

Contaminated land: implementing Part 2A of the Environmental Protection Act 1990

Policy and framework document including the Inspection Strategy for Dudley borough

December 2014

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Introduction

1. Within this document the term 'land contamination' is used generally and refers to the wider context, whilst the term 'Contaminated Land' is used in the narrowest sense and refers to that land which satisfies the statutory definition in Part 2A of the Environmental Protection Act 1990.
2. Part 2A of the Environmental Protection Act 1990 (Part 2A) came into force on 1 April 2000 and established a legal regime for the identification and remediation of land where contamination is causing unacceptable risks.
3. Under Part 2A each local authority has a statutory duty to inspect its area for the purposes of identifying contaminated land and, where such land is identified, to secure its remediation.
4. Dudley Metropolitan Borough Council published its first Contaminated Land Inspection Strategy in 2001 explaining how it was going to inspect the borough. On 6 April 2012, the first of new Statutory Guidance was published which, amongst other things, required local authorities to update or replace their Contaminated Land Inspection Strategies in line with current guidance.
5. The Council has taken the opportunity to review how it implements Part 2A and consider the significant changes in guidance that have occurred since Part 2A first came into force.
6. In accordance with the new Statutory Guidance, this document sets out how the Council will implement Part 2A in practice. It:
 - Presents the Council's aims, objectives and priorities for inspection;
 - Describes the Council's strategic approach to inspecting the borough and identifying contaminated land;
 - Sets out the roles and responsibilities within the Council;
 - Details procedures, elaborates on key policy and provides a set of guiding principles; and
 - Includes a programme of actions against which progress can be measured.
7. Whilst this document has primarily been written in the context of the Council being the regulator and enforcing authority, it is important to recognise that Part 2A also has other significant implications for the Council (across all Directorates and Service Areas).
8. This document has been prepared by the Land Contamination Team within the Planning and Environmental Health Division of the Directorate of the Urban Environment and replaces the 2001 Contaminated Land Inspection Strategy. Following a formal consultation exercise and approval by Cabinet this document was adopted and published by the council on [INSERT DATE].
9. Enquiries about Part 2A of the Environmental Protection Act 1990 and the Inspection Strategy for Dudley Borough should be addressed to:

The Land Contamination Team
Dudley Metropolitan Borough Council
Directorate of the Urban Environment
4 Ednam Road
Dudley
West Midlands
DY1 1HL

Email: LandContaminationTeam@dudley.gov.uk

Background

10. Dudley is situated at the heart of the Black Country, an intensely industrialised area that was at the forefront of the industrial revolution. The strong industrial heritage of the Dudley borough was built upon its mineral wealth of coal, ironstone, limestone, fireclay and sand.
11. Due to human activities involving the use, manufacture, storage and disposal of substances, numerous sites have become contaminated. The type of contamination can vary widely from site to site and is specific to the previous use. Some of the more common substances encountered include arsenic, heavy metals (such as lead and mercury), oils and tars, solvents, acids and gases such as methane and carbon dioxide associated with the degradation of wastes.
12. Land contamination is not just restricted to industrial sites. Some substances, such as arsenic, methane and carbon dioxide can occur naturally due to the geology of the borough. Contamination can also be present as a result of accidents, spillages, aerial deposition or migration.
13. The nature of the borough's industrial past has also resulted in other ground conditions such as shallow coal workings, mineshafts and limestone caverns.
14. Besides direct health or environmental issues, land contamination can cause economic and financial difficulties. Uncertainties about whether land could be contaminated and who could be liable for the cost of remediation can cause problems when buying or selling property and may even blight developments. The cost of remediating sites can deter development, in turn adding pressure on greenfield sites and adversely affecting regeneration.
15. The Council is working to address the legacy of contamination associated with historic activities and also prevent the creation of new contamination. Land contamination is an important issue for the Council, both in terms of preventing damage to human health and the environment, and in encouraging development on brownfield sites.



Aerial photograph 1963.



Aerial photograph 2013

Aerial photographs indicating that large tracts of former industrial land within the Borough have, over time, been successfully developed for housing.

Section One

Overview of the Part 2A regime.

Part 2A of the Environmental Protection Act 1990 (Part 2A) provides a means of dealing with unacceptable risks posed by land contamination to human health and the environment assessed in the context of the current use and circumstances of the land.

The overarching objectives of the Government's policy on contaminated land and the Part 2A regime are:

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

The Part 2A regime is one of several ways in which land contamination can be addressed. Other legislative regimes may provide a means of dealing with land contamination issues, such as building regulations; the regimes for waste, water and environmental permitting; and the Environmental Damage (Prevention and Remediation) Regulations 2009. Primarily land contamination can also be addressed when land is developed (or redeveloped) through the planning system.

Enforcing authorities should seek to use Part 2A only where no appropriate alternative exists. In addition a precautionary approach should be taken whilst avoiding a disproportionate approach given the circumstances of each case. The aim should be to strike a reasonable balance between dealing with risks, the benefits of remediating land and the potential impacts of regulatory intervention.

The primary legislation contains the structure and main provisions of the regime. It consists of sections 78A to 78YC of the Environmental Protection Act 1990, which were inserted by section 57 of the Environment Act 1995. In addition to the requirements contained in the primary legislation, operation of the regime is subject to regulations and statutory guidance.

Statutory guidance provides the detailed framework for the definition, identification and remediation of Contaminated Land, as well as exclusion from, and apportionment of, liability for remediation and the recovery of costs of remediation and relief from hardship.

Regulations made under Part 2A deal with: the descriptions of land which are required to be designated as special sites; the contents of, and arrangements for serving, remediation notices; compensation to third parties for granting rights of entry etc to land; grounds and procedures of appeal against a remediation notice; and particulars to be included in the public register.

The primary legislation has been modified by regulations to cover radioactive contaminated land which is also covered by separate statutory guidance. Where land is affected by both non-radioactive and radioactive contaminants both sets of statutory guidance will apply.

For a detailed explanation of the Part 2A regime reference should be made to the legislation, regulations and statutory guidance; however the following diagram provides a simplistic overview of the process.

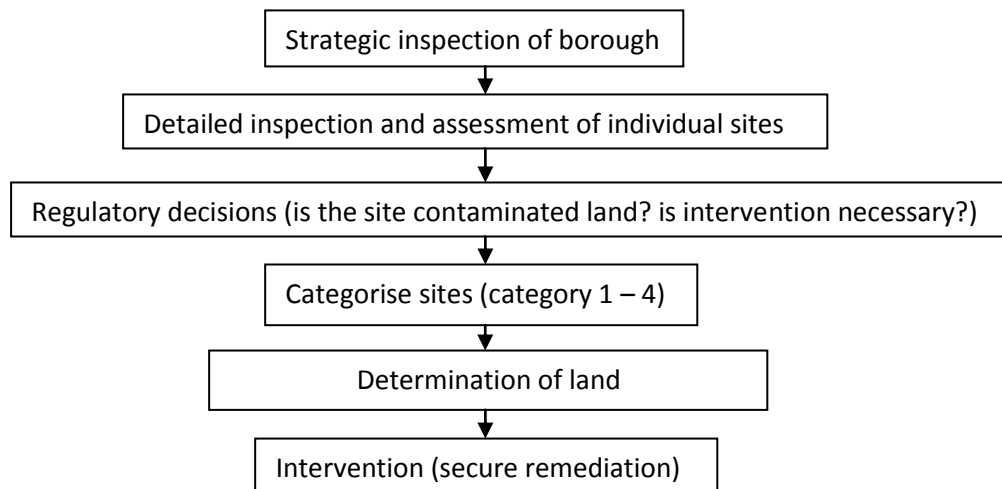


Figure 1. Simplistic overview of Part 2A process.

