



Stockton-on-Tees
BOROUGH COUNCIL

Contaminated Land Inspection Strategy

April 2009

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Executive Summary

This strategy document outlines the general policy to be adopted by Stockton-on-Tees Borough Council (SBC) to deal with contaminated land in its area. The document sets out a programme for the systematic inspection of land within the SBC area to determine whether the land is 'contaminated' under the legal definition set out in the Environmental Protection Act 1990 Part 11A.

The document sets out the process by which sites will be prioritised to ensure that those that pose the greatest risk to health are inspected first. It also sets out the program and procedures for inspection of the area, SBC's communication strategy and how environmental information will be managed.

1 Introduction

1.1 General Policy of the Local Authority

The policy objectives of SBC in relation to contaminated Land are laid out in the Council Plan 2005/8 in the Healthier Communities and Adults Section with a commitment to improving public health of the Borough

The general policy of the authority is to identify and enable remediation to take place on land that is subject to historic pollution, where significant harm is being caused or there is pollution of controlled waters. The authority will inspect all land in the Borough including Council owned land and will encourage, where possible, voluntary action by the person(s) responsible for pollution.

1.2 Regulatory Context

The legislation outlining the new contaminated land regime (Part IIA) was introduced by Section 143 of the Environmental Protection Act 1990 (which is enacted by the provisions of the Environment Act 1995). The Contaminated Land [England] Regulations 2000 were made under the act. The legislation gives Local Authorities (LAs) the duty to inspect their area for contaminated land and sets out procedures for dealing with individual sites. It also gives powers to serve remediation notices on the appropriate person, based on the polluter pays principal. LAs have responsibility for enforcing the legislation, however the Environment Agency (EA) will play an important role in this area, a summary of this is set out below: -

- Provision of information on specific sites including the physical or chemical nature of a site and where possible to identify the person responsible for causing the pollution.
- Provision of advice in relation to pollution of controlled waters and to comment on the seriousness of any such pollution.
- To advise the LA on the formal designation of special sites.
- To carry out inspections of Potential Special Sites as agreed with the Council.
- To provide specific guidance on sites designated as contaminated.

In dealing with contaminated land, SBC will need to follow Statutory Guidance that has been produced by Department of Environment, Transport and the Regions (DETR).

The first inspection strategy was published in July 2001 with a further revision in July 2003. In carrying out its inspection duty under section 78B (1), SBC will need to take a strategic approach to the identification of land, which merits detailed individual inspection.

The definition of Contaminated Land, as set out in Section 78A of the Act, is:

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

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

‘Harm’ includes 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.

Pollution Linkage:

When determining whether a site is contaminated in accordance with the legal definition, SBC is required to use the pollution linkage model and must demonstrate, scientifically, that there is a viable *pathway* between the *contaminant* and any *receptor*. These terms are defined below: -

A *contaminant* is a substance, which has the potential to cause harm, in, on or under land or cause pollution of controlled waters.

A *pathway* is a route, or means, by, or through, which a receptor could be, or is exposed to, or affected by a contaminant.

A *receptor* includes human beings, ecological systems or living organisms forming part of a system within protected locations; property in the form of buildings, crops, livestock or animals; or controlled waters.

The definition of contaminated land is based on the principals of risk assessment, ‘risk’ is defined as the combination of: -

- a) The probability, or frequency, of occurrence of a defined hazard and
- b) The magnitude (including the seriousness) of the consequences.

1.3 Development of the Strategy

SBC has set up an internal working group known as the Contaminated Land Working Group [CLWG], which has representatives from the Development Control Section, Development Plans Section, Regeneration Section, and Geographic Information Service and is lead by the Environmental Health Unit

Consultation with the Environment Agency takes place in a number of ways, these include: -

- Via the Tees Valley Environmental Protection Group (TVEPG);
- North East Contaminated Land Forum;
- Direct contact with the Contaminated Land staff.

