



Stockton-on-Tees
BOROUGH COUNCIL

Stockton-on-Tees Borough Council Contaminated Land Inspection Strategy 2019-2024

EXECUTIVE SUMMARY

In April 2000, Part 2A of the Environmental Protection Act 1990 (inserted into that Act by section 57 of the Environment Act 1995) came into force. The main objective requires local authorities to implement a “strategic approach” to inspecting their areas to identify land where contamination is causing unacceptable risks to human health or the wider environment.

This is the fifth review of the Contaminated Land Strategy to reflect the changes in service provision, contaminated land legislation, and published guidance. The strategy sets out the manner in which Stockton Borough Council proposes to implement its duties under Part 2A of the Environmental Protection Act 1990. This should be read in conjunction with the Contaminated Land Statutory Guidance issued by the Defra (April 2012).

The Council carried out a site risk categorisation exercise in 2002 with Jacobs to identify those sites which are potentially contaminated. This classified sites into 4 preliminary priority categories (PPC1-PPC4). Significant progress has been made in the inspection of the high risk sites within the Borough, and in 2019 the majority of the top priority [PPC1] sites have been inspected.

The Council has made a number of successful capital funding bids to DEFRA of approximately £750,000 to remediate the following sites:-

- Former Yarm Gas Works, West Street Yarm (£300,000 investment)
- Tilery Landfill Site, Talbot Street Stockton
- Former waste site at Cowpen Bewley Billingham
- Land adjacent to the Kings Arms Thames Road Billingham
- Pocket Park, Station Road Norton
- Land at Stapleton Street Norton
- Land at Fuller Crescent Norton
- Land adjacent to A19 Billingham Road Norton
- 96 Ha site, Portrack Industrial Estate, Stockton

From the work carried out to-date, one site (former Yarm Gas Works) has been determined as contaminated land and designated a ‘Special Site’ under the definition stated within the statutory guidance.

A change of approach to the inspection regime was implemented following the strategy review in 2014. It is proposed that during the period of 2019-24 the authority shall continue to concentrate on project work to remediate the PPC1 high risk category sites, where there is the greatest risk to human health.

The medium and lower risk categories (PPC2, PPC3 and PPC4) category sites will continue to be given lower priority. In implementing the strategy, the authority will prioritise reactive work, dealing with complaints from the public, and dealing with contaminated land through the development control regime. It is envisaged that through the Planning Regime a proportion of the remaining potentially contaminated sites will be identified and remediated.

The forthcoming strategy has been made based using the experience of officers, and the level of risk posed to human health using the relevant Statutory Guidance. The future budget allocation for contaminated land shall determine when the remaining medium and lower risk sites will be proactively inspected during this period.

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INTRODUCTION

England has a considerable industrial heritage; however a legacy of historic industrial enterprise and waste disposal is polluted land that often needs skilled and methodical recovery and remedial work to bring it back into everyday use. The Government's policy on dealing with this legacy is through the Contaminated Land regime under Part 2A of the Environmental Protection Act 1990, with the overarching objectives of the regime being:

- (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

In developing this Strategy Stockton Borough Council has responded to the Contaminated Land Regime under Part 2A of the Environmental Protection Act 1990, enacted by Section 57 of the Environment Act 1995, which placed new responsibilities on all local authorities to identify and assess the risk to human health, controlled waters, ecological systems and the environment.

This Strategy document sets out Stockton Borough Council's proposals for the identification, assessment and remediation of contaminated land within the Borough of Stockton on Tees. This is the 5th Review of the Strategy and it replaces the previous Strategies published in 2014, 2009, 2003 and 2001.

1.1 Legislative Overview

Part 2A of the Environmental Protection Act 1990 set up a system for the regulation of contaminated land in England and Wales. The regime provides a framework for the identification and remediation of contaminated land.

"Contaminated land" is land that poses an unacceptable risk to human health or the environment through its current use, including, likely future use which would not require a new or amended grant of planning permission, temporary use from time to time within the bounds of current planning permission, likely informal use and agricultural land where crops or animals are habitually reared.

Only land where unacceptable risks are clearly identified will be considered as meeting the Part 2A definition of contaminated land.

Stockton on Tees Borough Council assumes all the land within the Borough is not contaminated land under Part 2A of the Environmental Protection Act unless there is reason to consider otherwise in accordance with the outcome of detailed risk assessments.

1.2 Definition of Contaminated Land and Harm

Section 78A (2) of Part 2A of the Environmental Protection Act 1990 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 caused, or there is a significant possibility of such pollution being caused.

Section 78A (4) of Part 2A of the Environmental Protection Act 1990 defines 'Harm' to include "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."

Conditions for determining whether significant harm is being caused would be assessed according to section 2.3 which outlines the strategy for assessing the "risk" of harm. Having assessed the potential harm being caused using the scientific evidence available, the local authority should be satisfied, that on the balance of probabilities, that significant harm is being caused (i.e. it is more likely than not) by a particular contaminant.

The definition of harm has been updated in the statutory guidance (Defra, 2012) to be in line with the Water Act 2003 on controlled waters, namely, serious impacts on health; serious injury; birth defects; and impairment of reproductive functions. When deciding whether or not a particular form of harm is significant harm, Environmental Health will consider the seriousness and scale of the harm, and the impact on the health and quality of life of the person(s) impacted.

Significant pollution is said to be caused if substances are entering controlled waters or substances which have entered controlled waters and are likely to do so again. The term "pollution" of controlled waters means the "entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter." [S.78A (9) of Part 2A]

"Controlled waters" include estuaries (or transitional waters) and rivers, lakes, ponds and ground water. In relation to England, has the same meaning as in Part 3 of the Water Resources Act 1991 (territorial waters, coastal waters, inland freshwaters and groundwater's). This includes water that is above the saturation zone but not water that is in the underground strata.

1.3 Roles and Responsibilities under Part 2A

Local Authorities have been given the primary regulatory role under S.78B (1) Part 2A of the Environmental Protection Act 1990 for determining whether any land within their Borough is contaminated and for deciding whether any such land should be designated as a special site. In dealing with contaminated land the Environmental Health Department has regulatory remit for investigating statutory nuisance under Part 2A of the Environmental Protection Act 1990 and is a Planning Consultee under the Planning Regime.

If Stockton Borough Council identifies land which it considers would be likely to meet one or more of the descriptions of a special site set out in the Contaminated Land (England) Regulations 2006, it should consult the Environment Agency and, subject to the Agency's advice and agreement, to arrange for the Agency to carry out any intrusive investigations of the land on behalf of the authority. Where the Agency carries out an inspection on behalf of Stockton Borough Council, the inspection duty and the decision as to whether land is contaminated land, remain the sole responsibility of the Council.

The primary authority for dealing with controlled waters is the Environment Agency. As such, Stockton Borough Council is not the primary authority when dealing with controlled waters, but as this has the potential to impact upon the quality of land the local authority will liaise closely with the Environment Agency wherever the contamination of controlled waters is likely.

1.4 Local Authority Duties under Part 2A

Local Authorities shall take a strategic approach to carrying out inspection duty under section 78B(1). This approach shall be rational, ordered and efficient, and it should reflect local circumstances. In order to discharge its duties and responsibilities under the regime, Stockton Borough Council will:

- a) Inspect its area to identify potential contaminated land
- b) Determine whether any particular land is contaminated land under Part 2A of the Environmental Protection Act 1990
- c) Undertake to consult with all interested parties and other agencies in determining appropriate action in the discharge of its statutory powers
- d) Where decisions are not straightforward, and where there may be unavoidable uncertainty underlying some of the facts of each case, decide on whether and how to act. Judgement shall be used 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
- e) Take a precautionary approach to assess the risks raised by contamination, whilst avoiding a disproportionate approach given the circumstances of each case. The various benefits and costs of taking action will be considered, with a view to ensuring that the regime produces net benefits, taking account of local circumstances, as specified in the Statutory Guidance
- f) Only use Part 2A as a last resort to deal with land contamination and only where no appropriate other solution exists (see Section 5)

1.5 Strategic Implementation

Stockton Borough Council are required to take a “strategic approach” in accordance with the Contaminated Land Statutory Guidance (Defra 2012) by incorporating contaminated land into existing high level policy documents where appropriate – the Local Plan as an example.