The definition of Contaminated Land

The term ‘Contaminated Land’ has a specific meaning in Part 2A and is defined on the basis of harm and the pollution of controlled waters. In applying the definition and determining whether land is Contaminated Land the Council is required to act in accordance with statutory guidance.

Contaminated Land is defined under Part 2A as:

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

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

Where harm is attributable to radioactivity, the definition of Contaminated Land has been modified as:

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

- (a) harm is being caused, or
- (b) there is a significant possibility of such harm being caused.”

These definitions reflect the intended role of the Part 2A regime, which is to enable the identification and remediation of land where contamination is causing unacceptable risks to human health or the wider environment; or lasting exposure to radiation where action is likely to be justified.

The definitions do not necessarily include all land where contamination is present.

Risk assessment and the concept of the 'contaminant linkage'

The definition of Contaminated Land is based upon the principles of risk assessment and relies heavily on the concept of the 'contaminant linkage', i.e. the presence of a contaminant which has the potential to impact on a receptor by means of a pathway (Figure 2).

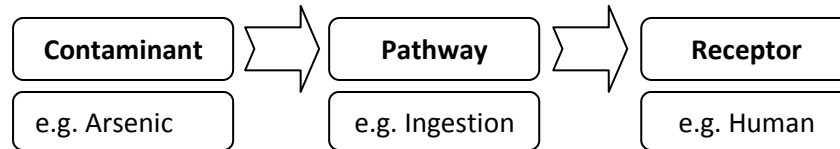


Figure 2. The concept of a contaminant linkage.

For the purposes of Part 2A:

- A contaminant is a substance which is in, on or under the land and which has the potential to cause harm or to cause pollution to controlled waters. Substance is defined as "any natural or artificial substance whether in solid or liquid form or in the form of gas or vapour".
- For non-radioactive contamination, the statutory guidance limits what can be considered as a receptor to the following: human beings; certain designated ecosystems or living organisms; property including crops, livestock, pets and buildings, and controlled waters.
- For radioactive contamination a receptor is limited to human beings only.
- A pathway is the route or means by, or through, which a receptor is being exposed to, or affected by, a contaminant (e.g. ingestion or skin contact).

All three elements of a contaminant linkage must exist before any particular land can be considered to be potentially Contaminated Land under Part 2A.

How will Contaminated Land be identified?

Under Part 2A, the Council is required to inspect the Dudley borough to identify Contaminated Land. The process consists of a number of stages as detailed in the Inspection Strategy (Section Three).

When determining whether any land appears to be contaminated the Council will act in accordance with the statutory guidance and the definition of Contaminated Land. The Council will take all relevant and available evidence into account and carry out an appropriate scientific and technical assessment of that evidence.

The Council is required to identify whether or not the three elements of a 'contaminant linkage' exist and if so, to then be satisfied that the contaminant linkage is resulting in significant harm (or harm in the case of radioactive contamination) or there is a significant possibility of such harm being caused, or significant pollution of controlled waters is being, or is likely to be caused.

What happens once land has been identified as Contaminated Land under Part 2A?

Local authorities are required to give notice of land identified as Contaminated Land (or designated as a special site) to the Environment Agency; the owner of the land; any person who appears to the

local authority to be in occupation of the whole or any part of the land; and each person who appears to the authority to be an appropriate person.

Where any land has been identified as Contaminated Land, the enforcing authority has a duty to secure remediation. There is at least a three month consultation period (bypassed in cases where urgent remediation is justified) following identification of Contaminated Land, or designation as a special site. During this period, the enforcing authority, site owner, occupier and other appropriate persons should reach decisions on the remediation mechanisms.

There are in general four possible outcomes of the consultations:

1. the appropriate person agrees to undertake remediation and issues a remediation statement, in consultation with the enforcing authority;
2. the enforcing authority serves a remediation notice on the appropriate person(s), where no indication is provided that appropriate remediation will be undertaken;
3. the enforcing authority uses its powers to undertake remediation itself and issues a remediation statement; or
4. it is unreasonable to require remediation and the enforcing authority issues a remediation declaration (if circumstances change after a remediation declaration has been issued, a remediation notice can be subsequently served).

What is remediation and what is likely to be required?

The term remediation has a wide meaning under Part 2A. It includes actions to assess the condition of Contaminated Land, remedial works to prevent, minimise, remedy or mitigate the effects of contamination, and subsequent inspections to review land.

The aim of remedial works is to remove or permanently disrupt the identified contaminant linkages. This could involve one or more of the following:

- removing, reducing or treating the contaminant;
- breaking, removing or disrupting the pathway; and
- protecting or removing the receptor.

The standard of remediation should reduce risks to an acceptable level and be sufficient to ensure that the land no longer poses sufficient risk to qualify as Contaminated Land. Where this isn't possible the aim should be to manage or remediate the land in such a way that risks are minimised as far as is reasonably practicable.

Enforcing authorities are required to have regard to the Statutory Guidance when deciding whether remediation is reasonable.

Who is responsible for the cost of remediation?

Responsibility for paying for remediation will, where feasible, follow the 'polluter pays' principle. Part 2A introduces the concepts of Class A and Class B appropriate persons. An appropriate person is any person who is to bear responsibility for anything which is to be done by way of remediation in any particular case. In the first instance, any people who caused or knowingly permitted a substance

to be in, on or under the land (Class A persons) are responsible. Where no Class A persons can be found, responsibility passes to the current owner or occupier of the land (Class B persons). Where neither Class A nor B persons can be found, the enforcing authority has powers to remediate the land. There are certain limitations regarding responsibility, such as when hardship might be caused.

Record of determinations and written statements

The Council is required to prepare a written record of any determination that land is Contaminated Land and which should be made publicly available. A determination may be reconsidered, revoked or varied should circumstances change and significantly alter the basis for the original decision.

Where there is little or no evidence to suggest land is Contaminated Land, on the basis of its assessment, the Council is satisfied that land does not meet the definition of Contaminated Land the Council is required to issue a written statement to this effect.

The Public Register

The Council is required to maintain a public register containing information relating to Part 2A. The contents of the register are prescribed by regulations and it is important to realise that the register is not a list of sites that are or might be contaminated. The register is intended to act as a full and permanent record of all the regulatory action taken by the enforcing authority in relation to the remediation of the land under Part 2A.

The information to be recorded in the public register includes:

- Remediation notices
- details of site reports relating to remediation notices obtained by the Council
- remediation declarations, remediation statements and notifications of claimed remediation
- designation of “special sites”
- appeals lodged against remediation and charging notices
- convictions

The public register is held at the offices of the Directorate of the Urban Environment, 4 Ednam Road, Dudley, West Midlands, DY1 1HL. A copy is also available to view on the council website: www.dudley.gov.uk/business/environmental-health/pollution-control/contaminated-land/part-2a-of-the-environmental-protection-act-1990/public-register/.

