

TORRIDGE DISTRICT COUNCIL

April 2013

Contaminated Land Strategy



Environmental Health & Public Protection

Contaminated Land Strategy

April 2013

Torrige District Council

Document History

January 2001	Consultation on draft Strategy
June 2001	Contaminated Land Strategy Published
January 2013	Consultation on revised Strategy
April 2013	Revised Strategy
January 2018	Review due

Contact Officer: David Morgan
Environmental Protection Manager
Torrige District Council
Bridge Buildings
Bideford, Devon. EX39 2HT
Tel: 01237 428810

If you require assistance with this or other documents produced by the Council please let us know at the address above.

CONTENTS		
	EXECUTIVE SUMMARY	5
1	INTRODUCTION	6
	1.1 What is contaminated land?	6
	1.2 The statutory regime	6
	1.3 A strategic approach	7
	1.4 The Council's revised strategy	8
	1.5 Management of the strategy	8
	1.6 The public register	8
2	OBJECTIVES AND PRIORITIES	9
	2.1 General approach of the Council	9
	2.2 Objectives of the strategy	10
	2.3 Aims & priorities	10
3	CHARACTERISTICS OF THE TORRIDGE AREA	11
	3.1 Geographic & demographic setting	11
	3.2 Protected location	11
	3.3 Geological characteristics	12
	3.4 Hydrogeology	12
	3.5 Ancient monuments	13
	3.6 Current and previous land uses	13
	3.7 Redevelopment history and controls	14
	3.8 Known information on contamination	14
	3.9 Natural contamination	14
4	STRATEGIC INSPECTION	15
	4.1 The 2001 strategic approach	15
	4.2 The revised strategic approach	15
	4.3 Planning controls	16
	4.4 Reactive investigations	17
	4.5 Responding to complaints	17
	4.6 Budgetary position	17
5	DETAILED INSPECTION	19
	5.1 Risk assessment of sites	19
	5.2 The inspection process	20
	5.3 Receptor-source-pathway model	20
	5.4 Consultation with interested parties	21

	5.5 Special sites	21
	5.6 Deciding that land is not contaminated land	21
6	DETERMINATION AND REMEDIATION	22
	6.1 Determination steps	22
	6.2 Formal determination of contaminated land	23
	6.3 Issuing determination Notices	23
	6.4 Remediation of contaminated land	23
7	MANAGEMENT AND COMMUNICATION	24
	7.1 Management of the strategy	24
	7.2 Liaison and communication	24
	7.3 Owner, occupiers and other interested parties	25
	7.4 Powers of entry	25
	7.5 The public register	25
	7.6 Provision of information to the Environment Agency	26
8	REVIEW MECHANISMS	27
9	REFERENCES	28
10	APPENDICES	29

Executive Summary

Since April 2000, local authorities have had a duty to manage contaminated land issues within their areas. The duty was conferred by Part 2A of the Environmental Protection Act 1990 (“the Act”) and associated Statutory Guidance. The Act gives local authorities the lead role in dealing with contaminated land and requires each authority to publish a written strategy setting out how it will carry out its duties. Torridge District Council published its strategic approach to managing contaminated land in June 2001: *Torridge District Council – Contaminated Land Inspection Strategy*.

The 2001 strategy has been reviewed and revised following the publication in April 2012 of new Statutory Guidance from DEFRA. This revised strategy explains how the Council will implement the contaminated land regime from 2013 onwards, taking account of the latest guidance, experience over the past decade and the resources available to the Council. The revised strategy is available both in hard copy and on the Council’s web site.

Torridge District Council recognises that decisions about contaminated land are not made on a purely technical basis. There will be a variety of regulatory, commercial, financial, legal and societal factors, which also affect how particular contaminated land issues should be addressed. The Council also recognises that decisions about contaminated land need to be scientifically robust, proportionate and transparent.

The Strategy takes a risk-based ‘suitable for use’ approach. This means assessing risks associated with land contamination in the context of the actual or intended use of a site.

The principal objectives of the revised strategy are to:

- meet the statutory requirements to produce a strategy and review it;
- set out a strategic approach to the identification and remediation of contaminated and potentially contaminated land;
- adopt a systematic and robust approach for dealing with sites that appear to be contaminated;
- inform stakeholders of the Council’s intentions and actions;
- set out how the Council will liaise with the Environment Agency and other stakeholders;
- ensure appropriate records are kept in a Public Register;
- minimise burdens on individuals, businesses and the wider community;
- encourage the re-use of brownfield land

Wherever possible, these objectives will be achieved through voluntary remediation and / or the redevelopment or regeneration of sites. This approach aims to minimise burdens on individuals, business and the wider community while ensuring that unacceptable risks are dealt with effectively.

1 Introduction

In April 2000, the UK Government introduced a new duty on each local authority to inspect the land within its area and identify any areas that could be defined as "contaminated land". Where a local authority finds such land, it must ensure it is remediated to reduce or remove risks to people and the environment. The government set out its requirements for dealing with contaminated land within Part 2A of the Environmental Protection Act 1990 ("the Act") and associated 'Statutory Guidance' documents.

1.1 What is Contaminated Land?

Contaminated land is defined in Part 2A of the Environmental Protection Act 1990 as any land, which appears to the local authority in whose area it is situated to be in such condition, by reason of substances in, on or under the land that:

"Significant harm is being caused or there is a significant possibility of such harm being caused, or pollution of controlled water is being or is likely to be caused."

