Nuneaton & Bedworth Borough Council

Contaminated Land Strategy

Phase 2

January 2010

Nuneaton & Bedworth
United to Achieve

EXECUTIVE SUMMARY

Under Part IIA of the Environmental Protection Act 1990 Nuneaton and Bedworth Borough Council has a duty to inspect the land within its area to identify contaminated sites, act as an enforcing authority for contaminated land, and maintain a public register of regulatory action in relation to contaminated land. The identification and safe re-use of contaminated land plays a key part in the sustainable development of the area.

The first Contaminated Land Strategy was published in July 2001. It was intended that the strategy would be kept under periodic review. This document is the first review of the Strategy and is known as Phase 2. It describes progress to date and the objectives that need to be attained in order to continue to discharge the Council's obligations under the legislation. Phase 2 deals with more detailed desk and field investigations of sites prioritised by the risk screening exercise. Background information published in the July 2001 Contaminated Land Strategy will not be repeated in this revision unless the information has changed or its inclusion here would add clarity.

Nuneaton and Bedworth Borough Council adopted a two-stage risk assessment approach to identify contaminated land:

Phase 1 – Risk Screening to prioritise sites for further inspection.
Phase 2 – Detailed Site Inspection risk assessment.

A four-year programme was originally adopted. It was anticipated that the risk screening would be performed between April 2001 and April 2002 with the more detailed risk assessment following this between April 2002 and April 2005. However, the process was much more complicated than expected, disclosing many more sites than expected and the belief that the strategy could be delivered within existing resources was unrealistic and therefore the risk screening exercise was extended until April 2008. Since April 2008, more detailed desktop investigations have been undertaken on sites prioritised by the risk screening exercise. However, sites requiring immediate attention are being dealt with as they arise.

The Council's priorities will continue to be, in order of importance: -

- To protect human health.
- To protect controlled waters.
- To protect designated ecosystems.
- To prevent damage to property.
- To prevent any further land contamination.
- To encourage voluntary remediation.
- To encourage the re-use of land considered to be brownfield or contaminated.

Although Nuneaton and Bedworth Borough Council will act as the lead regulator it will need to consult and form partnerships with other organisations such as the Environment Agency.

Since the publication of the original document, legislation has been changed to include radioactive contamination of land.

CONTENTS

1. INTRODUCTION

1.1 BACKGROUND

In April 2000, Part IIA of the Environmental Protection Act 1990 came into force, introducing a new regime for the regulation of contaminated land in England. The main purpose of Part IIA is to provide a legal structure for the identification of land posing unacceptable risks to human health or the environment, and for securing remediation of such land. It is based upon a set of principles which include 'suitable for use' standard of remediation, the 'polluter pays' principle for allocating liability and a 'risk based approach' to assessment of contaminated land.

The specific stated objectives of the 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 Government considers that the improved clarity and consistency of the regime (in comparison with its predecessors), is also likely to encourage voluntary remediation. It is intended that companies responsible for contamination should assess the likely requirements of regulators and plan remediation in advance of regulatory action.

The Government also considers the regime will assist developers of contaminated land by reducing uncertainties about so called "residual liabilities".

In particular, it should:

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.*

1.2 OBJECTIVES OF THE STRATEGY

The objectives of Nuneaton and Bedworth Borough Council's Strategy to deal with land contamination are:

- To identify and remove unacceptable risks to human health and the environment.
- To seek to bring damaged land back into beneficial use.
- To seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.
- To ensure compliance with and enforcement of Part IIA of The Environmental Protection Act 1990 (inserted by Section 57 of the Environment Act 1995), and amended by the Water Act, 2003 s86 when enacted.
- To ensure that where redevelopment of land takes place within the Borough, the planning process deals effectively with any land contamination so that the land is suitable for its intended use.
- To address the liability issues associated with the Council's existing and former land holdings and avoid any new liability associated with land transactions.
- To be proportionate to the seriousness of any actual or potential risk.
- To ensure that the most pressing and serious problems are located first by ensuring that resources are concentrated on investigating areas where the Council is most likely to identify contaminated land.

1.3 EXPLANATION OF TERMS

The legislation and guidance is heavily punctuated with many complex and unusual terms. To assist in the interpretation of these an extensive glossary was included as Appendix 1 of the Phase 1 Strategy document. For convenience, this glossary has been included as Appendix 1 to this revision.