Section Two

Council approach and policy with respect to implementing Part 2A

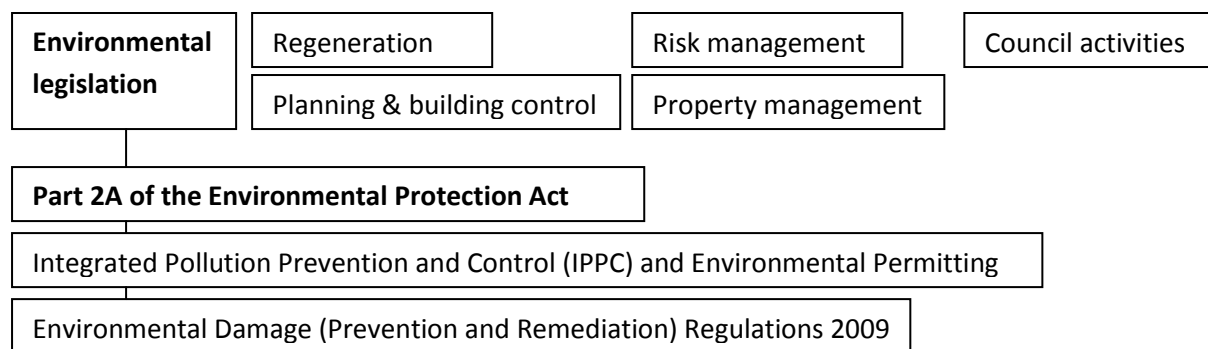
This section sets out the council’s approach and policy with respect to implementing Part 2A of the Environmental Protection Act 1990 (Part 2A).

The Council’s broad approach to managing land contamination

The management of land contamination may consist of a number of mechanisms including:

- Statutory duties and functions with respect to implementing environmental legislation.
- Regeneration initiatives.
- Implementation and enforcement of both the planning regime and Building Regulations.
- Reacting to incidents or complaints as they arise.
- Risk management and due diligence.
- Asset management, land acquisitions and disposals.
- Proactive action to deal with Council land.

Part 2A is not the only legislation that is relevant to the management of land contamination. The Council needs to use the correct regime for each case, observing the rules on where Part 2A applies and where its use is not appropriate.



The statutory duties and functions as regulator and enforcing authority under Part 2A are activities associated with implementing environmental legislation.

Figure 3. Schematic of Part 2A within the Council’s broad approach to managing land contamination.

Implementation of Part 2A

The general aims of the Council with respect to the implementation of Part 2A can be summarised as follows:

- To fulfil the Council’s regulatory and enforcement authority duties;
- To manage the Council’s liabilities for Contaminated Land; and

- To reduce the impact of contamination from Council owned land.

Risk Management

As part of corporate governance the Council is required to maintain a systematic strategy and framework for identifying, controlling and managing risks.

The Risk Management Strategy within the Council follows recognised principles encompassing the Risk Assurance Protocol process. In meeting its duties, responsibilities and liabilities under Part 2A the Council will be mindful of the risk management cycle (Figure 4.).



Figure 4. The risk management cycle.

Roles and responsibilities

Primarily the Council will be acting in the capacity of being the regulator and enforcing authority but could also be an ‘appropriate person’ in certain circumstances. As a responsible organisation and landowner the Council may also take action to address its potential liabilities under Part 2A.

The Council will keep the regulatory and enforcement function separate from other roles and responsibilities. A clear distinction will be maintained between the Council acting as the regulator and enforcing authority and the Council being an ‘appropriate person’ or land owner.

The remainder of this section focuses on the role of the Council as regulator and enforcing authority in identifying and securing the remediation of Contaminated Land under the provisions of Part 2A.

The roles and responsibilities of the Council as an ‘appropriate person’ and landowner are outlined in Section 4.

The Council as regulator and enforcing authority

The Building Control Service, within the Directorate of the Urban Environment, enforces the requirements of the Building Regulations. Section C1 of the Building Regulations requires that new development is not adversely affected by any contamination in or on the land associated with the building.

The Land Contamination Team, also part of the Building Control Service is responsible for undertaking the role of regulator and enforcing authority on behalf of the council.

Key responsibilities as regulator and enforcing authority include:

- Prepare an inspection strategy setting out how the Council intends to inspect its area for the purpose of identifying Contaminated Land or identify land for which there are reasonable grounds for inspection, for land contaminated by radioactive substances.
- Determine whether particular areas of land are Contaminated Land in accordance with the statutory guidance, and in consultation with the Environment Agency in relation to pollution of controlled waters or land contaminated by radioactive substances, and in consultation with Natural England for ecosystem effects.
- Decide whether any Contaminated Land is also required to be designated as a Special Site in consultation with the Environment Agency as appropriate.
- Identify and notify owners and occupiers of the land, those who may be liable and the Environment Agency that the land is Contaminated Land and whether it is a Special Site.
- Undertake urgent remediation action where there is imminent danger of serious harm.
- Determine who may be liable to bear responsibility for remediation of Contaminated Land.
- Ensure that appropriate remediation takes place, either by encouraging voluntary action or, unless restrictions apply, by serving a remediation notice on those responsible.
- Take further action if remediation is not carried out or is not effective.
- Maintain a public register containing details of regulatory action taken under Part 2A.
- Provide information on Contaminated Land under Part 2A to the Environment Agency to allow preparation of the State of Contaminated Land Report.

Policy

The primary aim of the Council's policy with respect to Part 2A is to protect human health and the wider environment from the risks posed by land contamination.

The policy of the Council with respect to implementing Part 2A mirrors the overarching objectives of Government policy on Contaminated Land which are:

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

Under this policy the Council will discharge its responsibilities as regulator and enforcing authority as follows:

- View Contaminated Land as a challenge and opportunity rather than a threat.
- Maintain a clear distinction between the council acting as the regulator and enforcing authority and the council being an 'appropriate person' or land owner.
- Ensure the implementation of Part 2A complies with statutory requirements, and reflects Government policy and current best practice.
- Take a strategic approach to carrying out its inspection duty which will be rational, ordered and efficient, and reflect local circumstances.
- Set out its approach in a written inspection strategy and keep it under periodic review.
- Deal with land contamination using the most appropriate regime given the particular circumstances of each case.
- Use Part 2A only where no appropriate alternative solution exists.
- Encourage voluntary actions and seek to resolve matters informally, with enforcement as a last resort.
- Promote and encourage sustainable methods and actions.
- Deal with matters in an open and transparent way.

- Deal with Contaminated Land in a timely manner.
- Undertake appropriate risk assessments that support robust decision making.
- Endeavour to strike a reasonable balance between dealing with risks, the benefits of remediating land and the potential impacts of regulatory intervention.
- Take a precautionary approach to the risks raised by contamination, whilst avoiding a disproportionate approach given the circumstances of each case.
- Consider the various benefits and costs of taking action, with a view to ensuring that the regime produces net benefits.
- Follow the 'polluter pays' principle whereby the costs of remedial actions are to be borne by the polluter.
- Aim to ensure that the overall outcome is as just, fair and equitable as possible.
- Seek to recover all costs to which it is entitled when exercising its powers of remediation under Part 2A.

The policy does not cover how the Council would deal with any liabilities or responsibility it may have as an 'appropriate person' under Part 2A or activities the Council may undertake under other regimes associated with the management of land contamination.

Influences on the Council's approach to inspection

In fulfilling its regulatory and enforcement authority duties the Council will be mindful of the Statutory Guidance and in particular the following guidance.

Paragraph 1.6 of the Statutory Guidance:

"Under Part 2A [the Council] may need to decide whether and how to act in situations where such decisions are not straightforward, and where there may be unavoidable uncertainty underlying some of the facts of each case. In doing so, [the Council] should use its judgement to strike a reasonable balance between: (a) dealing with risks raised by contaminants in land and the benefits of remediating land to remove or reduce those risks; and (b) the potential impacts of regulatory intervention including financial costs to whoever will pay for remediation (including the taxpayer where relevant), health and environmental impacts of taking action, property blight, and burdens on affected people. [The Council] should take a precautionary approach to the risks raised by contamination, whilst avoiding a disproportionate approach given the circumstances of each case. The aim should be to consider the various benefits and costs of taking action, with a view to ensuring that the regime produces net benefits, taking account of local circumstances."