1.6 Aim and Objectives

Stockton Borough Council's aim is to fulfil the requirements of the Statutory Guidance by inspecting its area according to the principles of the guidance. The strategy outlines how the legislation will be complied with through the following objectives;

- (a) Identify contaminated land sites in a rational, ordered and efficient manner which reflects any local circumstances
- (b) Be proportionate to the seriousness of any actual or potential risks
- (c) Prioritise areas of land it considers likely to pose the greatest risk to human health or the environment
- (d) Ensure that resources are concentrated on investigating areas where the authority is most likely to identify contaminated land
- (e) Minimise or reduce potential property blight as far as it considers reasonable
- (f) Be open to moves by the landowner (or other interested parties) in providing information to help resolve the status of the land
- (g) Encourage voluntary action to deal with land contamination issues as far as it considers reasonable and practicable
- (h) Encourage the re-use and remediation of brownfield land through the planning regime in accordance with the National Planning Policy Framework to ensure that new developments are suitable for use
- (i) Ensure the Environmental Protection Team continues to work closely with the Regeneration section to help with the identification and risk assessment of brownfield land to aid economic development
- (j) Ensure wherever possible that the original polluter pays for land remediation carried out under the Part 2A regime
- (k) Prevent any further land contamination, where possible, by raising awareness about the causes and effects of land contamination.
- (l) Where investigations/remedial works are carried on within close proximity to internationally designated sites, close liaison will take place with Natural England particularly in relation to hydrological pathways.
- (m) In a similar way the Council will liaise with Natural England and take account of the impact of any works on land and soils resources and the wide range of vital functions [ecosystem services] they provide.

2.0 CONTAMINANT LINKAGES AND RISK ASSESSMENT

2.1 Contaminant Linkage

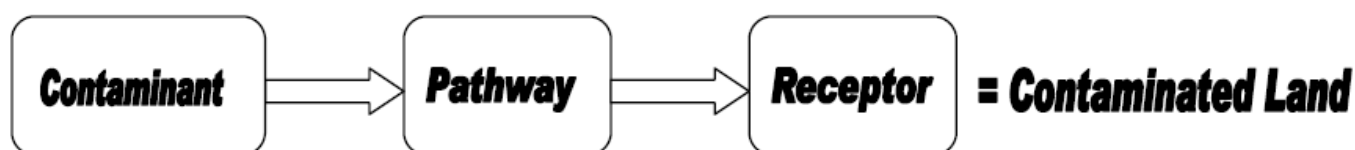
For any land to be identified as contaminated land at least one contaminant linkage needs to be established.

A contaminant linkage consists of three main elements:

- (a) A “contaminant” is a substance which is in, on or under the land and which has the potential to cause significant harm to a relevant receptor, or to cause significant pollution of controlled waters
- (b) A “pathway” is a route by which a receptor is or might be affected by a contaminant
- (c) A “receptor” is something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters

The term “contaminant linkage” means the relationship between a contaminant, a pathway and a receptor. All three elements of a contaminant linkage must exist in relation to particular land before the land can be considered potentially to be contaminated land, including evidence of the actual presence of contaminants.

Figure 1 Contaminant Linkage



The term “significant contaminant linkage” means a contaminant linkage which gives rise to a level of risk sufficient to justify a piece of land being determined as contaminated land under Part 2A of the Environmental Protection Act 1990.

The term “significant contaminant” means the contaminant which forms part of a significant contaminant linkage.

Determining what constitutes a significant contaminant linkage can be an extremely complex process. Stockton Borough Council will make its decision based on the best available evidence at the time of the investigation and on an individual site basis.

2.2 “Normal” Levels of Contaminants

The Statutory Guidance states that the Part 2A regime should not apply to land with levels of contaminants in soil that are common place and widespread throughout England and for which in the majority of cases there is no reason to consider that there is an unacceptable risk.

Normal levels of contaminants should not be considered to cause land to qualify as contaminated land, unless there is a particular reason to consider otherwise. Normal levels of contaminants in soil may be the result of the natural presence of contaminants or the presence

of contaminants caused by low level diffuse pollution, and common human activities other than past industrial uses.

In October 2012 DEFRA published a report and Technical Guidance Sheets on Normal Background Levels of Contaminants in English Soils. This work was undertaken by the British Geological Survey (BGS) on behalf of Defra and was commissioned to support the revised Statutory Guidance.

Normal levels of contaminants are considered to be those levels which are not significantly different to those likely to be typical or widespread within the authority's area or other areas of England, e.g. resulting from soil formations or geology and have not been shown to pose an unacceptable risk to health or the environment, or, resulting from human activity such as the historic use of unleaded petrol or the spreading of domestic ash in gardens at levels that might reasonably be considered typical.

2.3 Risk

The Statutory Guidance states that "risk" means the combination of:

- (a) The likelihood that harm, or pollution of water, will occur as a result of contaminants in, on or under the land; and
- (b) The scale and seriousness of such harm or pollution if it did occur

Risk assessments should be based on information which is:

- (a) Scientifically based
- (b) Authoritative
- (c) Relevant to the assessment of risks arising from the presence of contaminants in soil; and
- (d) Appropriate to inform regulatory decisions in accordance with Part 2A and the revised Statutory Guidance

2.4 The Process of Risk Assessment

Identification of the contaminant linkage and whether it is significant is ascertained by following a staged process of risk assessment. This is to gain an understanding of the risks presented by the land and any associated uncertainties. The risks are then communicated in what is known as a site conceptual model which can either be presented in writing or diagrammatic format.

The staged process commences with a strategic preliminary inspection which is informed by the collection of desk-based information and a site walkover, possibly with limited soil and / or water sampling. Where this strategic preliminary risk assessment suggests that further understanding of the risks is required, a more detailed site inspection is then carried out.

Detailed site inspection commences with a generic quantitative risk assessment whereby detailed information on the ground conditions is collected to further develop the site conceptual model through gaining a more thorough understanding of the risks and uncertainties involved.

Depending on the findings of the generic quantitative risk assessment it may become necessary to carry out various further stages of more detailed risk assessment to support a decision as to whether or not a site meets the definition of contaminated land under Part 2A.

2.5 Generic Assessment Criteria and other Technical Tools

Generic assessment criteria are criteria derived using largely generic assumptions about the characteristics and behaviour of contaminants, pathways and receptors. These assumptions will be conservative in a defined range of conditions.

Generic assessment criteria and other technical tools are used as screening tools to help assessors decide when land can be excluded from the need for further detailed inspection and assessment, or when further work may be warranted.

Stockton Borough Council's Environmental Protection Team will use generic assessment criteria for assessing risks to human health, controlled waters and ecological systems.

For human health, the findings of detailed inspections of soil will be compared against generic and site-specific assessment criteria, generated using the most up to date version of CLEA UK (Contaminated Land Exposure Assessment) in order to interpret and risk assess the data and make an informed decision under Part 2A.

Contaminants in controlled waters assessed for their risk to human health, will for example, be compared to the UK Drinking Water or World Health Organisation Standards.

Generic assessment criteria for assessing the risks to controlled waters and ecological systems include relevant water quality standards for example, river basin typology standards.

Other criteria may also be used Stockton Borough Council must however, understand how they were derived and how they can be used appropriately to assess risks in accordance with Part 2A and the revised Statutory Guidance.

2.6 Risk Categories

The Statutory Guidance (Defra 2012) introduced 4 risk assessment categories for sites investigated under Part 2A.

Stockton Borough Council will use the categories detailed in Paragraphs 4.19 to 4.30 of The Statutory Guidance to characterise its sites inspected under Part 2A.

Table 1 Summary of the 4 Categories

Categories	Human Health	Controlled Waters
1	There is an unacceptably high probability supported by robust evidence of the significant possibility of significant harm occurring if no action is taken to stop it. Significant harm may have already been caused and could occur again if no action is taken to stop it.	There is a strong and compelling case that a significant possibility of significant pollution of controlled waters exists. This would include cases where there is robust science-based evidence for considering that it is likely that high impact pollution would occur if nothing were done to stop it
2	There is a strong case for considering that the risks from the land are of sufficient concern, that the land poses a significant possibility of significant harm, however, there is little or no direct evidence that similar land, situations or levels of exposure have caused harm before, but available evidence suggests that there is a strong case for taking action under Part 2A on a precautionary basis.	The strength of evidence to put the land into Category 1 does not exist. There is however, sufficient concern that the land should be considered to pose a significant possibility of significant pollution of controlled waters on a precautionary basis. This may include land where there is a relatively low likelihood that the most serious types of significant pollution might occur.
3	There is not a strong case that land is capable of being determined as contaminated land on the grounds of significant possibility of significant harm and therefore the positive legal test cannot be met and it is not clear that net benefit is achievable. Although intervention under Part 2A is not in the opinion of Stockton Borough Council warranted, risks are not low and owners or occupiers of the land may take action to reduce risks outside of the Part 2A regime if they choose.	The risks are such that the tests in Categories 1 and 2 are not met and therefore regulatory intervention under Part 2A is not warranted. This includes land where it is very unlikely that serious pollution would occur; or where there is a low likelihood that less serious types of significant pollution might occur.
4	There is no risk, or the level of risk posed is low because for example, no relevant contaminant linkages have been established, there are only normal levels of contaminants in soil, there are no exceedances of generic assessment criteria or estimated levels of exposure to contaminants in soil are likely to form only a small proportion of what a receptor might be exposed to anyway through other sources of environmental exposure.	There is no risk, or the level of risk posed is low because for example, no contaminant linkage has been established, the possibility only relates to types of pollution that should not be considered to be significant, or the water pollution is similar to that which might be caused by background contamination.