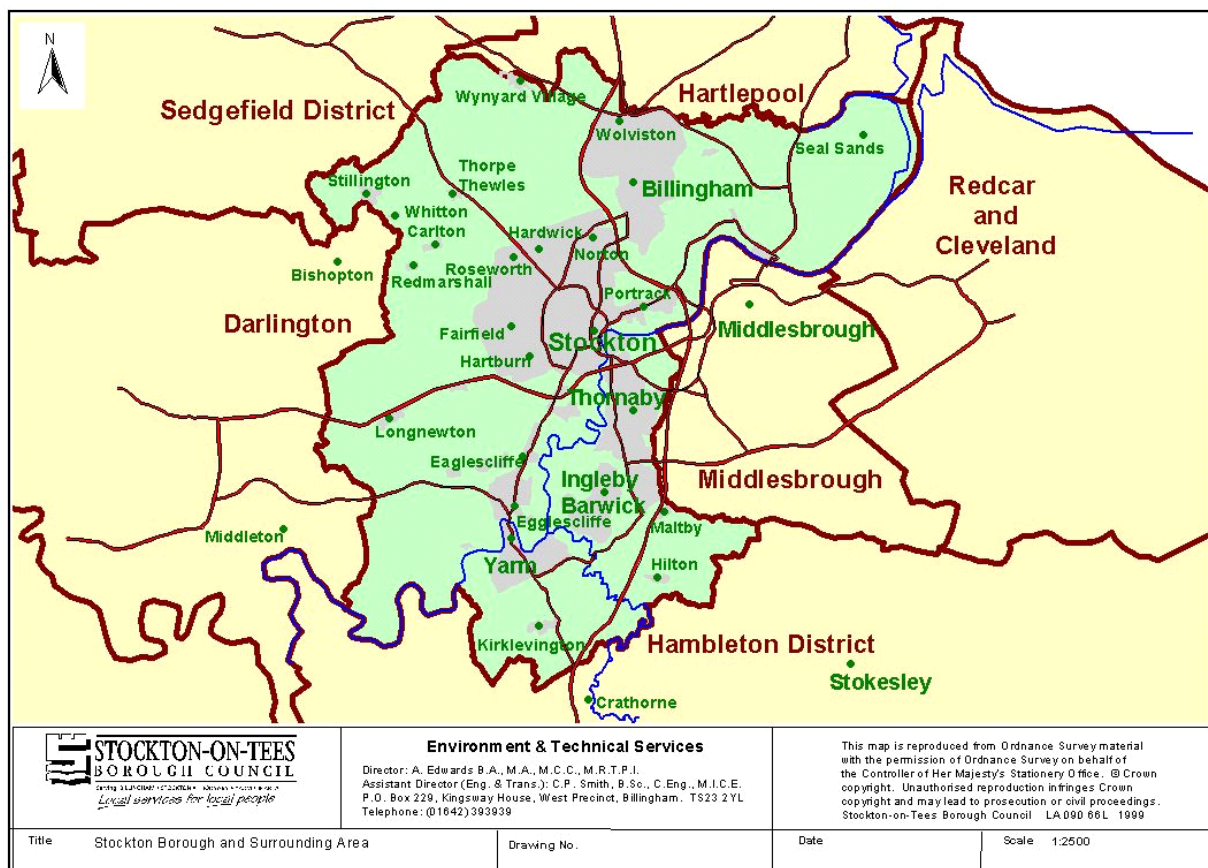
1.4 Objectives of the Strategy Document

The objectives of the strategy are to: -

- a.) ensure that the approach to historic pollution of land is rational, ordered and efficient,
- b.) ensure that the approach to historic pollution of land is proportionate to the seriousness of any actual or potential risk,

- c.) seek to ensure that the most pressing and serious problems are located first,
- d.) ensure that resources are concentrated on investigating in areas where the authority is most likely to identify contaminated land,
- e.) ensure that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land,
- f.) inform all stakeholders of any action to be taken in relation to contaminated land having regard to the communication strategy set out in section 6,
- g.) inform the Environment Agency of progress of the strategy implementation for the state of contaminated land report
- h.) encourage the reuse of previously developed land as a priority in consultation with other statutory bodies and potential developers by identifying potential sources of pollution and proposed remediation measures which would permit future beneficial use.

2 Characteristics of the Stockton Borough Council Area



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 of 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.

2.1 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.

2.2 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.

3 The Strategy

3.1 Aims of the strategy

The main aim of the strategy is to protect human health and to prevent pollution of controlled waters. In addition, it is necessary to protect the natural environment, buildings, crops and animals.