In addition there are various factors and characteristics of the Dudley borough which will influence the Council's approach to inspecting the borough including:

- Statutory duty to inspect;
- Government policies;
- Interactions with other regimes, particularly Planning;
- Council policies and priorities;
- Available resources and funding;
- Strong industrial heritage of the borough;
- Appropriateness of past actions;
- Extent of potentially contaminated land; and
- Multiple potentially contaminative land uses and multiple receptors on sites.

Communication strategies

Effective communication with stakeholders is essential. The Council will develop site specific risk communication strategies and detailed communication plans when implementing Part 2A and carrying out intrusive investigations.

Funding and resources

The implementation of Part 2A requires a commitment of funding and resources in order to ensure the Council meets the terms of the legislation and makes reasonable progress in identifying and securing the remediation of Contaminated Land.

As regulator and enforcing authority the Council will be responsible for costs associated with the following:

- Inspecting the borough, intrusive investigations and risk assessments as required;
- Orphan sites and orphan linkages in the absence of 'appropriate persons';
- Carrying out works in default;

The Revenue Support Grant (RSG) provided by Government includes funding for the council to fulfill their statutory obligations under Part 2A.

When undertaking its duties as the regulator and enforcing authority under Part 2A, the Council will explore the funding options on a case-by-case basis.

Where the Council (as regulator and enforcing authority) carries out any remediation it will seek to recover all of its reasonable costs from the appropriate person(s). However, the Council is required not to cause undue hardship and take account of other specific considerations in the statutory guidance. The Council's Cost Recovery Policy is set out in a separate document.

Section Three

The Inspection Strategy

The Statutory Guidance refers to two broad types of “inspection” likely to be carried out: *strategic inspection*, for example collecting information to make a broad assessment of land and then identifying priority land for more detailed consideration; and *detailed inspection* of particular land to obtain information on ground conditions and carry out risk assessments which support decision making.

The aim of this Inspection Strategy is to set out in writing the Council’s strategic approach to carrying out its inspection duties under Part 2A. The Inspection Strategy will be subject to periodic review (at least every five years).

The objective of the Inspection Strategy is to meet the statutory obligation placed on the Council to produce a written strategy

This Inspection Strategy focuses on the methodologies for identifying and prioritising sites, undertaking detailed inspections and carrying out risk assessments. The procedures for determining whether or not a site actually meets the definition of Contaminated Land, and other elements of the Part 2A regime are not part of this strategy document.

Aims and priorities of the Council’s strategic approach

In carrying out its inspection duties the Council will take a strategic approach which aims to

- Be rational, ordered and efficient;
- Be proportionate to the seriousness of any actual or potential risk;
- Seek to ensure that the most pressing and serious problems are located first;
- Ensure that resources are concentrated on investigating in areas where the Council is most likely to identify Contaminated Land; and
- Efficiently identify requirements for the inspection of particular areas of land.

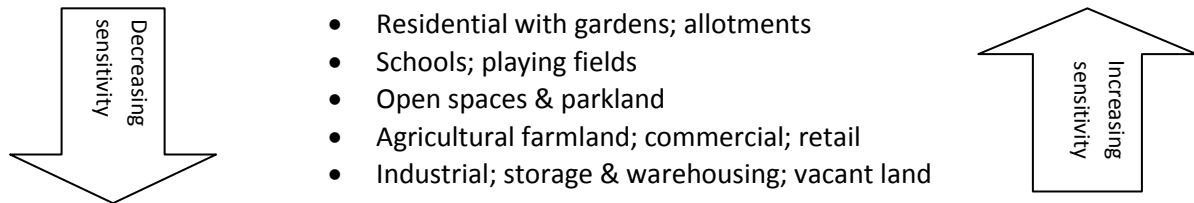
The Council will focus on sites where the risks associated with land contamination are unlikely to be addressed through other means, such as reclamation or development.

When carrying out its inspection duties the Council will adhere to current best practice and technical guidance. Furthermore, the requirements of the statutory guidance will be complied with.

The statutory guidance specifies the categories of receptors that are relevant under the Part 2A regime as:

- Human beings;
- Certain ecological systems;
- Property in the form of crops, grown produce, livestock, owned or domesticated animals, wild animals subject of shooting or fishing rights;
- Property in the form of buildings; and
- Controlled waters.

Initially, the Council will consider receptors in terms of current land use and will adopt a hierarchy based on recognized and published guidance.



The most sensitive land uses for the Council will be current residential dwellings with gardens and allotments, with existing industrial sites being at the other end of the scale.

There are four principal aspects to the implementation of the Inspection Strategy.

1. Initial identification and screening of land
2. Desk study and limited sampling
3. Intrusive investigations
4. Risk assessments

The purpose of the inspection process is to ensure that the Council has sufficient information to decide whether or not a particular area of land is Contaminated Land. As a site moves through each stage of the inspection process, the Council will consider whether sufficient evidence exists to classify the site in accordance with the Statutory Guidance, or if it would be prudent to continue and gather further evidence, or whether it is appropriate to suspend the inspection process on the basis that there are more pressing sites to inspect.

An important thread throughout the inspection process is the development and refinement of the conceptual site model. A conceptual site model shows the possible relationships between contaminants, pathways and receptors. As more information and understanding is obtained through the inspection process the conceptual site model is refined or revised.

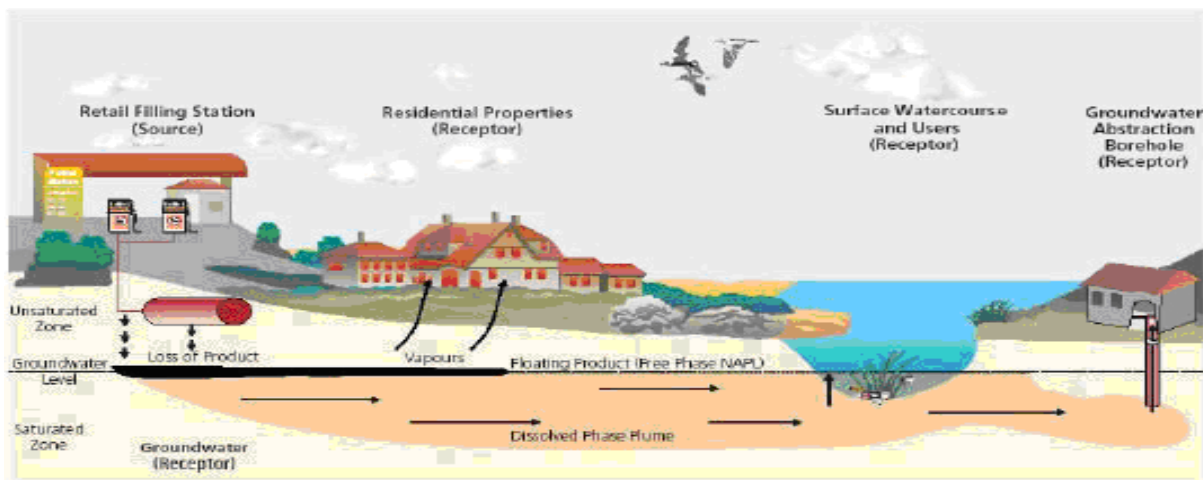


Figure 5. Example of a conceptual site model.

Table One outlines in general terms the strategic approach to inspection the council will follow.