2. REVIEW MECHANISMS

2.1 REVIEW OF STRATEGY DOCUMENT

Nuneaton and Bedworth Borough Council has a duty to inspect the District 'from time to time', to identify contaminated land. In practice, inspection is a continuous process, 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. 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 in general and the identification of appropriate persons in particular.
- Identification of special sites.
- Progress with the implementation of the strategy.

2.2 TRIGGERS FOR EARLY REVIEW

In addition to the routine review of inspection findings 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, spillages etc), or a change in circumstances
- Identification of a localised effect which could be associated with the land (identification of health effects)
- Responding to new information (information from statutory bodies, public or other interested parties).
- Changes in legislation and guidelines
- Establishment of case law

Following the identification of any of the above situations, an assessment of the impact on the overall strategy will be carried out and any amendments incorporated as necessary.

3. REGULATORY CONTEXT

Part IIA of the Environmental Protection Act 1990 provides the regulatory framework for the identification and remediation of contaminated land by local authorities. The Contaminated Land (England) Regulations 2000 (Statutory Instrument 2000 No. 227) came into force on 1st April 2000. The regime is based on the following basic principles:-

- Identify contaminated land.
- Assess the risks.
- Determine the appropriate remediation requirements.
- Consider the costs.
- Establish who should pay.
- Implement a remediation scheme.

Under the provisions, the Local Authority must 'cause its area to be inspected from time to time for the purpose of identifying contaminated land' (Section 78B). Where contaminated land is identified, the Local Authority must manage the land in a suitable and strategic way by applying a risk based approach.

A revised circular relating to the Environmental Protection Act 1990: Part IIA (Defra Circular 01/2006) was published in September 2006. This Circular replaces DETR Circular 02/2000, and describes the "Part IIA" regime and sets out the Statutory Guidance. This document includes changes in the regulations to include radioactive contamination. The advice note CLAN 5/06 provides details of the current regulations referred to by the Circular.

3.1 DEFINITION OF CONTAMINATED LAND

Contaminated land is defined in section 78A(2) of Part IIA and amended by the Water Act 2003, section 86 (when enacted) 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***
>
> ***Significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused.***

Nuneaton and Bedworth Borough 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 Local Authority.

Certain sites may be designated as "Special Sites" if they fall into specific categories as defined under the legislation. For these sites, the local authority

would first need to determine a site as “contaminated land” and then the Environment Agency becomes the enforcing authority.

Radioactivity – The Radioactive Contaminated Land (Modification of Enactments)(England) Regulations 2006 (Statutory Instrument 2006 No. 1379) came into force on 4 August 2006 which extended the responsibility of local authorities to consider contamination caused by radioactive materials (excluding nuclear facilities).

3.2 ROLE OF LOCAL AUTHORITIES

The statutory guidance states: “The local authority has the sole responsibility for determining whether any land appears to be contaminated land”. In broad terms this role includes: -

- Causing the area to be inspected to identify potentially contaminated sites
- Determining whether any particular site is contaminated (by definition)
- Determining whether any such land should be designated a ‘special site’
- Acting as the enforcing authority for contaminated land not designated as a ‘special site’

3.2.1 Priorities

Nuneaton and Bedworth Borough Council adopted a two-stage approach to identifying contaminated land: -

Phase 1 – Risk Screening to prioritise sites for further inspection
Phase 2 – Detailed Site Inspection to assess pollutant linkages.

The assessments at the risk screening Phase were made on a limited amount of basic data and information, such as old surveys, maps, geological information etc.

The assessment of a site as high priority does not necessarily infer the existence of a significant risk to one of the specified receptors, but it does identify the need for a detailed risk assessment.

The Local Authority's priorities in order of importance will continue to be: -

- To protect human health.
- To protect controlled waters.
- To protect designated ecosystems.
- To prevent damage to property.
- To prevent any further land contamination.
- To encourage voluntary remediation.
- To encourage the re-use of land considered to be brownfield or contaminated.

The initial Phase 1 Risk Screening has been completed. More than 3100 sites with previous potentially contaminative uses have been identified. However, inclusion in this list does not indicate that the land is contaminated. The sites have been listed in order of risk screening scores derived using the BGS ConSEPT software in conjunction with a desktop GIS system (ArcGIS 9.2). Prioritisation of sites changes as information becomes available through investigation and remediation.