In line with the aims of the strategy, potentially contaminated sites will be inspected in accordance with the risk they pose to potential receptors. As there are very few drinking water extraction points within the Borough, it is felt that the main focus will be those sites where there is likely to be significant harm to human health.

3.2 Current Position on Contaminated Land

Public and private organisations have already carried out a large amount of work to remediate contaminated sites in the Borough. The most notable remediation was undertaken by the Teesside Development Corporation on the 'Teesdale' site in Thornaby.

In the early 1990s, WS Atkins (Environmental Consultants) investigated, on the behalf of the Council, a number of known landfill sites where there was thought to be a risk of landfill gas migration into adjacent buildings or into services.

A database of sites that have undergone remediation under the Planning regime is being compiled; this is linked to the GIS and to the Land Quality Management Database LQMD.

3.3 Objectives and Milestones

- a. To deal with enquiries, from the public and other bodies, sensitively and promptly taking into consideration the actual risk posed by the site. ***Response within 5 working days of the enquiry*** in accordance with written procedures.
- b. To start remediation works of emergency sites (where there is imminent danger of serious harm is being caused or serious pollution of water pollution is being caused) ***within 3 months of identification.***
- c. To complete initial inspection of all preliminary priority category two, three and four sites [PPC2-4] by 31st December 2007.

4 Local Authority Priority Actions and Timescales

4.1 Priorities

SBC's main priority will be to protect human health the legislation also requires protection for other receptors [including buildings, animals, crops, ecological systems] as well as the need to protect controlled waters. There are only two water abstraction points within the Borough for drinking/food use (See Section 2.2).

These will be take high priority in the inspection regime to ensure that valuable water resources are protected

4.2 General Site Evaluation

The Council in partnership with the Jacobs Babtie Group Ltd carried out a site categorisation exercise, which allows a preliminary screening exercise to be carried out using a computer model. The methodology for the model is set out in the Identification, Prioritisation and Risk Ranking of Potentially Contaminated Land: Babtie Group Ltd [June 2002].

This is based on guidance contained in the Contaminated Land Research Report CLR Report 6 [1995] Prioritisation and Categorisation Procedure.

This work involved the following steps: -

- Data Acquisition
- Identification of Potentially Contaminated Sub-areas
- Prioritisation of identified sub-areas according to CLR6 Part 1
- Preliminary Categorisation [risk ranking] of all prioritised sub-areas based upon information sourced
- Assignment of Preliminary Priority Categories [PPC] to all sub-areas

The model gives a score to all pollution sources, all pathways and all receptors and calculates a total normalized score [TNS] for the site which relates to the potential risk posed by the site, the TNS is converted into a preliminary priority category [PPC] between 1 and 4 depending on the risk posed.

Full details of the datasets used in the model and the scoring system is available in the methodology document produced by the Babtie Group Ltd.

Following the preliminary site prioritisation, sites will undergo the following: -

1. A more detailed ‘desk study’ exercise where additional information is collected on the site
2. A preliminary inspection of the site
3. Final prioritisation of the site using the Part 11 procedure set out in CLR6.

The PART II prioritisation, involving a preliminary site investigation, will require specific information on the individual site. The output from this will provide four priority categories as shown below: -

Priority Category 1	<p>Site probably or certainly not suitable for present use and environmental setting.</p> <p>Contaminants probably or certainly present and very likely to have an unacceptable impact on key targets.</p> <p>Urgent action needed in the short term.</p>
Priority Category 2	<p>Site may not be suitable for present use and environmental setting.</p> <p>Contaminants probably or certainly present, and likely to have an unacceptable impact on key targets.</p> <p>Action may be needed in the medium term.</p>
Priority Category 3	<p>Site considered suitable for present use and environmental setting.</p> <p>Contaminants may be present but unlikely to have an unacceptable impact on key targets.</p> <p>Action unlikely to be needed whilst site remains in present use or otherwise remains undisturbed.</p>
Priority Category 4	<p>Site considered suitable for present use and environmental setting.</p> <p>Contaminants may be present but very unlikely to have an unacceptable impact on key targets.</p> <p>No action needed while site remains in present use and remains undisturbed.</p>

4.3 Relationship to the Development Control Regime.

The majority of potential sites will be remediated under the Planning [Development Control] regime, staff from the Environment Health Unit review all planning applications, where a development is taking place on potentially contaminated land the developer will be asked to provide an assessment of contamination and if necessary to put forward a remediation scheme and validation report.

