified and their association with any specified receptors has been considered in detail.

k) SEWAGE WORKS AND LAND USED FOR THE DISPOSAL OF SEWAGE SLUDGE - land dedicated 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 some areas used for the extraction of minerals, particularly aggregates and clay. Many of the resulting quarries then being filled with refuse or other materials (and in one particular case, toxic waste). These can present a particular risk to water resources. An attempt will be made to identify all past quarrying sites and assess the risk they present.

m) WASTE OR DERELICT LAND - often owned by the utilities, railways or local authorities is left seemingly abandoned because it has no particular use or is difficult to access. These areas can accumulate unwanted materials and can be used to dispose of wastes and effluents illegally. In addition, short lengths of post-Beeching disused railway cutting often provided convenient opportunities for uncontrolled waste tipping.

n) MINISTRY OF DEFENCE LAND - there are some areas either occupied or once occupied by Defence Agencies which need to be identified. Their potential for contamination could be significant therefore they will 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 has 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.

1.9 POTENTIAL SPECIFIED RECEPTORS

a) HUMAN - The present population of the District is distributed amongst the 5 main population centres of Lowestoft, Beccles, Halesworth, Bungay and Southwold. The remainder distributed throughout the many smaller settlements of the rural area. Human receptors may therefore be present to some degree at almost any location within the District. The potential for persons either living on or frequenting a potentially contaminated site will be considered in every case, but priority will be given to sites with infants.

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

c) PROPERTY (ANCIENT MONUMENTS) - as listed by English Heritage have been identified as part of the strategy and the potential impact of contaminants considered. A full list of scheduled Ancient Monuments is provided in Appendix 5 of the Statutory Local Plan.

d) PROPERTY (AGRICULTURAL AND HORTICULTURAL CROPS) - Being a largely rural area crop growing regions have not been 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) – Small scale timber growing operations exist in the District. All are situated in rural areas. Crop failure as a result of contamination is most unlikely except perhaps where trees have been planted on contaminated land as part of a remediation programme.

f) PROPERTY (HOME GROWN PRODUCE) - There are many acres of allotments within the District and these will continue to be considered in assessing likelihood of "Contamination".

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

h) ECOLOGICAL RECEPTORS - All receptors listed in 1.5 (b) above are identified as part of the inspection strategy. There are several specified sites including SSSIs and other areas of ecological importance.

i) WATER. - AQUIFERS – Almost the entire District is located over "major aquifers" with porous substrata. Potential risks from identified sources of contamination are considered carefully with the Environment Agency.

j) WATER. - PUBLIC WATER SUPPLIES - All public water supply abstraction points are identified and assessed in relation to their location, depth, strata / surface water supply they draw from and volume of supply.

k) WATER. - PRIVATE WATER SUPPLIES - There are approximately 75 private water supplies in the District which are often drawn from shallow sources. The protection of these is particularly important due to the heavy reliance paid on them by local communities. This Council already monitors these as part of its duties under the Water Industry Act 1991 Part II and Private Water Supplies Regulations 1991, and records are already held on EHS and due to be transferred to UNIFORM by the end of 2008.

l) WATER, OTHER AUTHORISED ABSTRACTION POINTS - All authorised abstraction points are identified and monitored by the Environment Agency who make their comments in relation to "Contamination" as described at i.6 above.

m) WATER, OTHER SPECIFIED RECEPTORS - All other water receptors such as rivers, streams, tributaries, reservoirs, lakes etc are identified and monitored by the Environment Agency who make their comments in relation to "Contamination" as described at i.6 above.

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

The method used is based on that described in DETR guidance (www.detr.gov.uk).

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 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 - Site considered suitable for present use and environmental setting. Contaminants may be present but very unlikely to have an unacceptable impact on key targets. No assessment action needed while site remains in present use or undisturbed.

This will be kept under review, as further information becomes available from various sources.

2.9 Data Capture, storage, sharing and organisation

2.9.1 To assist in the prioritisation procedure data about the sites of concern will be stored on "UNIFORM" – proprietary software for the management of records and inspections for contaminated land.