2.7 Stockton Borough Council's Approach to Categorising Sites

Following strategic preliminary inspections which will involve undertaking desk study research, site walkovers and on occasion ground and water sampling, Stockton Borough Council may be able to place some sites within Category 4 where no relevant contaminant linkage exists. Further risk assessment may be necessary for other sites to place them into Categories 1-3.

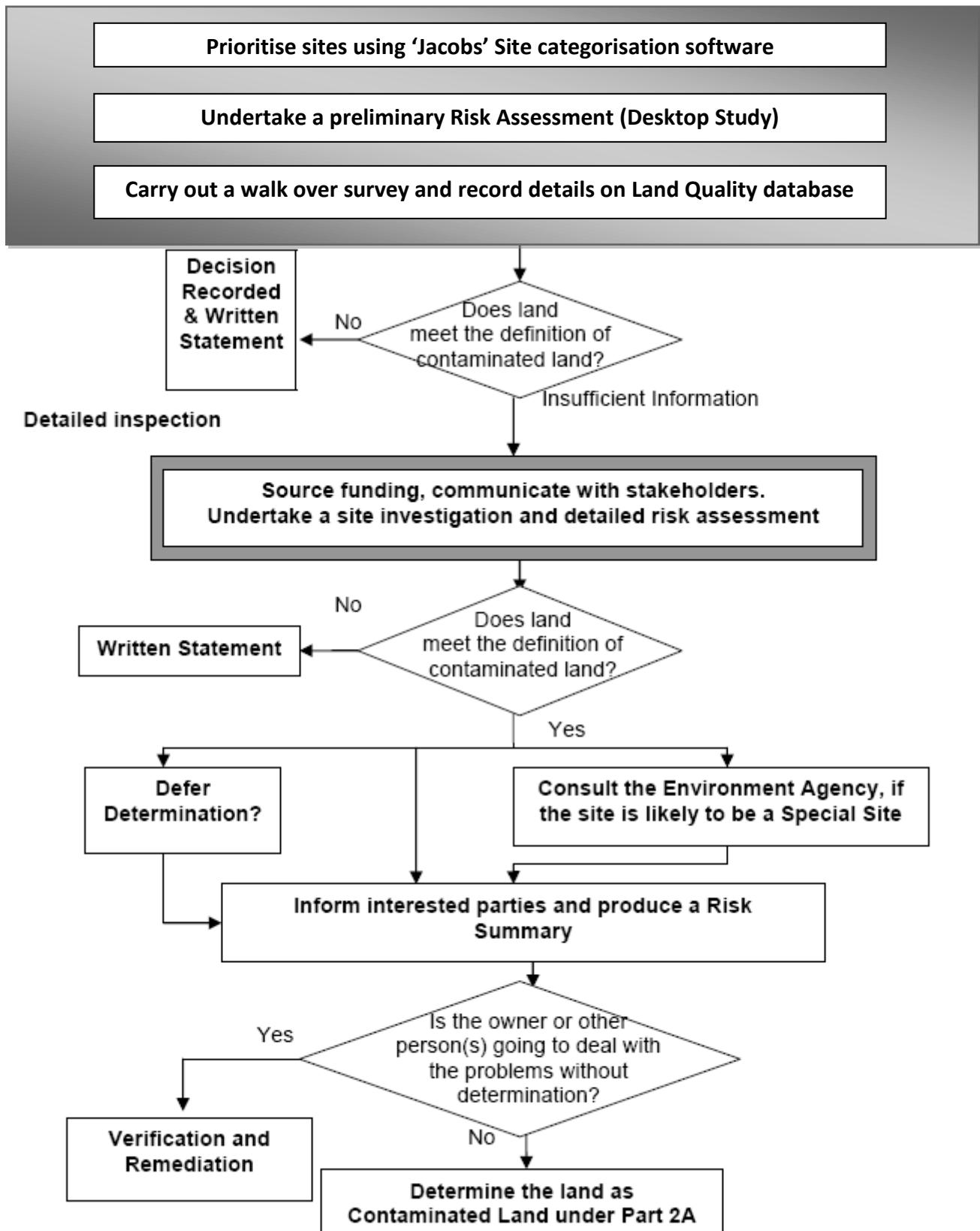
The Statutory Guidance states that where all factors are taken into account, if the local authority, therefore Stockton Borough Council, cannot decide whether or not a significant possibility of significant harm exists, it should conclude that the legal test has not been met and the land shall be placed in Category 3.

2.8 The Investigation Procedure

Stockton Borough Council will investigate its sites under Part 2A of the Environmental Protection Act 1990 in accordance with the procedure outlined in Figure 2.

Figure 2 Procedures for Investigating Sites

Strategic preliminary inspection



2.9 Written Statement

The revised Statutory Guidance has introduced Written Statements for that land which is likely to be inspected by local authorities and then considered not to be contaminated under Part 2A.

In implementing Part 2A of the Environmental Protection Act 1990, Stockton Borough Council is likely to inspect land that it then considers is not contaminated land. For example, this will be the case where the Council has ceased its inspection and assessment of land on grounds that there is little or no evidence to suggest that it is contaminated land. In such cases, the Council will issue a Written Statement to that effect (rather than coming to no formal conclusion) to minimise unwarranted blight. The Written Statement will make clear that on the basis of the assessment, the Council has concluded that the land does not meet the definition of contaminated land under Part 2A.

Stockton Borough Council will therefore inform the owners of the land of its conclusion and give them a copy of the Written Statement and keep a record of all Written Statements itself. The Council will consider making Written Statements available to other interested parties proactively and will always provide Written Statements on request.

2.10 Risk Summaries

The revised Statutory Guidance has introduced Risk Summaries for any land where, on the basis of its assessment, the local authority considers it is likely that the land in question may be determined as contaminated land.

Stockton Borough Council will produce a Risk Summary for any land within the borough which it considers likely to be determined as contaminated land under Part 2A of the Environmental Protection Act 1990.

The Risk Summaries will explain Stockton Borough Council's understanding of the risks and any other relevant factors. They will be prepared in advance of any formal determinations of land as contaminated land under Part 2A. The risk summaries shall be targeted towards the land owners and members of the public who may be affected by the decision.

Risk summaries are not required for:

- (a) Land which will not be determined as contaminated land (that land in Categories 3 and 4).
- (b) Land which has been prioritised for detailed inspection but which has not yet been subject to risk assessment.
- (c) Land determined as contaminated land before the revised Statutory Guidance (April 2012) came into force.
- (d) Land where there are only normal levels of contaminants in soil.

2.11 Determining Land as Contaminated Land under Part 2A of the Environmental Protection Act 1990

Following completion of the detailed site investigation and risk assessment, the site conceptual model will be updated to show whether one or more significant contaminant linkages exist or otherwise. Where one or more significant contaminant linkages exist between any sources of contamination and relevant receptors under Part 2A, the Environmental Protection Team will follow the procedure for determining that land as contaminated land, as set out in Section 78A (2) of the Environmental Protection Act 1990 and the revised Statutory Guidance and the land will be placed in either Category 1 or Category 2.

Stockton Borough Council may decide to defer the determination of contaminated land after informing interested parties because the landowner or other interested person may choose to undertake the remediation on a voluntary basis, and to an appropriate standard and timescale, agreed with the Environmental Protection Team.

The determination may also be postponed should one or more significant contaminant linkages only exist if the circumstances of the land were to change in the future within the bounds of the current use of the land.

Stockton Borough Council may reconsider a determination if new information comes to light, which is significant enough to alter the original decision. In such cases, Stockton Borough Council will decide whether to retain, vary or revoke the determination.

DEVELOPMENT OF THE CONTAMINATED LAND INSPECTION STRATEGY

The original Strategy ('A Strategy for Remediation & Reclamation of Contaminated Land') was approved and adopted in April 2001. Initial consultation was completed by 30th June 2001, and work commenced to identify and prioritise areas of contaminated land within the Borough.

The Strategy's first review took place in 2003 followed by a second in 2009, both being approved by Cabinet and subsequently adopted on behalf of the Council.