Where a sensitive development is proposed [e.g. residential, school, hospital] the developer will be expected to provide a minimum of a desk study for the development site, this will ensure that the development goes ahead in a safe manner.

If necessary the developer will be asked to carry out a full site investigation, with remediation and validation of results.

The guidance document PPG 23 Planning and Pollution Control gives local authorities advice on this matter. The Environment Health Unit records all planning consultations on the Flare computer system and reviews all site investigation reports submitted as part of the Planning system. The Environmental Health Unit has produced a guidance note for developers on the development of potentially contaminated land

4.4 Time scales and Progress to date

The first model run gave the following outputs.

The preliminary results of this exercise are as follows: -

- Preliminary Priority Category 1 PPC1 - 60 sites
- Preliminary Priority Category 2 PPC2 - 1659 sites
- Preliminary Priority Category 3 PPC3 - 212 sites
- Preliminary Priority Category 4 PPC4 - 33 sites

Total of 1964 sites.

It has been decided to carry out the inspections by first carrying out a preliminary site 'walk over' inspection to gather additional site data which will be relevant when the detailed inspection work is carried out. The walk over inspections are a useful tool to allow reclassifying sites where new information become available. The information from the site 'walkovers' with onsite photographs is stored on a Land Quality Management Database [LQMD].

Progress with the Site walkovers is shown in the table below

Year	Number of site walkovers Completed
2002~3	11
2003~4	149
2004~5	21
2005~6 [up to Quarter 3]	35
2006~7	60
2007~8	105
2008~9	47

Total of 528 walk overs.

The proposed timetable is set out below: -

Type of Site	Target Date
Sites reported by the public/other source.*	Site visit and initial response within 5 working days.
Sites requiring urgent remediation action.	As above, start of remediation works 3 months.
Preliminary Inspection of all PPC1 sites.	Completed
Preliminary Inspection of all PPC2-4 sites.	31st December 2007

Note: -

* Sites identified by the public will be dealt with in accordance with Procedure Note [Request for Service]: Work Instruction [Inspection of Contaminated Land].

The Office of the Deputy Prime Minister [ODPM] has issued best value performance indicators for Contaminated Land ,these are known as BV216a and BV216b introduced in

April 2005 .The Environmental Health Unit has set targets in the Environmental Health Unit Service Plan which are reported to senior management on a quarterly basis.

- The BV216a indicator describes the number of sites of concern with respect to land contamination.
- The BV216b indicator describes the number of sites for which sufficient detailed information is available to decide whether or not remediation of the land is necessary expressed as a percentage of all ‘sites of potential concern’.

Year	Number of sites of concern at start of year	Target number of sites where a decision has been made regarding remediation [BV216b]	Actual number of sites where a decision has been made [percentage achieved]	Target Percentage of sites where a decision has been made [BV216b]
2002-2005	1964	182	-	-
2005/6	1782	62	59 [3.3%]	3.5%
2006/7	1723	104	55 [3.2%]	6%
2007/8	1669	150	168 [10.1%]	9%
2008/9	1501	200	70 [4.7%]	13.5%

4.4 Progress with Detailed Inspections

The Environmental Health Unit has already completed a number of detailed / intrusive inspections of potentially contaminated site within the Borough using the DEFRA Contaminated Land Capital Funding Scheme to finance investigations on the following sites:-

- Former Tilery land fill site, Talbot Street, Stockton
- Cowpen Bewley Landfill site.
- Newport Emergency Landfill site.
- Former Yarm Gas Works, West Street Yarm.
- We are currently working with consultants on our ‘landfill project ‘ where intrusive investigations are being carried out on 23 former landfill sites /areas of filled ground, this will be funded by the DEFRA Capital Projects Scheme.
- Kings Arms site Thames Road Billingham.
- Pocket Park Station Road Norton.
- Stapleton Street Norton.
- Fuller Crescent Norton.
- A19 Site Billingham Road Norton.
- 96 Ha site Portrack Industrial Estate, Portrack.