"Harm" is defined as:

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

The fact that a harmful substance is in, on or under a piece of land does not in itself mean that land is "contaminated land". The source of harm may be present but unless a possible route exists through which it is likely to cause harm to health, ecosystems or property or to cause pollution of controlled waters, the land is not contaminated within the meaning of the Act.

In order for there to be a 'significant possibility of significant harm' the above source-pathway-receptor linkage must be identified. Only once this 'pollutant linkage' has been established for a harmful substance can the land in question be designated as "contaminated land" under the Act.

1.2 The Statutory Regime

The statutory basis of the Government's contaminated land regime is to be found in Part 2A of the Environmental Protection Act 1990 (which was inserted by the Environment Act 1995). The Act gives local authorities the lead role in dealing with contaminated land issues within their area and requires each authority to publish a written strategy setting out its approach. Strategies can reflect the particular circumstances of an authority's area but must be written in accordance with statutory guidance issued by the Secretary of State for Environment, Food and Rural Affairs. Revised statutory guidance was published in April 2012 (*Environmental Protection Act 1990: Part 2A - Contaminated Land Statutory Guidance*)

The 2012 guidance replaces the previous statutory guidance. It sets out the overarching objectives of Government policy on contaminated land and the Part 2A regime as follows:

- (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.

The Guidance explains how local authorities should implement the contaminated land regime, including how they should go about deciding whether land is contaminated land in the legal sense of the term. The Guidance does not apply to radioactive contamination of land, which is covered by separate statutory guidance.

Enforcing authorities are required to use Part 2A only where no appropriate alternative solution exists. Alternatives include development of land under the planning system, during the building control process, or where action is taken independently by landowners. Other legislative regimes may also 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.

1.3 A Strategic Approach

The Guidance requires local authorities to take a strategic approach to carrying out its duties which should be rational, ordered and efficient, and reflect its local circumstances. Strategic approaches may vary between local authorities but all authorities should set out their approach as a written strategy.

Strategies should include:

- Aims, objectives and priorities, taking into account the characteristics of the area
- A description of relevant aspects of the area
- The approach to strategic inspection of the area
- The approach to prioritising detailed inspection and remediation activity
- How the approach under Part 2A fits with broader approaches to land contamination, such as using the planning system to ensure land is made suitable for use when it is redeveloped

- How the authority will seek to minimise unnecessary burdens on the taxpayer, businesses and individuals

1.4 The Council's Revised Strategy

Torridge District Council published its strategic approach to managing contaminated land in June 2001: Torridge District Council – Contaminated Land inspection Strategy.

The 2001 strategy has been reviewed with particular reference to the 2012 Statutory Guidance. This revised strategy explains how the Council will implement the contaminated land regime from 2013 onwards and takes account of the latest guidance, experience over the past decade and the resources available to the Council at the current time. The revised strategy is available both in hard copy and on the Council's web site.

1.5 Management of the Strategy

Environmental Protection will act as lead service within the Council for the purpose of managing the Strategy.

A designated Officer will have responsibility for dealing with enquiries and incidents relating to land contamination and generally implementing the strategy. This Officer will also be the main contact for liaison with the Environment Agency, Natural England, DEFRA, land owners, agents, members of the public and other stakeholders concerning potentially contaminated land.

The designated Officer will review the strategy at regular intervals of no less than 5 years or when statutory changes or new guidance require it.

1.6 The Public Register

The Council must maintain a public register containing certain information about the sites it has dealt with under the Part IIA regime. Sites are only included on the register once a declaration has been made.

2 Objectives and Priorities

Torrige District Council recognises that decisions about contaminated land are not made on a purely technical basis. There will be a variety of regulatory, commercial, financial, legal and societal factors, which also affect how particular contaminated land issues should be addressed. The Council also recognises that decisions about contaminated land need to be scientifically robust, proportionate and transparent.

The District Council is the lead regulator on contaminated land and will work in partnership with other organisations, particularly the Environment Agency and Natural England to resolve issues effectively.

2.1 General Approach of the Council

The Council will take a risk-based approach to assessing whether land is contaminated. Risks will be assessed according to the suitable for use principle in accordance with Statutory Guidance. This means assessing risks associated with land contamination in the context of actual or intended use of a site. The Council's approach to assessing the risks posed by particular sites is explained in section 6.

In developing its strategic approach, the Council has paid due regard to its local circumstances and information currently available. This has enabled consideration of the following aspects:

- available evidence that significant harm or pollution of controlled waters is actually being caused;
- the extent to which human and ecological receptors and controlled waters are likely to be distributed within different parts of the authority's area;
- the extent to which those receptors are likely to be exposed to a contaminant as a result of the use of the land or the geological and hydrogeological features of the area;
- the extent to which information on land contamination is already available;
- the history, scale and nature of industrial and military activities which may have contaminated the land in different parts of the District;
- the nature and timing of past redevelopment in different parts of the District;
- the extent to which remedial action has already been taken by the authority to deal with land-contamination problems, or is likely to be taken as part of the District's Local Plan and Development Plan for its area.

The Council is also mindful that other regulatory provisions can be relevant to problems with land contamination. Overlaps with planning, water pollution and Environmental Permitting legislation are important examples. The Council will seek to resolve problems using alternative provisions wherever this appears appropriate, with a view to minimising burdens on individuals, business and the wider community.