The fourth strategy document (2014) reflected a change of approach to the inspection regime, with a prioritisation of the high risk category sites (PPC1 and PPC2) where there is the greatest potential risk to human health. Throughout this period the authority implemented a strategy of prioritising reactive work, dealing with complaints from the public, and dealing with contaminated land through the development control regime.

This is the fifth strategy document setting out Stockton Borough Council's proposals for the identification, assessment and remediation of contaminated land within the Borough of Stockton on Tees, and replaces the previous Strategies published in 2014, 2009, 2003 and 2001.

3.1 Sites Inspected

As detailed in the previous strategies potentially contaminated sites have been identified as shown below in preliminary risk categories PPC1 -4

Table1 Summary of the four categories for 2019-24

The table below shows the progress made to date on the inspections of these sites

				Number of sites from preliminary exercise	Sites Completed	Sites Remaining (Jan 2020)
Preliminary PPC1	Priority	Category	1	60	58	2
Preliminary PPC2	Priority	Category	2	1659	566	1093
Preliminary PPC3	Priority	Category	3	212	69	143
Preliminary PPC4	Priority	Category	4	33	8	25
TOTAL				1964	689	1263

This leaves 2 high risk [PPC1] sites which require inspection. The approach to inspection of these sites will be to prioritise the outstanding PPC1 premises. The work programme and timescales for 2019-24 are outlined in section 4.7

It is proposed that the remaining PP2, PPC 3 and PPC 4 sites will not receive preliminary inspections. We will adopt a more reactive approach and examine these sites when linked to

planning developments, and as a result of complaints or reported incidents, or as part of identified project work.

The work undertaken through the planning regime is an ongoing process which enables a means of reactively and proactively identifying land which is potentially contaminated. We shall continue to work with developers and the Planning Department to remediate sites that are not within our PCC risk categorisations. It is estimated that approximately 500 sites have been assessed using this process, ensuring the health of residents and ensuring they are supported to live in sustainable neighbourhoods.

It is important to point out that to date, only one site has been determined as contaminated land under Section 78 of the Environmental Protection Act 1990 (as inserted by Section 57 of Environment Act 1995), Yarm Gas Works site at West Street Yarm, and this has been fully remediated.

PRIORITY ACTIONS AND TIMESCALES FOR 2019-24

The following priority actions will be undertaken in accordance with the procedure outlined in Figure 2 “Procedures for Investigating Sites”;

- To complete inspections of all remaining PPC1 sites in accordance with this strategy
- To respond to complaints/enquiries from the public and other agencies on contaminated land issues and to take appropriate action
- To encourage developers and landowners to remediate potentially contaminated land to the appropriate standard using workable planning conditions /agreements
- To supervise voluntary remediation of sites
- To continue to provide guidance to developers through the Planning Regime.
- Development of the SBC web site to assist developers during the planning process and submitting Environmental Information Enquiries, which can form the basis of an enquiry prior to a planning application being submitted.

4.1 Environmental Search Report

The Environmental Health Department presently uses the QGIS4 to risk assess and prioritise potentially contaminated land. This geographical information system is presently being updated to incorporate new themes and environmental information. The risk assessment software is managed by the Senior Environmental Protection Officer.

The information obtained by the search will be used to support planning application and Environmental Information requests under the Environmental Information Regulations 2004. The reports will be used during strategic preliminary inspections of sites and to determine whether further intrusive site investigations are required.

4.2 Strategic Preliminary Risk Assessment (Desk Top Study)

Strategic Preliminary Risk Assessments (desk top studies) will be produced in accordance with the risk assessment principles based on the contaminant-pathway-receptor approach. The studies will normally be carried out by the Senior Environmental Protection Officer. These risk assessment studies will aid the understanding and the associated uncertainties of the land in question and findings will be developed into a conceptual model for each site to identify whether or not there are any potentially unacceptable risks.

4.3 Sampling

Where a strategic preliminary risk assessment (desk top study) has been carried out and the site conceptual model identifies the potential for one or more significant contaminant linkages to exist, Stockton Borough Council will aim to carry out sampling of soil and / or water (subject to funds being available) to further develop knowledge and identify uncertainties.

4.4 Funding Site Investigation Work

Defra Capital Grants Programme is used to fund the inspection of sites which have been identified as requiring detailed generic quantitative investigation, e.g. intrusive site investigation and further risk assessment to develop greater understanding and knowledge of the site conceptual model. To date SBC has received £750k in successful Capital Project applications via DEFRA.

4.5 Site Investigation and Strategic Preliminary Risk Assessment

Further to sampling having been carried out to enhance the understanding of a site conceptual model, any land identified in a strategic preliminary risk assessment (desk top study) as having the potential for one or more significant contaminant linkages to exist will require a detailed investigation, e.g. intrusive site investigation and risk assessment.

The decision to progress to an intrusive site investigation and risk assessment is taken by the Senior Environmental Protection Officer and the Principal Environmental Health Officer with the agreement of the Head of Service.

Achieving the works will be dependent on receiving external funding from Defra, or alternatively, Stockton Borough Council may choose to fund the works. The Council would also seek to negotiate with current land owners, occupiers and known permittees of contamination to fund investigation works. If possible other sources of funding would be investigated to fund investigation works.

Stockton Borough Council may choose to carry out site investigation and risk assessment works itself, or alternatively may employ the services of environmental consultants to carry out the work on their behalf. Environmental consultants would be selected following a tendering process.

Regardless of who carries out the intrusive works and risk assessment, the final decision as to whether the land constitutes contaminated land lies with Stockton Borough Council.

Site investigation and risk assessments will be carried out in accordance with the guidance and standards available at the time of the planned investigation works, currently, CLR11 (which is under revision by the Environment Agency as of January 2020) and BS10175:2013. Results will be compared against relevant assessment criteria.

Following the outcome of the site investigation and risk assessment process the Council will then assign the land into one of the 4 categories detailed in paragraphs 4.19 to 4.30 of the revised Statutory Guidance and a decision will be made as to whether the land meets the definition of contaminated land under Part 2A of the Environmental Protection Act 1990.

4.6 Dealing with Unforeseen Urgent Sites

Where information is received indicating the possibility of imminent significant harm to health or imminent significant pollution of controlled waters, a strategic preliminary site assessment (desk top study) will be carried out to determine the likelihood of such an event occurring. Where it is identified that a significant contaminant linkage is likely to exist, urgent action to carry out further investigation will be necessary and an action plan will be drawn up and implemented.

This work would take priority over the scheduled programme of work for 2019-2024.

List of unforeseen urgent sites remediated between 2014-2019

SITE	WORK UNDERTAKEN TO REMEDIATE LAND
Melbray Chemical Works	Following a large chemical fire, SBC supervised £2 million of remediation to the site.
Blenheim residential Development	Remediation of residential sites affected by asbestos
Tinsleys Industrial Site Former Elementis Site	Identification of Chromium VI being discharged into the watercourse. Joint work undertaken with the Environment Agency and landowners to remediate the land.
Parkfield Residential Development	Remediation of residential sites affected by asbestos.
Victoria Residential Development	Remediation of residential site affected by soil contamination.
The Education Centre, Norton Road	Stockton Borough Council owned site -Environmental Advice provided to developers.
Alma Street	Stockton Borough Council owned site - Environmental Advice provided to developers.
Hampton Hotel	Stockton Borough Council owned site - Environmental Advice provided to developers.
Great North Air Ambulance, Eaglescliffe, Urray Nook.	Remediation and re-use of chromium works site to be used by the GNAA. The site is to incorporate an aircraft hanger, hardstanding and offices to be used as a medical training centre.
Ministry of Defence Site, Eaglescliffe.	Large scale remediation of the site (approx. 900 residential properties) as land is affected by Kerosene, asbestos and radiological contamination.

4.7 Work Programme and Timescales for 2019-24

Table 2. Work programme and Timescales for 2019-24

Task	Target Date
To complete preliminary inspections of the two remaining PPC1 sites	Ongoing
To have regular progress meetings with Elementis Chromium to review progress of the voluntary site remediation	Ongoing
Liaise with Environment Agency [EA] in relation to potential special sites where a formal request made for EA to inspect	Ongoing
Implement Cleveland Dyke Action Plan 2014 dealing with historic chromium pollution as agreed between Environment Agency/Stockton Borough Council	Ongoing
To supervise voluntary site remediation of the Elementis Chromium site in respect of human health receptors	Ongoing
To carry out detailed inspection of any site as required subject to the funding being available. Formerly funding was achieved through the DEFRA Capital Projects scheme this now no longer in existence.	As required
To supervise redevelopment schemes within the Borough to ensure satisfactory remediation has been completed.	Ongoing
To respond to complaints from the public in relation to potentially contaminated land and to take appropriate action according to risk posed and within current financial constraints	Ongoing
To respond to pollution incidents when required under the Environmental Damage Regulations	When necessary
To work closely with developers and the Council's Planning Department to ensure that potentially contaminated sites are remediated to the appropriate standard	Ongoing
To manage closed landfill sites at Whitton, Portrack and Newport with respect to potential landfill gas migration.	Ongoing
To manage the water treatment plant at the closed landfill site situated at Cowpen Bewley Woodland Park, Billingham, and to carry out regular maintenance and repair works at the site as required.	Ongoing
To assist developers, search companies, land owners and the general public with enquiries in relation to potentially contaminated land. To carry out land quality searches and environmental information requests as required	Ongoing
To assist other Council departments with the assessment of potentially contaminated land	As required

LAND CONTAMINATION WITHOUT PART 2A OF THE ENVIRONMENTAL PROTECTION ACT 1990

Stockton Borough Council is mindful that the Part 2A regime should only be used where no appropriate alternative solution exists and that other legislative regimes may provide a means of dealing with land contamination issues.

