



Welwyn Hatfield Borough Council

Statutory Contaminated Land Strategy Fourth Edition

(Draft for Consultation)

Required under the provisions of the
Environmental Protection Act 1990 Section 78B

Welwyn Hatfield Borough Council
Statutory Contaminated Land Strategy
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INTRODUCTION & OVERVIEW

i.1 INTRODUCTION

Welcome to Welwyn Hatfield Borough Council's Contaminated Land Strategy for 2013-2018. Under the Environmental Protection Act 1990 we are legally obliged to inspect the land in the Borough that may be contaminated and pose unacceptable risk to Public Health and the wider environment. The Strategy has been designed to ensure that the Council meets its legal duties of inspecting its area and adheres to the principles of clear and open communication at all times. The Strategy seeks to secure solutions that are acceptable to all whilst working within the terms of our Enforcement Strategy and the principles of sustainable development. The aim is to ensure land is remediated to a level acceptable by modern standards, with commensurate improvements to public health.

The Council is strongly committed to the principles of sustainable development and to improving the environment. This Strategy also complements our Local Development Frameworks aimed at preserving Green Belt and encouraging the development of formerly used Brownfield sites and derelict land.

EXECUTIVE SUMMARY

The Welwyn Hatfield Contaminated Land Strategy 2013-2018 has been developed to meet the legal requirements of the Part IIA of the Environmental Protection Act 1990. The purpose of the regime is for all local authorities to carry out periodic inspections of their area to identify sites that could potentially be determined as contaminated land if they meet the criteria of the statutory definition and ensure appropriate action is taken to make the land suitable for use.

Alongside this primary legislation, other secondary legislative regimes play an important role in ensuring that contamination is minimised or prevented and that land remediation is secured through the planning process.

This Strategy sets out how the Council proposes to implement its inspection duties over a period of six years and contribute towards the sustainable development of the District whilst protecting human health and property as well as the wider environment of controlled waters and ecosystems.

The main aim of The Strategy is:

(To) identify, in a rational, ordered and efficient manner, areas of land that require detailed individual inspection, and respond to contaminated land problems in a manner proportionate to the risks involved.

Considerable work has already been undertaken in this area with an initial number of approximately 580 sites assessed since 2001. This has left a small number of sites which require a more in depth study to decide whether further action is necessary. The Council will achieve the Strategies aims and objectives through effective partnerships, provision of timely information and guidance to private developers and landowners, raising awareness of contaminated land issues and accessing the available funds to remediate land identified as contaminated in Welwyn Hatfield.

The Strategy will be informally reviewed annually to monitor progress against the key objectives and priorities, to factor in any new data that may become available as well as any changes to the government policy. We will aim to ensure that all the actions taken in relation to contaminated land help protect public health and eliminate or minimise the negative impact contamination can cause to the environment. The value of property will also ultimately be enhanced by the full delivery of the Strategy as potential contamination issues are often identified only when environmental searches are undertaken during the sale of a property and adequate time to resolve issues is not always available. The Strategy will pre-emptively resolve this uncertainty for investigated properties.

i.2 - NATIONAL OBJECTIVES OF THE REGIME

Contaminated land could be seen to be, “an archetypal example of our failure in the past to move towards sustainable development”. The first priority is the prevention of new contamination via the pollution control regimes this relies on the concept of “suitability for use”.

There are three stated objectives underlying the suitable for use approach:

- a) to identify and remove unacceptable risks to human health and the environment;
- b) to seek to bring damaged land back into beneficial use; and
- c) to seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.

This approach recognises that risk can only be satisfactorily assessed in the context of a specific use with the aim of maintaining an acceptable level of risk at minimum cost.

The specific stated objectives of the contaminated land regime are:

- a) To improve the focus and transparency of the controls, ensuring authorities take a strategic approach to problems of land contamination;*
- b) To enable all problems resulting from contamination to be handled as part of the same process (previously separate regulatory action was needed to protect human health and to protect the water environment);*
- c) To increase the consistency of approach taken by different authorities; and*
- d) To provide a more tailored regulatory mechanism, including liability rules, better able to reflect the complexity and range of circumstances found on individual sites.*

In addition to providing a more secure basis for direct regulatory action, the improved clarity and consistency of the regime, in comparison with its predecessors, the regime has encouraged voluntary remediation. Companies responsible for contamination are encouraged to assess the likely requirements of regulators and plan remediation in advance of any possible regulatory action.

There will also be significant incentive to undertake voluntary remediation in that the right to exemption to pay Landfill Tax will be removed once enforcement action has commenced.

Since its inception the regime has assisted developers of contaminated land by reducing uncertainties about so called, “residual liabilities”, in particular it has been shown to:

a) reinforce the suitable for use approach, enabling developers to design and implement appropriate and cost-effective remediation schemes as part of their redevelopment projects;

b) clarify the circumstances in which future regulatory intervention might be necessary (for example, if the initial remediation scheme proved not to be effective in the long term); and

c) set out the framework for statutory liabilities to pay for any further remediation should that be necessary.

i.3 - LOCAL OBJECTIVES

The Welwyn Hatfield Council welcomed the introduction of Part IIA of the Environmental Protection Act 1990 which complimented the Council’s own Corporate aims and objectives.

Government policy specifically encourages the reuse of contaminated land as part of the strategy to make best use of land and relieve development pressure on 'Greenfield' land. When considering planning applications for the development of land which may be contaminated, the Council will need to assess whether, in the light of the type of contamination, the proposed development will be suitable and whether there are likely to be any unacceptable risks to health or the environment arising from its development or future occupation. The responsibility for decontamination rests with the developer or owner. The Council will normally require developers to undertake a full investigation of contamination on such sites and undertake the necessary remediation measures, if necessary by imposing conditions on planning permissions.

POLICY R2 - CONTAMINATED LAND
THE COUNCIL WILL ENCOURAGE PROPOSALS FOR THE DEVELOPMENT AND REUSE OF LAND WHICH IS OR MAY BE CONTAMINATED. ON SUCH SITES, APPLICATIONS MUST BE ACCOMPANIED BY A FULL SURVEY OF THE LEVEL OF CONTAMINATION AND PROPOSALS FOR REMEDIATION MEASURES. IN CONSIDERING WHETHER PLANNING PERMISSION SHOULD BE GRANTED, THE COUNCIL WILL NEED TO BE SATISFIED THAT THERE WILL BE NO UNACCEPTABLE RISK TO HEALTH OR THE ENVIRONMENT ARISING FROM THE REMEDIAL WORKS OR THE PROPOSED USE OF THE SITE IN RELATION TO THE TYPE OF CONTAMINATION.

The identification and safe re-use of contaminated land therefore plays a key part in the sustainable development of the area.

i.4 - ABOUT THIS STRATEGY

The Act itself states at section 78B (1) that:

Every local authority shall cause its area to be inspected from time to time for the purpose -

- (a) of identifying contaminated land; and
- (b) of enabling the authority to decide whether any such land is land which is required to be a special site (see appendix 2).

Section 78B (2) states that the authorities must act in accordance with guidance issued by the Secretary of State in this respect. The previous Statutory guidance published within Department of Environment Food and Rural Affairs Circular 01/2006, dated September 2006 has been subject to review and a consultation on proposed changes was released in March 2011. The revised Contaminated Land Statutory Guidance was published in April 2012.

Radioactivity

Following extensive national consultation undertaken in July 2005 the contaminated land regime has been extended to include radioactive contamination. This was enabled by the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005 that came into force in January 2006. The main objective for extending the regime to include radioactivity is to provide a systematic way to identify and remediate land where contamination is causing a lasting exposure to radiation.. Any land determined as contaminated land by virtue of radioactivity will be dealt with by the Environment Agency under the designation as a special site. This section does not apply in respect of harm to any other receptor or pollution of controlled waters.

The statutory guidance makes clear that in order to carry out this duty Authorities must produce a formal contaminated land strategy document which clearly sets out how land which merits detailed individual inspection will be identified in an ordered, rational and efficient manner, and in what time scale.

In order to satisfy the far reaching objectives of the regime it is necessary to investigate land throughout the whole of the District and collate significant volumes of information. This process enables the Authority to make the sometimes difficult and inevitably complex decisions relating to the condition of land, the risks it presents and who may be liable for it at law.

The revised Statutory Guidance does not apply to radioactive contamination of land. Radioactive contaminated land is covered by separate statutory guidance. In the event that land is affected by both radioactive and non-radioactive contaminants both sets of statutory guidance will apply, and the enforcing authority should decide what

is a reasonable course of action having due regard for the relevant primary legislation and advice from the Environment Agency.

i.5 - EXPLANATION OF TERMS

The legislation and guidance contains many complex and often unusual terms. To assist in the interpretation of these an extensive glossary has been included in DETR Circular 2/2000, *Environmental Protection Act 1990: Part IIA - Contaminated Land*. (For convenience this has been re-produced in appendix 8)

i.6 - ROLES AND RESPONSIBILITIES

The primary regulator in respect of these powers are the **local authorities**. In the Welwyn Hatfield Council the strategy will be under the control of the Head of Public Health and Protection and the Environment Overview and Scrutiny Committee. It should be noted that this is a complex and demanding enforcement role which will be carried out in accordance with the Cabinet Office Enforcement Concordat March 1998 and the Welwyn Hatfield Enforcement Strategy.

The statutory guidance states: "The local authority has the sole responsibility for determining whether any land appears to be contaminated land."

This is a significant responsibility which reflects existing local authority duties under the statutory nuisance regime and Town & Country Planning Development Control. The role in broad terms includes:

- * To cause the area to be inspected to identify potentially contaminated sites
- * To determine whether any particular site is contaminated (by definition)
- * To determine whether any such land should be designated a 'special site'
- * To act as enforcing authority for contaminated land not designated as a 'special site'

The **Environment Agency** also has four main roles:

- * To assist local authorities in identifying contaminated land (particularly where water pollution is involved)
- * To provide site specific guidance to local authorities on contaminated land where requested
- * To act as enforcing authority for contaminated land designated a 'special site'
- * To publish periodic reports on contaminated land

Where the presence of contaminated land has been confirmed the enforcing authority must:

- * Establish who should bear responsibility for remediation
- * Decide after consultation what must be done in the form of remediation and ensure it is effectively carried out
- * Determine liability for the costs of the remedial works

- * Maintain a public register of regulatory action in relation to contaminated land

i.7 - OUTLINE OF THE STATUTORY PROCEDURE

Contaminated land is defined as:

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

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

What may and may not constitute the various categories of harm is described in the statutory guidance. Controlled waters include inland freshwater, groundwater and coastal waters (see appendix 4).

Local authorities must search their Districts for land which has both sensitive receptors and sources of potential contamination. Where they have good reason to believe these both exist, they must undertake a formal risk assessment in accordance with established scientific principles in order to establish whether there is the potential for them coming together and causing harm or pollution as described. This is known as a, contaminant linkage.

Where they are satisfied that significant harm is occurring, or there is a significant possibility of such harm, or there is pollution of controlled waters, they must declare that a significant contaminant linkage exists and that the land is therefore contaminated land by definition. In every case where the land does not fall within the category of a, special site, they must commence regulatory action.

This involves a series of complex procedures which must include:

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

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

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

- * Urgent action is necessary (see part 5 and appendix 6)
- * There is no appropriate person
- * The authority is precluded from taking enforcement action (specified reasons)
- * The authority agrees to carry out the works on behalf of an appropriate person
- * A remediation notice has not been complied with

In non urgent cases where a remediation notice is necessary and all the required consultations have been completed, the notice must be served on the appropriate person(s) no sooner than three months after the contaminated land has been determined or declared a special site. The notice itself may require further investigation of the site and as a result more contaminant linkages may be identified. Where that is the case the enforcing authority must go through the same processes again to identify appropriate persons and remedial actions.