2.9.1 Contaminants

The risk presented to Buildings, Humans, Aquifers and Ecosystems by each individual contaminant is quantified, and scored and entered on the contaminants table. This is assessed according to the available guidance on toxicity (e.g. CLEA), physical characteristics (solid, liquid, gaseous, soluble, insoluble, flammable, explosive), and advice from the relevant agencies, (HSE, EA etc.).

2.9.2 Contaminated Land table

This was the most time consuming part of the exercise and entailed a District wide survey, gathering data from all available sources of past and present uses. Sources may include historical maps, old copies of Kelly's directory, local knowledge and local archives. Where at all possible, contemporary plans or maps of a site were scanned and held in EHS to indicate the boundaries, extent and layout of contaminating uses. These records are in the process of being transferred to "UNIFORM".

2.9.3 Desktop Study

UNIFORM provides facilities to manage the risks and program periodic inspections.

Manual Adjustments to the Automatically Derived Assessment

The data collected about a given site are considered by a suitably qualified person, who will check the potential risks identified against all the available information relating to a site. Completion of this exercise constitutes a desktop "inspection".

If there is not enough information available to do this to a sufficient degree of confidence, then site investigations proceed to establish the facts as outlined in Part 3, below.

2.10 Contaminant/Receptor Pathway Assessment

This preliminary process is known as a CRP (contaminant receptor pathway) assessment. Initial trawls may identify sites where either particular contaminants are likely or known to exist, or sensitive receptors are known to exist. No assessment is undertaken unless both are suspected or confirmed. Where there is doubt the situation is kept under review. The results will enable each site to be prioritised according to 2.9 above.

2.11 As Priority Category 1 sites are likely not to be suitable for their present use, should any be identified, these will be investigated as a matter of high priority.

COMPLAINTS FROM THE PUBLIC

2.12 Increasing numbers of complaints continue to be received about fly tipping, accumulations, and allegedly contaminated land. These are investigated in accordance with existing protocols to establish which enforcement process would be most appropriate. See also 1.8 above, where the new contaminated land regime does not apply.

2.13 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 existing procedures for the investigation of Environmental Health Complaints.

2.14 Sites identified by development control or building control as potentially contaminated sites whilst considering;

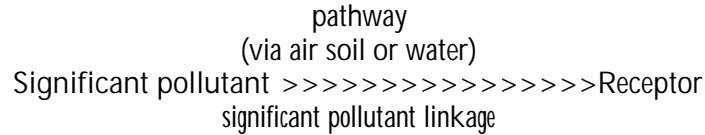
- applications for planning consent under the Town and Country Planning Acts
- acceptance of notices deposited by Approved Inspectors
- inspecting buildings under the Building Regulations
- land for allocation for housing or other uses in the Local Plan

will be referred to the Portfolio Manager (Environmental Services) for determination and appropriate action in accordance with this strategy.

CONCLUDING COMMENTS ON IDENTIFICATION AND PRIORITISATION

2.15 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 are 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.

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



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

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

3.6 In cases where imminent risk of serious harm or serious pollution of controlled waters has been confirmed, the Council will authorise urgent action in accordance with, and as defined by, paragraph 5.13 of this strategy, (and in conjunction with section 5 of the Statutory Guidance).

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

- The Environment Agency
- Department for Environment, Food and Rural Affairs
- The Health & Safety Executive
- Developers
- Previous occupiers
- Trading Standards
- Fire Service
- and others

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

Once sufficient information has been obtained which confirms a pollutant linkage does not exist, or, if it does, it is not significant, then the investigation ceases and no further action is 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 is 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:

- they are effective;
- do not cause any unnecessary damage or harm; and
- 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. There are no circumstances in which the Council will 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 their agents) wish to carry out formal investigation on behalf of the Council their officers will need to be appointed as, "suitable persons", in accordance with appendix 5. The Environment Agency do not have the power under Part IIA to investigate land which may be contaminated land without the authorisation of the Council.