5.1 Voluntary Action

Stockton Borough Council aims to encourage owners to deal with contamination by voluntary action to minimise unnecessary burdens on the taxpayer, businesses and individuals and where appropriate will encourage problematic land to be dealt with as part of wider regeneration work.

5.2 The Planning Regime

Contamination is a material consideration under the Town and Country Planning Act 1990 and the planning regime remains the primary mechanism for dealing with contaminated land. In accordance with the National Planning Policy Framework 2012, local planning authorities have to consider the implications of contamination when developing local plans and when considering applications for proposed developments.

The planning regime addresses the risks in relation to future use of land and where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and / or landowner.

Planning policies and decisions should ensure that a site is suitable for its new use and that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990.

Where necessary, Stockton Borough Council will use conditional approval on planning consents that requires the developer and / or landowner to follow a staged process of risk assessment to demonstrate that contamination has been effectively considered and dealt with in accordance with legislation, current guidance and good practice to demonstrate that the development is suitable for its new intended use.

5.3 Building Regulations

The Building Regulations 2010 Part C, C1.(2) and approved Document C, Site preparation and resistance to contaminants and moisture 2004 edition, contain specific requirements regarding contamination and landfill gas issues. These require measures to be taken to protect new buildings, and their future occupants, from the effects of contamination, including hazardous ground gases.

5.4 Pollution of Controlled Waters

The Water Resources Act 1991 provides the Environment Agency with powers to take action to prevent or remedy the pollution of controlled waters. The Act is particularly useful in cases

where there is historic pollution of groundwater, but where the Part 2A regime cannot be applied, for example, where pollutants are entirely contained within the relevant body of groundwater or where the source site cannot be identified.

5.5 Local Authority Integrated Pollution Prevention Control

The regulation and operation of installations under Local Authority Integrated Pollution Prevention Control are legislated under the Environmental Permitting (England and Wales) Regulations 2010 and provides provisions for dealing with contamination resulting from a breach of an environmental permit.

Local Authority Integrated Pollution Prevention Control permit applications must include a site report (non-risk based) describing in particular the baseline condition of the site of the installation / mobile plant. This includes identifying any substance, on or under the land which may constitute a pollution risk. On surrender of the permit, the operator must be able to demonstrate no deterioration of the baseline condition has occurred as a result of the permitted activities or will be required to restore the land and groundwater to its original state.

Environmental Permits issued by the Environment Agency are subject to the same requirements.

5.6 Environmental Damage Regulations 2009

The Environmental Damage (Prevention and Remediation) Regulations 2009 provide additional enforcement powers for the prevention and regulation of land contamination.

The regulations only apply to damage which has taken place after 1 March 2009 and are usually applied to allow a rapid reactive resolution to land contamination caused by a pollution incident.

These regulations define environmental damage as damage to:

- (a) Protected species or natural habitats, or a site of special scientific interest, or
- (b) Surface water or groundwater with a deterioration in the water's status, or
- (c) Contamination of land that results in a significant risk of adverse effects on human health.

The Environment Agency, Natural England, Local Authorities and the Secretary of State are the enforcing authorities responsible for administering and enforcing the regulations in England and Wales, depending on the type of damage involved. The enforcing authority must establish whether damage is 'environmental damage' and identify a responsible operator in order to serve a remediation notice taking account of any measures proposed by the operator.

MANAGEMENT PROCEDURES

The Environmental Protection Team within the Environmental Health Unit and the Public Health Department is responsible for implementing Part 2A of the Environmental Protection Act 1990.

The Environmental Protection Team will implement the Contaminated Land Strategy and will, if proven necessary through the risk assessment process, make determinations of contaminated land under Part 2A of the Environmental Protection Act 1990 and carry out statutory enforcement on behalf of Stockton Borough Council. These statutory duties will be carried out by the Environmental Protection Team Manager and the Senior Environmental Protection Officer.

The Senior Environmental Protection Officer attend training and regular professional meetings to maintain competency and share best practice.

CLANNERS (Contaminated Land North East Regions) regional meeting is held each quarter. Part 2A is a regular agenda item in which changes to guidance are discussed and best practice information is shared by local authorities on their experience in investigating and risk assessing sites. Environment Agency representatives attend the meetings and provide valuable input regarding controlled waters as well as delivering training sessions to the group.

The NECLF (North East Contaminated Land Forum) regional meeting is held each quarter. The meeting is managed by panels of representatives from Local Authority, Environment Agency, Consultancy and Academia and the meetings provide an opportunity to share best practice and knowledge from a wide spectrum of specialists.

The TVEPG (Tees Valley Environmental Protection Group) local to the Tees Valley Authorities and local Environment Agency is held 6 times per annum and contaminated land is a standing agenda item.

6.1 Use of Consultants

Stockton Borough Council may on occasion use consultants to carry out site investigations and risk assessments on their behalf using the Council's Framework Agreement subject to funding secured under the DEFRA Capital Grant Programme.

6.2 Delegated Powers

The Environmental Health Service Manager, Environmental Protection Team Manager and the Senior Environmental Protection Officer have delegated powers to act under Part 2A of the Environmental Protection Act 1990 and Section 108 of the Environment Act 1995.

6.3 Powers of Entry

The requirements of Section 108 of the Environment Act 1995 relate to the Statutory Powers of Entry regarding the inspection of land under Part 2A and are detailed in Sections 2.10-2.11 of the revised Statutory Guidance. Stockton Borough Council will use these powers in the situation where the landowner refuses entry or cannot be found.

6.4 Health and Safety

Prior to carrying out site work, a health and safety risk assessment will be undertaken in accordance with Health & Safety legislation and the Council's Corporate Health & Safety policy. This will determine the risks to personnel carrying out the various phases of work involved and assist in the implementation of controls to remove or reduce risks identified to the lowest practicable level.

Any contractor or consultant appointed to carry out investigation work for Stockton Borough Council will be supplied with relevant information held about the site and will be required to carry out suitable and sufficient risk assessments that ensure the health, safety and welfare of themselves and others.

Consultant and contractor risk assessments will be vetted by the Council for their general health and safety competence prior to work commencing and to demonstrate that they are fully compliant with health and safety legislation.

All necessary control measures highlighted in the risk assessment will be implemented prior to the commencement of site works and will be reviewed during the works.

Relevant guidance on Health and Safety aspects of site inspection is included within HS (G)66 (1991) Protection of workers and the general public during the development of contaminated land.

6.5 Information and Complaints

Upon receipt of information regarding land contamination or water pollution, an officer from Environmental Protection will acknowledge receipt of this within 3 working days in accordance with appropriate work instructions. All information received will be recorded in accordance with the corporate service request procedure. The customer will be contacted by an officer in order to verify the source and details of the information. Customers will be kept updated on actions taken and their identity will remain confidential.

Information provided anonymously will be acted upon as if it had been given by an identified person as far as is possible.

6.6 Staffing – Current FTE for Land Quality

Following the change of direction from proactive action to reactive action the Contaminated Land Support Officer post was deleted in November 2013. The following posts exist in the establishment to deal with contaminated land:-

- 1) Senior Environmental Protection Officer 1 full time post [1FTE]
- 2) Environmental Protection Team Manager [0.2FTE]
- 3) Environmental Health Service Manager [As Required]
- 4) Senior Environmental Health Officer [0.2FTE]

INFORMATION MANAGEMENT

7.1 Risk Assessment Software

Stockton Borough Council purchased the Jacobs site categorisation software which is linked to the Geographical Information System 4 [GIS4] for the purpose of prioritising potentially contaminated sites. This geographical information system is presently being updated to incorporate new themes and environmental information.

7.2 Data Confidentiality

Site Prioritisation Inspection List of potentially contaminated sites is held using appropriate organisational and technical measures to comply with the General Data Protection Regulations (GDPR) 2016, in accordance with the Councils Policy on data protection.