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

i.8 – OTHER RELEVANT LEGISLATION

As stated in i.2 above, the primary aim is to prevent new contamination occurring. Part 2A introduced both a formalised proactive approach to the identification of land which is contaminated due to past activities, and also a clearer legal mechanism to ensure that contaminated land is ultimately rehabilitated. However, this legislation cannot be viewed in isolation because there are a number of legislative tools, which are relevant to this area of Environmental Protection.

a) **Industrial Pollution Control Regimes:** Pollution from certain industrial processes is subject to control by pollution control regimes. Environmental Permitting (England and Wales) Regulations 2010 sets out a system called Integrated Pollution Control (IPC) and Local Air Pollution Control (LAPC). Integrated Pollution Control and subsequent regulatory frameworks seek to ensure that all environmental aspects of a process are controlled in a holistic way, having regard to the Best Available Technique implemented by operators to control industrial emissions. The Pollution Prevention and Control (England and Wales) Regulations 2000 (PPC Regulations) were introduced under the Pollution Prevention and Control Act 1999 and built on the existing system. The Pollution Prevention and Control Regulations also transposed the Integrated Pollution Prevention and Control (IPPC) Directive

(now Directive 2008/1/EC). The primary aim of the Integrated Pollution Prevention and Control Directive is to ensure a high level of environmental protection and to prevent harmful emissions and where that is not practicable, to reduce emissions to acceptable levels.

In England and Wales the Pollution Prevention and Control Regulations were replaced in April 2008 by the Environmental Permitting Regulations 2007 (EP Regulations). These Regulations bring together Pollution Prevention and Control and Waste Management Licensing Regulations into one new regulatory system. Apart from combining the two sets of Regulations there have been no major changes to the Pollution Prevention and Control aspects.

The Pollution Prevention and Control Regulations introduced three separate but linked systems of pollution control and these have continued under the Environmental Permitting Regulations.

- Local Authority Pollution Prevention and Control, which covers installations known as Part B activities that are regulated by Local Authorities.
- Local Authority Integrated Pollution Prevention and Control which covers installations known as A(2) activities, which are regulated by Local Authorities and:
- Integrated Pollution Prevention and Control, which covers installations known as A(1) activities, which are regulated by the Environment Agency and includes the prevention of pollution to land and where necessary land remediation. Where land is polluted by an A(1) activity the Part 2A Contaminated Land regime is not applicable.

b) Environmental Permitting (England and Wales) Regulations 2010 (waste permits and exemptions) - All waste disposal operations including discharges to controlled waters and waste processing sites (including scrap yards) should be subject to permitting. Contamination causing harm, or pollution of controlled waters, should be dealt with as a breach of the conditions of the permit. In exceptional circumstances, where the problem arises from an unlicensed activity, it is possible that Part IIA could apply. An example of this would be a leak from an oil tank outside the tipping area. Where there has been an illegal tipping of controlled waste (fly tipping) this should also be dealt with under the Environmental Protection Act 1990 Part II (section 59).

c) **Water Resources Act 1991 section 161** (Pollution of Controlled Waters not arising from land) - Where a pollution incident has occurred and the pollutant is discharged directly into the body of water, or it has left land and it is entirely in the body of water (i.e. the land is no longer causing pollution), the Water Resources Act 1991 will apply.

d) **Water Resources Act 1991 Part III** (Discharge Consents) - No remediation notice can require action to be taken which would affect a discharge authorised by consent.

e) **Town and Country Planning Act 1990** (Change of Land Use) - Where land becomes a risk to potential new receptors as a result of a change of use, the Town & Country Planning Development Control regime will continue to apply as before.

f) **Health and Safety at Work etc Act 1974.** (Risk of Harm to Employees) - Where there is a risk of harm to persons at work from land contamination, this should be dealt with under relevant Health and Safety legislation. The enforcing authority will be either the Health & Safety Executive or this Council depending on the work activity.

g) **Control of Major Accident Hazard Regulations 1999** (Risk of Harm Following an Incident at a COMAH Site) - Where there has been a release, explosion or other major incident, which has caused land contamination, the restoration should be carried out as part of the COMAH on site / off site emergency restoration plan.

h) **Food Standards Act 1999** (Contaminated Food) - Part I of the Food and Environment Protection Act 1985 gave Ministers emergency powers to prevent the growing of food on contaminated land. Following the establishment of the Food Standards Agency this power is now vested in the Secretary of State. Where the Council suspects crops may be affected from contaminated land to such an extent they may be unfit to eat, they will consult the Food Standards Agency and Ministry of Agriculture Fisheries and Food to establish whether an emergency order may be necessary. It should be noted; however, that remediation of the site if necessary would be carried out through the powers in Part IIA.

i) **Radioactivity - The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005:** This extends the Part 2A regime to include radioactive contaminated land. It provides a system for the identification and remediation of land where contamination is causing lasting exposure to radiation of human beings and where intervention is liable to be justified. It does not apply to non-human species or controlled waters. The duties to inspect and deal with such land are with the Local Authority, up to the point of Special Site designation, if appropriate, inspection is only a duty if there are “reasonable grounds” to suspect a problem.

j) **Organisms** – The contaminated land regime does not apply to contamination caused by organisms such as bacteria, viruses or protozoa, as they do not fall within the definition of substances. This could affect land contaminated with Anthrax spores, E-coli, etc. The Council will liaise with the Environment Agency in relation to Ministry of Defence land and the Ministry of Agriculture Fisheries and Food on all other sites. It should be noted that even though contaminated sites used in connection with biological weapons must be designated Special Sites (see appendix 2), this applies only to non biological contamination.

k) **Statutory Nuisance** - (Environmental Protection Act 1990 Part III) - The relationship between contaminated land and statutory nuisance is not straight forward. However if land is declared contaminated land by definition, it cannot be considered a statutory nuisance. This ensures there is no duplication or confusion between the two regimes. If however the land is investigated and found not to be contaminated land but, “land in a contaminated state” (defined as land where there are substances in, on or under the land which are causing harm, or there is a possibility of harm being caused), it also cannot be considered a statutory nuisance for the purposes of Part III of the Act. Where land is not *contaminated land* or in a,

contaminated state, but is causing a nuisance, it could be considered a statutory nuisance as before.

l) **The Clean Neighbourhoods and Environment Act 2005:** Introduced with the aim of increasing powers, duties and guidance for dealing with problems associated with local environmental quality. One of the miscellaneous provisions of the Act amends arrangements for appeals against remediation notices served under Section 78e of Part 2A of EPA 1990. Previously arrangements were such that appeals against a notice served by the Local Authority were considered by Magistrates Courts, but now such appeals are considered by the Secretary of State.

m) **The Environmental Damage (Prevention and Remediation)**

Regulations 2009 - This transposes the requirements of the European Environmental Liability Directive 2004/35 into UK law and came into force on the 1st March 2009. It is a mechanism for making the polluter pay for environmental damage that is caused after the 1st March 2009 where that damage arises from an economic activity. Operators of such activities are required to:

- prevent the imminent threat of environmental damage
- prevent further damage where damage may have already occurred
- remediate environmental damage

Environmental damage can be damage to land, water or biodiversity. The enforcing authorities for this are Local Authorities, the Environment Agency and Natural England, with the exact jurisdiction varying depending on the activity causing the damage and the nature of the damage.

Local Authorities are the enforcing authority for:

- preventative action where there is damage to water or biodiversity arising from any category A2 environmentally permitted operation
- preventative and remediation action where there is damage to land arising from any category A2 environmentally permitted operation
- preventative and remediation action where there is damage to land from any category B environmentally permitted operation or any permitted economic activity not covered by environmental permitting regulations.

Land damage is defined by the regulations as “any contamination by substances or organisms which creates a significant risk of adverse effects on human health”.

The relationship between this and the Contaminated Land Regime is that it:

- operates without prejudice to existing legislation
- is intended to be used in preference to Part 2A in instances of environmental damage that have occurred after 1st March 2009.

i.9 LAND UNDER OWNERSHIP OF AN ENFORCING AUTHORITY

Where land owned by a local authority is found to be contaminated land, unless a special site, there will be no enforcing authority. Local Authority's must, however, carry out their duties as though they were the enforcing authority, undertake the same consultations, assessments and seek appropriate remedial works as necessary.

To this end a formal relationship should be maintained between the Department responsible for enforcement of the new regime and that responsible for Council owned land. All information relating to the identification, assessment and remediation of Council owned land must be fully reported to satisfy the needs for transparency. See also i.10 below.

i.10 - THE NEED FOR TEAM WORKING

This strategy impacts on potentially all departments of the Council and our partners, in particular:

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

Building Control - have the duty to enforce protection measures in new build projects to mitigate the impact of contamination on property. Information they hold will be essential to quantify risks.

Landscape and Ecology - The Arboriculture Officer may need to be consulted on remediation and tree growth. The Conservation Officer on impacts on Eco-receptors.

Legal Services - this is a highly complex piece of legislation which could have significant implications for the Council, land owners and occupiers. The Solicitor's advice may be required on many aspects including those relating to enforcement, liability, powers of entry, data protection, access to information etc.

Information Technology - significant volumes of data will need to be held both on data base and geographical information systems. Support will be required on the use of these systems and data protection.

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

Finesse Leisure and Welwyn Hatfield Housing Trust - land in use and controlled by these departments may be contaminated and require remediation.

Local Authority Owned Property - The Head of Corporate Property will lead the Council on the remediation of any contaminated sites it is found to be responsible for.

The need for close corporate team working to ensure the smooth implementation of the strategy is very important.

i.11 – PROGRESS TO DATE AND FUTURE ACTION

Progress to date and future actions are considered in Part 8.

THE STRATEGY

PART 1

DESCRIPTION OF THE WELWYN HATFIELD COUNCIL AREA AND HOW ITS PARTICULAR CHARACTERISTICS IMPACT ON THE INSPECTION STRATEGY

1.1 INTRODUCTION

Welwyn Hatfield Borough is located centrally in Hertfordshire and covers an area of 50 square miles (130 sq kms). It is bordered by Hertsmere to the south west, St Albans to the west, North Hertfordshire to the north and East Hertfordshire and Broxbourne to the east. The very south of the borough borders the London Borough of Enfield. The Metropolitan Green Belt covers 79% of the borough, which is approximately 10,248 hectares. In 2008 the population of Welwyn Hatfield was 111,700. The main residential and commercial centres are Welwyn Garden City and Hatfield, which are both New Towns. Smaller centres are the villages of Brookmans Park, Cuffley, Digswell, Oaklands and Mardley Heath, Welham Green, Welwyn and Woolmer Green. The whole District outside these settlements is within the Green Belt.

Welwyn Hatfield



**WELWYN
HATFIELD**
BOROUGH COUNCIL



1.2 LAND OWNED BY THE DISTRICT COUNCIL

The Council owns both land and buildings within the district. The council's property management database records 127 entities ranging from purpose built leisure facilities to scout huts. Further properties are under the control of the Welwyn Hatfield Housing Trust additional Council owned land takes the form of grass verges and similar amenity space.

1.3 CURRENT LAND USE CHARACTERISTICS

Contrasts exist between urban and rural communities, and commercial and residential properties. The district has a population of 111,700 people concentrated in the towns of Welwyn Garden City (43,252) and Hatfield (27,883). Surrounding these commercial and residential centres are a number of villages set amongst arable farmland. Numerous commercial undertakings have premises within the district, although none of the current uses can be described as heavy industry. In general commercial activities centre on retail, office and transport/distribution. Increasingly organisations are choosing Welwyn Hatfield to locate corporate headquarters testimony perhaps to its pleasant character and easy access to London.

As would be expected within a district containing a "Garden City" there are numerous tracts of open space within the district including 2 sites of special scientific interest. Additionally there are 44 areas of land in use for allotment plots spread throughout the district with ownership being divided between the District and Parish councils.

1.4 KEY PROPERTY TYPES

The district contains a mix of residential and commercial properties. Housing needs cater for the full range of social classes from the large high quality housing popular with city commuters through to high rise housing and comparatively isolated labourers cottages. The Sites and Monuments register shows 4 scheduled ancient monuments within the district. These are concentrated around the Welwyn area and detailed in table 2. Additionally there are over 300 listed buildings within the district, 6 of which are grade 1, along with numerous other buildings of architectural and historical interest.