3.2.2 Internal management arrangements

The primary regulators in respect of these new powers are local authorities. In Nuneaton and Bedworth, the Strategy will be under the control of the Environmental Services Director. It should be noted that this is a complex and demanding enforcement role, which will be carried out in accordance with the Local Authority's enforcement policy and the Cabinet Office Enforcement Concordat (March 1998).

The Environmental Protection Team, within Planning and Public Protection, has responsibility for the implementation of the contaminated land regime under Part IIA of the Environmental Protection Act 1990.

The Environmental Protection Team can be contacted at:

Environmental Protection
Planning and Public Protection
Nuneaton and Bedworth Borough Council,
Town Hall,
Coton Road,
Nuneaton, CV11 5AA
Tel: 024 7637 6405 Fax: 024 7637 6214
E-mail: env.health@nuneatonandbedworth.gov.uk

3.3 ROLE OF THE ENVIRONMENT AGENCY

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 the enforcing authority for contaminated land designated as a 'special site' as defined in the legislation
- 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

3.4 LIABILITY

Apportionment of liability for the costs of investigation and remediation of sites is based on the precept of "polluter pays". However, liability issues maybe very complex, particularly where the polluter no longer exists. For more information, refer to Version 1 of this Strategy, p.24, or see Part IIA of the Environmental Protection Act 1990, section 78F, or Defra Circular 01/2006, Annex 1, p12 and Annex 2, p37.

3.5 APPEALS PROCEDURE

Persons or organisations served with a remediation notice by a regulatory local Authority have the right to appeal against the notice.

Section 104 of The Clean Neighbourhoods and Environment Act 2005 (Commencement No. 2) (England) Order 2006 (S.I. 2006/1361), in England. amends the arrangements for appeals to remediation notices served by local authorities. Where a remediation notice is served on or after 4 August 2006, such appeals must be now be made to the Secretary of State, instead of to the Magistrates' Court.

For more details of grounds for appeal, see page 166 of Defra Circular 1/2006 at:
www.defra.gov.uk/environment/land/contaminated/pdf/circular01-2006.pdf

4. LOCAL CHARACTERISTICS

For details of the Nuneaton and Bedworth area and industrial history of the Borough, refer to Part 1 in the first version of the Strategy (July 2001).

4.1 GEOLOGY AND HYDROGEOLOGY

This section of the first version has been updated.

4.1.1 Geology

Nuneaton and Bedworth Borough Council has a complex area of geology. This has further been added to by Nuneaton's history of coal mining and other extensive extractive industries. In basic terms the main feature to the eastern side of the Council's area is the Mercia Mudstone, with minor aquifer status. As you look to the more central area of the borough there are a series of thin areas of varying geological members. The main member of note within the central region is the Bromsgrove Sandstone Formation, which has major aquifer status. As you continue to move westwards you find more substantial areas of the Whitacre Member and then the Keresley Member.

Superficial deposits overlying the bedrock geology include large areas of Thrussington Till and Wolston Clay along with areas of alluvial deposits comprising sand and gravel and/or clay associated with the River Anker flood plain. Additionally there are some local glaciofluvial and glacial deposits (sands, gravels, clays).

Artificial geology refers to changes made by human activities on the natural ground surface, including quarries or pits (mapped as Infilled Ground if there is fill, or Worked Ground if there is no fill) and Made Ground[1]. There are extensive areas with artificial geology in the Nuneaton and Bedworth area which require consideration as possible pollutant sources.

[1] **Made Ground**: Areas where the ground is known to have been deposited by man on the former, natural ground surface: road, rail, reservoir and screening embankments; flood defences; spoil (waste) heaps; coastal reclamation fill; offshore dumping grounds; constructional fill (landraise).
Worked Ground: Areas where the ground is known to have been cut away (excavated) by man: quarries, pits, rail and road cuttings, cut away landscaping, dredged channels.
Infilled Ground (formerly termed 'Worked Ground and Made Ground'): Areas where the ground has been cut away (excavated) and then had artificial ground (fill) deposited: partly or wholly back-filled workings such as pits, quarries, opencast sites; landfill sites (except sites where material is dumped or spread over the natural ground surface). (from McMillan and Powell 1999).