This data that is held is mainly incomplete and unverified and therefore reports, including conclusions based on strategic preliminary information, or incomplete data pertaining to sites that are considered to be potentially contaminated, will be treated as confidential.

Part 3 12(4)(d) of the Environmental Information Regulations 2004 provides an exemption for disclosing incomplete data.

Information provided to the Council by a third party in the course of its inspection and assessment of land for potential contamination, will also be classified as confidential and will only be disclosed for public inspection with the prior agreement by the information provider.

7.3 Public Register

Section 78R of the Environmental Protection Act 1990 requires Stockton Borough Council to maintain a Public Register relating to actions pertaining to land identified as contaminated land under the Act. The Public Register of Contaminated Land is available for viewing during normal office hours, by prior appointment at:

Environmental Health Unit

16 Church Road

Stockton on Tees

TS18 1XD

01642 526575

7.4 Requests for Environmental Information

Stockton Borough Council will comply with the provisions of the Environmental Information Regulations 2004, the Freedom of Information Act 2000, Data Protection Act 1998 and the General Data Protection Regulations (GDPR) 2016 in all responses to requests for environmental information.

Care will be taken to ensure that the information provided is as accurate and correct as possible so as to avoid 'blighting' land and raising unfounded concerns (see Section 8.2).

Environmental information requests are normally to provide environmental information pertaining to property sales or development.

GENERAL LIAISON AND COMMUNICATION STRATEGIES

8.1 Internal Liaison

Environmental Protection will liaise throughout the inspection process with relevant sections of the Council, in particular Planning, Building Control, Regeneration and Legal. The Leader of the Council, Ward Councillors, the Cabinet Member for Environment, the Head of Service will be informed of site investigation works and the outcome of these works.

8.2 External Liaison

The Statutory Guidance states that developing an understanding of risks in complex cases may raise issues which are beyond the expertise of one person and may require the involvement of others to conduct a robust risk assessment. The question of whom to consult will depend largely on the circumstances of the land, and expertise and gaps in expertise of the person carrying out the risk assessment. Stockton Borough Council will liaise with the necessary Agencies as appropriate depending on the circumstances of the case. Where warranted, the Council will consider employing the services of external consultants and legal representatives.

Stockton Borough Council will always consult with the Environment Agency when trying to establish through the risk assessment process when there is evidence that the site in question is a potential special site in this case the Council would formally request that the Environment Agency carry out the intrusive inspection of the land on its behalf.

Stockton Borough Council will consult the Public Health England [PHE] formerly the Health Protection Agency [HPA] when trying to establish through the risk assessment process whether significant harm is being caused or there is a significant possibility of such harm being caused to health. PHE will be asked to work with the Council to assist in the communication of advice regarding health effects and may assist with information, such as leaflets and information packs aimed at the interested parties.

Stockton Borough Council will consult Natural England when considering whether land might meet the definition of contaminated land by virtue of an ecological system effect.

8.3 Communication Strategies

Prior to site investigation works for the highest priority sites, Environmental Protection will develop communication strategies with the assistance of the Corporate Communication teams as necessary.

Communication strategies will aim to: -

- (1) Address the site investigation works
- (2) Inform and update key milestones to all interested parties on a regular basis throughout the site investigation process
- (3) Provide information packs for residents, including historical information on previous land use, details of the site investigation works, frequently asked questions and contact details.
- (4) Provide an opportunity for interested parties to communicate directly with a designated officer

- (5) Reassure interested parties for all aspects of the site investigation works
- (6) Gain the support of residents, landowners, land users, the wider public and other interested parties for the site investigation works
- (7) Manage the perceived risk to all interested parties
- (8) Anticipate and manage any potential crisis situations that may generate negative publicity for the site investigation works or Stockton Borough Council

8.4 Review and Consultation of the Contaminated Land Inspection Strategy

The 2019-24 Strategy has been reviewed in accordance with the advice provided in the DEFRA Contaminated Land Statutory Guidance published in April 2012.

Statutory bodies, other sections of the Council, Councillors and the Tees Valley Authorities will be consulted on the draft Contaminated Land Inspection Strategy in February 2020 and will be invited to provide comments.

The full list of consultees is provided in Appendix 5.

The Contaminated Land Inspection Strategy proposes a 5 year work programme for the inspection process (see Section 4).

The next review of the Strategy is expected to be undertaken at the end of 2024 or earlier if required by statute.

8.5 Responses from External Consultees

The Council will consider all comments on this draft strategy and has amended the final document accordingly. External consultees include the following organisations:

- Environment Agency
- Natural England
- Tees Archaeology

SUPPORTING INFORMATION

The following Appendices support the Contaminated Land Inspection Strategy:

Appendix 1:	Characteristics of Stockton Borough Council Area
Appendix 2:	Pollution of Controlled Waters and Special Sites
Appendix 3:	Powers of Entry
Appendix 4:	Contaminated Land Register of Public Information
Appendix 5:	List of Consultees
Appendix 6:	Contact Details
Appendix 7:	Reference Bibliography
Appendix 8:	Cost Recovery Policy
Appendix 9	Glossary of Terms

APPENDIX 1 - Characteristics of the Stockton Borough Council Area



Characteristics

Divided by the river Tees that runs east to west, the Borough of Stockton-on-Tees is situated in the north east of England. Covering an area of 20,400 hectares, it has a population of 178,000 with 75,000 dwellings the population density being 8.7 persons /hectare.

Stockton, with population of 82,500, is the main town with Thornaby (24,000) to the south and Billingham (35,000), dominated by the former ICI industrial complex, to the north. Around the river mouth, the reclaimed Seal Sands area is dominated by the chemical industry; in this area there are some protected areas for nature conservation. These include a National Nature Reserve [NNR], a Special Protection Area [SPA], RAMSAR site and three Sites of Special Scientific Interest [SSSI] [details relating to these is referred to on page23].

There are a number of small villages in the on the outskirts of the Borough.

A large proportion (62.5 %) of the properties in the Borough have gardens.

The Borough is bounded by Hartlepool and parts of Sedgefield (to the north), Middlesbrough to the south and east Hambleton to the south, Darlington (to the west) and Redcar and Cleveland Council to the east.

Brief History of the Area

The Borough has a history of mineral extraction, brick and tile manufacture, iron and steel manufacturing, shipbuilding, engineering works and chemical works.

It owes its origins to the River Tees, a feature whose economic prominence is gradually being restored. Previously a tidal river, a Barrage, completed at the end of 1994, now maintains its height at, more or less, high tide level.

Geological and Hydro geological Characteristics

The geology of the area shows predominantly Sherwood Sandstone (in the central area, which is an aquifer), Mercia Mudstone (to the east, which is a non-aquifer) and Permian Upper Marls (to the west, which is a non-aquifer). A dolerite dyke, known as the Cleveland Dyke, runs approximately NW to SE.

The solid geology is overlaid with drift deposits of boulder clay, laminated clay, littoral sand and glacial sand and gravel.

Within the Borough, there are only two principal water abstraction points where the water is used for drinking purposes or food use (one in Stillington and one at United Biscuits at Billingham).The EA has identified one Source Protection Zone [SPZ] for the drinking water abstraction source. In addition there are several groundwater and surface water abstractions in the area

Ground Vulnerability maps indicate that most of the area has low permeability drift deposits which overlay the aquifers.

APPENDIX 2 - Pollution of Controlled Waters and Special Sites

The Contaminated Land (England) Regulations 2006 include the description of sites which if contaminated land should be considered as a special site.

These criteria were amended in April 2012 and the current provisions are as follows.

Special Sites

2.—(1) Contaminated land of the following descriptions is prescribed for the purposes of section 78C (8) as land required to be designated as a special site—

- (a) land affecting controlled waters in the circumstances specified in regulation 3;
- (b) land which is contaminated land by reason of waste acid tars in, on or under the land;
- (c) land on which any of the following activities have been carried on at any time—
 - (i) the purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal; or
 - (ii) the manufacture or processing of explosives;
- (d) land on which a prescribed process designated for central control has been or is being carried on under an authorisation, where the process does not solely consist of things being done which are required by way of remediation;
- (e) land on which an activity has been or is being carried on in a Part A(1) installation or by means of Part A(1) mobile plant under a permit, where the activity does not solely consist of things being done which are required by way of remediation;
- (f) land within a nuclear site;
- (g) land owned or occupied by or on behalf of—
 - (i) The Secretary of State for Defence;
 - (ii) The Defence Council,
 - (iii) An international headquarters or defence organisation, or
 - (iv) The service authority of a visiting force, being land used for naval, military or air force purposes.
- (h) Land on which the manufacture, production or disposal of—
 - (i) chemical weapons,
 - (ii) any biological agent or toxin which falls within section 1(1)(a) of the Biological Weapons Act 1974(1) (restriction on development of biological agents and toxins), or
 - (iii) any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act (restriction on development of biological weapons), has been carried on at any time;
- (i) Land comprising premises which are or were designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991(2) (arrangements for development etc. of nuclear devices).
- (j) Land to which section 30 of the Armed Forces Act 1996(3) (land held for the benefit of Greenwich Hospital) applies.