Table One: Outline of the strategic approach to inspection		
Step	Process	Actions taken throughout approach
1. Identify site	Identification of potentially contaminative use(s) on site, which could be historic or current Preliminary evaluation of available information. Initial screening and ranking of site.	Constant gathering and review of information. Review and refine Conceptual Site Model. Consider and refine boundaries of individual sites under inspection.
2. Gather information	Desk study and site reconnaissance. Environmental setting, including geology and hydrogeology. Identify potential contaminants, receptors and possible pathways.	Search for appropriate persons and establish liability groups. Decide whether there is sufficient information to categorise sites and make a determination.
3. Conceptual site model & risk evaluation	Identify components of plausible contaminant linkage(s). Formulate conceptual site model. Consider radioactivity. Further evaluation & refine prioritization.	Liaison with appropriate persons, site owners and statutory consultees.
4. Site investigation	Design and implement intrusive investigation. Risk assessment.	React to complaints and cases reported by the public and others.
5. Determination	Consider grounds for the determination – whether or not significant harm is being caused or a ‘significant possibility of significant harm’ exists. Categorise sites 1-4. Verification and recording. Notification.	Risk communication and public relations.
<p>Notes:</p> <ul style="list-style-type: none"> • The intention is to outline in general terms the process the council will go through to identify contaminated land. It is not possible to cover every possible scenario or every particular step taken for each individual site. • As a rule, at the beginning of each new step a review of the information provided by previous steps should be undertaken and documented to ensure that there is a sufficient basis for continuing. Although each step is presented as a discrete entity, it is often the case that a review of information obtained indicates the need to go back to earlier steps in order to obtain more data or to make a reassessment. In this way, a picture of the contamination on a site is built up in a phased approach. • The primary focus will be on human health when screening sites but all potential receptors will be considered during the inspection stage to avoid repetition and duplication of effort. • The likelihood of radioactivity being present will also be considered in the overall context of looking at sites rather than concentrating on radioactivity separately. • Sites will be ranked and inspected in tranches. 		

Strategic inspection

Collated environmental data

Various datasets are held within the corporate geographical information system (GIS) which provide a readily available source of data in relation to potential sources of contamination, pathways and sensitive receptors.

Examples of information:

- Historical land use data supplied by Landmark Information Group
- Energy facility dataset also supplied by Landmark Information Group
- Former landfill site records
- Historic pits and quarries
- Historic Ordnance Survey mapping
- Aerial photography

- Current land use dataset
- Geology
- Hydrogeology and hydrology
- Protected buildings and ancient monuments
- Nature reserves, parks and open spaces, conservation areas

Identification and screening of sites

The basis for determining whether a site is Contaminated Land is to establish the presence of a significant contaminant linkage. As such, the starting point is to identify where 'contaminant linkages' are most likely to exist.

The initial stages of identifying and screening land for inspection are based upon the relationship between potential sources of contamination and the proximity of sensitive receptors.

The Council will consider the potential sources of contamination (both historical and current) in the context of the severity and type of the potential contamination associated with the activities on site. The sensitivity of receptors will be considered in the context of current land uses such as housing with gardens, allotments and playing fields.

Methodology

The Council has constructed a bespoke screening tool designed to take into account the industrial heritage and geological setting of the borough and focus upon the principal of source, pathway and receptor.

The screening tool utilises environmental datasets held within the corporate geographical information system (GIS) including information supplied by Landmark Information Group, the Environment Agency and British Geological Survey.

The model interface comprises of a simple excel spreadsheet. The model applies a series of scores which are broadly balanced between 1 to 100 for each source, pathway and receptor which multiply into a single cumulative score. The scoring is allocated as follows:

	Principal score	Additional variables considered appropriate		Total range of scoring
Source	1-100	Scale (of land use)	0.8-1.2	0.8-120
Receptor	1-10	Off-site receptors Proximity (<10->100)	1-10 0.1-0.9	0.1-90
Pathway	1-9	Distance (<10->100)	0.1-0.9	0.1-8.1

Drop-down menus which automatically assigned a score have been adopted to remove as far as possible the element of individual interpretation when assigning scores, thus providing a consistent approach.

Practical application

Building on the work already undertaken and the environmental data gathered since the original Inspection Strategy was published in 2001, the Council will proceed on a geographical basis and populate the spreadsheet.

Initially the primary focus of the process will be the identification of potential sources of contamination in terms of land use. Landmark Information Group Historical Land Use categories form the foundation of potentially contaminative uses with some amendments and additions to reflect characteristics of the borough, particularly in respect of mineral extraction, quarrying and infilling of land.

The boundary of each site will be polygonised onto a dedicated layer within the corporate GIS.

These potential contaminant sources will be further assessed in terms of scale, typical operational practices and their likelihood of causing contamination and assigned a 'score' (1-100 on the basis of the source).

Where a site falls within an area with multiple potentially contaminative uses these will be consolidated into one site boundary. The site will then be considered on the basis of the most severe potentially contaminative land use.

The nature of the receptors and their proximity will then be assessed.

It should be noted that the majority of pathway scores are assigned as medium unless prior knowledge of the site and ground conditions are known. The default position assumes that a pathway could exist.

On completion of the screening exercise all potentially contaminated sites identified within the borough will have an assigned score. A simple sorting of the scores will result in a ranking order being produced. Those sites with the highest scores and exhibiting the presence of all three parameters (source, pathway, and receptor) by default will be considered to be the highest priority with regard to potentially being 'Contaminated Land' and consequently the focus of subsequent more detailed desk studies.

Detailed inspection

The purpose of detailed inspection is to ensure that the Council has sufficient information to support robust risk assessment and decide whether or not a particular area of land could be Contaminated Land.

Detailed inspection may include any or all of the following:

- The collation and assessment of documentary information
- A visual inspection and limited sampling
- Intrusive investigations (e.g. exploratory excavations)

The Council will work its way through the potentially contaminated sites identified from the initial screening exercise. Tranches of sites will be brought forward with those sites with the greatest potential risks being inspected first.

A desk study and site visit will be carried out for each site in the group. This may be followed by limited sampling and monitoring, possibly involving a small number of hand dug pits and mini boreholes, and then more extensive investigations with mechanically excavated trial pits and boreholes where necessary.

Desk study and site visit

Review documents, historical mapping, aerial photography, planning history, site history and activities. Review physical factors including geology, hydrogeology, soil characteristic and topography. Confirm potential sources and proximity of receptors. Visible indications of contamination such as soil or water discolouration, subsidence, stressed vegetation, odours and liquid discharges from the ground.

Limited sampling and monitoring

Confirm the presence of potential contaminants. Assist in evaluating the need for and planning intrusive investigations.

Intrusive investigations

Sampling, analysis and monitoring. Gather information about the location and extent, concentrations and behaviour of contaminants. Determine the site geology and hydrogeology and assess the strata identified (e.g. pH, soil organic matter content, porosity, groundwater flow and gas permeability).

Risk assessment

After each stage of detailed inspection all information will be reviewed and an assessment of the risks undertaken. The risk assessment process will assist in deciding whether or not land could be Contaminated Land or if further inspection and assessment is justified.

The methodology for assessing risks to human health is outlined in Appendix Two.

Managing the inspection process and prioritising detailed inspection

During the inspection process it may become necessary to prioritise activities and those sites which warrant detailed inspection. Maintaining the risk based approach, a number of factors will be taken into account when managing the inspection process and prioritising detailed inspection of sites, including:

- Number of properties/people potentially affected.
- Nature and range of the contaminants.
- Immediacy of effect. Risk of explosion/chronic exposure.
- Evidence of previous actions or intervention (eg. Planning and when properties built).
- Likelihood of contamination being dealt with in the past.
- Timescales and duration of potential exposure.
- Fate and degradation of potential contaminants.