4.1.2 Hydrogeology

Part IIA of the Environment Protection Act 1990 (Statutory Instrument 2000 No. 227, Schedule 1, Regulation 3c, para. 2) lists major bedrock aquifers that may require an investigation as a 'special site'.

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[2]
Upper Permian Magnesian Limestone
Lower Permian Penrith Sandstone
Lower Permian Collyhurst Sandstone
Lower Permian Basal Breccias, Conglomerates and Sandstones
Lower Carboniferous Limestones

Rocks in bold font occur within the Nuneaton and Bedworth Borough Council boundary.

Obsolete terms
Some of the rock names in the legislation are obsolete and new names have been assigned by the British Geological Survey. For current terminology details, see the BGS lexicon of named rock units.

[2] Includes the Bromsgrove Sandstone Formation

5. PROGRAMME OF INSPECTION

The strategy sets out a simple but systematic approach, which follows the source-pathway-receptor principle and is consistent with a risk-based approach to the management of contaminated land.

5.1 PHASE 1 RISK SCREENING (2001 – 2008)

The methodology for identification of potentially contaminated sites was based on a desk top survey of Nuneaton and Bedworth 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 and/or pathway

Previous uses considered potentially contaminative are listed in Version 1 of the Strategy, Part 1.

Potentially contaminated land sites were identified, listed and categorised using a risk screening methodology. This utilised the available data regarding: -

- Potential sources - from historical mapping, Kelly's Directory, Government guidance and local knowledge;
- Potential pathways - from environmental, hydrological and geological/ hydrogeological data sources; and
- Potential receptors - from land use, gazetteers, local knowledge and features mapping sources i.e. aerial photography.

The risk screening methodology determined an individual score for various pollution linkages. Five receptor types were assessed: -

- human beings
- ecological systems
- property in the form of buildings
- property in a form other than buildings
- controlled waters

Scores were then calculated for each pollution linkage (based on the five receptor types identified above). An overall score was calculated using weighting factors that consider the combination of the source and all of the five receptor types. The weighting factors were selected to reflect the relative importance of each of the receptor types.

For example, the human receptor category was assigned higher weighting than the property categories. The scoring methodology reflected the concept that a low (or zero) score value would result from a situation where one or more of the three elements of pollutant linkage does not exist.

These overall scores were then used to determine a relative ranking of sites. A lower relative score signifies a lower potential for a pollution linkage. Conversely, a higher relative score signifies greater potential. This ranking was used to assist in identifying those higher priority sites which require further detailed investigation.

Sites where a source of contamination has been identified but there is no pollution linkage will only be inspected further if the status of the site changes, for example, if a new receptor is introduced through the planning process.

5.2 PHASE 2 – DETAILED RISK ASSESSMENT AND INVESTIGATION (2008 onwards)

Following the completion of the risk screening process the Council is systematically reviewing those sites identified in order of ranking, although some sites may be prioritised based on land use (e.g. schools, residential areas etc). At this stage a more detailed investigation will be undertaken to confirm whether or not the pollutant linkage identified is: -

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

Where evaluation of all available data suggests that a pollutant linkage may exist, it may be necessary to visit the site and carry out some form of intrusive investigation. In every case this will be carried out by a "suitable person", adequately qualified to undertake the work. 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 that: -

a) They are effective;
b) They do not cause any unnecessary damage or harm to any aspect of the environment, including the historic environment;
c) They do not cause pollution of controlled waters.

To ensure the most appropriate technical procedures are employed, the Council will have regard to best practice. This will be evaluated using Government and industry guidelines.

Sites identified to undergo detailed risk assessment will be the subject of consultation with the County archaeologist to advise on known or potential archaeological issues on the site.

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 pollutant linkage exists.

Where multiple pollutant linkages are suspected, each linkage will be considered separately.

In cases where imminent risk of serious harm or serious pollution of controlled waters has been confirmed, the Council will authorise urgent action. The Environment Agency will be notified in cases of pollution of controlled waters.

If a site meets the criteria of a 'special site', Nuneaton and Bedworth Borough Council may ask the Environment Agency to investigate the site on its behalf.

5.2.1 Landfill gas

Many contaminated sites, particularly but not exclusively landfills, produce gases as a result of chemical decomposition of materials beneath the surface. These gases can be hazardous, particularly methane (explosive risk between 5% and 15% v/v), carbon dioxide (suffocation risk), and hydrogen sulphide (toxic with unpleasant smell).