- (k) land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land; and
- (l) Land which—
 - (i) is adjoining or adjacent to land of a description specified in any of sub-paragraphs (b) to (k); and
 - (ii) is contaminated land by virtue of substances which appear to have escaped from land of such a description.

2. For the purposes of paragraph (1)(b), “waste acid tars” are tars which—

- (a) contain sulphuric acid;
- (b) were produced as a result of the refining of benzole, used lubricants or petroleum; and
- (c) are or were stored on land used as a retention basin for the disposal of such tars

Regulation 3 Pollution of Controlled Waters

3. The circumstances to which regulation 2(1) (a) refers are where—

(a) controlled waters which are, or are intended to be, used for the supply of drinking water for human consumption are being affected by the land and, as a result, require a treatment process or a change in such a process to be applied to those waters before use, so as to be regarded as wholesome within the meaning of Part 3 of the Water Industry Act 1991(1) (water supply);

(b) controlled waters are being affected by the land and, as a result—

(i) those waters do not meet or are not likely to meet the criterion for classification applying to the relevant description of waters specified in regulations made under section 82 of the Water Resources Act 1991(3) (classification of quality of waters); or

(ii) for controlled waters that are designated as protected areas under Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(4), those waters do not meet the environmental objectives that apply to them under that Directive (excluding protected areas listed in paragraphs (i), (iv) and (v) of Annex IV to that Directive); or

(c) controlled waters are being affected by the land and—

(i) any of the substances by reason of which the pollution of the waters is being or is likely to be caused falls within any of the families or groups of substances listed in paragraph 1 of Schedule 1 to these Regulations; and

(ii) the waters, or any part of the waters, are contained in underground strata within the saturation zone which comprise wholly or partly any of the formations of rocks listed in paragraph 2 of Schedule 1 to these Regulations.

APPENDIX 3 - POWERS OF ENTRY

Sections 2.10-2.11 of the revised Statutory Guidance (April 2012) states the requirements for when to use Statutory Powers of Entry for the inspection of land under Part 2A in accordance with Section 108 of the Environment Act 1995. Stockton Borough Council will use statutory powers of entry in the situation where the landowner refuses entry or cannot be found.

If the local authority intends to carry out an inspection using statutory powers of entry under Section 108 of the Environment Act 1995 it should first be satisfied that there is a reasonable possibility that a significant contaminant linkage may exist on the land. The authority should not use statutory powers of entry to undertake intrusive investigations, including the taking of sub-surface samples, if:

(a) it has already been provided with appropriate, detailed information on the condition of the land (e.g. by the Environment Agency or some other person such as the owner of the land) which provides sufficient information for the authority to decide whether or not the land is contaminated land; or

(b) a relevant person (e.g. the owner of the land, or a person who may be liable for the contamination) offers to provide such information within a reasonable and specified time, and then provides such information within that time

APPENDIX 4 - CONTAMINATED LAND REGISTER OF PUBLIC INFORMATION

Information to be placed on the Contaminated Land Public Register includes:

(1) Site information

- location or address
- plan
- National Grid Reference
- size of site
- extent of contamination

(2) Details of site reports and investigation works

(3) Remediation notices

(4) Remediation declarations, remediation statements and notifications of claimed remediation

(5) Name and address of each person who has claimed to have carried out remediation

(6) The period in which it is claimed remediation was carried out

(7) Details of sites designated as 'special sites'

(8) Details of any appeals against remediation or charging notices

9 Details of convictions

The Contaminated Land Register of Public Information will not include:

(1) Details of historic land use data or other research records used in the investigation of potentially contaminated land.

(2) Information that is against the national interest

(3) Information that is commercially confidential

APPENDIX 5 - LIST OF CONSULTEES

INTERNAL CONSULTEES

Economic Growth Service Manager - Chris Renahan

Strategic Development Manager– Iain Robinson

Planning Development Manager – Simon Grundy

GIS4 Manager - David Renn

EXTERNAL CONSULTEES

<p>DARLINGTON BOROUGH COUNCIL Environmental Health, Town Hall, Darlington, DL 1 50T Tel: 01325 388563 Fax: 01325 388446 Email: environmentalhealth@darlington.gov.uk Website: www.darlington.gov.uk</p>	<p>HARTLEPOOL BOROUGH COUNCIL Engineering Consultancy Bryan Hanson House Lynn Street Hartlepool TS24 7BT</p>
<p>Middlesbrough Borough Council Environmental Health PO Box 99A Town Hall Middlesbrough TS1 2QQ</p>	<p>Redcar and Cleveland Borough Council Environmental Protection Team Belmont House Rectory Lane Guisborough Cleveland TS14 7FD</p>
<p>Peter Rowe Tees Archaeology Sir William Gray House Clarence Road Hartlepool TS24 8BT Tel: 01429 523455</p>	<p>Land Contamination Technical Specialist (Groundwater, Hydrology and Contaminated Land Team) Environment Agency North East Office Tyneside House Skinnerburn Road Newcastle Business Park Newcastle upon Tyne NE4 7AR Tel: 0870 8506506</p>
<p>North East HPT Public Health England Floor 2 Citygate Gallowgate Newcastle upon Tyne NE1 4WH Telephone 0300 303 8596 (option 1) Out of hours advice 0191 269 7714</p>	<p>Natural England Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH Phone: 0300 060 3900</p>

APPENDIX 6 - CONTACT DETAILS ENVIRONMENTAL HEALTH UNIT

Stephen Donaghy, Environmental Health Service Manager

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APPENDIX 7 - REFERENCE BIBLIOGRAPHY

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16. The Environment Act 1995. HMSO.
17. The Environmental Information Regulations 2004.
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APPENDIX 8 - COST RECOVERY POLICY

Environmental Protection Act 1990 Part IIA Contaminated Land Remediation - Cost Recovery Policy

It is the aim of this policy to demonstrate the considerations and procedure that will be undertaken by Stockton Borough Council (hereafter 'the Authority') when pursuing the recovery of its costs expended in contaminated land remediation. This policy forms an addendum to the Council's Adopted Contaminated Land Strategy (revised July 2003). It is an objective of this document to promote transparency, fairness and consistency within the process of remediation cost recovery under Part IIA of the Environmental Protection Act 1990 and in compliance with the statutory guidance.

The policy specifies circumstances where the Authority would be prepared to consider waiving or reducing the recovery of remediation costs having given due regard to hardship and other relevant factors. The policy will be made available as appropriate in the pursuance of duties under the above Act.

Cost Recovery Principles

Costs incurred for remediation work carried out by Stockton Borough Council on contaminated land, as determined under Part IIA of the Environmental Protection Act 1990, can be charged to the relevant '*Appropriate Person/s*', subject to certain conditions.

Stockton Borough Council will recover costs following the '*Polluter Pays*' principle by virtue of which all reasonable costs of remediation are to be borne by the polluter where possible.

The Cost Recovery Policy is limited only to Stockton Borough Councils "*reasonable costs*". This includes any costs incurred by the Environment Health Unit or other Units of the authority in managing or carrying out *remediation* of any land determined as contaminated. However, the Council will always seek to do such work economically.

Section 78P of the Environmental Protection Act provides that:

- (1) Where, by virtue of section 78N(3)(a), (c), (e) or (f) the enforcing authority does any particular thing by way of remediation, it shall be entitled, subject to sections 78J(7) and 78K(6) to recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons in relation to the thing in question, from those persons in proportions determined pursuant to section 78F(7)..."
- (2) in deciding whether to recover the cost, and if so, how much of the cost, which it is entitled to recover under subsection (1) above, the enforcing authority shall have regard -
 - (a) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and
 - (b) to any guidance issued by the Secretary of State for the purposes of this subsection"

Stockton Borough Council will aim to recover remediation costs in a manner that is both fair and equitable.

Cost Recovery Procedure

Stockton Borough Council will:

- Identify the *Appropriate Person/s* in respect to the designated contaminated land, as defined under the tests detailed in Section 78F under Part IIA of the Environmental Protection Act 1990.
- Determine whether any of the exemptions from liability under sections 78J, 78K or 78X(3) apply and then carry out the processes of *attribution*, *exclusion* and *apportionment* of liability.
- Establish the reasonable costs incurred in carrying out the remediation action.
- Apportion these costs between any identified *Appropriate Persons* for the Remediation Actions carried out.