Reviewing inspection decisions

There may be situations where changes in the conditions or circumstances of the land or its surrounding environment will prompt the Council to revisit inspection findings and decisions for particular areas of land. Such instances may include:

- Change of use of land introducing new receptors
- Changes in legislation and guidance
- Responding to new information/intelligence.
- Reports of localised health effects

Where the Council becomes aware of the need to reassess a site it will be considered in the overall context of the strategic approach and those other potentially contaminated sites awaiting detailed inspection.

The Statutory Guidance sets out four categories when considering whether or not particular land is contaminated land on grounds of significant possibility of significant harm (SPOSH) which can be summarised as follows:

Category 1: Clearly problematic.

Category 2: Strong case for SPOSH and action on a precautionary basis.

Category 3: Risks not sufficient to warrant action under Part 2A.

Category 4: Clearly not 'Contaminated Land'.

Section Four

Council owned land and land for which the Council is an ‘appropriate person’.

The general aims of the Council with respect to the implementation of Part 2A have been summarised as follows:

- To fulfil the Council’s regulatory and enforcement authority duties;
- To manage the Council’s liabilities for Contaminated Land; and
- To reduce the impact of contamination from Council owned land.

The Land Contamination Team is responsible for undertaking the role of regulator and enforcing authority on behalf of the Council. This Section sets out the roles and responsibilities within the Council where the council is the landowner or an ‘appropriate person’.

The Council as a responsible organisation and landowner

The Council will take its potential liabilities and obligations under Part 2A seriously and act responsibly. The Council’s intention is to set a good example and be proactive.

The Council will act corporately in its capacity as a responsible organisation and landowner. As such, corporate responsibility for dealing with the Council’s potential liabilities under Part 2A rests with Risk Management Services. In conjunction with Property Management Services and relevant land holding Directorates and Service Areas, Risk Management Services shall be responsible for, and the costs associated with:

- Ensuring the potential risks for the Council associated with Part 2A are included in the Risk Register and managed accordingly.
- Reviewing current practices and procedures, taking into account the implications of Part 2A.
- Introducing improved working arrangements to ensure potential liabilities for the Council are minimised.
- Carrying out preliminary risk assessments on all Council property holdings and identifying property that warrants further assessment or possibly remedial action.

These actions with target dates are included within the Work Programme in Section 5.

The Council as an ‘appropriate person’

The Council will be liable for Contaminated Land (and the costs associated with dealing with it) where the Council (and possibly its predecessors) caused or knowingly permitted the original pollution or in instances where the council owns the land and the original polluter cannot be identified.

The Council will act corporately in its capacity as an 'appropriate person'. Risk Management Services shall be responsible for, and the costs associated with, managing the Council's liabilities as an 'appropriate person'.

Inspection of Council owned land

Having due regard to the Statutory Guidance, where the Land Contamination Team identifies particular areas of Council owned land for detailed inspection it will notify the relevant land holding Directorates and Service Areas together with Property Management Services and Risk Management Services.

Prior to undertaking any limited sampling or intrusive investigations the Land Contamination Team will give the relevant land holding Directorates and Service Areas, Property Management and Risk Management the opportunity to provide detailed information about the condition of the land or carry out investigations to obtain such information within a reasonable and specified time.

Section Five

Work programme 2014 – 2019

Aim	Objective	Action	Target date	Responsible Service Area
To fulfill the Council's (statutory) inspection duties under the Part 2a regime	Set out the Council's strategic approach to carrying out its inspection duty as a written strategy.	Formally adopt & publish the Council's Inspection Strategy	December 2014	Building Control Service Land Contamination Team
	Formally adopt and publish a new version of the Council's Inspection Strategy which reflects the revised Statutory Guidance.			
	Implement the Inspection Strategy and meet the work programme and delivery plan targets.	Complete the screening exercise of the borough	Completed	Building Control Service Land Contamination Team
		Desk studies	30 a year from July 2014 (pro rata)	Building Control Service Land Contamination Team
		Intrusive investigations	2 a year from March 2015	Building Control Service Land Contamination Team
Review the Inspection Strategy at least every five years.	Review the Inspection Strategy	April 2019	Building Control Service Land Contamination Team	
To publish and adopt key policy and a set of guiding principles to assist the Council as regulator and enforcing authority	Set out the Council's approach to background levels and normal presence of contaminants across the borough.	Research topic (inc. possible sampling) and set out the Council's approach.	October 2015	Building Control Service Land Contamination Team
	Produce templates for risk summaries and written statements.	Produce templates for risk summaries and written statements.	March 2015	Building Control Service Land Contamination Team
	Set out the Council's decision making process with respect to Part 2A determinations.	Review and ratify the decision making process with respect to Part 2A determinations.	March 2015	Building Control Service Land Contamination Team
	Set out the Council's cost recovery policy.	Formulate the Council's cost recovery policy.	December 2014	Building Control Service Land Contamination Team
To manage the Council's liabilities for contaminated land	Ensure the potential risks for the Council associated with Part 2A are recognised and managed appropriately.	Include the potential risks associated with Part 2A in the Corporate Risk Register and manage them accordingly.	October 2016	Risk Management, Property Management and relevant land holding Directorates and Service Areas
	Ensure Council practices and procedures are suitable and sufficient and minimise potential liabilities under Part 2A.	Review current practices and procedures and introduce improved working arrangements.	October 2017	Risk Management, Property Management and relevant land holding Directorates and Service Areas
To reduce the impact of contamination from Council owned land	Proactively investigate all Council property holdings for contamination risks.	Carry out preliminary risk assessments on all Council property holdings and identify property that warrants further assessment or possibly remedial action.	October 2018	Risk Management, Property Management and relevant land holding Directorates and Service Areas

Notes:

- It is difficult to speculate as to realistic timescales for the inspection of all the potentially contaminated sites across the borough. The Council is unable to predict how resource intensive any one particular site might be. Given that the strategic approach is looking to focus resources where contamination is likely to be found, it follows that any desk study could quite easily escalate into a comprehensive intrusive investigation and possible determination. Committing resources to a detailed intrusive investigation will undoubtedly influence the ability to continue with the desk studies and site reconnaissance exercise.
- The work programme includes both the activities of the Council as regulator and enforcing authority and those as a responsible organisation and landowner.