Gases can migrate through porous media (fill, superficial deposits, porous bedrock) for considerable distances and under certain conditions can accumulate to present a risk to receptors.

Sites with high levels of methane and/or other gases will require a remediation strategy to ensure that gases cannot migrate and present a risk to any receptors.

5.2.2 Radon

Radon gas can be released from some waste materials, e.g. pulverised fuel ash (PFA). However, current guidance from the Health Protection Agency advises that levels of radon derived from PFA are insignificant and do not pose a risk. Natural radon emissions from subsurface geological formations are not considered to be a risk in the Nuneaton and Bedworth Borough Council area.

5.2.3 Soil contamination and Soil Guideline Values (SGV)

Soil samples collected as part of a site investigation are analysed by an UKAS/MCERTS accredited laboratory. The concentrations of various inorganic and organic contaminants are then compared to guidance data, e.g. Soil Guideline Values (SGV – see box below). However, a full list of SGVs has not been published to date (May 2009) and other guidance (e.g. from expert environmental consultants) has to be used. The issue of SGVs together with complications relating to bio-availability of components and the interactive properties of multiple contaminants is currently under review.

The following information has been published (November 2006) by the Environment Agency on their website at:
www.environment-agency.gov.uk/subjects/landquality/113813/672771/675257/

Soil Guideline Values (SGV)

The key question when dealing with potentially contaminated sites is: Does the soil concentration of contaminant X pose a risk to human health or the environment?'
The Soil Guideline Values (SGVs) will help to answer this.

SGVs represent 'intervention values', which if exceeded, indicate potentially unacceptable risks to site users. Exceedance of SGVs may also indicate that further investigation and/or remedial action may be required to protect human health.

Soil Guideline Values have been derived using the Contaminated Land Exposure Assessment (CLEA) model for three land uses:

- residential (with and without vegetable growing)
- allotments
- commercial / industrial
-

Soil Guideline Values have superseded ICRCL values (ICRCL stands for the Interdepartmental Committee on the Redevelopment of Contaminated Land) in respect of assessing risks to human health. See 'Contaminated Land Advice Note' (CLAN) 1/02 and 3/02 on the Defra website (www.defra.gov.uk).

SGVs can be used in support of the application of the statutory regimes addressing land contamination, especially Part IIA of the Environmental Protection Act 1990 (the contaminated land regime) and development control under the Town and Country Planning Acts. CLAN 2/05 published by Defra (2005) provides advice on the use of Soil Guideline Values in the determination of land as contaminated land under Part IIA.

The SGV publications, together with the TOX and CLR reports can be downloaded from the 'Publications related to CLEA' page
http://www.environment-agency.gov.uk/subjects/landquality/113813/672771/675330/?version=1&lang=_e

More information on SGVs is given in "Assessing Risks From Land Contamination - a Proportionate Approach. Soil Guideline Values: the Way Forward" (Clan 06/06 November 2006).

5.2.4 Funding for investigations

Since 1991 Defra's programme (Contaminated Land Capital Projects Programme) has provided valuable capital support to English local authorities, and since 1997/98 to the Environment Agency, for their land contamination responsibilities.

Since 2000/01 the programme has also assisted local authorities to fulfil their responsibilities under the "Part IIA" contaminated land regime, including the costs of site investigation and also remediation in certain cases. It also provides support to certain other authorities with relevant responsibilities.