Table: 2 Scheduled ancient monuments within the Welwyn Hatfield Council district

Parish	Monument No.	Title	Grid ref.
Essendon	20611	Coldharbour moat	TL 2836 0581
Welwyn	117	Linear earthwork in Perry's Grove	TL 258 170
Welwyn	27909	Dicket Mead Roman villa	TL 2348 1602 TL 2355 1601
Welwyn	27910	Lockleys Roman villa	TL 2376 1619

1.5 STRATEGIC APPROACH TO THE IDENTIFICATION OF CONTAMINATED LAND IN THE WELWYN HATFIELD AREA

In developing a strategic approach it is necessary to consider -

- * The extent to which any specified receptors are likely to be found in the District;
- * The history, scale and nature of industrial or other potentially contaminating uses;

Land can only be considered contaminated if it impacts in a certain way on specified receptors, these are:

a) Human beings

b) Eco systems:

Areas of special scientific interest

Wildlife & Countryside Act 1981 section 28

National / local nature reserves

Wildlife & Countryside Act 1981 section 35 / National Parks & Access to the Countryside Act 1949 section 21

Marine nature reserves

Wildlife & Countryside Act 1981 section 36

Areas for the special protection of birds

Wildlife & Countryside Act 1981 section 3

Special areas of conservation & special protection areas

Conservation (Natural Habitats etc) Regulations 1994 regulation 10

Any candidate special areas of conservation or potential special protection areas

Any habitat or site afforded planning policy protection

Planning Policy Guidance Note 9 - Nature Conservation, para 13

c) Property:

Buildings (including below ground)

Ancient monuments

All crops including timber

Produce grown domestically or on allotments for consumption

Livestock

Other owned or domesticated animals

Wild game subject to shooting or fishing rights

d) Controlled Waters:

Territorial sea water (to three miles)

Coastal waters

Inland fresh waters (rivers, streams, lakes, including the bottom / bed if dry)

Ground waters

Water Resources Act 1991 s104 (see also appendix 3)

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

Relevant geology, hydro geology and hydrology

The location of: sensitive water receptors
 sensitive property receptors
 relevant ecological receptors
 all existing human receptors, and;
 potential sources of contamination

Consideration will also be given to the existence of sites and receptors which if found to be contaminated land would be designated special sites (see appendix 2).

1.6 SOURCES OF CONTAMINATION

a) **INDUSTRIAL HISTORY** - A comprehensive list of potentially contaminating uses can be found in Appendix 4. The first step in the process of identifying potentially contaminated sites is to closely examine historical data. This will be in a number of forms including a database of potentially contaminating uses from the early part of the century to the present day. The Council has invested in Ordnance Survey Historical Land Use Data, purchased from Landmark. The data has been captured as a result of systematic analysis of 1:10,000 and 1:10560 scale mapping in order to identify previous industrial use of a potentially contaminating nature and key historical land use features. This data is supplied with quality assurance guarantee. There will also be a requirement to examine historic maps and photographs which will be obtained from this Council's archives and the County records office. A lot of past industry will also still be within recent memory so local knowledge can be an important factor.

The Welwyn Hatfield Council district is a blend of old and new. Stretching along the A1(m) corridor from Woolmer Green in the north to Little Heath in the south and covering an area of almost 50 square miles it has been steeped in history since Roman times, although according to Richardson (1978) there is evidence of middle stone age activity in the area of Hatfield now known as "Stream Woods". cursory examination of data held by the Council's museum service reveals the following spectrum of industrial land uses. For convenience these have been placed in alphabetical order.

- Aircraft manufacture
- Brewing
- Brick making
- Cereal manufacture
- Chalk mining
- Chemicals and plastics research and development
- Dairying
- Farming
- Film production
- Gravel extraction
- Grinding and abrasives manufacture
- Horticulture
- Laundry facilities
- Lime burning
- Pharmaceutical research and development
- Radio manufacture

- Railway activities
- Silk processing
- Slaughtering
- Straw plaiting
- Tanning
- Toy manufacture
- Warehousing

Obviously this is not a complete inventory of land use since prehistoric times; however it serves as a useful guide. Additionally, research reveals how some parts of the district were affected by wartime activities. For example there is evidence of bombing, home guard activities and special wartime uses of certain premises.

b) CURRENT INDUSTRY - The present industrial areas of the Borough are potential sources of contamination.

c) Environmental Permitting (England & Wales) Regulations 2010 - 'Part B' processes permitted for atmospheric discharges under the Pollution Prevention and Control Regime by this Council.

There are currently processes permitted by the Council under EPR 2010. Many of these processes have the potential to pollute the land, but there are no other statutory methods of control.

d) Environmental Permitting (England & Wales) Regulations 2010 - 'Part A' processes permitted for integrated pollution prevention & control (IPPC) by the Environment Agency.

There are currently 11 processes authorised by the Environment Agency EPR 2010. The Environmental Permitting regime controls unauthorised discharges to land.

e) COMAH sites - The Control of Major Accident Hazards Regulations 1999 (SI 743) are enforced by the Environment Agency and Health & Safety Executive (joint competent authority) to control both on and off site risks from industries with a high potential for disaster from dangerous substances (flammable, toxic or explosive). There is currently only one such site within the borough:

Transco Plc, Welwyn Garden City Holder Station, Tewin Road, Welwyn Garden City

f) It should be noted that all sites notified to the HSE under the Notification of Installations Handling Hazardous Substances Regulations 1982 (NIHHS sites) and COMAH sites, are held on the hazardous substances register, so there is need to consult with the HSE on their location.

g) EXPLOSIVES - are not directly covered by the hazardous substances regulations but are controlled by the Health & Safety Executive under licences issued under the Explosives Act 1875. No licensed sites have been identified to date..

h) CURRENT LANDFILL AND WASTE PROCESSING SITES - are licensed by the Environment Agency under the provisions of Environmental Permitting (England & Wales) Regulations 2010. Details of all these sites have already been provided by

the Agency for this purpose.

i) CLOSED LANDFILL SITES - are a potentially significant source of risk, especially those which operated before the licensing requirements of the Control of Pollution Act 1974 and subsequent legislation. All closed landfills in the District have been identified.

j) SEWAGE WORKS AND LAND USED FOR THE DISPOSAL OF SEWAGE SLUDGE - land dedicated for the disposal of sewage sludge is notified to the Environment Agency under the, Sludge (Use in Agriculture) Regulations 1989.

k) MINERALS EXTRACTION - the geology of the area has resulted in certain areas being used for the extraction of minerals. Many of the resulting quarries then being filled with refuse or other materials. These can present a particular risk to water resources.

l) WASTE OR DERELICT LAND - often owned by the utilities, railways or local authorities is left seemingly abandoned because it has no particular use or is difficult to access. These areas can accumulate unwanted materials and can be used to dispose of wastes and effluents illegally.

m) MINISTRY OF DEFENCE LAND - there are currently no areas occupied by Defence Agencies within the area.

n) PREVIOUSLY DEVELOPED CONTAMINATED SITES - the inspection of the District will identify potentially contaminated sites which have been developed over the years. In some cases the methods and extent of remediation may be unknown, in others it may be known but the remediation suspected of being inadequate.

As mentioned above, a more comprehensive list of previous uses considered potentially contaminating are listed in appendix 5 for information

Any new sites that fall within the categories a-n above will be identified and the risk they present assessed in accordance with this strategy.

1.7 POTENTIAL SPECIFIED RECEPTORS

a) HUMAN - The present population of the District is approximately 111,700 distributed amongst the two main population centres of Hatfield and Welwyn Garden City The remainder distributed throughout the villages and smaller settlements of the rural area. Human receptors may therefore be present to some degree at almost any location within the District. The potential for persons either living on or frequenting a potentially contaminated site will be considered in every case.

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

c) PROPERTY. ANCIENT MONUMENTS - as listed by English Heritage will be specifically identified as part of the strategy and the potential impact of contaminants

considered. (see 1.4 above)

d) PROPERTY. AGRICULTURAL AND HORTICULTURAL CROPS - Crop growing regions have not been specifically identified but will be taken into consideration as necessary. Where contamination is known or suspected associations with poor yield and crop failure will be investigated.

e) PROPERTY. HOME GROWN PRODUCE - There are 44 allotment plots within the District and these have been identified. Similarly any domestic gardens likely to be contaminated will be identified and assessed as necessary.

f) PROPERTY. AGRICULTURAL LIVESTOCK, GAME AND OTHER OWNED ANIMALS - The presence of livestock in an area will not be specifically identified but taken into consideration as necessary.

g) ECOLOGICAL RECEPTORS - All receptors listed in 1.5 (b) above will be identified as part of the inspection strategy. There are several specified sites including SSSIs and other areas of ecological importance. Significant impact of contamination is unlikely but all areas have been identified.

h) GROUNDWATER./ AQUIFERS - Potential risks from identified sources of contamination will be considered carefully with the Environment Agency.

i) CONTROLLED WATER / PUBLIC WATER SUPPLIES - Where potential pollution linkage includes a public water supply source as a receptor the responsible water company will be notified as soon as practicable.

j) CONTROLLED WATER/ PRIVATE WATER SUPPLIES - There are 12 private water supplies in the District which are often drawn from shallow sources. The protection of these is particularly important due to the heavy reliance paid on them by local communities. This Council already monitors these as part of its duties under the Water Industry Act 1991 Par II and Private Water Regulations 2010.

k) SURFACE WATER, OTHER AUTHORISED ABSTRACTION POINTS – These will be investigated as necessary.

l) WATER, OTHER SPECIFIED RECEPTORS - All other water receptors such as rivers, streams, tributaries, reservoirs, lakes etc have been identified as part of the inspection strategy.

1.8 BROAD GEOLOGICAL AND HYDROGEOLOGICAL CHARACTERISTICS

Cuming (1997) provides an overview of the geology underlying the district. Describing the solid geology as “relatively simple”, Cuming summaries it as

“...being largely of chalk of the cretaceous period overlain in the south and east by London clay.....with an overlay of superficial deposits completing the picture”

The BGS map, sheet 239 (drift edition, 1:50000) “Hertford” confirms this observation,

by showing the district being largely built upon a subsoil of chalk comprising the cretaceous sequence of upper and middle chalks, overlain by a variety of deposits such as boulder clay. To the north of the district in the parishes of Welwyn and the Ayots there are outcrops of upper chalk (soft chalk with flints) whilst in the south of the district there is a belt of Woolwich and Reading beds (mottled clay, sand and pebbles) and beyond that a stretch of London clay.

The upper chalk is classified by the Environment Agency as a major aquifer, whilst a number of smaller abstractions are known to draw water from minor aquifers contained within alluvial deposits.

The River Lee bisects the district, flowing in an easterly direction. Along the river there are alluvial deposits such as valley gravels. A tributary of the Lee, the Mimram is one of the County's smallest rivers and according to a County Council heritage survey it, together with adjoining spring fed water courses, are typical chalk land streams, the relatively recent alluvial deposits concealing the chalk beneath (TPC 1992)

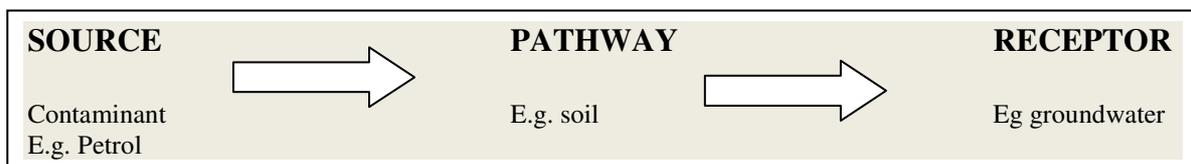
The BGS map shows a number of gravel deposits, throughout the district however many of these are known to have been won and back filled with waste materials, particularly around the Welwyn Garden City area.

PART 2

2. IDENTIFICATION OF POTENTIALLY CONTAMINATED SITES AND THEIR PRIORITISATION ACCORDING TO RISK

2.1 The identification of contaminated land will be carried out in an ordered, rational and efficient manner based firmly on the principles of risk assessment. Significant and imminent risks to human health will always be given the highest priority.

2.2 Before land can be declared contaminated by definition a, **significant contaminant linkage**, must be identified.



2.3 Unless all three elements of a contaminant linkage, that is a **Source**, a **Pathway**, and a **Receptor** are identified land cannot be considered contaminated. All search strategies will therefore be prioritised on areas where both contaminants and receptors are known or likely to exist. It is important to fully understand this concept as it will form the basis of all future site investigation and prioritisation procedures.