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

- Significant harm is being caused
- There is a significant possibility of significant harm being caused
- Pollution of controlled waters is being caused
- 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 WHERE THE SIGNIFICANCE OF A POLLUTANT LINKAGE CAN NOT BE ADEQUATELY DETERMINED - Situations may arise where, on the information available, it is not possible to determine whether a pollutant linkage is significant in accordance with the statutory guidance. In such case the Council will determine that the land does not fall within the statutory definition of contaminated land, no remediation will be required and it will not be entered on the register. However, the situation will be kept under review and reopened at any time new information becomes available.

3.13 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 description of the pollutant linkage(s) confirmed, including conceptual model;
- a summary of the evidence which confirms the existence of the pollutant linkage(s);
- a summary of the risk assessment(s) upon which the pollutant linkage(s) were considered to be significant;
- 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: the owner(s), the occupier(s), those liable for remediation ('appropriate persons' in the guidance) and 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 are of the opinion that the contaminated land appears to be a special site (see appendix 1) it will consult the Environment Agency. The Agency will then consider whether it agrees that the land should form a special site. If it does not agree it will notify the Council and the Secretary of State within 21 days with a comprehensive statement explaining its reasons. The Council will then refer the decision to the Secretary of State.

4.5 If the Environment Agency agrees with 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 copy of the written record of determination, copies of site investigation reports (or details of their availability), an explanation of why the appropriate persons have been chosen as such and 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:

- Identifying potential appropriate persons and liability groups
- Characterising remediation actions
- Attributing responsibility to liability groups
- Excluding members of liability groups
- 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:

- The financial circumstances of those concerned have no relevance;
- The Council must consult persons affected to obtain information (on a reasonable basis having regard to the cost). If someone is seeking to establish an exclusion or influence an apportionment to their benefit then the burden of providing the Council supporting information lies with them.
- 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 less complex, the single test merely excludes those who do not have an interest in the capital value of the land. Tenants therefore are excluded.

5.6 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 (not withstanding urgent cases), and then only after this lengthy consultation process has been exhausted. Notices will be authorised after two tests are satisfied:

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

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

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

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

REMEDICATION BY THE LOCAL AUTHORITY

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

5.12a The Council will always encourage the use of the best available techniques to remediate contaminated land. Where resources permit, the Council will seek to lead by example when remediation is required for land in its ownership, by employing remediation measures to achieve a "state-of-the-art" sustainable solution, and not rely simply on the bare minimum to clean up the site.

5.12b 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 can not 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 and no class A person can be found.
- The land is contaminated land by reason of pollution of controlled waters from an abandoned mine.
- The person was acting in a "relevant capacity" (insolvency practitioner, official receiver etc.)

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

URGENT ACTION

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

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

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

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

PART 6

DATA HANDLING AND ACCESS TO INFORMATION

6.1 The Council is required by Statute to maintain this contaminated land strategy and formally publish it. 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).

Records relating to samples, notices and complaints will be stored using existing procedures, in UNIFORM, linked to gazetteer entries, linked to the corporate local land and property gazetteer.

Exchanging Data with Partners

The desirability of sharing information with internal partners is set out elsewhere in this strategy. This would ideally be achieved by sharing data on systems with compatible datasets and retrieval, viewing and reporting software, so that the single copy of up-to-date information can be retrieved and viewed dynamically by partners.

At present, the systems in use by internal partners are too dissimilar to readily permit free exchange in accordance with current good practice in database design, without substantial investment and redesign of existing systems.

For these reasons, ad-hoc methods of data exchange have been set up.

Future Enhancements

The existing dataset will be imported into the Contaminated Land module of the new "Uniform" computer system, due to be implemented by April 2008.

This will maintain links with a proprietary mapping product designed to be compliant with BS7666 (National Land and Property Gazetteer standards).

THE ENVIRONMENTAL INFORMATION REGULATIONS 1992 AND THE FREEDOM OF INFORMATION ACT 2000

6.2 Implementation of the strategy has generated data held on computer databases, as well as in paper form. There is a statutory obligation to disclose this information under certain circumstances (Freedom of Information Act). There are also obligations to disclose portions under the Environmental Information Regulations.