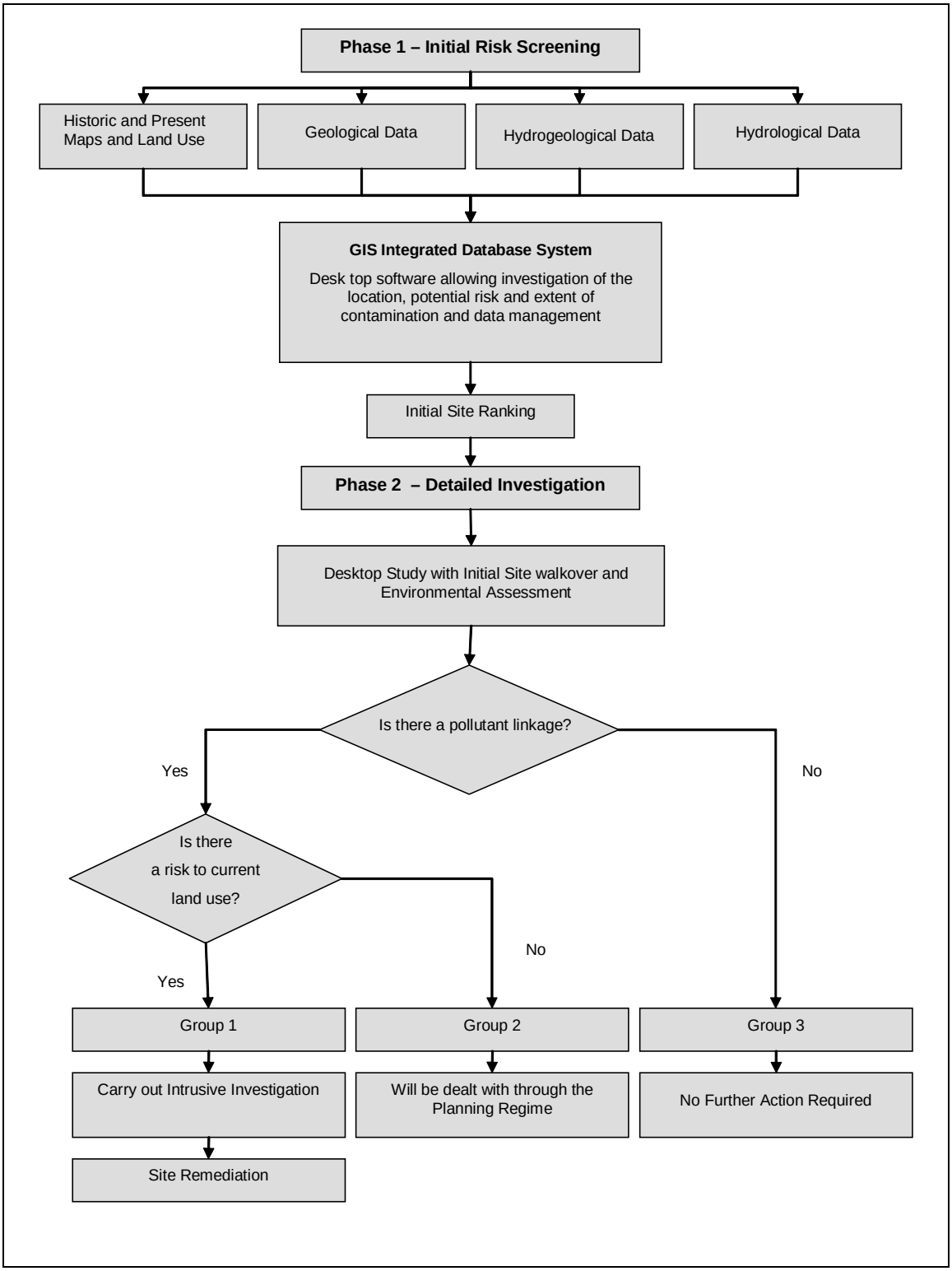
In addition, the Government has supported the revenue costs of dealing with contaminated land through its revenue support grant to LAs, and grant-in-aid to the Agency. Other Government programmes, such as those delivered by English Partnerships, also contribute to reducing the legacy of land contamination.

Details of funding are available at:
http://www.defra.gov.uk/environment/land/contaminated/funding.htm

In order to apply for funding, a certain level of preliminary investigation must be carried out, in order to support a case for central funding.

5.2.5 Risk assessment & investigation flowchart

The flowchart below illustrates the steps taken to assess whether or not a site is contaminated



Risk Screening & Investigation flowchart. See below for explanation of Groups 1, 2 & 3

Explanation of land categories of Groups 1, 2 & 3 (flow chart, previous page)

Group 1
Land where a past or present contaminative use has been identified and where there is a possibility that it might affect a receptor. Examples include landfill sites where there are no measures to control lateral migration of gas and sites where a highly contaminative industrial process is located within a groundwater protection zone or near a water abstraction point. Sites in this category will be subdivided into high, medium and low priority sites for detailed inspection.