2.4 If, for example, an area of land is known to be badly affected with potentially dangerous contaminants, it will not be considered of the highest priority if studies confirm there are no specified receptors within the area of influence. If there are receptors evident, the risk assessment process will seek to determine the likelihood of them coming together at any time. If the chances of this are calculated as, significant and the land poses an unacceptable risk, and the consequences would result in significant harm, or pollution of controlled waters, then a significant contaminant linkage will be said to exist and the land will be declared contaminated land by definition.

2.5 In summary, for contaminated land to exist the following are pre-requisites:

- i) One or more contaminant substances
- ii) One or more specified receptors
- iii) At least one plausible pathway between contaminant and receptor
- iv) The land poses an unacceptable risk and there is a likelihood that the contaminant linkage will result in significant harm to one of the specified receptors or, pollution of controlled waters.

2.6 The strategy for identification will therefore be based on a desk top survey of the District to identify areas of land where:

- a) Previous uses indicate contamination may exist
- b) There is no existing pollution control regime in place

c) There are known receptors within a determined area of influence

Previous uses considered potentially contaminating are listed in appendix 5.

2.7 Potentially contaminated land shall, prior to detailed investigation, be listed and categorised according to a **preliminary assessment** of risk. The method used will be based on that described in DETR Contaminated Land Research Report 6, entitled, 'Prioritisation & Categorisation Procedure for sites which may be Contaminated' (CLR 6). This is to ensure all further investigative work relates directly to seriousness of the potential risk and therefore the most pressing problems are identified and quantified first. Reference should also be made to CLR 11 Model Procedures for the Management of Contaminated Land to fully evaluate the condition of land under the strategy.

2.8 To assist in the prioritisation procedure a simple scoring system has been devised as follows:

Likelihood of <i>contaminants</i> on the site:	1	-	most unlikely
	5	-	good chance
	10	-	known to be present

Existence of <i>receptors</i> within area of influence:	1	-	most unlikely
	5	-	good chance
	10	-	known to exist

Likelihood of impact of contaminants on receptors (<i>pathway</i>):	1	-	most unlikely
	5	-	good chance
	10	-	certain

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

CRP Score	PC
26-30	1
21-25	2
16-20	3
10-15	4

Relationship of CRP score to Priority Category:

2.10 CLR6 was published in 1995 and the terminology is not ideal for this purpose therefore some of the wording has been slightly changed in the description of the Priority Categories below, new words have been identified by underlining>.

2.11 CLR 6 describes four Priority Categories (PCs):

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

2.12 How this system is used can best be demonstrated by examples and several are shown in appendix 7 using a simple multi-stage assessment form

2.13 As Priority Category 1 sites are likely not to be suitable for their present use, these will be investigated as soon as possible after they are identified.

COMPLAINTS FROM OTHER PROFESSIONALS AND THE PUBLIC

2.14 Complaints will continue to be received about accumulations, and the potential for contaminated land. These will be investigated by Environmental Health in accordance with existing departmental procedures and protocols to establish whether the complaint is justified. If so, the particular circumstances will be evaluated to establish which enforcement process would be most appropriate. See also i.8 above.

2.15 Complaints may also be received about the fact that a particular site has been identified for further investigation. This could give rise to concern, especially where a potential sale has failed as a direct result of the suggestion that the land may be contaminated. Those so affected may seek an early investigation to clarify their position, thereby seeking to circumvent the prioritisation process. Such requests for priority inspection will, where resources allow, be dealt with as considerately as possible. This is considered also in Part 6 on data handling and access to information.

PART 3

3. OBTAINING FURTHER INFORMATION ON CONTAMINANT LINKAGES AND THE RISK ASSESSMENT PROCESS

3.1 The Council has the sole responsibility for determining whether any land appears to be contaminated land, it cannot delegate this responsibility. This applies even where the Environment Agency has carried out an investigation on behalf of the Council (see 3.11 below).

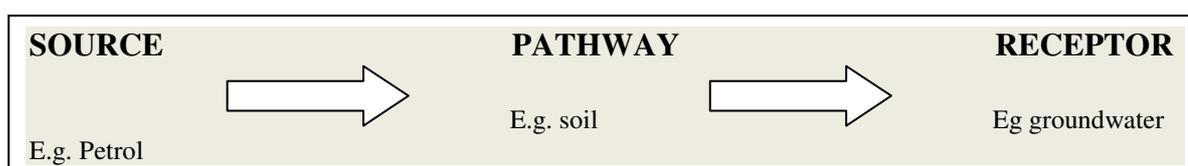
3.2 Once the Council becomes aware of the (possible) existence of a contaminant linkage they must, in accordance with the prioritisation procedure, commence the risk assessment process. The definition of contaminated land (see i.7 above) is based on the principles of risk assessment. For the purposes of the guidance risk is defined as the combination of:

- a) the probability, or frequency, of occurrence of harm; and
- b) the magnitude of the consequences.

There are two steps in applying the definition of contaminated land:

3.3 STEP 1

The Council must satisfy itself that at least one contaminant linkage exists -



This, for the purposes of this strategy is termed a **stage 1 risk assessment**.

The contaminant(s) must have the potential to have a defined detrimental impact on the receptor(s) and the pathway has to be plausible. It is not necessary for direct observation of the pathway but if a reasonable scientific assessment suggests the two could come together then a pollutant linkage is said to exist and the authority must proceed to step two. However, regulatory decisions will be made based on what is reasonably likely, not what is hypothetically possible.

3.4 STEP 2

At this stage a more detailed investigation must be undertaken to confirm that the contaminant linkage identified is:

- * resulting in significant harm (or the significant possibility of such harm) being caused to the receptor(s), or
- * resulting in (or likely to result in) the pollution of controlled waters

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

For the purposes of this strategy this is termed a **stage 2 risk assessment**.

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

3.6 In cases where imminent risk of serious harm or serious pollution of controlled waters has been confirmed, the Council will authorise urgent action in accordance with paragraph 5.14 of this strategy.

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

The Environment Agency
Ministry of Agriculture Fisheries and Food
The Health & Safety Executive
Communicable Disease Control Consultant
Developers
Previous occupiers
Water undertakers
and others

Details of several sources of information are listed in 1.7 above.

Once sufficient information has been obtained which confirms a contaminant linkage does not exist, or, if it does, it is not significant, then the investigation will cease and no further action will be taken. It may be, however, that circumstances will be identified whereby a significant contaminant linkage could occur at some time in the future. Then arrangements will be made to keep the situation under review.

3.8 INSPECTION OF LAND - Where evaluation of all available data suggests a significant contaminant linkage may exist, it may be necessary to visit the site and carry out an intrusive investigation. In every case this will be carried out by a, "suitable person", adequately qualified to undertake the work (see appendix 6). The utmost discretion will be used at all times to minimise the effect on occupiers of the land.

Intrusive investigations will be carried out in accordance with appropriate technical procedures to ensure:

- a) They are effective;
- b) do not cause any unnecessary damage or harm; and
- c) do not cause pollution of controlled waters.

To ensure the most appropriate technical procedures are employed the Council will have regard to the most up to date guidance available including Health and Safety at Work requirements.

3.9 POWERS OF ENTRY - Statutory powers of entry are conferred on the Council to enable it to carry out its functions under Part IIA. These are also considered in appendix 6. There are **no circumstances** in which the Council will use these powers to obtain information about the condition of land, where:

- * It can obtain the information from third parties without the need for entering the site; or
- * A person offers to provide the information within a reasonable and specified time, and does so.

3.10 LAND WHICH MAY BE A SPECIAL SITE (see appendix 2) - Where the Council are aware that land it intends to investigate would, if declared contaminated land, be a special site, it will notify the Environment Agency in writing requesting any information it may have on the land and the likelihood of pollutant linkages. According to the wishes of the Environment Agency, it may be that a joint investigation will be undertaken.

Where the Environment Agency (or their agents) wishes to carry out formal investigation on behalf of the Council their officers will need to be appointed as, "suitable persons", in accordance with appendix 6. The Environment Agency does not have the power under Part IIA to investigate land which may be contaminated land without the authorisation of the Council.

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

- a) Significant harm is being caused
- b) There is a significant possibility of significant harm being caused
- c) Pollution of controlled waters is being caused
- d) Pollution of controlled waters is likely to be caused

In making any determination the Council will take all relevant information into

account, carry out appropriate scientific assessments, and act in accordance with the statutory guidance. The determination will identify all three elements of the contaminant linkage and explain their significance.

3.12 In an attempt to ensure the situation can be understood as widely as possible, a simple conceptual model (initially in diagrammatic form) will be produced for all relevant pollutant linkages, and multi-stage assessment forms completed, which clearly demonstrates the decision making process. Examples are produced in appendix 7.

3.13 WHERE THE SIGNIFICANCE OF A CONTAMINANT LINKAGE CAN NOT BE ADEQUATELY DETERMINED - Situations may arise where, on the information available, it is not possible to determine whether a contaminant linkage is significant in accordance with the statutory guidance. In such case the Council will determine that, on the balance of probabilities, it would seem the land does not present an unacceptable risk and therefore does not fall within the statutory definition of contaminated land, but the situation will be kept under review and reopened at any time new information becomes available.

3.14 Similarly, inspection may identify contamination that would form a significant contaminant linkage should new receptors be introduced. In such circumstances this information will be carefully recorded and the site monitored where the introduction of relevant new receptors seems likely. Should such a site be identified for future development the information obtained during the investigation will be made available to the planning officer and the developer.

PART 4

4. THE WRITTEN RECORD OF DETERMINATION AND FORMAL NOTIFICATION

4.1 Once an area of land has been declared contaminated by statutory definition, the Council will prepare a written record to include:

- a) A description of the contaminant linkage(s) confirmed, including conceptual model;
- b) A summary of the evidence which confirms the existence of the contaminant linkage(s);
- c) A summary of the risk assessment(s) upon which the contaminant linkage(s) were considered to be significant;
- d) A summary of the way the requirements of the statutory guidance were satisfied.

4.2 The Council will then formally notify in writing all relevant parties that the land has been declared contaminated, these to include:

- a) The owner(s)
- b) The occupier(s)
- c) Those liable for remediation ('appropriate persons' in the guidance)
- d) The Environment Agency

4.3 At the notification stage it may not be possible to identify all the relevant parties, particularly the appropriate persons. The Council will, however, act on the best information available to it at this time and keep the situation continually under review as more information becomes available.

4.4 If the Council are of the opinion that the contaminated land is a special site (see appendix 2) it will inform the Environment Agency of that decision also. The Agency will then consider whether it agrees that the land should form a special site. If it does not agree it will notify the Council and the Secretary of State within 21 days with a comprehensive statement explaining its reasons. The Council will then refer the decision to the Secretary of State. The Local Authority will endeavour in all cases to respect the memorandum of understanding between the Environment Agency and the Local Government Association (June 2001)

4.5 If the Environment Agency agrees with the Council, or it fails to notify the Council it disagrees within 21 days, the land will be designated a special site. The responsibility for securing remediation then passes to the Environment Agency, though the Council must complete the formal notification process.

4.6 The legislation and statutory guidance has been designed to try to encourage voluntary remediation (without the need for enforcement action). The formal notification procedure commences the process of consultation on what remediation might be most appropriate. To aid this process the Council will therefore provide as much information to the relevant parties as possible, including where available:

- a) A copy of the written record of determination;
- b) Copies of site investigation reports (or details of their availability)

- c) An explanation of why the appropriate persons have been chosen
- d) Details of all other parties notified

4.7 The appropriate persons will also be provided with written explanations of the test for exclusion and apportionment.

4.8 It may be at this stage that the Council will need further information on the condition of the site to characterise any significant contaminant linkages identified. If that is the case an informal attempt will be made to obtain this information from the appropriate persons already identified.