5 Procedures

5.1 Internal Management arrangements for inspection and identification

The Environmental Health Unit is responsible for the identification, inspection and remediation of contaminated land within the Borough.

The Officer responsible for managing the contaminated land project will be the Principal Environmental Health Officer (Environmental Protection). The following staffs have been appointed to implement the inspection strategy: -

- Contaminated Land Officer
- Contaminated Land Support Officer.

The additional work will include the following: -

1. Carry out more detailed risk assessments of sites that require further works.
2. Maintain accurate records of the inspection process on the Land Quality Management Database LQMD.
3. Maintain environmental information on a database and GIS and carry out further model runs.
4. Liaise with various statutory bodies on contaminated land issues.
5. Collect and disseminate statistical information on contaminated land.
6. Prepare contracts for consultants for contaminated land investigations.
7. Enable remediation works to take place (where appropriate) by voluntary action or by formal means.
8. Determine the 'responsible person(s)' for the sites that require remediation.
9. Take enforcement action (as appropriate).
10. To agree remediation schemes having regard to issues of conservation importance, including those sites of historic importance.
11. Oversee remediation schemes for contaminated land.
12. Respond to enquiries from the general public, landowners and other stakeholders.

5.2 Funding Implications

The following works are eligible to be funded through the Contaminated Land Capital Project scheme, administered by DEFRA.

- Capital costs of carrying out intrusive site investigations on privately owned land or land owned by the Council to determine whether it is contaminated.
- Any remedial works on land in Council ownership.
- Remediation of contaminated land sites not in their ownership where the appropriate person cannot be found ('Orphan sites').

Most of the significant investigation works carried out will therefore be eligible for funding and applications will be made as sites are investigated. This is however not guaranteed and will be subject to availability of funding in the future and the merits of each case.

Revenue funding will be used to fund the implementation and administration of the strategy, preliminary inspections and any enforcement work which may be necessary. It should be

pointed out that, in the event of a challenge to a remediation notice, the legal costs involved in enforcement work could be high. As stated previously the Council will encourage where possible the voluntary remediation of any contaminated sites.

Cost Recovery for Remediation

The DETR circular sets out guidance for local authorities with regard to liabilities for remediation work, the general principal of this is that the polluter should pay for any pollution which they left behind. In some cases companies may no longer exist and these liabilities could fall onto the current owner / occupier of the land who could become liable.

To overcome this, the Council has formulated a Hardship Policy for contaminated sites where costs of remediation of these sites could fall on individual householders, a copy of the policy can be found in appendix.

5.3 Considering SBC owned land

Land owned by SBC will generally have high-risk receptor groups on, or close to, it (e.g. school sites, allotments etc) and therefore will be examined at an early stage in the programme. Data on SBC owned land has been identified and is available, in digital form, on the GIS system.

The Council will have a dual role in any sites that are shown to be contaminated, as landowner and as the authority responsible for implementing the legislation. It is important that these roles be kept separate.

Close liaison will take place with the appropriate department with respect to these sites.

5.4 Information Collection

As mentioned above a number of environmental databases have been assembled giving information on pollution sources, pollution pathways and potential receptors. These are linked by geographic information system (GIS) using Arc View software to store site information in digital form.

The metadata base contains information on the various databases including the following: -

- Source of the data
- The accuracy of the data
- Data capture date
- Owner of data
- Copyright information

5.5 Information and Complaints

The Environmental Health Unit operates under ISO 9001:2000 Quality Management System, which includes the Work Instruction [Inspection of Contaminated Land] covering the following areas: -

- Complaints/ enquiries from the public
- Preliminary Inspection of Contaminated Land
- Detailed Inspection of Contaminated Land

5.6 Information Evaluation

Initial screening of all known potential sites was completed in July 2002 as described above. Individual sites will then be examined using the *site-specific evaluation* (given below).

General Site Evaluation:

Detail of the method to be used is set out in section 4 above.

Site Specific Evaluation

Information on individual sites is recorded on the LQMD, this allows all the information on the site to be stored in one place and linked to the GIS. Data from this will be provided to the EA for the State of Contaminated Land Report.