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

6.4 Below are broadly the exemptions to the right to disclosure 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 7 working days after they are made. A charge, (Appendix 6), 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.

DATA PROTECTION ACT 1998 and FREEDOM OF INFORMATION ACT 2000

6.9 The Data Protection Act applies to all personal data. 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 Freedom of Information Act provides certain legal rights to information held by the Council. This may extend to information about potentially contaminated land in some cases.

6.13 The implications of disclosing 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 any disclosure outside the strict obligation to publish a register of contaminated sites.

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 on the Council's website at www.waveney.gov.uk/environment . .

PART 7

ARRANGEMENTS FOR REVIEWING THIS STRATEGY

7.1 The strategy as a whole will be reviewed at least annually and any proposed changes will be reported to Members and incorporated as necessary.

PART 8

PROJECTED COSTS AND TIMETABLE

8.1 There is a rolling programme of inspections for the (currently) 350 sites identified across the district that have been identified as potentially contaminated.

8.2 The Council receives approximately 50 requests for advisory inspections per annum.

8.3. Approximately 200 planning applications per annum require scrutiny to determine whether conditions relating to the control of contamination need applying.

8.4 This work accounts for 0.8 of a FTE post

8.5 It should be noted that these arrangements relate specifically to the Council's enforcement role and not that as landowner. Should land in possession of the Council be identified as contaminated land then funding of remediation will be considered on a case by case basis. In the event of significant costs being involved it is likely that an application will also be made via the contaminated land SCA scheme.

APPENDICES

APPENDIX 1

SPECIAL SITES

1. Once a local authority has identified land as contaminated land by definition, it must also consider whether it falls into the category of a special site. Special sites are sites where, more often than not, the Environment Agency have had, or still have, an enforcement role.
2. What exactly constitutes a special site is specified in the Contaminated Land (England) Regulations 2000. For a legal definition the Regulations must always be consulted. In simple terms, however, they include land: -
 - Polluting controlled waters (in certain circumstances - see appendix 3);
 - On sites subject to Integrated Pollution Control (see Environmental Protection Act 1990 Part I - Prescribed Processes and Substances Regulations 1991 schedule 1 part A);
 - With waste sulphuric acid tar lagoons (on sites used for refining benzol e, used lubricants or petroleum);
 - Used as an oil refinery;
 - Used to manufacture or process explosives;
 - Used to manufacture or dispose of atomic, chemical or biological weapons (non biological contamination only);
 - Used for other nuclear purposes;
 - Owned or occupied by a defence organisation for naval, military or air force purposes (not off base housing / NAFFI);
3. Contaminated land beyond the boundary of these premises (but contaminated by them) also forms part of the special site.
4. Procedure in relation to the investigation and declaration of special sites is covered in 3.11, 4.4, 4.5 and 5.15 above.

APPENDIX 2

LIST OF CONSULTEES AND CONTACT POINTS

Planning

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

Building Control

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

Solicitor

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

Engineer

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

Information Technology

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

Data Protection

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

Housing & Property

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

Finance

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

Environmental Health

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

Economic Development

Town Hall, High Street, Lowestoft
Tel. (01502) 562111

ENGLISH HERITAGE

Details of all Ancient Monuments in the area can be obtained from the Planning Officer

Local Contact

Archaeological Services

Suffolk County Council, Shire House, Bury St. Edmunds IP33 2AR

National contact:

Chief Scientist

23 Saville Row, London W1X 1AB

Tel: 0207 973 3321

ENGLISH NATURE

Suffolk Team, Regent House, 110 Northgate Street, Bury St. Edmunds IP33 1HP

Special advisory teams:

Environmental Impacts Team (Taunton)

Roughmoor, Bishop's Hull, Taunton, Somerset, TA1 5AA

Tel: 01823 283211

Environmental Impacts & Marine Team (Peterborough)

Northminster House, Peterborough, Cambridgeshire, PE1 1UA

Tel: 01733 455000

ENVIRONMENT AGENCY

Contaminated Land Officer, Environment Agency, Cobham road, Ipswich IP3 9JE

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

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

National Part IIA process manager:

Environment Agency, Manley House, Kestrel Way, Exeter, EX2 7LQ

Tel: 01392 444 000

National Head Quarters

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

Tel: 01454 624 400

National Centre for Groundwater and Contaminated Land

Olton Court, 10 Warwick Road, Solihull, B92 7HX

Tel: 0121 711 2324

National Centre for Eco-toxicology and Hazardous Substances
Evenload House, Howberry Park, Wallingford, OX10 8BD
Tel: 01491 828 544

National Centre for Risk Analysis and Options Appraisal
Steel House, 11 Tothill Street, London, SW1H 9NF
Tel: 0207 664 6897

FOOD STANDARDS AGENCY

Contaminants Division, 7th Floor
Aviation House, 125 Kingsway, London, WC2B 6NH
Tel: 0207 238 5751

HEALTH & SAFETY EXECUTIVE

Kiln House, Pottergate, Norwich

HER MAJESTY'S CUSTOMS AND EXCISE OFFICE

Landfill tax is the responsibility of the Birmingham business centre:
2 Broadway, Broad Street, Five Ways, Birmingham, B15 1BG
Tel: 0845 9128484

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

National policy advisor:
The Sustainable Agriculture Branch
RMED
DEFRA
16 Palace Street, London SW1EE 5FF

Local enquiries:
The Rural Development Service – National Land Management Team
Southgate Street, Bury St Edmunds, Suffolk, IP33 2BD
Tel: 01953 606838

STATUTORY REGENERATION BODIES

East of England Development Agency (EEDA)
Compass House, Chivers Way, Histon, Cambridge, CB4 9ZR

English Partnerships Head Quarters
National Environmental Policy Co-ordinator
16-18 Old Queen Street, London, SW1H 9HP
Tel: 0207 976 7070

English Partnerships Senior Projects Manager
Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH

Tel: 01925 651144

The Countryside Agency Head Quarters
John Dower House
Crescent Place, Cheltenham, Gloucester, GL50 3RA
Tel: 01242 521 381

SUFFOLK COUNTY COUNCIL

Petroleum Licensing Officer
Trading Standards, Ropewalk, Ipswich. IP4 2JS
Tel: 01473 584368

APPENDIX 3

POLLUTION OF CONTROLLED WATERS

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

- Coastal waters including docks
- Relevant territorial waters (usually to three miles)
- Inland fresh waters (relevant rivers, watercourses, lakes, ponds, reservoirs - including bottom / channel / bed, even if dry)
- Ground Waters
(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. Pollution of Controlled Waters on land which is contaminated and not a Special Site remains a Local Authority enforcement issue. Below is a summary of the issues relating to controlled waters.

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

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

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

- * The Surface Water (Dangerous Substances) (Classification) Regulations 1989
- The Bathing Waters (Classification) Regulations 1991
- The Surface Water (Dangerous Substances) (Classification) Regulations 1992
- The Surface Water (River Eco System) (Classification) Regulations 1994
- The Surface Water (Abstraction for Drinking Water) (Classification) Regulations 1996
- The Surface Water (Fish life) (Classification) Regulations 1997
- The Surface Water (Shellfish) (Classification) Regulations 1997
- The Surface Water (Dangerous Substances) (Classification) Regulations 1997
- The Surface Water (Dangerous Substances) (Classification) Regulations 1998

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

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

*Specified aquifers are those contained in the following rocks:

- Pleistocene Norwich Crag;
- Upper Cretaceous Chalk;
- Lower Cretaceous Sandstones;
- Upper Jurassic Corallian;
- Middle Jurassic Limestones;
- Lower Jurassic 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. Reference should always be made to the latest guidance.