Group 2
Land where a past or present contaminative use has been identified, but no pollution linkage could be established. Land in this group is considered suitable for its current use. This group will also include land already regulated as processes under the IPC or IPPC regulations, licensed waste disposal sites, vacant land in predominantly residential areas or existing industrial processes where there are no vulnerable receptors. A large proportion of the industrial or vacant land will fall into this group. This land will be reappraised through the planning process if and when the land use changes or when resources are available to carry out a more detailed assessment of the land.

Group 3
Land where no pollution linkage has been identified and is therefore suitable for use. Typically this group will include agricultural areas, residential or educational land that has been built on green field sites or parks with no contaminative history. For land to be classified as Group 3 there needs to be confidence that historical land uses can be identified.

5.2.6 Procedures for Phase 2 Investigations

Sites are selected for investigation based on the ranking indicated by the risk score calculated by the BGS ConSEPT risk screening programme carried out under the Phase 1 process.

Initially the two highest priority groups, Category A and B, have been selected to be inspected, this gives an initial number of sites that totals 396. These sites will be worked through in order of highest ranking and once all Category A and B sites have been inspected a review will be conducted to decide which further Categories to inspect. When a site has been investigated and either declared as “suitable for use” with no action required or remediated to a condition “suitable for use”, it will be removed from the list. In many cases, sites proposed for change of use or redevelopment will be considered under the planning regulations.

A full environmental desktop study of the site including a site walkover will be carried out for each site. The results of the study will determine whether there is a significant risk of a pollution linkage being present (refer to flow diagram above). A site-specific programme of intrusive investigations may be initiated.

If no significant risk is perceived, the site will be logged as “suitable for use”, and no further action will be taken unless a change of use is planned, or new information is obtained to trigger a review.

Progress will be monitored through the use of a local indicator with a target of investigating and gaining suitable information so that 5% of High Priority Sites (this includes sites from the top rated A and B categories from the Phase 1

screening and sites where planning conditions were applied) will be cleared as suitable for use per annum.

5.2.7 Information from the public

The Environmental Protection Team welcomes information from the public regarding any sites that may be of concern. Contact details are given below.

5.2.8 Progress to date

Current progress will be reported on the Contaminated Land website or made available at:

Environmental Protection
Planning and Public Protection
Nuneaton and Bedworth Borough Council,
Town Hall,
Coton Road,
Nuneaton, CV11 5AA

Tel: 024 7637 6405
Fax: 024 7637 6214
E-mail: env.health@nuneatonandbedworth.gov.uk

6. INFORMATION MANAGEMENT

6.1 CONTAMINATED LAND STRATEGY DOCUMENT

The latest revision of the Strategy will be made available on the Nuneaton and Bedworth Borough Council website www.nuneatonandbedworth.gov.uk, and at the offices of the Environmental Protection Team, Town Hall, Coton Road, Nuneaton CV11 5AA. Members of the public will be able to view the strategy document free of charge during normal office hours 9.00am – 5.00pm. Requests for copies of documents must be made to the Environmental Protection Team and a reasonable charge will be made. The latest version will be published within 6 weeks of corporate approval.

6.2 CONTAMINATED LAND REGISTER

The information held on the Contaminated Land Register is that relating to regulatory action and remediation. The contents are specified in the Contaminated Land (England) Regulations 2000 and include the following:

- Remediation Notices
- Remediation Declarations/Statements
- Appeals against Notices
- Designation of special sites
- Notification of Claimed Remediation
- Convictions for Offences

The register is maintained at the offices of the Environmental Protection Team, Town Hall, Coton Road, Nuneaton CV11 5AA. Members of the public are able to view the register free of charge during normal office hours 9.00am – 5.00pm. Requests for copies of documents must be made to the Environmental Protection Team and a reasonable charge will be made. A list of contaminated sites will be maintained on the Contaminated Land Website.

6.3 PROVISION OF INFORMATION TO INTERESTED PARTIES

Implementation of the strategy will result in significant volumes of data, which will be held on computer databases 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 1992 and the Freedom of Information Act 2000 when dealing with requests for disclosure.

Requests for information will therefore be dealt with promptly and no later than 14 days after they are made. An administration charge will be made for the supply of information in accordance with the Regulations. 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.

6.4 PROVISION OF INFORMATION TO THE ENVIRONMENT AGENCY

The Environment Agency is required to prepare and publish a report on the 'State of Contaminated Land in England' and another report for Wales when requested by the Secretary of State. In order to do this the Environment Agency will collate the information it holds and that held by local authorities.