2.2 Objectives of the Strategy

The principal objectives of this strategy are to:

- meet the statutory requirements to produce a strategy and review it;
- set out a strategic approach to the identification and remediation of contaminated and potentially contaminated land;
- adopt a systematic and robust approach for dealing with sites that appear to be contaminated;
- inform stakeholders of the Council's intentions and actions;
- set out how the Council will liaise with the Environment Agency and other stakeholders;
- ensure appropriate records are kept in a Public Register;
- minimise burdens on individuals, businesses and the wider community;
- encourage the re-use of brownfield land

2.3 Aims and Priorities

In accordance with the requirement to take a strategic approach, a prioritised list of the Council's aims has been devised to aid decision-making in a cost effective manner.

The Council's prioritised aims in dealing with contaminated land will be to:

- protect human health;
- protect controlled waters;
- prevent damage to property; livestock and crops etc;
- protect designated ecosystems;
- prevent further contamination of land;
- encourage voluntary remediation; and
- encourage re-use of brownfield land.

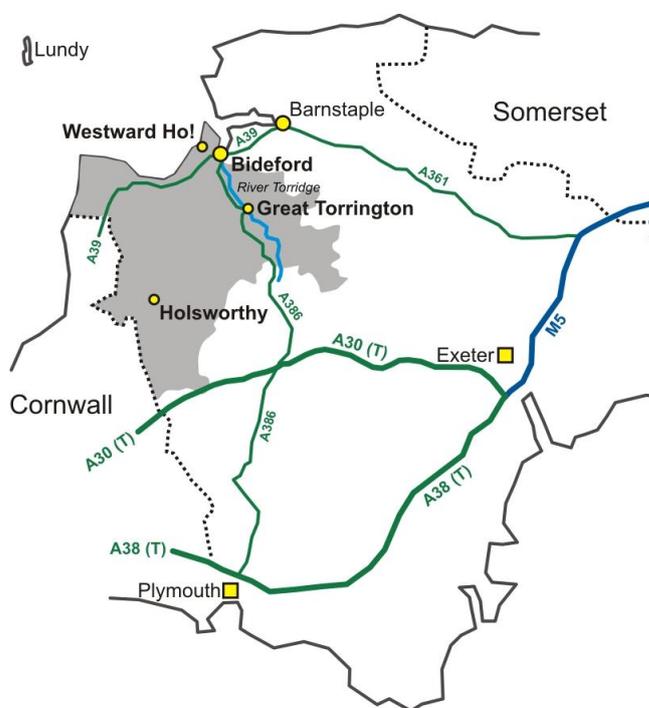
Wherever possible, these aims will be achieved through voluntary remediation and / or the redevelopment or regeneration of sites. The approach aims to minimise the burden on individuals, business and the wider community while ensuring that unacceptable risks are dealt with effectively.

3 Characteristics of the Torridge Area

This section provides background information about Torridge District Council's area, with particular reference to issues relevant to land contamination.

3.1 Geographic and Demographic Setting

Torridge is located in the north west of Devon. The district is predominantly rural, with the main towns comprising Bideford, Holsworthy and Torrington. The district comprises 984 sq km (380 sq miles) and has a natural and built environment of high quality. The coastline, historic towns, nature reserves and Areas of Outstanding Natural Beauty are valued assets.



The population of Torridge is 65,800 (2010) and this is projected to grow by more than 35% between 2010 and 2031. This is much higher than the 17.7% population growth projected for England as a whole over the same period. Almost half of the population live in or close to Bideford including East-The-Water, Northam, Westward Ho! and Appledore. Great Torrington has around 5,000 inhabitants and Holsworthy 2,000. The remaining residents live in the open countryside or in one of the one hundred or so villages and hamlets of the area.

This Council's area has an extensive rural road network and is connected to the rest of the region by the A39, A388, A386 and the A3072 roads. The regional rail network does not extend into the Council's administrative area.

Local authorities with land adjoining the administrative area of this Council are North Cornwall District Council, North Devon District Council, West Devon Borough Council and Mid Devon District Council.

3.2 Protected Locations

In environmental and ecological terms, the Torridge area is of great value with its rural landscape and distinctive heritage. The natural landscape, varying between wooded valleys and extensive open moorlands, is highly valued by local residents and tourists.

The Taw/Torridge Estuary and much of the associated land is of special ecological interest. The River Torridge itself contains areas of regional, national and international importance for wildlife and supports salmon, sea trout and brown trout fisheries. A major part of the area is designated as Sites of Special Scientific Interest (SSSI) and lies within a County Nature Conservation Zone. The area is also valued for its wading birds, wildfowl and a range of maritime and estuarine habitats and as a result it is an Important Bird Area (IBA). The northern portion of the area is part of the North Devon Area of Outstanding Natural Beauty and the coastline includes extensive stretches of SSSI.

Extensive stretches of this Council's coastline are part of the Tintagel – Marsland – Clovelly Special Area of Conservation (SAC), characterized by the Vegetated Sea Cliffs, having European interest.

One of the most important habitats is the remaining area of Culm grassland, which itself is a SAC. This marshy grassland habitat occurs on the gley soils of the Culm Measures and is of internal importance for the plant and animal communities that it supports. The Purple Moor Grass Meadows and Marsh Fritillary Butterfly associated with this area have European interest.

Lundy Island covers some 13,000 hectares and is situated approximately 18km off Hartland Point. As England's only Marine Nature Reserve (MNR) there is exceptionally high habitat diversity and associated species variety. This island is famous for its birds and is also a SAC and a SSSI with its Reefs and Offshore Reefs having European interest. Lundy has a working population of approximately 14 residents.