Abattoirs	Farms	Printed circuit board manufacture
Adhesives manufacture	Fertiliser manufacture	Radioactive materials processing
Agriculture	Fellmongers	Railway land
Aircraft manufacture	Fibre glass works	Railway locomotive manufacture
Airports	Food processing	Refiners of nickel and antimony
Animal burial	Foundries	Resin manufacture
Animal by-product processing	Fuel manufacture	Rubber manufacture
Anodisers	Fuel storage	Scrap metal dealers
Anti-corrosion treatment	Garages and depots	Shooting grounds
Asbestos products	Gas mantle manufacture	Sealing compound manufacture
Asphalt works	Gas works	Sewage works
Automotive engineering	Glass works	Sewage sludge disposal areas
Battery manufacture	Glue manufacture	Sheet metal merchants and works
Bearings manufacture	Gum and resin manufacture	Ship breakers
Blacksmiths	Hatters	Ship builders
Boiler makers	Hide and skin processors	Skein silk dyers
Bookbinding	Ink manufacture	Small arms manufacture
Brass and copper tube manufacture	Iron foundry	Smokeless fuel manufacture
Brass foundries	Iron works	Soap manufacture
Brewing	Knackers yards	Solvent manufacture
Car manufacture	Laquer manufacture	Solvent recovery
Carbon products manufacture	Laundries	Steel manufacture
Cement works	Leather manufacture	Stove enamellers
Chemical manufacture & storage	Metal coating	Synthetic fibre manufacture
Chrome plating	Metal manufacture	Tank cleaning
Ceramics manufacture	Metal sprayers and finishers	Tanneries
Coal carbonisation	Mining	Tar and pitch distillers
Coal merchant	Mirror manufacture	Textile manufacture
Concrete batching	Motor vehicle manufacture	Thermometer makers
Coppersmiths	Oil fuel distributors and suppliers	Timber treatment
Descaling contractors (chemical)	Oil merchants	Timber preservatives manufacture
Detergent manufacture	Oil refineries	Tin plate works
Distilleries	Oil storage	Transport depots
Dockyards	Paint and varnish manufacture	Tyre manufacture and retreading
Drum cleaning	Paper works	Vehicle manufacture
Dry cleaners	Pesticides manufacture	Vulcanite manufacture
Dye works	Petrol stations	Vulcanisers
Dyers and finishers	Photographic film works	Waste disposal
Electricity generation	Photographic processing	Waste recycling
Electrical engineers	Paper manufacture	Waste treatment
Electro platers	Plastics works	Zinc works
Engineering works	Plating works	
Explosives manufacture (including fireworks)	Power stations	
	Print works	

In addition to this list, reference will be made to the current issues of the "Industry Profiles" published by the Department of the Environment, and "Guidance for the Safe development of Housing on Land Affected by Contamination" published by the NHBC and the Environment Agency.

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. V24 –26/25 delegates this authority to the Corporate Directors, Environmental Health Officers and Environmental Health Technicians employed by the Council are already authorised under these provisions for other purposes under the terms of section 108 of the Environment Act. Their authorisations will be reviewed and amended as necessary. These powers are extensive and will be considered in detail with the Council's Solicitor prior to any resisted entry being attempted, and in any event will be exercised in accordance with the Council's enforcement policies and any legal requirements in force from time to time. It should be noted that these powers are not available to the Environment Agency. The powers which a person may be authorised to exercise include:

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

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

3. It should be noted that there are no circumstances in which the Council will 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. There is, however, guidance on what may constitute "seriousness" when assessing the reasonableness of remediation.

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

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

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

1. They are effective
2. They do not cause any unnecessary damage or harm
3. They do not cause pollution of controlled waters

COMPENSATION

9. Schedule 18 of the Environment Act 1995 makes clear the circumstances when a local authority must pay compensation for loss or damage as a result of the use of these powers. The appropriate officer 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 pathogen.

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 Officers
Other environmental science disciplines (several)
Engineers
Geologists
Hydrologists
Soil scientists

(This list is not exhaustive)

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

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

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

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

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

16. Additional training will be required to provide an adequate foundation of knowledge upon which to carry out the role. This will be reviewed annually and will be funded from the normal training budget.

17. The Client officer will produce a draft specification for each contract which clearly identifies the work to be carried out, its purpose, timetable and Client / Contractor responsibilities. Any contract will be let in accordance with the relevant financial Standing Orders.

18. 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 time table is strictly adhered to
- The aim of the contract is achieved

References

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