The report will include:

- A summary of local authority inspection strategies, including progress made against the strategy and its effectiveness.
- The nature, extent and distribution of contaminated land.
- The level of remediation undertaken.
- Regulatory activity under Part IIA.

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APPENDIX 1

GLOSSARY OF TERMS

Where references are made to section numbers, this refers to the sections of the legislation and statutory guidance.

Aquifer: a permeable geological formation which is capable of both storing and transmitting water in significant amounts.

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

Appropriate person: 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.

Brownfield site: a site which has been previously developed and is presently disused. Redevelopment of such sites may be problematic due to issues of contamination, whether actual or perceived.

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.

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

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

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

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. Also known as a ‘source’.

Contaminated land: 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.

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.

Eco-system: A system of living organisms interacting with each other and their environment.

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.

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).

Groundwater: Groundwater is found as water sitting in the spaces between rock particles and in underground fissures in special rock layers known as 'aquifers'. It can also be found in unconsolidated deposits of recent geological age.

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 of the statutory guidance for a discussion of the interpretation of this term.

Harm: 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.

Inspection using statutory powers of entry: any detailed inspection of land carried out through use of powers of entry given to an enforcing authority by section 108 of the Environment Act 1995.

Intrusive investigation: an investigation of land (for example by exploratory excavations) which involves actions going beyond simple visual inspection of the land, limited sampling or assessment of documentary information.

Liability group: the persons who are appropriate persons with respect to a particular significant pollutant linkage.

Local authority: 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.

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

Owner: 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.

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.

Pollutant linkage: the relationship between a contaminant, a pathway and a receptor.

Pollution of controlled waters: 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.

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 of the statutory guidance 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.

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

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 of the statutory guidance.

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.

Remediation: defined 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.

Remediation notice: 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 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.

Remediation statement: 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.

Significant harm: 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.

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

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 of the statutory guidance.

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

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

Sustainability (or sustainable development): development, which meets the needs of the present generation without compromising the ability of future generations to meet their own needs.

APPENDIX 2

LIST OF CONSULTEES (VERSION 1, 2001)

Statutory Consultees

Area Contaminated Land Officer
Environment Agency
Wrens Court
15-17 Lower Queen Street
Sutton Coldfield
B72 1RT

Tel 0121 2412000
0121 2412022

J A Irving
Conservation Officer
English Nature
West Midlands Team
Warwickshire Office
10-11 Butchers Row
Banbury
Oxon
OX16 8JH

Dr Patrick Miller
Contaminants Division
Food Standards Agency
7th Floor Aviation House
125 Kingsway
London
WC2B 6NH

Tel 020 72768726
Fax 02072768717
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East Midlands Region
44 Derngate
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Rural and Marine Environment Division
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Advantage West Midlands
3 Priestley Wharf
Holt Street
Aston Science Park
Birmingham
B7 4BN

Tel: 0121 380 3500
Fax 01213803501

Other Consultees

Rugby Borough Council
Town Hall
Evreux Way
Rugby
CV21 2LA

North Warwickshire Borough Council
The Council House
South Street
Atherstone
Warwickshire
CV9 1BD

Coventry City Council
Council House
Earl Street
Coventry
CV1 5RS

Hinckley and Bosworth Borough Council
Council Offices
Argents Mead
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LE10 1BZ

Warwickshire County Council
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Local Contacts

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APPENDIX 3

LIST OF CONSULTEES (REVISION, 2009)

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English Nature
West Midlands Team
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Contaminants Division
Food Standards Agency
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Regional Planner
English Heritage
East Midlands Region
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Advantage West Midlands
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Aston Science Park
Birmingham
B7 4BN

Other Consultees

Rugby Borough Council
Town Hall
Evreux Way
Rugby
CV21 2LA

North Warwickshire Borough Council
The Council House
South Street
Atherstone
Warwickshire
CV9 1DE

Coventry City Council
Council House
Earl Street
Coventry
CV1 5RS

Hinckley and Bosworth Borough Council
Council Offices
Argents Mead
Hinckley
LE10 1BZ

Warwickshire County Council
Shire Hall
Warwick
CV34 4RR

Local Contacts

National Land Management Team
Rural Development Service
Department for Environment, Food and Rural Affairs
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