3.3 Geological Characteristics

The geology of the area is dominated by deposits from the Carboniferous period, which lasted for 65 million years, 345-280 million years ago. Deposits of the Upper Carboniferous period, known as the Culm Measures, include the Bude and Crackington Formations which were formed in thinly bedded layers, alternating between shale and sandstone: the sandstone predominating in the Bude Formation and the shales in the Crackington Formation.

3.4 Hydrogeology

Ground water is utilised throughout this Council's area. This is abstracted from boreholes, wells and springs for a variety of agricultural, domestic and commercial uses where access to mains supply is impractical. South West Water supplies the majority of drinking water supplies and there are around 550 known private supplies in the District, 400 of which serve single dwellings.

This Council's area is comprised mainly of Minor Aquifers, which seldom produce large quantities of water for abstraction, though they are important for local supplies. Ground water is also essential in maintaining the flow of surface watercourses and wetland features, providing a component flow (base flow) to many watercourses throughout the year.

The majority of this Council's area is underlain by the Carboniferous Crackington and Bude Formations, which consist of interbedded sandstones and shales. In these aquifers, water is stored and transmitted within fissures and fractures, and typical abstractions yield quantities of water sufficient for private domestic use and limited agricultural use. Higher yields are associated with areas of more intense fracturing.

3.5 Ancient Monuments

Ancient Monuments are historical structures or monuments worthy of preservation and study due to their archaeological or heritage interest. There are a number of Ancient Monuments within the Torridge area, including ancient fortifications, burial sites and settlements.

Should enquiries indicate that contamination is present at a site containing an Ancient Monument, special care will be taken in order to preserve the site's historical value. It is possible for circumstances to arise in which contaminants present at a site actually form part of the archaeological interest of that site. If the Council becomes aware of a need to remediate a site containing an Ancient Monument, the County Archaeologist and English Heritage will be consulted at an early stage.

3.6 Current and Previous Land Uses

The majority of the Council's area is farmed, with most of the area grassland, supporting dairy and other livestock. Other agricultural uses include farm woodland, rough grazing and some diversified uses such as solar farms.

Woodland and forestry occupy a small percentage of the area, ranging from naturally invaded pastures, through to managed deciduous woodlands and coniferous monoculture.

There is some quarrying for stone and ball clay and other industrial activities, including a shipbuilding complex, within the Council's area.

Tourism is a major source of income, attracting thousands of visitors a year. The South West Coast path provides access to the countryside for walkers and attracts considerable numbers of people to the area. Similarly, development of the Tarka Trail and the reopening of the old railway routes to pedestrian and cycle traffic have added opportunities for access to the countryside.

Lime burning was carried out in various locations in the 19th Century. It involved burning lime in kilns to form quicklime. Water was then added which produced a chemical reaction resulting in the water being given off as steam. The resulting

powder was spread over farmland to reduce the acidity of the soil and to break down heavy clay soils.

Other former land uses that have the potential to cause contamination in this Council's area include gasworks, slaughterhouses, landfills, tanneries, mines, rail industry, bus depots, former Ministry of Defence land, sewage treatment plants, petrol filling stations and timber treatment yards.

3.7 Redevelopment History and Controls

The Torridge District Council Local Plan, The Minerals and Waste Local Plan and the County Structure Plan are key documents for the majority of planning decisions. The Council's Local Plan has included specific controls for land contamination following introduction of the Council's 2001 Contaminated Land Strategy.

Under these planning controls, development of land is subject to site investigation and remediation requirements where land contamination is likely to be an issue or requires treatment. Land that has been the subject of development since these controls were introduced is therefore unlikely to constitute contaminated land in the future and is suitable for its intended use.

3.8 Known Information on Contamination

The Council holds information on potentially contaminated sites and on sites which have been remediated. This has been accumulated from various sources including: submissions as part of the development control process; complaints from the public; premises subject to Environmental Permitting (e.g. the unloading of petrol into storage at a service station); landfill site records; and records of historical and current industrial uses.

3.9 Natural Contamination

A number of potential sources of natural contamination are described within existing information published, for example, by the British Geological Survey (BGS). Such information will be taken into account when assessing any potentially contaminated sites.

4 Strategic Inspection

All local authorities are required to adopt a strategic approach to the identification of contaminated land in their area. The Statutory Guidance requires that the approach adopted should:

- be rational, ordered and efficient;
- take account of local circumstances.

The latest statutory guidance acknowledges that approaches will vary between local authorities.

4.1 The 2001 Strategic Approach

In its 2001 Strategy, the Council detailed its strategic approach, which generally related to the gathering of information about potentially contaminated land and the subsequent assessment and prioritisation of these sites. The approach involved a number of stages including the following:

1. A framework for inspection of sites requiring urgent attention
2. Collection of information on potentially contaminated sites
3. Initial assessment of potentially contaminated sites
4. Compilation of a list of potentially contaminated sites
5. Risk-based assessment and prioritisation of sites
6. Detailed inspection of high risk sites from the priority list

At stage 2, information was gathered from a variety of data sources, including historical mapping and business directories. This information was then used to compile a list of some 2570 locations where contaminated land could theoretically be present. Sites were added to the list where an information source indicated that a possibly contaminative use or activity had, at some time, taken place at the location. In practice, it is very likely that the vast majority (and possibly all) of these sites are not contaminated land as defined by the Act. Stages 5 and 6 have not been completed.

4.2 The Revised Strategic Approach

Having regard to the latest Statutory Guidance, experience of dealing with contaminated land issues over the past decade and the resources available to the Council, a different strategic approach is now considered appropriate.