Individual sites will be assessed using authoritative guidance set out in the Contaminated Land Exposure Assessment CLEA guidelines where soil guidelines are set out for certain contaminants for three typical land uses –residential, allotments and commercial/industrial.

In the case of sites where there is a possibility of pollution of controlled waters, the EA document: ‘Methodology for the Derivation of remedial targets for soil and groundwater to protect water resources. R&D Publication 20’ will be used.

6 General Liaison and Communication Strategies

- Strong communication links have already been set up with the EA and these will continue, we will also consult with the Health Protection Agency and the Primary care Trust in relation to any sites where there could a potential risk to human health.

Copies of the revised Strategy will be available on the Stockton Borough Council website, copies placed in the local library and in the Council Members’ library.

Close liaison will take place with neighbouring authorities in respect of any site adjoining the SBC boundary, which meets the definition of contaminated land; section 78X [2] of the legislation allows action to be taken by the authority affected by the site even though the site does not fall within their geographical area.

In relation to the inspection of individual sites, before any investigation/ remediation works takes place, it will be important that the public and other stakeholders who may be affected by contaminated land are informed at an early stage. Interested parties will then need to be kept informed of the progress of these works.

Advice on potential stakeholders will be sought from members of the Contaminated Land Working Group.

The Council’s Public Relations Department will be asked to advise on the message to be delivered to stakeholders. The risks from the site should be clearly explained together with any uncertainties in the information; guidance in the document Communicating Understanding of Contaminated Land Risks [SNIFFER] will be followed.

The exact method of communication of information on a site will depend on individual circumstances, however steps will be made to ensure that stakeholders are allowed the opportunity to make comments on the matter.

The Environment Agency supplied an updated CD-ROM Part 11A data supply [in Summer 2005] The Council will transfer information and requests for inspections of sites classified as potential special sites to the EA in accordance with written procedures [Work Instruction Inspection of Contaminated Land].

7 Program for inspection

The timetable for the completion of the initial site inspections is set out in section 4.2 above. A separate timetable will be drawn up for any sites that require further investigative works (e.g. intrusive investigation and site-specific risk assessment). The detailed guidance in the Local Authority Guide to the Application of Part 11A will be used in this process.

7.1 Arrangements for carrying out detailed inspections

The procedure for the detailed inspection will involve the following steps:-

Pre Inspection /Desk Study

- Historic search of all digital mapping information.
- Search of historic information supplied by Landmark Information Systems Ltd.
- Collection of other information held by the Council, e.g. planning records of previous site investigation.
- Review of information in the former Department of Environment [DOE] Industrial Profiles for the site on possible contaminants on the site.
- Locate and contact the landowner/occupier/appropriate person.
- Recording the information collected on a LQMD.
- Liaison as necessary with Environment Agency, English Nature and English Heritage, Ministry of Agriculture Fisheries and Food (MAFF), Food Standards Agency.
- Preliminary discussions with the analytical laboratory with respect to sample collection method, sample size, method of collection and any conditioning of the sample(s).
- When carrying out assessments of agricultural and rural land consideration will be given to the DEFRA system of Agricultural Land Classification [ALC] held by the Planning Department.

Preliminary site inspection

The purpose of the preliminary site inspection is to confirm the present conditions of the site and the surrounding area, identify any differences from historic records, to identify any significant surface features and to collect evidence contributing to the development of a conceptual model for the site.

In practical terms the inspection will involve the following steps: -

- Notify the land owner of the intention to carry out the inspection.
- Carry out preliminary site inspection of the site in accordance with written procedures and complete site investigation proforma.
- To collect photographic evidence of the current site conditions.
- To carry out [where applicable] limited surface sampling from the site.

The results of the inspection will be recorded on the Land Quality Management database linked to the GIS system.

Final Categorisation of Sites

- Sites will undergo further prioritisation using the flow charts set out in CLR6.

- Site in the PC1 and PC2 category will be taken to the next stage.

Intrusive Site Inspection / Risk Assessment

Before undertaking any intrusive investigation all stakeholders, including adjacent occupiers having regard to the risk communication strategy, will be notified.