Stockton Borough Council will itself be responsible for any fraction of the costs that are apportioned to itself as an *Appropriate Person*, or which relate to *Orphan linkages* from the process of *attribution*. The Council will consider whether the apportioned share of costs for the remediation actions would cause hardship on the relevant *Appropriate Person/s*.

Where recovering costs from a Class A appropriate person who also owns all or part of the contaminated land, the Council may recover its costs by serving a charging notice on the land. A charging notice cannot be used in other circumstances. If the appropriate person does not repay the amount that the Authority is seeking to recover, then Stockton Borough Council will consider pursuing a remedy in the County Court or the High Court as appropriate.

Hardship and the Waiving of Costs

Commercial Enterprises / Small and Medium Sized Enterprises

The same approach will be adopted to all types of commercial or industrial enterprises, which are identified as appropriate persons. This will apply to public corporations, limited companies, partnerships or an individual operating as a sole trader.

The Authority may choose to take account of such adopted policies relating to economic development of the Borough when determining cost recovery decisions.

Small and Medium Sized Enterprises are defined as an independent enterprise with fewer than 250 employees, and either an annual turnover not exceeding £40 million or an annual balance sheet total not exceeding £27 million.

The Authority will give consideration to:

Whether recovery of the full costs of remediation would mean that the enterprise is likely to become insolvent and thus cease to exist; and

If so, the cost to the local economy of such a closure.

The Authority will consider whether the full recovery of remediation costs would cause any small or medium sized enterprise that is the appropriate person, to become insolvent and thus cease to exist. The Council will consider reducing the cost recovery to the extent required to avoid making the enterprise insolvent.

The Authority will not waive or reduce the recovery of costs where it is clear that an enterprise has deliberately arranged matters so as to avoid responsibility for the costs of the remediation.

Trusts

Where the appropriate persons identified include those acting as trustees, Stockton Borough Council will assume that such trustees will exercise all powers, which they have or may reasonably obtain in order to make funds available from the trust or from borrowing that may be made available for the trust for the purpose of paying for remediation.

The Authority would consider waiving or reducing costs to a level that is equal to the amount that can be made available from the trust where total remediation costs would exceed those funds available.

The Authority will not consider reducing the costs:

- where it is clear that the trust was formed for the purpose of avoiding paying the remediation costs; or
- to the extent that trustees have personally benefited, or will personally benefit, from the trust.

Charities

The Authority will consider reducing costs so as not to jeopardise the charities ability to provide benefit or amenity, which is in the public interest. The extent of such a reduction would depend on the individual circumstances of the case and charity and the measure of public benefit afforded by the organisation.

This approach will also be applied to charitable trusts and charitable companies.

Social Housing Landlords

The Authority shall consider reducing or waiving costs if:

- the Appropriate Person is a body eligible for registration as a social housing landlord under section 2 of the Housing Act 1996.
- its liability relates to land used for social housing; and
- full recovery would lead to financial difficulties for the Appropriate Person, such that the provision or upkeep of the social housing would be jeopardised.

The extent of the waiver or reduction considered should be sufficient to avoid any such financial difficulties. If hardship would be endured by the appropriate person/s then the Authority would explore options to reduce the possibility of such hardship being incurred. These options may include considering whether it could recover more of its costs by deferring recovery and securing them by a charge on the land in question under Section 78P. Such deferral may lead to payment from an appropriate person either in instalments or when the land is next sold.

The Authority may also consider whether cost recovery would be less likely to cause hardship if repayment was to be made in instalments over time. This may be particularly relevant where the Authority is able to secure its costs through a charging notice.

Specific Considerations for Class A Persons

The Authority will not be willing to waive costs where it was in the course of carrying on a business that the Class A person caused or knowingly permitted the presence of the significant pollutants. Reduction of costs will be considered where the person was not carrying on a business as he/she will be less likely to have earned profit from such an activity.

Where Other Potentially Appropriate Persons have not been Found

The Authority will consider waiving or reducing its cost recovery from a Class A person who satisfactorily demonstrates that:

Another identified person who cannot now be found, also caused or knowingly permitted the significant pollutant to be in, on or under the land in question; and

If that other person were to be found the Class A person seeking the waiver or reduction would either be excluded from liability by virtue of the Exclusion Tests set out in Part 5 Chapter D or the proportion of the costs would be significantly reduced by virtue of the guidance on apportionment in Part 6 Chapter D.

Specific Considerations for Class B Persons

Costs in Relation to Land Values

In some cases, the costs of remediation of a site may exceed the value of the land in relation to its current or proposed use.

In such cases the Authority will consider waiving or reducing its cost recovery from a Part B person where that person satisfactorily demonstrates that remediation costs do indeed exceed the land's value. In this context 'value' will be taken to mean the value that the remediated land would have on the open market at the time the cost recovery decision is made, disregarding any possible blight arising from the contamination.

The extent of the waiver or reduction in costs recovery should not exceed that which will ensure remediation is not greater than the value of the land in question.

Precautions Taken before Acquiring a Freehold or a Leasehold Interest

The Authority will consider reducing costs recovery where a Class B person who is the owner of the land demonstrates to the satisfaction of the Authority that:

- He took such steps prior to acquiring the freehold, or accepting the grant of assignment of a leasehold, as would have been reasonable at that time to establish the presence of any pollutants; and
- When he acquired the land, or accepted the grant of assignment of the leasehold, he was nonetheless unaware of the presence of the significant pollutant now identified and could not reasonably have been expected to have been aware of their presence; and
- It would be fair and reasonable, taking into account the interests of national and local taxpayers, that he should not bear the whole cost of remediation.

Owner Occupiers of Dwellings

Where a Class B person owns and occupies a dwelling on the contaminated land in question, the Authority will consider waiving or reducing its costs recovery where that person satisfies the Authority that, at the time the person purchased the dwelling, he did not know, and could not reasonably have been expected to know, that the land was adversely affected by the presence of a pollutant.

Any such reduction or waiver will only be granted to the extent necessary to ensure that the Class B person in question bear no more of the cost of remediation than it appears reasonable to impose, having regard to income, capital and outgoings.

Where the appropriate person has inherited the dwelling or received it as a gift the above principles will be applied with respect to the time at which he received the property.

Where the contaminated land in question extends beyond the dwelling and its curtilage, and is owned and occupied by the same appropriate person the above principles will be applied to the dwelling and its curtilage only.

Remediation under Written Agreement

In any case where the Authority has carried out remediation under the terms of a written agreement with the Appropriate Person/s, any recovery of costs will be made under the terms of that agreement - the agreement is in effect a contract between the Council and the Appropriate Person/s.

In a case of this kind, the normal cost recovery powers, in section 78P, do not apply, which means also that the limitations on recovery of costs relating to hardship and the Statutory Guidance also do not directly apply. The Appropriate Person in entering into an agreement with the Authority effectively waives their rights under the cost recovery policy and must abide by the terms specified by the written agreement.

Appropriate Persons Seeking Reduction or Waiving of Costs

In any case where an appropriate person is seeking a reduction or waiving of remediation costs the Authority will require:

- Formal request made in writing to the Environmental Health Unit Manager
- The presentation of evidence in support of the above claim appertaining to one or more of the categories described above.

The Authority will seek to obtain such information as is reasonable having regard to:

- How the information may be obtained;
- The costs, for all parties, involved in obtaining the information; and
- The potential significance of the information for any decision.

When the above circumstances are satisfied the Authority will give all due consideration to the request and provide the applicant with a decision in writing containing the reasoning behind how the decision was achieved.

In such cases a Charging Notice as specified by the Environment Act 1995 Section 78P would be served on the appropriate person. The Charging Notice shall:

- Specify the amount of costs which the Authority is wishing to recover;
- State the interest to be applied to the costs as determined by the Authority;
- State the route of appeal available to the person concerned; and
- Detail grounds for a charge on the premises concerned pursuant or otherwise to an appeal.

Appeals against Charging Notices may be made to the County Court within the period of 21 days beginning with the date of service.

The Authority when seeking to enforce a charge under the above shall apply all powers and remedies, as appropriate, granted by the Law of Property Act 1925, and otherwise, as if it were a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.

APPENDIX 9 - GLOSSARY OF TERMS

Apportionment: any determination by the enforcing authority under Section 78F(7) (that is, a division of the costs of carrying out any remediation action between two or more appropriate persons).

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 anything which is to be done by way of remediation in any particular case.'

Attribution: the process of apportionment between liability groups.

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

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

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

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

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

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

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.

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

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

Remediation action: any individual thing which is being, or is to be, done by way of remediation.