In reaching this decision, account has been taken of the following factors:

- Many potentially polluting sites have already been remediated, redeveloped, or are still in active industrial use.

- Some brownfield sites have been, or are due to be developed under planning controls which will ensure they are remediated where necessary.
- When the Council has received reports or complaints related to land contamination these have been and will continue to be resolved as they arise.
- To date, no land has been identified where the Authority considers that there is a reasonable possibility that a significant contamination linkage exists for the purposes of designating the land as contaminated under the Part 2A regime.

The Council must also consider the resources it has available and the need to target limited resources where they can be of most benefit. Undertaking a proactive assessment and prioritisation of the list of 2570 “potentially contaminated” sites would require specialist Officer and Geographical Information System resources that are not currently in place. Such a task would also take a considerable time to complete and would need to be followed by detailed investigation of the highest risk sites before any firm decisions could be reached on contamination. The detailed inspection of individual sites can be an expensive, time consuming and potentially controversial task. Affected properties may suffer significant property blight during the process. While this would, of course, be justified for sites where significant risks to sensitive receptors have been identified, such information is unlikely to be available prior to detailed inspection unless the site is currently giving cause for concern.

The Council considers that it can better prioritise its response to the risks of land contamination within its area by acting on information concerning the current status of sites. This approach would combine use of Development Control provisions for sites undergoing development, with a robust response to reports and complaints about potentially contaminated land. This approach would replace the previous prioritisation and proactive site inspection approach set out in the 2001 Strategy. The revised strategic approach is set out below and in the next section.

4.3 Planning Controls

The Council will make use of the planning system to address sites that may be affected by land contamination.

Since the production of the Contaminated Land Strategy in 2001, it has been recognised that, generally, the most appropriate and efficient way to address the issues associated with contamination is through the planning process. This places the onus on the developer/applicant to address potential contamination issues as part of the wider planning process, including providing detailed assessments produced by competent consultants where necessary.

Issues of land contamination are a material consideration within the planning system and, as such, receive attention as part of all relevant applications. Environmental Protection is consulted on relevant applications, which provides an opportunity for technical queries to be raised and additional information to be requested from applicants when necessary.

4.4 Reactive Investigations

Although the Council's approach to identifying potentially contaminated land will principally be via the development control process, there may still be a need to investigate some sites, in particular where information is received that suggests a problem of land contamination is of current concern to one or more sensitive receptors.

If information comes to the attention of the Council that indicates a site is causing concerns relating to contaminated land, the Council will undertake any necessary investigation in accordance with the statutory and other relevant guidance. The detailed inspection of relevant sites is described in the next section.

4.5 Responding to Complaints

A complaint regarding contaminated land will be dealt with following the same procedure as currently used to deal with statutory nuisance complaints.

All complainants may expect:

- their complaint to be logged and recorded;
- to be contacted by an officer regarding their complaint within a reasonable amount of time; and
- to be kept informed of progress towards resolution.

Every effort will be made to resolve complaints quickly and efficiently and most complaints are likely to be resolved by the provision of information, or by agreeing voluntary action with the landowner.

Where complaints relate to land that appears to constitute contaminated land as defined under the Act the investigation is likely to take longer to resolve. Complainants will be advised of the key stages in the process as the investigation continues including the requirement to identify the following:

- i. evidence of a viable pollutant linkage, possibly requiring a detailed site investigation, before a formal determination of contaminated land is permissible;
- ii. prior consultation with interested parties and other stakeholders;
- iii. a minimum of a three month period between determination and serving of a remediation notice; and
- iv. the requirement for the enforcing authority to make every effort to identify the original polluter of the land (or "Class A" person).

The regulations allow conditions ii and iii to be waived in extreme cases, but not conditions i and iv. The decision making process can therefore take many months to complete.

4.6 Budgetary Provision

The inspection and assessment of potentially contaminated land can be a complex and time-consuming activity. The cost of such activities varies enormously, making it difficult to anticipate budgetary pressures from one year to the next. Where the

Council becomes aware of the need to inspect a site under Part 2A of the Act it will be important that appropriate budgetary provision is made to cover any necessary investigations. The Environmental Protection Manager will assess the likely costs of Part 2A inspections as and when they arise, with a view to ensuring appropriate financial provisions are put in place.

In addition to its inspection responsibilities, the Council also has responsibilities as a land owner. Should any of its land be found to be contaminated land the Council may need to carry out remediation work or take other actions. Remediation can be very expensive and the Council is aware of the risks it potentially carries in this regard.

5 Detailed Inspection

If information comes to the attention of the Council indicating a site is causing concerns relating to contaminated land, the Council will investigate in accordance with the statutory and other relevant guidance.

The Statutory Guidance requires that:

“If the local authority identifies land where it considers there is a reasonable possibility that a significant contaminant linkage (as defined in paragraphs 3.8 and 3.9) exists, it should inspect the land to obtain sufficient information to decide whether it is contaminated land, having regard to section 3 of this Guidance.”

The guidance also makes clear that, under Part 2A, the starting point should be that land is not contaminated land unless there is reason to consider otherwise.

All decisions about contaminated land will be made on the basis of a robust risk assessment, undertaken in accordance with the Guidance.

5.1 Risk Assessment of Sites

Part 2A takes a risk-based approach to defining contaminated land. The Statutory Guidance defines “risk” as 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.

For a significant risk to exist there needs to be one or more contaminant-pathway-receptor linkages – “**contaminant linkage**” – by which a relevant receptor might be affected by the contaminants in question. In other words, there must be contaminants present in, on or under the land in a form and quantity that poses a hazard, and one or more pathways by which they might significantly harm a sensitive receptor.