Section Six

Appendices

One: Inspection flowchart: Part 2A of the Environmental Protection Act 1990

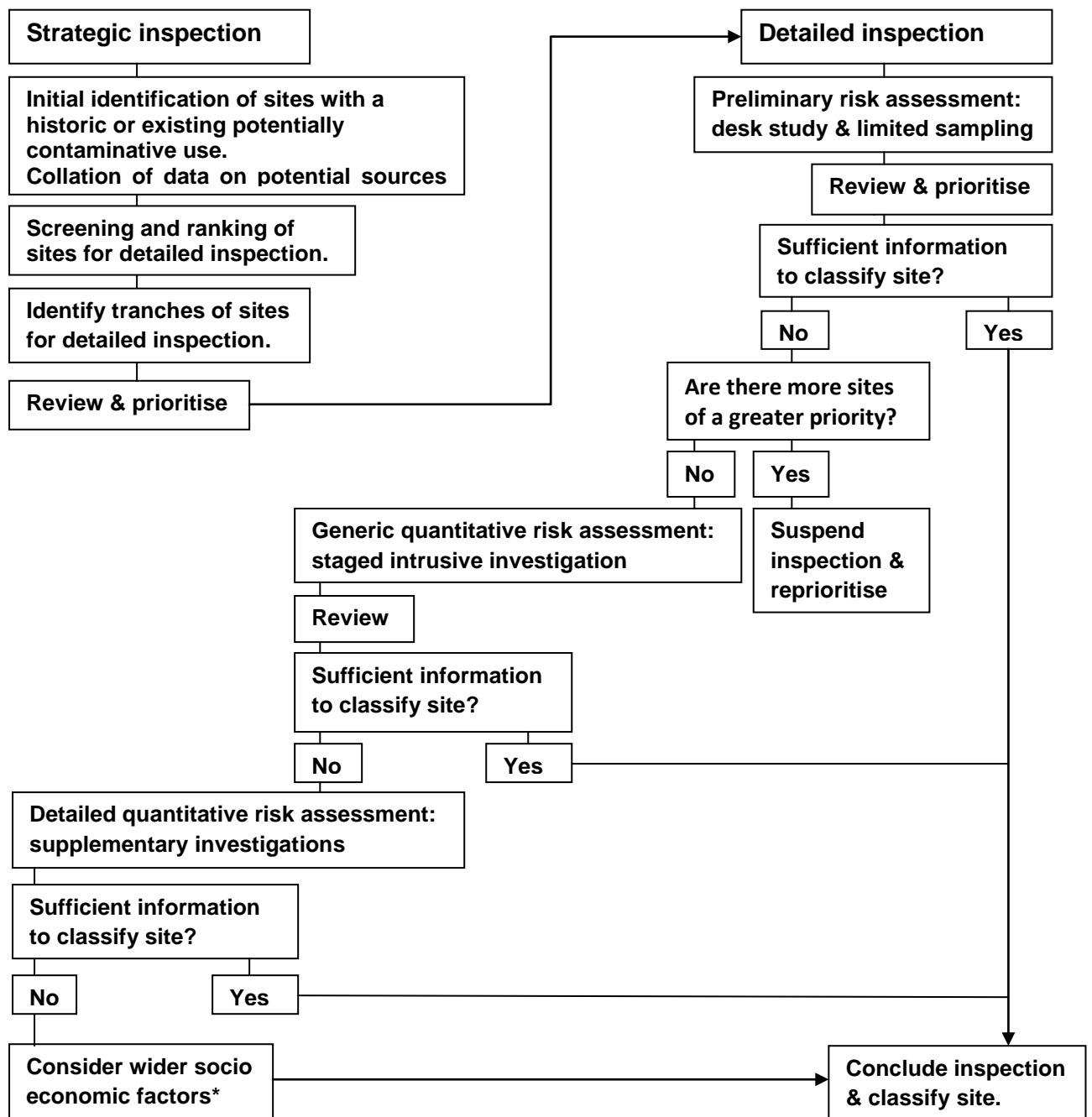
Two: Risk assessment methodology

Three: Glossary of terms

APPENDIX ONE

INSPECTION FLOWCHART

Inspection flowchart: Part 2A of the Environmental Protection Act 1990



* Includes consideration of:

- Likely direct and indirect health benefits and impacts of regulatory intervention. To include the benefits of removing/reducing risks; risks from contaminants being mobilised during remediation; and any indirect impacts such as stress related health effects that may be experienced by affected people, particularly local residents; and
- What remediation would involve, how long it would take; and what benefits it would be likely to bring; whether benefits would outweigh the financial and economic costs; and any impacts on local society or the environment from taking action that the council considers relevant.

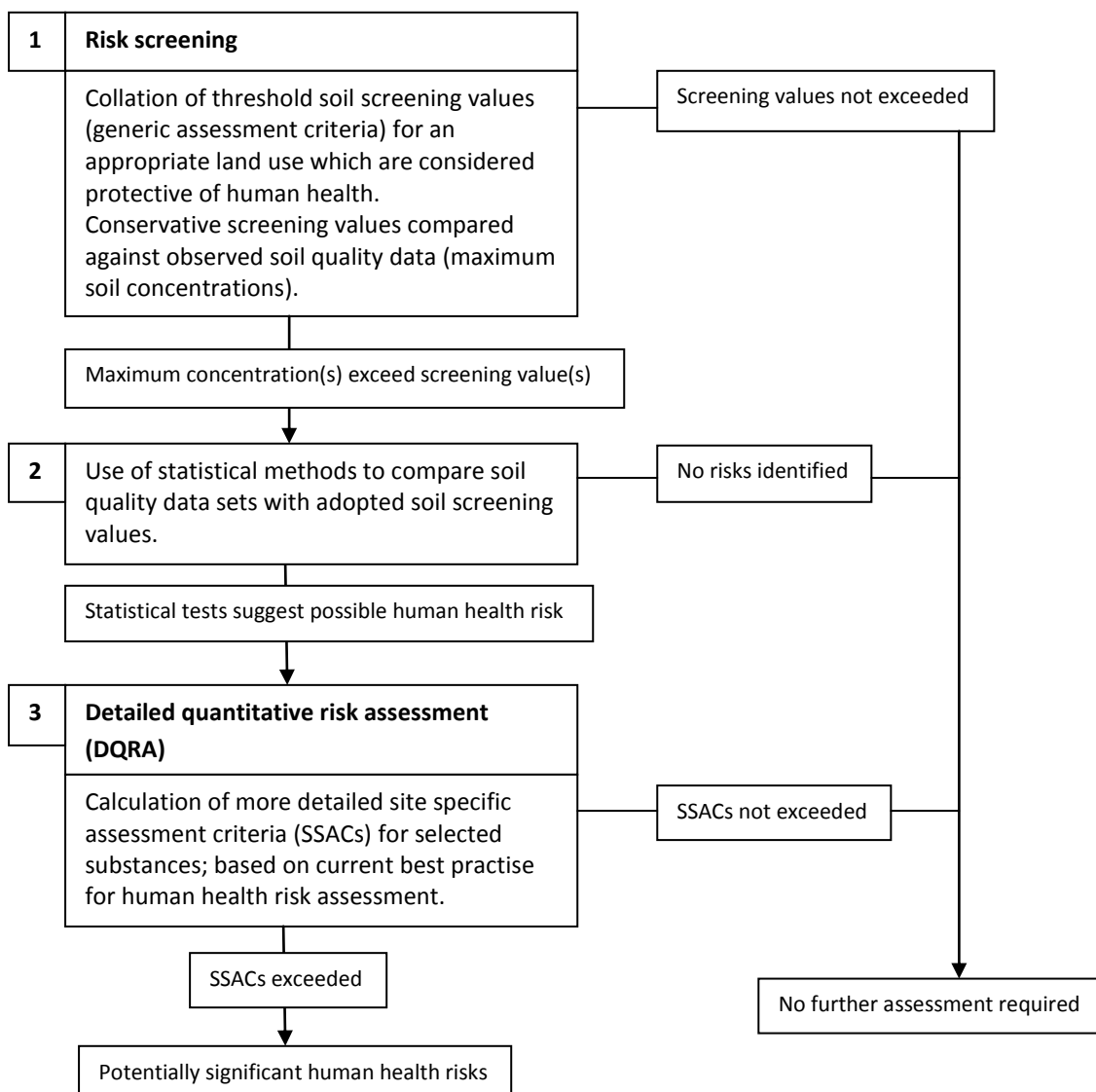
APPENDIX TWO

Risk assessment methodology

Risk assessment methodology

The process of risk assessment involves understanding the risks presented by the land, and the associated uncertainties. In practice, this understanding is usually developed and communicated in the form of a “conceptual site model”. The understanding of the risks is developed through a staged approach to risk assessment, often involving a preliminary risk assessment informed by desk-based study; a site visit and walkover; a generic quantitative risk assessment; and various stages of more detailed quantitative risk assessment.