PART 5

5 LIABILITY & ENFORCEMENT

5.1 Land may be declared contaminated upon the identification of only one significant contaminant linkage. Full liability cannot therefore be determined until all significant contaminant linkages on the site have been identified (see also 3.6 above). When all significant contaminant linkages have been identified the procedure relating to the apportionment of liability must commence. This has five distinct stages as follows:

- i) Identifying potential appropriate persons and liability groups
- ii) Characterising remediation actions
- iii) Attributing responsibility to liability groups
- iv) Excluding members of liability groups
- v) Apportioning liability between members of a liability group

5.2 These procedures are complex and cumbersome. The process commences with the establishment of liability groups. All appropriate persons for any one linkage are a, 'liability group'. These may be class 'A' or class 'B' persons.

APPROPRIATE PERSONS - Class 'A' - These are, generally speaking the persons responsible for the contamination, but also included are persons who, "knowingly permit". This includes developers who leave contamination on a site which subsequently results in the land being declared contaminated.

APPROPRIATE PERSONS - Class 'B' - Where no class 'A' persons can be found liability reverts to the owner or the occupier. These are known as class 'B' persons.

The Council will make all reasonable enquiries to identify class 'A' persons before liability reverts to owners or occupiers.

5.3 The matter of appropriate persons must be considered for each significant contaminant linkage. Therefore where a site has had a series of contaminative uses over the years, each significant contaminant linkage will be identified separately and liability considered for each.

5.4 APPORTIONMENT OF COSTS - The members of a liability group will have the total costs falling on the group as a whole apportioned between them. It may also be necessary to apportion costs between liability groups. There are three basic principles which apply to exclusion and apportionment tests:

- i) The financial circumstances of those concerned have no relevance;
- ii) The Council must consult persons affected to obtain information (on a reasonable basis having regard to the cost). If someone is seeking to

establish exclusion or influence an apportionment to their benefit then the burden of providing the Council supporting information lies with them.

iii) Where there are agreements between appropriate persons the local authority has to give effect to these agreements.

5.5 LIMITATION ON COSTS TO BE BORN BY APPROPRIATE PERSONS - There are six tests specified to identify Class 'A' groups who should be excluded from liability. These will be applied in sequence and separately for each contaminant linkage. The exclusion of Class 'B' persons is much less complex; the single test merely excludes those who do not have an interest in the capital value of the land. Tenants therefore are excluded.

5.6 When the Council has apportioned the costs of each remediation action and before serving remediation notices, it will consider whether any of those liable may be in financial hardship. If, after taking into consideration the statutory guidance it decides that one or more of the parties are unable to meet the cost of remediation, it will not serve a remediation notice on any of the parties. The Council will instead, consider carrying out the work itself and produce and publish a remediation statement

THE ENFORCEMENT PROCESS

5.7 Before remediation notices are served the extensive consultation process will be completed and ample encouragement given to arrive at an informal solution. The Council will do all in its power to consult the appropriate person(s), owners, occupiers etc about their views on the state of the land. This could be a difficult and most protracted process and cause delays. Where a housing estate is affected for example, it would be reasonable to expect house owners, land owners, developers, lenders, insurers, surveyors, geo technical engineers, residents groups, etc all to have differing views according to their position.

5.8 Remediation notices are served only as a last resort (not withstanding urgent cases), and then only after this lengthy consultation process has been exhausted. Notices will be authorised after two tests are satisfied:

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

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

5. 10 SPECIFYING REMEDIATION - The Head of Public Health and Licensing will specify what remediation measures are to be carried out in the remediation notice. These will be both appropriate and cost effective employing what the statutory guidance terms, 'best practicable techniques'. The aim of the remediation will be to ensure that the land is no longer contaminated, taking the shortest and lowest cost route. This means in most cases attention will be focussed on the pathway, rather

than the contaminant or receptor.

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

5.12 The inspection or remediation of any potentially contaminated land should not result in harm to ecosystems and or other nature conservation interests. In assessing the practicability of any remediation consideration of both the direct and indirect effects of the proposed remedial works should be considered.

REMEDICATION BY THE LOCAL AUTHORITY

5.13 Before the Council can serve a remediation notice it will first determine whether it has the power to carry out any of the remediation actions itself. There are five specified circumstances where this may be the case:

- * Where urgent action is required (see below)
- * Where no appropriate person can be found
- * Where one or more appropriate persons are excluded (on grounds of hardship)
- * Where the local authority has made an agreement with the appropriate person(s) that it should carry out the remediation
- In default of a remediation notice

ORPHAN SITES

5.14 Orphan sites are those where it is not possible after, "reasonable", enquiries to find anyone responsible for them (class A or class B persons), or, where persons can be found but they are exempted from liability for specified reasons. These are described in the statutory guidance as, "orphan linkages".

Exemptions apply where:

The land is contaminated by reason of pollution of controlled waters only and no class A persons can be found (this means class B persons cannot be held liable for polluting water from land).

The land is contaminated by reason of the escape of a pollutant from one piece of land to another and no class A person can be found or the release falls within the definition of The Environmental Damage (Prevention and Remediation) Regulations 2009 (see i8 (m) above).

The land is contaminated land by reason of pollution of controlled waters from an abandoned mine.

The person was acting in a "relevant capacity" (insolvency practitioner/ official receiver etc)

In such cases the enforcing authority should bear the cost of the remediation in

accordance with Secretary of State's guidance.

URGENT ACTION

5.15 Urgent action must be authorised where the Council is satisfied that there is imminent danger of serious harm or serious pollution of controlled waters being caused as a result of contaminated land. In such circumstances the procedures identified in the statutory guidance will be followed which may involve forced entry into the premises (see also appendix 6). Where necessary the Local Authority will liaise with the Environment Agency in all such circumstances.

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

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

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

PART 6

6 DATA HANDLING AND ACCESS TO INFORMATION

6.1 The Council is required by Statute to produce this contaminated land strategy and formally publish it. It must also maintain a register of regulatory action taken under Part IIA, which must be made available for public inspection at all reasonable times (see 6.13 below).

THE ENVIRONMENTAL INFORMATION REGULATIONS 2004

6.2 The strategy will result in significant volumes of data which will be held on computer data bases and geographical information systems, as well as in paper form. There is no statutory obligation to disclose this information therefore the Council must comply with the requirements of the Environmental Information Regulations when dealing with requests for disclosure.

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

6.4 Regulation 12(1)(b) states that a public authority may refuse to disclose environmental information requested if, *'in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.'* This means that even if an exception applies and the authority wishes to withhold the information, it must go on to consider whether it is in the public interest to do so. Below are broadly the exemptions to the right of environmental information. In all circumstances where there is in doubt, the Council's Controller of Legal Services will be consulted.

- a) Where held for judicial purposes.
- b) Where disclosure would affect legal proceedings.
- c) Where disclosure would affect international relations, national defence or public security.
- d) Where disclosure would affect the confidentiality of deliberations by a relevant person, or the confidentiality of commercially sensitive matters.
- e) Where it would involve the supply of a document or record which is still in the course of completion.
- f) Where the information is not accessible.

6.5 "Information", for the purposes of the Regulations includes records, registers, reports, returns, and information in electronic format.

6.6 It has been suggested that information held as a result of the Council's initial

inspection of the District and subsequent prioritisation for further investigation, could be classified as, 'a record which is in the course of completion', for the purposes of the Regulations, and therefore not be disclosed. It should, however, be understood that sites should not be so identified unless there are sound reasons, based on scientific judgement that a contaminant linkage may exist. Also once the preliminary inspection of the District has been undertaken, each assessment could constitute a, 'record', in itself.

6.7 More significantly, however, should a third party purchase land following a refusal on the part of this Authority to supply information requested on its condition, and the Authority had identified it at that stage as potentially contaminated land, that party may wish to seek a remedy against the Council should the site be subsequently declared contaminated land and lose value as a result.

6.8 Requests for information will therefore be dealt with promptly and no later than 10 working days after they are made. Where the Council must refuse a request for any of the reasons stated in the Regulations it will provide details of the reasons in writing at no cost to the applicant.

THE DATA PROTECTION ACT 1998

6.9 The Data Protection Act applies to all personal data that is processed it applies not only to electronically held data but data in structured filing systems (paper records). The Act seeks to give some protection to persons (known as data subjects) in respect of three potential dangers:

- 👉 The use of personal information that is inaccurate, incomplete or irrelevant
- 👉 The possibility of access to personal information by unauthorised persons
- 👉 The use of personal information in a context or for a purpose other than that for which the information was collected

6.10 Personal data is defined as data consisting of information which relates to a data subject who can be identified from the information, or from that and other information in the possession of the data user (the Council). Every individual member of the public can be considered a data subject, there is no age limit.

6.11 It should be noted that just about all information held in structured filing systems be they manual or electronic is considered as being, 'processed' for the purposes of the Act.

6.12 The implications of holding information relating to the condition of potentially polluted property, and the persons associated with that property and pollution, could be significant. It is therefore imperative that the requirements of the relevant data protection legislation is complied with at all times.

CONTENTS OF FORMAL CONTAMINATED LAND REGISTERS

6.13 The only information required to be stored on a formal register is that relating to regulatory action and remediation. The contents are specified at length in schedule 3 of the Contaminated Land (England) Regulations 2000. This formal contaminated

land register will be maintained within the Environmental Health Department. Members of the public will be able to view the register free of charge during normal office hours. Requests for copies of documents must be made to the Head of Public Health and Licensing. The register shall contain:

- a) Remediation notices
- b) Charging notices
- c) Appeals against remediation & charging notices
- d) Remediation statements and declarations
- e) Other environmental controls
- f) Designations of special sites
- g) Notices terminating the designation of special sites
- h) Notifications by owners/occupiers/appropriate persons of any voluntary works which they claim have been carried out on the site
- i) Agency site-specific guidance

COMMUNICATIONS WITH THE ENVIRONMENT AGENCY

6.14 Communications with the Environment Agency will respect the memorandum of understanding between the Agency and the Local Government Association and will be made using prescribed forms if necessary where these exist.

PART 7

7 QUALITY CONTROL, AND ARRANGEMENTS FOR REVIEW

7.1 COMPLAINTS AND INFORMATION FROM OTHER PROFESSIONALS AND OF THE PUBLIC - This is also considered in 2.14 and 2.15 above. Procedures are in place to:

- Record that information or a complaint has been received;
- Allocate an appropriate officer to deal with the request;
- Record the request and response; and
- Ensure appropriate records are maintained.

7.5 As part of this Council's ongoing commitment to improving quality of service the following performance criteria have been agreed:

All complaints will receive an initial response within 7 working days.

REVIEW

7.6 Whilst the Council has a duty to inspect the District, 'from time to time', to identify contaminated land, the frequency of inspection is not prescribed. In practice inspection may be a continuum, balancing a systematic approach with the availability of resources. The Council has a duty to review its inspection strategy on a regular basis and to meet its statutory responsibilities two main aspects of review need to be built into this strategy:

- Triggers for reviewing inspection decisions, and
- Review of the inspection strategy

7.7 In addition to the routine review of inspection findings (see 2.11, 2.16, 3.8, 3.14, 3.15, 4.3 above) there will be situations which will trigger re-assessment including:

- Change of use of surrounding land (introduction of new receptors)
- The potential for pollutant linkages to become significant or urgent as a result of unplanned events (e.g. flooding, subsidence, spillage's etc), or a change in circumstances
- Identification of a localised effect which could be associated with the land
- Responding to new information
- The Environment Agency will be consulted on any review.

7.8 The strategy as a whole will be reviewed every three years and any proposed changes will be reported to the Head of Public Health & Licensing and incorporated as necessary. Particular matters that will be kept under review include:

- The content of the strategy generally
- Priorities for further investigation of potentially contaminated sites

- The potential for the introduction of new receptors
- The potential for new contamination
- Progress on voluntary remediation
- The enforcement process generally and the identification of appropriate persons particularly
- Identification of special sites
- Progress with the implementation

7.9 An immediate review of the strategy will be triggered by fundamental changes to the legislation or statutory guidance issued under Part IIa Environmental Protection Act 1990.

PART 8

PROGRESS TO DATE AND FUTURE ACTIONS

8.1 Currently, potentially contaminated sites are dealt with under the Planning Regime. The Development Management section within the Planning Service currently consults the Environmental Health Officer on potential land contamination issues of proposed developments when a planning application is received.