The receptors recognised as being potentially sensitive in Part 2A are:

- **Human Beings**
- **Ecological Systems or Living Organisms forming part of a System within certain Protected Locations**, including: Sites of Special Scientific Interest (SSSI), National Nature Reserves (NNR), Nature Reserves, Special Areas of Conservation (SAC), Special Protection Areas (SPA), Candidate SACs, RAMSAR sites, Areas of special protection for birds, Source protection zones, Groundwater-private abstractions, Groundwater-major aquifers.
- **Property in the Form of Buildings**, including Ancient Monuments:

- **Property in other Forms:** Crops, Livestock, Home-grown produce, owned or domesticated animals, wild animals subject to shooting or fishing rights; and
- **Controlled Waters:** Surface waters (e.g. rivers, lakes, streams), Drinking water abstractions as defined in the Water Resources Act 1991 Section 104.

Risks will be considered in relation to the current or likely future use of the land, in accordance with statutory guidance.

5.2 The Inspection Process

The inspection process will typically involve a number of incremental steps starting with a desk-based study. This may then be followed by a site visit and walkover; a generic quantitative risk assessment; and various stages of more detailed quantitative risk assessment as required. The process will normally continue until it is possible to decide:

- (a) that there is insufficient evidence that the land might be contaminated land to justify further inspection and assessment; and/or
- (b) that the land is or is not contaminated land.

For the inspection of land to proceed to the next stage of risk assessment there must be evidence that an unacceptable risk is reasonably likely to exist. If the Council considers there is little reason to consider that the land might pose an unacceptable risk, inspection activities will normally stop at that point.

5.3 Receptor-Source-Pathway Model

Inspections will normally make use of a receptor–source–pathway model (see Appendix 1) as a means for identifying any potentially significant pollutant linkages at the site. This approach aims to establish the presence and condition of the most sensitive receptors at an early stage in order to target resources at the highest risks.

In order to undertake the receptor–source–pathway analysis certain information must be established. The requirements are:

- current land use plans;
- locations of current and former landfills and other areas of filled ground;
- locations of groundwater abstraction wells, both public and private;
- current surface water classification under the Environment Agency’s General Quality Assessment Chemical Grading for Rivers and Canals Scheme and the river ecosystem classification under the Surface Waters (River Ecosystem Classification) Regulations 1994;
- current processes authorised by the Environment Agency or Local Authority under the Environmental Permitting regulations.
- location of statutory and non-statutory sites of ecological importance;
- potential sources of contamination based on the industries listed in the DOE Industry Profiles; and

- the current and historical locations of these industries.

The further detailed inspection of relevant sites will be carried out in accordance with the Defra Guidance and other relevant guidance and standards.

5.4 Consultation with Interested Parties

The Council will consult the landowner before inspecting the land unless there is a particular reason why this is not possible, for example because it has not been possible to identify or locate the landowner. Where the owner refuses access, or the landowner cannot be found, the authority may consider using statutory powers of entry, subject to statutory guidance and the particular circumstances of the case.

The Council will also consider informing other interested parties (for example occupiers of the land and owners and occupiers of neighbouring land) and whether to publish a written statement.

5.5 Special Sites

If the local authority inspects land which it considers (if the land were to be determined as contaminated land) 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 will consult the Environment Agency and, subject to the Agency's advice and agreement, arrange for a joint approach to inspection of the land.

5.6 Deciding that land is not Contaminated Land

Where the Council inspects land under Part 2A and then decides it is not contaminated land it will issue a written statement to that effect to the land owner (rather than coming to no formal conclusion). The statement will make clear that on the basis of its assessment, the authority has concluded that the land does not meet the definition of contaminated land under Part 2A. The Council will also keep a record of its reasons for deciding that land is not contaminated.

6 Determination and Remediation

The Council has the sole responsibility for determining whether any land appears to be contaminated land although it can rely on information or advice provided by another body such as the Environment Agency, or a suitably qualified and experienced practitioner appointed for the purpose.

There are four possible grounds for the determination of land as contaminated land (non-radioactive contamination):

- (a) Significant harm is being caused to a human, or relevant non-human, receptor.
- (b) There is a significant possibility of significant harm being caused to a human, or relevant non-human, receptor.
- (c) Significant pollution of controlled waters is being caused.
- (d) There is a significant possibility of significant pollution of controlled waters being caused.

Where, following detailed inspection of a site, the Council reaches a decision that land is “contaminated land” under the Act, it will proceed as follows and in accordance with the statutory guidance.

6.1 Determination Steps

Once an area of statutory contaminated land has been identified, there are three main stages that need to be completed prior to formal determination of land as contaminated land under the Act:

- a) The Council must have identified one or more significant contaminant linkage(s), and carried out a robust, appropriate, scientific and technical assessment of all the relevant and available evidence.
- b) In the case of any land which, following determination as contaminated land, would be likely to meet one or more of the descriptions of a “Special Site” set out in the Contaminated Land Regulations 2006, the Council will consult the Environment Agency before deciding whether or not to determine the land.
- c) The Council must have informed the owners and occupiers of the land and any other person who appears to the authority to be liable to pay for remediation, of its intention to determine the land (to the extent that the authority is aware of these parties at the time) unless the authority considers there is an overriding reason for not doing so. Where appropriate, time will also be allowed to reach informal arrangements to deal with the problems.