The process adopted for assessing risks to human health is summarised in the following flow diagram:



The assessment of risks posed to human health receptors is conducted through a tiered process, whereby an initial screening is employed to identify any potentially hazardous contaminants. Where such contaminants are identified, these are then subject to a detailed quantitative risk assessment utilising as much site specific information as possible to generate representative site specific assessment criteria. These are contaminant concentrations above which it can be considered there is a possibility of significant harm to human health.

APPENDIX THREE

GLOSSARY OF TERMS

Appropriate Person: Defined in section 78A(9) as: ‘any person who is an appropriate person, determined in accordance with section 78F, to bear responsibility for any thing which is to be done by way of remediation in any particular case.’

Class A person: A person who is an appropriate person by virtue of section 78F(2) (that is because they have caused or knowingly permitted a pollutant to be in, on or under the land).

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

Conceptual site model (CSM): A representation of the characteristics of the site in diagrammatic or written form that shows the possible relationships between contaminants, pathways and receptors.

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

Contaminant Linkage: The relationship between a contaminant, a pathway and a receptor.

Contaminated Land: Section 78A (2) defines contaminated land as:

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

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

b) significant pollution of controlled waters is being, or there is a significant possibility of such pollution being caused.’

OR with respect to radioactive contamination defined in section 78A(2) (as modified) as;

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

a) harm is being caused; or

b) there is a significant possibility of harm being caused.’

Controlled Waters: Defined in section 78A(9) by reference to Part 3 (section 104) of the Water Resources Act 1991; this includes territorial and coastal waters, inland fresh waters and ground waters.

Desk study: Interpretation of historical, archival and current information to establish where previous activities were located, and where areas or zones that contain distinct and different types of contamination may be expected to occur, and to understand the environmental setting of the site in terms of pathways and receptors.

Detailed quantitative risk assessment: Risk assessment carried out using detailed site-specific information to estimate risk or to develop site-specific assessment criteria.

Enforcing Authority: Defined in section 78A(9) as:

- 'a) in relation to a 'special site', the Environment Agency;
- b) in relation to contaminated land other than a 'special site', the local authority in whose area the land is situated'.

Generic assessment criteria: Criteria derived using generic assumptions about the characteristics and behaviour of sources, pathways and receptors. These assumptions will be protective in a range of defined conditions.

Generic quantitative assessment: Risk assessment carried out using generic assumptions to estimate risk or to develop generic assessment criteria.

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

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

OR with respect to radioactive contamination defined in section 78A(4) (as modified) as:

'lasting exposure to any person resulting from the after effects of a radiological emergency, past practice or past work activity.'

Inspection using statutory powers of entry:

Any detailed inspection of land carried out through use of powers of entry given to an enforcing authority by section 108 of the Environment Act 1995.

Intrusive Investigation: An investigation of land (for example by exploratory excavations) which involves actions going beyond simple visual inspection of the land or assessment of documentary evidence. Also known as site investigation.

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

Owner: Defined in section 78A(9) as:

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

Part 2A: Part 2A of the Environmental Protection Act 1990.

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

- a) is being exposed to, or affected by, a contaminant,
- or
- b) could be so exposed or affected.

Pollution of controlled waters:

Defined in section 78A(9) as:

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

Preliminary risk assessment: First tier of risk assessment that develops the initial conceptual model of the site and establishes whether or not there are any potentially unacceptable risks.

Radionuclide: Also known as 'radioisotopes', they are atoms with an unstable nucleus which can undergo radioactive decay, emitting gamma rays and/or subatomic particles, which constitutes ionising radiation.

Receptor: Either:

- a) a living organism, a group of living organisms, an ecological system or a piece of property which -
 - i) is in a category listed in table A in chapter A as a type of receptor, and
 - ii) is being, or could be, harmed, by a contaminant; or
- b) controlled waters which are being, or could be, polluted by a contaminant; or
- c) a person subjected to lasting exposure resulting from the after-effects of a radiological emergency, past practice or past work activity.

Remediation: Defined in section 78A(7) as:

- a) the doing of anything for the purpose of assessing the condition of -
 - i) the contaminated land in question;
 - ii) any controlled waters affected by that land; or
 - iii) any land adjoining or adjacent to that land;
- b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose -
 - i) of preventing or minimising, or remedying or mitigating the effects of any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or
 - ii) of restoring the land or waters to their former state; or
- c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.'

OR

with respect to radioactive contamination defined in section 78A(7) (as modified) as:

- 'a) the doing of anything for the purpose of assessing the condition of -
 - i) the contaminated land in question; or
 - ii) any land adjoining or adjacent to that land;
- b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land for the purpose -
 - i) of preventing or minimising, or remedying or mitigating the effects of any harm by reason of which the contaminated land is such land; or
 - ii) of restoring the land to its former state; or
- c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land.'

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

Remediation Statement:

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

Risk: The combination of:

- a) the probability, or frequency, of occurrence of a defined hazard (for example, exposure to a property of a substance with the potential to cause harm); and
- b) the magnitude (including the seriousness) of the consequences.

Risk assessment: The formal process of identifying, assessing and evaluating the health and environmental risks that may be associated with a hazard.

Risk estimation: Predicting the magnitude and probability of the possible consequences that may arise as a result of a hazard.

Risk evaluation: Deciding whether a risk is unacceptable.

Risk management: The processes involved in identifying, assessing and determining risks, and the implementation of actions to mitigate the consequences or probabilities of occurrence.

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

Significant possibility of significant harm:

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

Site Investigation: An investigation of land (for example by exploratory excavations) which involves actions going beyond simple visual inspection of the land or assessment of documentary evidence. Also known as an intrusive investigation.

Detailed site investigation: Main stage of intrusive site investigation, which involves the collection and analysis of soil, surface water, groundwater, soil gas and other media as a means of further informing the conceptual model and the risk assessment. This investigation may be undertaken in a single or a number of successive stages.

Site reconnaissance: A walk-over survey of the site.

Site-specific assessment criteria: Values for concentrations of contaminants that have been derived using detailed site-specific information on the characteristics and behaviour of contaminants, pathways and receptors and that correspond to relevant criteria in relation to harm or pollution for deciding whether there is an unacceptable risk.

Special Site: Defined by section 78A(3) as

‘Any contaminated land -

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

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

The effect of a site being designated as a ‘special site’ is that the Environment Agency, rather than the council, becomes the enforcing authority for the land.

Substance: Defined in section 78A(9) as:

‘Any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.’

OR with respect to radioactive contamination defines in section 78A(9) (as modified) as:

‘Whether in solid or liquid form or in the form of a gas or vapour, any substance which contains radionuclides which have resulted from the after-effects of a radiological emergency or which are or have been processed as part of a past practice or past work activity, but shall not include radon gas or the following radionuclides: Po-218, Pb-214, At-218, Bi-214, Rn-218, Po-214 and Tl-210.’

Contaminated land: implementing Part 2A of the Environmental Protection Act 1990

Cost recovery policy

This policy came into force on [insert date]

The Council's policy is to seek to recover all of its reasonable costs and apply no waiver or reductions in any circumstances.

The policy means that the Council will not have the power to carry out remediation itself under Section 78N(3)(e) and as such will not be prevented from serving a remediation notice.

In adopting this Policy the Council has had due regard to the Legislation and published Statutory Guidance which is available at the following link

<https://www.gov.uk/government/publications/contaminated-land-statutory-guidance>

Whilst the legislation and statutory guidance requires the council to have regard to hardship and other specific considerations it does not automatically mean that the Council has to waive or reduce the costs. Section 8 of the Statutory Guidance is guidance to which the Council must have regard, not prescriptive advice which it must follow.

The Council is committed to seeking an overall result which is as just, fair and equitable as possible to all those who have to meet the costs of remediation, including local and national taxpayers.

Agreed and ratified by Cabinet: [insert date]