- If the site is suspected to be a 'special site' liaison will be made with the EA.
- Liaison as necessary with English Nature [in relation to significant contamination near SSSI's etc.] and English Heritage/Tees Archaeology [in relation to significant contamination on or near archaeological sites].
- These works will normally be carried out under the supervision of a qualified environmental consultant drawn from the approved list of consultants.

Before engaging consultants the Council will consider the following:-

- The Council has set up a framework agreement which contains a list of specialist contractors with the necessary expertise, these will work at agreed rates for the Council.
- The purpose and objectives for the works will be clearly stated to the consultant, e.g. extent of the investigation, number and type of samples/sampling protocols, type of analysis required, whether a remediation scheme is required or whether only a site determination is required.
- A clear brief for the works will be agreed including the method of reporting and the expected outcomes.
- Health and Safety requirements need to be closely followed, particularly the 'Protection of workers and the general public during the development of contaminated land' 1991 [ISBN 011885657X].
- Full details of desk study information and preliminary investigation will be provided to the consultant before the start of any work.

8 Review Mechanisms

From time to time, inspection decisions on individual areas of land will need to be reviewed to take account of proposed changes to the surrounding land, unplanned events (e.g. flooding, spillages and releases into the air etc.) and in the light of additional information from the public and from statutory bodies.

Close scrutiny of Development Plans submitted to the Council, that could impact on potentially contaminated sites or sites immediately adjacent to these sites, will continue to take place [see also section 4.3].

The Strategy Document will be subject to further reviews from time to time as the project develops.

Changes to the strategy will be reported to Council for approval and the EA will be consulted on any major changes.

9 Management

9.1 Information Storage

Information on the inspection of land under the legislation will be held on the Land Quality Management Database, which is linked to the GIS system. This allows reports to be generated on individual sites.

The database will be held on a personal computer in the Environment Health Unit, Room 131, 16 Church Road, Stockton-on-Tees.

The information will:

- Consist of possible contaminants, pathways and receptors.
- Be kept up to date by nominated staff of the Environment Health Unit.
- Be available to other officers of the Council particularly Regeneration and Economic Development Division and the Planning and Environment Division of the Development and Regeneration Department.

The system will be backed up regularly using the Microsoft (MS) backup system.

Confidential information on individual sites will be stored separately from the main information and will be referenced on the main database.

9.2 Information for the Public

The environmental information will be available free of charge to the general public during normal office hours. There will need to be some supervision, of the general public, by authorised staff, when examining the information.

We are able to provide more detailed information on individual sites through our Land Quality Information service [a small charge is made for this service].

The public register containing details of any remediation notices served will also be available to the public in a similar way.

9.3 Information Requests from Consultants etc.

Requests for environmental information from consultants will be supplied in accordance with Procedure Note [Request for Service] and Work Instruction [Environmental Information Request]. A copy is held in the Environment Health Unit's Quality Manual.

9.4 Information supplied to the EA

This will be required for reports to the Secretary of State as set out in the 'Memorandum of Understanding: EA and Local Government Association Protocol for Contaminated Land'.

Data will be collected electronically so that it can be transferred quickly and efficiently as described in 9.1 above.

10 Other Supporting Information

10.1 Contact points

Members of SBC's Internal Working Group included the following: -

i. Steve Smith, Principal Environmental Health Officer, Environmental Health Unit, Development and Neighbourhood Services Tel: 01642 526556 or e-mail: steve.smith@stockton.gov.uk	ii. Lee Tweddell Contaminated Land Officer, Environmental Health Unit Development and Neighbourhood Services Tel. 01642 5265790 e-mail: lee.tweddell@stockton.gov.uk
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- IV. Department of the Environment Contaminated and Research Report CLR2: Guidance on the Preliminary site inspection of Contaminated Land.
- V. Department of the Environment Contaminated and Research Report: CLR3: Documentary research on Industrial sites.
- VI. Communicating Understanding of Contaminated Land Risk: SNIFFER project number SR97 [11] F.
- VII. Industry Profiles, Department of the Environment, 1995 and 1996.
- VIII. Codes of Good Agricultural Practice for the Protection of Soil, Water and Air – DEFRA publications.

10.2 Glossary of terms used in this report

Aquifer: Groundwater bearing rock formations sufficiently permeable to transmit and yield water in usable quantities. (See definition of groundwater below).