Where possible, the following steps will also be completed prior to formal determination:

- decide what remediation is required and attempt to achieve remediation through a voluntary agreement if possible and appropriate;
- record appropriate information on the public register

6.2 Formal Determination of Contaminated Land

The Council will prepare a written record of any determination that land is contaminated land.

The record will include:

- a description of the particular significant pollutant linkage, identifying all three components of the pollutant, pathway and receptor;
- a summary of the evidence upon which the determination is based;
- an analysis of significant harm or significant pollution;
- a summary of the relevant assessment of this evidence; and
- a summary of the way in which the authority considers that the requirements of statutory guidance have been satisfied.

6.3 Issuing Determination Notices

Once the Council has determined land as contaminated land, it will give notice of its decision to:

- a) the Environment Agency;
- b) the owner of the land;
- c) any person who appears to the authority to be in occupation of the whole or any part of the land; and where identified:
- d) each person who appears to the authority to be an appropriate person; in accordance with section 78B(3) of Part 2A.

6.4 Remediation of Contaminated Land

Once land has been determined as contaminated land, the Council will consider how it should be remediated and, where appropriate, issue a remediation notice. If land is deemed to be a “special site” the Environment Agency takes on responsibility for remediation following determination.

The process of deciding who is responsible for remediation of contaminated land can be quite complicated and the council will have regard to the detailed Statutory Guidance in reaching its decisions.

The Council will seek to recover its costs wherever possible, in accordance with the Act and Statutory Guidance.

7 Management and Communication

7.1 Management of the Strategy

Environmental Protection is the lead service within the Council for the purpose of managing the Strategy. A designated Officer has responsibility for dealing with enquiries and incidents relating to land contamination and generally implementing the strategy. This Officer is also the main contact for liaison with the Environment Agency, Natural England, DEFRA, land owners, agents, members of the public and other stakeholders concerning potentially contaminated land.

Elected members will be informed at the earliest opportunity of any plans to determine an area of council-owned land, or where the Council is the “appropriate person” and may be liable for remediation costs. Ward Councillors will be informed of any plans to determine land within their area.

The designated Officer will review the strategy every 5 years and when statutory changes or new guidance require it.

7.2 Liaison and Communication

Effective liaison with other bodies is central to the implementation of this strategy.

Statutory consultees for the 2001 Contaminated Land Strategy were:

- Environment Agency
- English Nature
- English Heritage
- DEFRA
- South West of England Development Agency
- Devon County Council

The Environment Agency has also been consulted on the revised Strategy.

There is considerable scope for members of the public, businesses and voluntary organisations to make important contributions in dealing with contaminated land. The revised strategy will be published on the Council’s website and the involvement of non-statutory consultees in the process of dealing with contamination land will be encouraged wherever appropriate.

The statutory definition of contaminated land requires that there must be a **significant possibility of significant harm to human health or non-human receptors** or **significant possibility of pollution of controlled waters**. The Council recognises that the expectations of some members of the public will not be met by the powers the local authority may exercise under the Part 2A regime. Wherever possible, Council Officers will seek to explain matters in terms that can readily be understood by non-specialists.

7.3 Owners, Occupiers and other Interested Parties

The Council's approach to its regulatory duties is to seek voluntary action before taking enforcement action. This approach has been adopted and used to good effect for issues of land contamination previously and recognises that in many cases, remediation can be achieved more effectively by agreement rather than by enforcement. This approach requires effective communication with owners, occupiers and other interested parties at all stages. The designated Environmental Protection Officer will keep owners, occupiers and other interested parties informed as necessary.

7.4 Powers of Entry

Under Section 108 (6) of the Environment Act 1995, the council has been granted powers of entry to carry out its investigations and inspections.

Before the Council carries out an inspection using statutory powers of entry it will first attempt to liaise with owners and other interested parties with a view to avoiding the need to using such powers.

The Council will not carry intrusive investigations at a site if:

- it has already been provided with detailed information on the condition of the land upon which the Council can determine whether the land is contaminated; or
- a person offers to provide such information within a reasonable and specified time, and then provides such information within that time.

Where the Council decides to carry out intrusive investigation it will be in accordance with appropriate technical procedures for such investigations (for example BS10175 (2000) and BS5930 (1999)).

7.5 The Public Register

Under the regulations, the Council is required to maintain a public contaminated land register. The Environmental Protection Team will hold the register at the Council's Bridge Buildings office in Bideford. It will be accessible on request by members of the public during office hours.

The regulations specify the information that can be recorded on this register, which will include:

- remediation notices;
- details of the site reports obtained by the authority relating to remediation notices;
- remediation declarations, remediation statements and notification of claimed remediation;
- designation of sites as "special sites";
- any appeals lodged against remediation and charging notices; and
- convictions.

The public register will not hold details of historic land use and other records used in the assessment and investigation of potentially contaminated land.

7.6 Provision of Information to the Environment Agency

The Environment Agency is required to prepare an Annual Report for the Secretary of State on the state of contaminated land in England and Wales. This report includes:

- a summary of local authority inspection strategies, including progress against the strategy and their effectiveness;
- the amount of contaminated land and the nature of the contamination; and
- measures taken to remediate land.

As local authorities are the lead regulators on contaminated land, the national survey is heavily reliant on information provided by local authorities. A memorandum of understanding has been drawn up between the Environment Agency and the Local Government Association that describes how information will be exchanged between the local authority and the Environment Agency. The Council will seek to provide information to the Environment Agency in accordance with this guidance.