8.2 Planning applications, particularly those with a potentially sensitive end use, are checked with regards to the presence of potential land contamination on or within influencing distance of the proposed development site. For these proposed developments, where advised by the Environmental Health Officer (based on the limited information available to them), the Planning Service will require the developers through the means of a Planning Condition on the Planning Permission to satisfy the Council that the presence of any contamination has been adequately assessed and subsequently ensure that the land is suitable (or made so) for the proposed new use in accordance with recognised standards.

8.3 In extreme cases, planning permission may have to be refused or the application put on hold whilst further investigations take place.

8.4 In addition the Council is in a process of identifying potentially contaminated sites which are currently not being addressed under the planning regime. Also, a review of initially identified potentially contaminated sites has been made which concluded that for a number of sites a further investigation will be warranted. These will be subject to comprehensive Phase 1 desktop investigation to ascertain whether they could be subject to further action under Part IIA. This work will be completed in accordance with the timetable below.

8.4 Subsequently potentially significant sums may be required to make more detailed intrusive investigation of sites and, possibly take enforcement action and carry out remediation action.

8.5 Should a significant investigation and / or remediation be identified, it would be anticipated that an application for Supplementary Credit Approval would be made specifically relating to that site.

8.6 It should be noted that these arrangements relate specifically to the Council's enforcement role and not that as land owner. Should land in possession of the Council be identified as contaminated land then funding of remediation will need to be considered on a case by case basis.

AMENDED* TIMETABLE FOR THE IMPLEMENTATION OF PART IIA

Duty	Year
Detailed Phase 1 assessment of priority category 2 sites to be completed and decisions on whether to proceed further made.	Work completed by December 2013

APPENDICES

APPENDIX 1

BACKGROUND TO THE LEGISLATION

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

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

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

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

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

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

The Department of the Environment concern itself with all land which has been so contaminated as to be a potential hazard to health or the environment regardless of the use to which it is to be put, and;

The Government bring forward legislation to lay on local authorities a duty to seek out and compile registers of contaminated land.

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

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

Subsequently in July 1992, draft regulations were released which significantly reduced categories of, contaminating uses, "to those where there is a very high probability that all land subject to those uses is contaminated unless it has been appropriately treated". It was estimated that land covered by the registers would be only 10 to 15% of the area previously envisaged. This, however, was still considered to be a high figure. On the 24th of March 1993 the Secretary of State announced that the proposals for contaminated land registers were to be withdrawn and a review of land pollution responsibilities to be undertaken.

This resulted in the Department of the Environment consultation paper, *Paying for our Past* (March 1994). Following consultation the policy document, *Framework for Contaminated Land*, was published in November 1994. This review emphasised a number of key points:

- There was a commitment to the, "polluter pays principle", and, "suitable for use approach".
- Concern related only to past pollution (there were effective regimes in place to control current sources of land pollution).
- Action should only be taken where the contamination posed actual or potential risks to health or the environment and there are affordable ways of remediation.
- The long standing statutory nuisance powers had provided an essentially sound basis for dealing with contaminated land.

The proposed new legislation was first published in June 1995 in the form of section 57 of the Environment Act which amended the Environmental Protection Act 1990 by introducing a new Part IIA. After lengthy consultation on statutory guidance this came into force in April 2000.

APPENDIX 2

SPECIAL SITES

1. Once a local authority has identified land as contaminated land by definition, it must also consider whether it falls into the category of a special site. Special sites are sites where, more often than not, the Environment Agency have had, or still have, an enforcement role.

2. What exactly constitutes a special site is specified in the Contaminated Land (England) Regulations 2000. For a legal definition the Regulations must always be consulted. In simple terms, however, they include land:-

- Polluting controlled waters (in certain circumstances - see appendix 3);
- On sites subject to Integrated Pollution Control (see Environmental Protection Act 1990 Part I - Prescribed Processes and Substances Regulations 1991 schedule 1 part A);
 - With waste sulphuric acid tar lagoons (on sites used for refining benzole, used lubricants or petroleum);
- Used as an oil refinery;
- Used to manufacture or process explosives;
- Used to manufacture or dispose of atomic, chemical or biological weapons (non biological contamination only);
- Used for other nuclear purposes;
- Owned or occupied by a defence organisation for naval, military or air force purposes (not off base housing / NAFFI);
- Falls within the scope of the Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005

3. Contaminated land beyond the boundary of these premises (but contaminated by them) also forms part of the special site.

4. Procedure in relation to the investigation and declaration of special sites is covered in 3.11, 4.4, 4.5 and 5.15 above.

APPENDIX 3

LIST OF CONTACT POINTS

COUNCILS

1. WELWYN HATFIELD COUNCIL

Chief Executive

Mr M.Saminaden
Council Offices
The Campus
Welwyn Garden City
AL8 6AE
Tel: 01707-357327
e-mail: M.Saminaden@Welhat.gov.uk

Director of Strategy and Development

Mr C. Conway
Council Offices
The Campus
Welwyn Garden City
AL8 6AE
Tel: 01707-357346
e-mail: C.Conway@Welhat.gov.uk

Director of Governance

Mr R. Baldock
Council Offices
The Campus
Welwyn Garden City
AL8 6AE
Tel: 01707-357277
e-mail: B.Baldock@Welhat.gov.uk

Director (Finance & Operations)

Mrs Pam Kettle
Council Offices
The Campus
Welwyn Garden City
AL8 6AE
Tel: 01707-357275
e-mail: p.kettle@Welhat.gov.uk

Head of Public Health & Protection

Mr N. Long
Council Offices
The Campus
Welwyn Garden City
AL8 6AE
Tel: 01707-357401
e-mail: N.Long@Welhat.gov.uk

Client Support Services Manager

Mr Farhad Cantel
Council Offices
The Campus
Welwyn Garden City
AL8 6AE
Tel: 01707-357011
e-mail: F.Cantel@Welhat.gov.uk

2. WELWYN HATFIELD COMMUNITY HOUSING TRUST

Chief Executive

Mr J. Briggs
51 Bridge Road East
Welwyn Garden City
AL7 1JR
Tel: 01707-357742
e-mail: J.Briggs@Welhat.gov.uk

3. COUNTY COUNCIL

Hertfordshire County Council
County Hall
Pegs Lane
Hertford
Herts
SG13 8DQ
Tel:01992-555555

3. TOWN COUNCILS

HATFIELD TOWN COUNCIL

Ms Carrie Lloyd
Town Clerk
Hatfield Town Council
Council Offices
Birchwood Leisure Centre
Longmead
Hatfield
Herts
AL10 0AN

Tel: 01707-262023
e-mail: Carrie.lloyd@hatfield-herts.gov.uk

4. PARISH COUNCILS

ESSENDON PARISH COUNCIL

Clerk to the Council
The Old Rectory
Essendon Hill
Essendon
Herts AL9 6AH
Tel: 01707 261375

NORTHAW AND CUFFLEY PARISH COUNCIL

Mr Jason Grocock
Clerk to the Council
Parish Council Office
7 Maynard Place
Cuffley
Herts EN6 4JA
Tel: 01707 875825
e-mail: nothawcuffleyclerk@btconnect.com

NORTH MYMMS PARISH COUNCIL

Clerk to the Council
Parish Council Office
1a Bushwood Close
Welham Green
Hatfield AL9 7YZ
Tel: 01707 268418

WELWYN PARISH COUNCIL

Ms A S Pack
Clerk to the Council
Parish Centre
Lockleys Drive
Welwyn AL6 9NT
Tel: 01438 716667
e-mail: Clerk@welwynpc.org.uk

WOOLMER GREEN PARISH COUNCIL

Ms J.Pearce
Clerk to the Council
Woolmer Green Village Hall
Hall Lane
Woolmer Green
Herts
SG3 6XA
Tel: 01438 815247
e-mail: clerk@woolmergreenpc.org.uk

5. PARISH MEETINGS

AYOT ST LAWRENCE

Mr H E Ross
Tynings
Bridge Hall Lane
Ayot St Lawrence
Welwyn
Herts AL6 9BX
Tel: 01438 820397
e-mail: copmasl@yahoo.co.uk

AYOT ST PETER

Mrs J Fowler (Clerk)
Station House
Ayot St Peter
Welwyn
Herts AL6 9BE
e-mail: jandkfowler@btinternet.com

ENGLISH HERITAGE

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

East of England Office

English Heritage
Brooklands
24 Brooklands Avenue
Cambridge
Cams CB2 8BU
Tel: 01223582700
Fax: 01223582701
e-mail: eastofengland@english-heritage.org.uk

NATURAL ENGLAND

National Consultations
Natural England
Consultation Service
Hornbeam House
Electra Way
Crewe Business Park
Crewe
Cheshire
CW1 6GJ

East of England Office
Natural England
Eastbrook

Shaftesbury Road
Cambridge
CB2 8DR
Tel: 0300-060-3787
Fax: 0300-060-2070

ENVIRONMENT AGENCY

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

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

Area contaminated land officer:

Teresa Corey

Environment Agency
Apollo Court
2 Bishops Square Business Park
St Albans Road West
Hatfield
Herts
AL10 9EX
Tel: 01707-632300
Fax: 01707-632533

FOOD STANDARDS AGENCY

UK Headquarters
Aviation House
125 Kingsway
London WC2B 6NH
Tel: 0207-276-8000
Emergency: 0207-270-8960

HEALTH & SAFETY EXECUTIVE

Home Counties Division
Woodlands
Manton Lane
Manton Lane Industrial Estate
Bedford
Tel: 01234 220633

HER MAJESTY'S CUSTOMS AND EXCISE OFFICE

Landfill tax
Central Collection Unit
HM Revenue & Customs
Alexander House
21 Victoria Avenue
Southend
SS99 1AY
Tel: 01702 366 558
Fax: 01702 366 562

DEPARTMENT FOR ENVIRONMENT FOOD AND RURAL AFFAIRS

Nobel House
17 Smith Square
London SW1P 3JR
Tel: 08459 335577

STATUTORY REGENERATION BODIES

Homes and Communities Agency

Cambridge Office
Eastbrook Centre
Shaftesbury Road
Cambridge
CB2 8BF
Tel: 0300-1234-500

APPENDIX 4

POLLUTION OF CONTROLLED WATERS

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

- Coastal waters including docks
- Relevant territorial waters (usually to three miles)
- Inland fresh waters (relevant rivers, watercourses, lakes, ponds, reservoirs - including bottom / channel / bed, even if dry)
- Ground water (section 104 of the Water Resources Act 1991)

2. The pollution of controlled waters is simply defined as:

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

3. There is no power in the Act to enable the Secretary of State to issue guidance on what degree of pollution may constitute pollution of controlled waters. This has been accepted as a potential area of conflict. When, however, considering cases where it is thought very small quantities of a contaminant are causing pollution, local authorities must consider what remediation it may be reasonable to require. This should act as a limiting factor thereby ensuring unrealistic demands are not made in relation to cases of very minor pollution.

4. Pollution of controlled waters will rarely be dealt with by the local authorities. Below is a summary of the issues relating to controlled waters.

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

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

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

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

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

*Specified aquifers are those contained in the following rocks:

- Pleistocene Norwich Crag;
- Upper Cretaceous Chalk;
- Lower Cretaceous Sandstones;
- Upper Jurassic Corallian;
- Middle Jurassic Limestones;
- Lower Jurassic Cotteswold Sands;
- Permo-Triassic Sherwood Sandstone Group;
- Upper Permian Magnesian Limestone;
- Lower Permian Penrith Sandstone;
- Lower Permian Collyhurst Sandstone;
- Lower Permian Basal Breccias, Conglomerates and Sandstones;
- Lower Carboniferous Limestones.

9. This, in effect, leaves local authorities with the potential responsibility for the pollution of controlled waters where:

- a) Surface or coastal waters are affected but not breaching the Regulations in paragraph 7 above.
- b) Groundwater (other than a principal aquifer specified as in 8 above) is contaminated and the water is not used for drinking.

APPENDIX 5

LIST OF POTENTIALLY CONTAMINATIVE LAND USES

This list has been drawn up to provide a broad indication of the type of sites that are known to use, or to have used in the past, materials that could pollute the soil. It must be understood that the list is not exhaustive, also that inclusion on this list does not necessarily infer the existence of a pollutant linkage.