Contaminated Land [Legal Definition]: Any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances, in, on or under the land that:

- Significant harm is being caused or there is a significant possibility of such harm being caused; or
- Pollution of controlled waters is being, or is likely to be caused.
- Controlled waters: These include:
 - Inland waters (river, streams, underground streams, canals, lakes and reservoirs),
 - Groundwaters (any water contained in underground strata, wells or boreholes),
 - Territorial waters (the sea within three miles of a baseline).
 - Coastal waters (the sea within the baseline up to the line of highest tide, and tidal waters up to the fresh water limit).

DETR: Department of the Environment, Transport and the Regions.

EA: The Environment Agency.

GIS: Geographic Information System.

Groundwater: Is that portion of the water beneath the surface of the earth that:

- Can be collected with wells, tunnels or drainage galleries,
- Or that flows naturally to the surface via seeps and springs.

Groundwater is the major source of water for many town and industries as well as irrigation for farms.

The legal definition from EC Groundwater Directive [80/68/EEC] is: -‘All water which is below the surface of the ground in the saturated zone and in direct contact with the ground or subsoil’.

Pathway: One or more routes by which a receptor can be exposed to a contaminant.

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

Ramsar Site: Designated by English Nature as important wetland areas of international importance.

Receptor: Sometimes referred to as a ‘target’ – the health of a person, waters, ecosystem or property type that could be affected by contamination.

Remediation: Generally accepted as being the carrying out of works to prevent or minimise effects of contamination. In the case of this legislation, the term also encompasses assessment of the condition of land and subsequent monitoring of the land.

Risk Assessment: The study of the following: -

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

Source: A substance in, on or under the ground with the ability to cause harm.

Source Protection Zone: Protection zones around certain sources of groundwater used for public water supply. Within these zones, certain activities and processes are prohibited or restricted.

Special Protection Area SPA

These are designated by English Nature and made under the EEC wild bird directive

Special Sites: Defined in regulation 2 and 3 and Schedule 1 of the Contaminated Land [England] Regulations 2000 a summary is given below: -

- Any of the following activities have been carried out at any time: disposal of waste acid tars in a retention basin; purification of crude petroleum or oil; manufacture or processing of explosives; the manufacture, production or disposal of chemical weapons or biological agents or weapons
- The land is currently used for naval, military or air force purposes, an atomic weapons establishment, within a nuclear licensed site, subject to section 30 of the Armed Forces Act 1996;
- The land appears to be contaminated as a result of the escape of substances from land meeting any of the above descriptions;
- Land which is affecting controlled waters that; are used as drinking water supply, and are likely to require treatment in order to be fit for human consumption, or; are not likely to meet the requirements for water quality specified in regulations made under the Water Resources Act 1991, or are contained within one or more defined aquifers and where pollution relates to one or more defined substances.

SSSI: Site of Special Scientific Interest.

TVEPG: Tees Valley Environmental Protection Group made up of representatives from Stockton, Middlesbrough, Redcar & Cleveland, Hartlepool and Darlington Councils.

10.3 Other Contacts

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<p>3. Fiona Reynolds, Rural and Marine Environment Division, Sustainable Agriculture Branch, Ministry of Agriculture, Fisheries and Food, Room 311, 16 Palace Street, London, SW1E 5FF. Tel: 0207 238 5420 (Fax: 6700). Contact - Fiona Reynolds E-mail: fiona.reynolds@maff.gsi.gov.uk.</p>	<p>4. Food Standards Agency, Aviation House, 125 Kingsway London, WC2B 6NH. Tel: 0207 238 5751(Fax: 5331). E-mail: patrick.miller@foodstandards.gsi.gov.uk</p>
<p>4. English Heritage, Bessie Surtees House, 41-44 Sandhill, Newcastle-upon-Tyne, NE1 3JF. Tel: 0191 261 1585 (Fax: 1130). Contact - Naomi Atherton.</p>	<p>5. Tees Archaeology, The Archaeology Service for Teesside, Sir William Gray House, Clarence Road, Hartlepool TS24 8BT. Contact - Peter Rowe. +44 (01429) 523455 E-mail: tees-archaeology@hartlepool.gov.uk</p>
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Appendix 1 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 €7 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.

11 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.

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.