The local authority will also provide information to the Environment Agency whenever a site is determined as contaminated land, and whenever a remediation notice, statement or declaration is issued or agreed. The Environment Agency has provided standard forms allowing this information to be provided in a consistent format and the Council will use these to fulfil its reporting requirements where appropriate.

8 Review Mechanisms

The Council will review its written strategy periodically to ensure it remains up to date. This will occur at least every 5 years and when statutory changes or new guidance require it.

All decisions made with regard to contamination need to be made objectively, consistently, transparently, and with proper regard to uncertainty. One important aspect of managing contaminated land is the need to review decisions made about particular sites, to establish whether any material changes have occurred. Examples of factors which influence the decisions and which have the potential to change include:

- site use
- use of adjoining land
- climatic or meteorological change
- change in physical characteristics e.g. the water environment
- legislative or internal or external policy changes
- technical standards or procedures
- actions taken by humans or other agents to reduce the effectiveness of remedial measures.

All decisions made under part 2A will therefore be made and recorded in a consistent manner that will allow for effective review as and when circumstances require it.

9 REFERENCES

Environmental Protection Act 1990. HMSO (1990).

The Environment Act 1995 HMSO (1995).

The Contaminated Land (England) Regulations 2000. SI 2000/227 HMSO (2000).

DEFRA Contaminated Land Statutory Guidance, April 2012

CLG National Planning Policy Framework, March 2012

British Standards Institute. Code of Practice for Site Investigations. BS 5930 (1999).

British Standards Institute. Investigation of Potentially Contaminated Sites – Code of Practice. BS10175 (2001).

10 APPENDICES

Appendix 1: Receptor – Source - Pathway initial Risk-Screening Model

Stage 1 Identifying Potential Receptors

Humans

- Low risk industrial and commercial developments
- Medium risk playing fields, public open space
- High risk informal play areas, schools, allotments, housing

Proximity of possible source, excluding landfills, to area

- High risk 0 to 50m
- Medium risk 51 to 250m
- Low risk >250m

Development (gas)

- Low risk industrial development
- Medium risk commercial development
- High risk residential

Proximity of filled ground/landfills to area

- High risk 0 to 50m
- Medium risk 51 to 250m
- Low risk >250m

Groundwater

- Low risk industrial or agricultural use
- Medium risk private supply
- High risk public supply

Proximity of abstraction point to area

- High risk 0 to 1000m
- Medium risk 1001 to 2000m
- Low risk >2000m

Surface Water

- Low risk GQA Classes A and B, River Ecosystem Classes RE1 and RE2
- Medium risk GQA Classes C and D, River Ecosystem Classes RE3 and RE4
- High risk GQA Classes E and F, River Ecosystem Classes RE5

Proximity of possible source from each bank and 100m upstream of GQA surface water class

- High risk 0 to 50m
- Medium risk 51 to 250m
- Low risk >250m

Protected Species

- Low risk non-statutory
- Medium risk SSSI
- High risk European designation

Proximity of possible source to area

- High risk 0 to 50m
- Medium risk 51 to 250m
- Low risk >250m

Property in other forms

- Low risk crops
- Medium risk livestock, owned or domesticated animals, wild animals subject to shooting or fishing rights
- High risk home-grown produce

Proximity of possible source to area

- High risk 0 to 50m
- Medium risk 51 to 250m
- Low risk >250m

Scoring risks

For each receptor and source proximity:

- score 3 for high risk;
- score 2 for medium risk; and
- score 1 for low risk.

By multiplying the receptor and source risk levels, nine possible combinations for each ranked group of receptors can be derived:

Receptor Sensitivity (Score)	High (3)	3	6	9
	Medium (2)	2	4	6
	Low (1)	1	2	3
		Low (1)	Medium (2)	High (3)
		Source proximity risk level (Score)		

The scores can be grouped into preliminary categories which in turn allow further investigations, of the inferred pathway, to be prioritised for those areas where greatest risk of contamination is likely to occur.

Risk Score

1 – 2
3 – 4
6

Preliminary Category

i
ii
iii

A land area plan of the site showing each of these Preliminary Categories can then be produced.

On this basis minimum information requirements to complete Stage 1 will be:

- i. Current land use plans
- ii. Locations of any near-by current and former landfills and other areas of filled ground
- iii. Locations of groundwater abstraction wells, both public and private
- iv. Current surface water classification under the Environment Agency's GQA (Chemistry) and River Ecosystem Classification
- v. Location of any statutory and non statutory sites of ecological importance
- vi. Potential sources of contamination based on the industries listed in the DOE Industry Profiles
- vii. The historical locations of these industries based on historical Ordnance Survey maps.

Stage 2 Inferred Pathways

Starting with the human receptors in Preliminary Category iv and the information available at this stage (including the local geological and hydrogeological conditions), the presence of a particular pathway will be considered in terms of:

- likely to be present;
- may be present; or
- unlikely to be present

The following matrix could emerge in terms of numbers of preliminary prioritised risks with emphasis placed on the presence of *likely* pathways in Preliminary Category iv for human receptors and then working down the chosen receptor priority list for Preliminary Category iv areas under the development, groundwater etc receptor categories.

			Preliminary Categories			
			Low	High	i	ii
Priority	High	Humans	X	X	X	X
		Development	X	X	X	X
		Groundwater	X	X	X	X
	Low	Surface water	X	X	X	X
		Protected Species	X	X	X	X
		Property in other Forms	X	X	X	X

Those areas falling within Preliminary Category i would be screened out at this stage.