Abattoirs	Fuel manufacture
Adhesives manufacture	Fuel storage
Agriculture	Garages and depots
Aircraft manufacture	Gas mantle manufacture
Airports	Gas works
Animal burial	Glass works
Animal by-product processing	Glue manufacture
Anodisers	Gum and resin manufacture
Anti-corrosion treatment	Hatters
Asbestos products	Hide and skin processors
Asphalt works	Ink manufacture
Automotive engineering	Iron founder
Battery manufacture	Iron works
Bearings manufacture	Knackers yards
Blacksmiths	Laquer manufacture
Boiler makers	Laundries
Bookbinding	Leather manufacture
Brass and copper tube manufacture	Metal coating
Brass founders	Metal manufacture
Brewing	Metal sprayers and finishers
Car manufacture	Mining
Carbon products manufacture	Mirror manufacture
Cement works	Motor vehicle manufacture
Chemical manufacture and storage	Oil fuel distributors and suppliers
Chrome plating	Oil merchants
Ceramics manufacture	Oil refineries
Coal carbonisation	Oil storage
Coal merchant	Paint and varnish manufacture
Concrete batching	Paper works
Coppersmiths	Pesticides manufacture
Descaling contractors (chemical)	Petrol stations
Detergent manufacture	Photographic film works
Distilleries	Photographic processing
Dockyards	Paper manufacture
Drum cleaning	Plastics works
Dry cleaners	Plating works
Dye works	Power stations
Dyers and finishers	Print works
Electricity generation	Printed circuit board manufacture
Electrical engineers	Radioactive materials processing
Electro platers	Railway land
Engineering works	Railway locomotive manufacture
Explosives manufacture (including fireworks)	Refiners of nickel and antimony
Farms	Resin manufacture
Fertiliser manufacture	Rubber manufacture
Fellmongers	Scrap metal dealers
Fibre glass works	Sealing compound manufacture
Food processing	Sewage works
Foundries	Sewage sludge disposal areas
	Sheet metal merchants and works

Ship breakers
Ship builders
Shooting grounds
Skein silk dyers
Small arms manufacture
Smokeless fuel manufacture
Soap manufacture
Solvent manufacture
Solvent recovery
Steel manufacture
Stove enamellers
Synthetic fibre manufacture
Tank cleaning
Tanneries
Tar and pitch distillers
Textile manufacture

Thermometer makers
Timber treatment
Timber preservatives manufacture
Tin plate works
Transport depots
Tyre manufacture and retreading
Vehicle manufacture
Vulcanite manufacture
Vulcanisers
Waste disposal
Waste recycling
Waste treatment
Zinc works

APPENDIX 6

POWERS OF ENTRY AND THE APPOINTMENT OF “SUITABLE PERSONS”

1. Section 108 of the Environment Act 1995 gives the local authority power to authorise, in writing, “suitable persons”, to investigate potentially contaminated land. These powers are extensive and will be considered in detail with the Council’s Solicitor prior to any resisted entry being attempted. It should be noted that these powers are not available to the Environment Agency. The powers which a person may be authorised to exercise include:

- * To enter at any reasonable time (or in urgent cases, at any time, if need be by force) any premises / land to make such examination and investigations necessary.

- * To take samples, photographs, carry out tests, install monitoring equipment etc.

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

3. It should be noted that there are no circumstances in which the Council will use these powers to obtain information about the condition of land, where:

- * It can obtain the information from third parties without the need for entering the site; or

- * A person offers to provide the information within a reasonable and specified time, and does so.

URGENT ACTION

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

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

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

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

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

- a) They are effective

- b) They do not cause any unnecessary damage or harm

c) They do not cause pollution of controlled waters

COMPENSATION

9. Schedule 18 of the Environment Act 1995 makes clear the circumstances when a local authority must pay compensation for loss or damage as a result of the use of these powers. The Chief Environmental Health Officer will therefore ensure that only appropriate technical procedures are deployed, the utmost care is taken at all times, and the conditions carefully recorded before, during and after completion of the necessary works.

“SUITABLE PERSONS”

10. The science and associated technical procedures relating to the investigation and assessment of contaminated land are extremely complex. Knowledge of several specialised disciplines is required together with an ability to interpret significant volumes of data and make a reasoned judgement, often in difficult circumstances.

11. The consequences of, ‘getting it wrong’, could, in many cases, have a major impact on the District and on people’s lives. On the one hand, an entire area could be unnecessarily blighted and homes rendered worthless over night, whilst on the other, a generation of children could be left at risk from an unidentified pathogen.

12. Neither the Act nor the guidance considers what may constitute a, “suitable person”, for the purposes of the investigation and assessment of contaminated land. There is no list of approved consultants or any professional organisation which oversees the training of contaminated land specialists. There is no minimum qualification and no recognised qualification. Consultants come from a range of backgrounds including:

- Environmental health
- Other environmental science disciplines (several)
- Surveyors
- Engineers
- Geologists
- Hydrologists
- Soil scientists
- Chemists
- etc

13. Ultimately, the responsibility for determining what land may and may not be declared contaminated, by definition, lies with the Chief Environmental Health Officer he will, however, often need to rely on the advice of appointed, “suitable persons”. Under these circumstances criteria have been developed to assist in their selection.

PROCEDURE FOR THE APPOINTMENT OF “SUITABLE PERSONS” FOR THE PURPOSES OF PART IIA

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

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

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

16. The Client officer will produce a comprehensive, unambiguous but succinct draft specification for each contract which clearly identifies the work to be carried out, its purpose, timetable and Client / Contractor responsibilities. Then he will produce a list of appropriate companies, taking care to seek out those most prominent and successful in the field, rather than only those who promote themselves to the Council. Each of these will then be contacted in turn for an informal discussion as to

their capability, expertise and experience. Prior to commencing this process the Client officer will produce a selection of questions relevant to the contract to ask each company. This should then hopefully result in a short list of six or so companies who will be asked to quote / tender for the work based on a final specification.

18. A check list of information requirements is included at the end of this section.

19. Once appointed the Client officer will be responsible for monitoring the contract to ensure:

- The contractors are kept fully aware of their responsibilities at all times
- Quality control requirements are met
- Amendments are quickly agreed and documented
- The time table is strictly adhered to
- The aim of the contract is achieved

CHECKLIST OF INFORMATION REQUIREMENTS

CLIENT'S INFORMATION REQUIREMENTS	REQUIREMENTS OF THE CONSULTANT
1. GENERAL	
1.1 Background on company capability	How long has company been operating? What kind of work were they originally set up to do - is this an add on? Who traditionally are their clients?
1.2 Numbers and qualifications of staff 1.3 CV and availability of key staff	If a large company, what are the interests / sympathies of those in control. Do they consider local authorities as a serious market? How many staff are available for this type of work, will they need to subcontract? Who will actually be doing the job, what are their qualifications and experience? Practical experience is KEY. Do they really understand Part IIA? Knowledge of environmental law & local government systems an important requirement.
1.4 Details of QA systems including: Allocation of responsibilities Project Management Technical Procedures Technical review Training Assessment of external suppliers	Where appropriate, need details of quality management systems indicating whether accredited by a third party. What technical procedures to be used. Which staff responsible, which will undertake technical review. How will quality of subcontractors is to be ensured.
1.5 Management of Health & Safety	Identify H&S management procedures where appropriate. Do they understand the fundamental requirements of H&S legislation?
1.6 Track record on similar projects	Ever done similar work or is this a new departure?
1.7 Client references	Need several telephone numbers to enable rapid verification of statements made at interview.
1.8 Financial status	May not always be necessary but on large contracts where considerable financial outlay required need to demonstrate solvency. Bond may be required on large remediation contracts.
1.9 Details of insurance cover	Need to demonstrate insurance available 3 rd party liability and professional indemnity. Identify limitations / exclusions

1.10 Membership of professional and trade associations	May be necessary to make checks, Corporate membership of professional organisations, meeting CPD requirements?
1.11 Compliance with codes of practice	Can they demonstrate knowledge of the appropriate guidance, codes of practice etc relevant to the job?
2. PROJECT SPECIFIC	
2.1 Technical proposal	The proposal must make it absolutely clear that work will be carried out to comply with the requirements of the specification, what the results will be, and when they will be achieved.
2.2 Project management plan / working plan	A clear timetable must be available which states what stage will be reached by when and who will be responsible to deliver.
2.3 Details of sub contractors	Subcontractors will be necessary on large technical projects. Must state who they are, contact points and lines of responsibility.
2.4 Details of technical procedures	Again, the working plan must clarify all procedures and lines of responsibility.
2.5 Reporting	Reporting procedures must be made absolutely clear. It is essential not to have masses of reports landing on the desk of the client officer which puts the responsibility back on him / her. The responsibility for doing what has been agreed to the agreed standard must lie with the contractor.
2.6 Programme & 2.7 Financial proposal	It may be that the Contractor will want to provide a guide price or include large contingency sums. The programme of work and the quotation must not be ambiguous. A lot depends on the quality of the original specification. Stage payments and timetables must be firm and with perhaps penalty clauses if fail to deliver on time.
2.8 Conditions of engagement	Contracts w5 need not be long and wordy, should define responsibilities of both parties, liabilities etc succinctly.

APPENDIX 7

EXAMPLES OF PRELIMINARY, AND STAGE 1 & 2 RISK ASSESSMENTS

Preliminary assessments are those carried out at the time of the inspection of the District and are designed only to assess priorities for further investigation. See Part 2 above.

Stage 1 risk assessments are those which seek to confirm (or otherwise) that a suspected pollutant linkage actually does exist. See 3.3 above.

Stage 2 risk assessments are those which seek to confirm (or otherwise) that a confirmed pollutant linkage is significant. See 3.4 above.

EXAMPLE 1 - Closed landfill with houses built on the site with no recognised capping

<i>Contaminant score</i>	-	10	(As landfill site contaminants are known to be present)
<i>Receptor score</i>	-	10	(As persons are living on the site receptors are known to exist)
<i>Pathway score</i>	-	10	(As persons are living on the site they are potentially able to access the contamination - a pathway exists)
TOTAL	-	<u>30 - PC1</u>	

This is a very simple example but it indicates why houses on a landfill site with minimal protection will always be PC1 as a *contaminant linkage* always exists.

EXAMPLE 2 - Closed landfill site with houses built on the perimeter

<i>Contaminant score</i>	-	10	(As a landfill site contaminants are known to be present)
<i>Receptor score</i>	-	10	(As persons are living very close by receptors are known to exist within an area of influence of the site)
<i>Pathway score</i>	-	6	(As persons are living so close there may be a presumption that there is a significant possibility that the contamination could impact on the receptors, maybe landfill gas)
TOTAL	-	<u>26 - PC1</u>	

In this case, if there was data to show that the pathway between the contaminant of concern (say landfill gas) and the receptors, had been effectively broken, then the pathway score may be significantly reduced or even become zero.

EXAMPLE 3 - Closed land raise in the country, no houses or property receptors nearby but watercourses identified on both sides of the site with leachate staining

<i>Contaminant score</i>	-	10	(As a landfill site contaminants are known to be present)
<i>Receptor score</i>	-	10	(The water courses are controlled waters and therefore specified receptors within an area of influence of the site)

Pathway score - 8 (It is very likely - possibly certain, that the contamination on this site will access the water courses)

TOTAL - 28 - PC1

EXAMPLE 4 - Old derelict gas works site, no structures, no access to the public, clay geology, no significant deep aquifer, but PWS nearby. Recent sample results satisfactory.

Contaminant score - 10 (As a gas works site contaminants are known to be present)

Receptor score - 5 (Initial investigations seem to suggest the existence of sensitive receptors unlikely except the PWS)

Pathway score - 3 (Adverse impact on receptor unlikely but could not be ruled out in the long term - seems satisfactory at the moment from recent sample results)

TOTAL - 18 - PC3

EXAMPLE 5 - Old power station site, now derelict, no structures, children play on the site, motorcyclists use it for scrambling. River adjacent and part of site a flood plain.

Contaminant score - 8 (As a power station site contaminants are very likely, including asbestos)

Receptor score - 10 (Person frequenting the site are receptors with direct access to any surface contamination. The river is controlled water and could be picking up contaminants from the site during periods of flood and heavy rain)

Pathway score - 5 (Chronic adverse impact on receptors possible)

TOTAL - 23 - PC2

Appendix 8

Glossary of Terms Found in DETR Circular 2/2000 Contaminated Land: Implementation of Part IIA of the Environmental Protection Act 1990.

The statutory guidance uses a number of terms which are defined in Part IIA of the 1990, other Acts or in the guidance itself. The meanings of the most important of these terms are set out below, along with a reference to the section in the Act or the paragraph in which the relevant term is defined.

Terms which are defined in statutes (mostly in section 78A of the 1990 Act) are shown with underlining.

Animal or crop effect: significant harm of a type listed in box 3 of [Table A of Chapter A](#).

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).
Paragraph [D.5\(e\)](#)

Appropriate person: defined in section 78A(9) as:

"any person who is an appropriate person, determined in accordance with section 78F..., to bear responsibility for any thing which is to be done by way of remediation in any particular case."

Assessment action: a remediation action falling within the definition of remediation in section 78A(7)(a), that is the doing of anything for the purpose of assessing the condition of the contaminated land in question, or any controlled waters affected by that land or any land adjoining or adjacent to that land. *Paragraph [C.8\(e\)](#)*

Attribution: the process of apportionment between liability groups.
Paragraph [D.5\(e\)](#)

Building: any structure or erection, and any part of a building including any part below ground, but not including plant or machinery comprised in a building. [Table A](#)

Building effect: significant harm of a type listed in box 4 of [Table A of Chapter A](#).

Caused or knowingly permitted: test for establishing responsibility for remediation, under section 78F(2); see paragraphs [9.8 to 9.14 of Annex 2](#) for a discussion of the interpretation of this term.

Changes to Substances: an exclusion test for Class A persons set out in Part 5 of Chapter D.
Paragraphs [D.62 to D.64](#).

Charging notice: a notice placing a legal charge on land served under section 78P(3)(b) by an enforcing authority to enable the authority to recover from the appropriate person any reasonable cost incurred by the authority in carrying out remediation.

Class A liability group: a liability group consisting of one or more Class A persons.

Paragraph [D.5\(c\)](#)

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). Paragraph [D.5\(a\)](#)

Class B liability group: a liability group consisting of one or more Class B persons.

Paragraph [D.5\(c\)](#)

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). Paragraph [D.5\(b\)](#)

Collective action: a remediation action which addresses together all of the significant pollution linkages to which it is referable, but which would not have been part of the remediation package for every one of those linkages if each of them had been addressed separately.

Paragraph [D.22\(b\)](#)

Common action: a remediation action which addresses together all of the significant pollution linkages to which it is referable, and which would have been part of the remediation package for each of those linkages if each of them had been addressed separately. Paragraph [D.22\(a\)](#)

Contaminant: a substance which is in, on or under the land and which has the potential to cause harm or to cause pollution of controlled waters. Paragraph [A.12](#)

Contaminant Linkage: see **Pollutant Linkage**

Contaminated land: defined in section 78A(2) as

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

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

"(b) pollution of controlled waters is being, or is likely to be, caused."

Contaminated Land (England) Regulations 2000: regulations (SI 2000/227) made under Part IIA - described in [Annex 4](#).

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

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. *Paragraph [E.8](#)*

Current use: any use which is currently being made, or is likely to be made, of the land and which is consistent with any existing planning permission (or is otherwise lawful under town and country planning legislation). This definition is subject to the following qualifications:

- (a) the current use should be taken to include any temporary use, permitted under town and country planning legislation, to which the land is, or is likely to be, put from time to time;
- (b) the current use includes future uses or developments which do not require a new, or amended, grant of planning permission;
- (c) the current use should, nevertheless, be taken to include any likely informal recreational use of the land, whether authorised by the owners or occupiers or not, (for example, children playing on the land); however, in assessing the likelihood of any such informal use, the local authority should give due attention to measures taken to prevent or restrict access to the land; and
- (d) in the case of agricultural land, however, the current agricultural use should not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land. *Paragraph [A.26](#)*.

Ecological system effect: significant harm of a type listed in box 2 of [Table A of Chapter A](#).

Enforcing authority: defined in section 78A(9) as:

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

Escaped Substances: an exclusion test for Class A persons set out in Part 5 of Chapter D.

Paragraphs [D.65 to D.67](#)

Excluded Activities: an exclusion test for Class A persons set out in Part 5 of Chapter D.

Paragraphs [D.47 to D.50](#)

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). *Paragraph [D.5\(d\)](#)*

Favourable conservation status: defined in Article 1 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

Hardship: a factor underlying any cost recovery decision made by an enforcing authority under section 78P(2). See paragraphs [10.8 to 10.10 of Annex 2](#) for a discussion of the interpretation of this term.

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

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

Human health effect: significant harm of a type listed in box 1 of [Table A of Chapter A](#).

Industrial, trade or business premises: defined in section 78M(6), for the purpose of determining the penalty for failure to comply with a remediation notice, as:

"premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing."

Inspection using statutory powers of entry: any detailed inspection of land carried out through use of powers of entry given to an enforcing authority by section 108 of the Environment Act 1995. *Paragraph [B.21](#)*

Introduction of Pathways or Receptors: an exclusion test for Class A persons set out in Part 5 of Chapter D. *Paragraphs [D.68 to D.72](#).*

Intrusive investigation: an investigation of land (for example by exploratory excavations) which involves actions going beyond simple visual inspection of the land, limited sampling or assessment of documentary information. *Paragraph [B.20\(c\)](#)*

Liability group: the persons who are appropriate persons with respect to a particular significant pollutant linkage. *Paragraph [D.5\(c\)](#)*

Local authority: defined in section 78A(9) as meaning any unitary authority, district council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

Monitoring action: a remediation action falling within the definition in section 78A(7)(c), that is "making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters". *Paragraph [C.8\(g\)](#)*

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. *Paragraphs [D.12](#), [D.14](#) and [D.17](#)*

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

"a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is

entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let."

Part IIA: Part IIA of the Environmental Protection Act 1990.

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

- (a) is being exposed to, or affected by, a contaminant, or
- (b) could be so exposed or affected. *Paragraph [A.14](#)*

Payments Made for Remediation: an exclusion test for Class A persons set out in Part 5 of Chapter D. *Paragraphs [D.51 to D.56](#)*

Person acting in a relevant capacity: defined in section 78X(4), for the purposes of limiting personal liability, as any of the following:

- "(a) a person acting as an insolvency practitioner, within the meaning of section 388 of the Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act;
- "(b) the official receiver acting in a capacity in which he would be regarded as acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 if subsection (5) of that section were disregarded;
- "(c) the official receiver acting as a receiver or manager;
- "(d) a person acting as a special manager under section 177 or 370 of the Insolvency Act 1986;...
- "(f) a person acting as a receiver or receiver and manager under or by virtue of any enactment, or by virtue of his appointment as such by an order of a court or by any other instrument."

Pollutant: a contaminant which forms part of a pollutant linkage. *Paragraph [A.17](#)*

Pollutant linkage (aka Contaminant Linkage): the relationship between a contaminant, a pathway and a receptor. *Paragraph [A.17](#)*

Pollution of controlled waters: defined in section 78A(9) as:

"the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter."

Possibility of significant harm: a measure of the probability, or frequency, of the occurrence of circumstances which would lead to significant harm being caused. *Paragraph [A.27](#)*

Receptor: either:

- (a) a living organism, a group of living organisms, an ecological system or a piece of property which:
 - (i) is in a category listed in Table A in Chapter A as a type of receptor, and
 - (ii) is being, or could be, harmed, by a contaminant; or

(b) controlled waters which are being, or could be, polluted by a contaminant. *Paragraph [A.13](#)*

Register: the public register maintained by the enforcing authority under section 78R of particulars relating to contaminated land.

Related companies: are those which are, or were at the "relevant date", members of a group of companies consisting of a "holding company" and its "subsidiaries". The "relevant date" is that on which the enforcing authority first served on anyone a notice under section 78B(3) identifying the land as contaminated land, and the terms "holding company" and "subsidiaries" have the same meaning as in section 736 of the Companies Act 1985. *Paragraph [D.46](#)***Error!**

Reference source not found.

Relevant information: information relating to the assessment of whether there is a significant possibility of significant harm being caused, which is:

- (a) scientifically-based;
- (b) authoritative;
- (c) relevant to the assessment of risks arising from the presence of contaminants in soil; and
- (d) appropriate to the determination of whether any land is contaminated land for the purposes of Part IIA, in that the use of the information is consistent with providing a level of protection of risk in line with the qualitative criteria set out in Tables A and B of Chapter A. *Paragraph [A.31](#)*

Relevant land or waters: the contaminated land in question, any controlled waters affected by that land and any land adjoining or adjacent to the contaminated land on which remediation might be required as a consequence of the contaminated land being such land. *Paragraph [C.8\(d\)](#)*

Remedial treatment action: a remediation action falling within the definition in section 78A (7)(b), that is 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:

- (a) 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
- (b) of restoring the land or waters to their former state.

Paragraph [C.8\(f\)](#)

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. *Paragraph [C.8\(a\)](#)*

Remediation declaration: defined in section 78H(6). It is a document prepared and published by the enforcing authority recording remediation actions which it would have specified in a remediation notice, but which it is precluded from specifying by virtue of sections 78E(4) or (5), the reasons why it would have specified those actions and the grounds on which it is satisfied that it is precluded from specifying them in a notice.

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

Remediation package: the full set or sequence of remediation actions, within a remediation scheme, which are referable to a particular significant pollutant linkage. *Paragraph [C.8\(b\)](#)*

Remediation scheme: the complete set or sequence of remediation actions (referable to one or more significant pollutant linkages) to be carried out with respect to the relevant land or waters. *Paragraph [C.8\(c\)](#)*

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

Risk: the combination of:

- (a) the probability, or frequency, of occurrence of a defined hazard (for example, exposure to a property of a substance with the potential to cause harm); and
- (b) the magnitude (including the seriousness) of the consequences. *Paragraph [A.9](#)*

Shared action: a remediation action which is referable to the significant pollutant in more than one significant pollutant linkage. *Paragraph [D.21\(b\)](#)*

Single-linkage action: a remediation action which is referable solely to the significant pollutant in a single significant pollutant linkage.

Paragraph [D.21\(a\)](#)

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

Significant pollutant: a pollutant which forms part of a significant pollutant linkage. *Paragraph [A.20](#)*

Significant pollutant linkage: a pollutant linkage which forms the basis for a determination that a piece of land is contaminated land.

Paragraph [A.20](#)

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

Sold with Information: an exclusion test for Class A persons set out in Part 5 of Chapter D. *Paragraph [D.57 to D.61](#)*

Special site: defined by section 78A(3) as:

"any contaminated land -

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

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

The effect of the designation of any contaminated land as a special site is that the Environment Agency, rather than the local authority, becomes the enforcing authority for the land.

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

"any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour."

APPENDIX 9

USEFUL PUBLICATIONS

Model Procedures for the Management of Contaminated Land –
DEFRA/Environment Agency 2004

The Radioactive Contaminated Land (Modification of
Enactments) (England) (Amendment) Regulations 2007 – HMSO

Environmental Protection Act 1990 - HMSO

Environment Act 1995 - HMSO

Using Soil Guideline Values – Better Regulation Science Programme: Science
Report SC050021/SGV

Human Health Toxicological Assessment of Contaminants in Soil – Science Report
Final SC050021/SR2

GPLC1- Guiding Principles for Land Contamination – EA

Guidance for the Safe Development of Housing on Land Affected by Contamination -
NHBC R&D Publication 66 2008

CLR3 – Documentary Research on Industrial Sites – 1994

CLR5 – Information Systems for Contaminated Land – 1994
Land Contamination Risk Assessment Tools : An Evaluation of some of the
Commonly Used Methods – EA 2000

An ecological risk assessment framework for contaminants in soil - Science report
SC070009/SR1 EA

BS 10175:2001 Investigation of potentially contaminated sites - Code of practice.

BS 5930 Code of practice for site investigation

Welwyn Hatfield Developers Guide To Contaminated Land (available from Council
Offices or at www.welhat.gov.uk)

