

CONTAMINATED LAND STRATEGY



Key Information

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Section/Directorate:	Public Spaces	
Service Impact Assessment:	19 October 2018	
External Consultation:	Essex County Council, Billericay Town Council, Parish Councils, Environment Agency, Natural England, English Heritage, Health & Safety Executive, Department for Environment Food and Rural Affairs, East of England Strategic Health Authority, Thames Gateway South Essex Partnership, Local Enterprise Partnership, Homes England, Clarion Housing Group, Estuary Housing Association, Peabody, The Guinness Partnership, London & Quadrant Housing Trust, Salvation Army Housing Association, Swan Housing Association, Moat Homes	
Internal Consultation:	Chief Executive, Service Director, Corporate Director, Assistant Director Public Spaces, Assistant Director Communities, Assistant Director Growth, Assistant Director Resources, Assistant Director Corporate Services, Head of People & Change, Manager of Street Scene & Technical Services, Manager of Environmental Health Services, Building Control Manager, Manager of Housing Choice, Manager of Inclusion & Diversity, Community Safety Manager, Head of Regeneration & Economic Development, Head of Planning, Corporate Programme Manager, Health & Safety Lead, Legal & Procurement Group Manager, Manager of ICT, Data Protection Officer, Manager Strategic & Executive Support, Manager of Marketing & Communications	
Strategy Approval - Officer Level	Assistant Director, Public Spaces	
Strategy Approval – Member Level	Committee – November 2018	
Strategy Review Date:	November 2023	
Service Impact Assessment Review Date:	November 2023	
Version History		
Version No.:	Period to which strategy applies:	Review Date:
1	2001-2007	2007
2	2007-2013	2013
3	2013-2018	2018
4	2018-2023	2023

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Foreword by Chairman, Leisure, Culture & Environment Committee

Basildon Council first published its strategic approach to dealing with contaminated land in July 2001 and we remain committed to providing protection to members of the public and the environment by regulating and implementing an effective management system.

Addressing problems associated with contaminated land often proves complex. For this reason it is unrealistic for any developer, landowner or occupier to find everything they need to know within this document.

The strategy does however detail the Council's approach to identification and inspection of contaminated land and how problems posed by contaminated land present within the Borough will be addressed.

Councillor Kevin Blake, Chairman Leisure, Culture & Environment Committee

September 2018

Introduction and Overview

Background

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 'Brownfield' gaps in our urban landscape. At the same time, changes in heating methods and the advent of the consumer society also had a significant effect on the type and volume of refuse necessary to landfill. Inevitably, these changes have left behind a legacy of contaminated land, which in some cases may be harmful.

In June 1995, new legislation to deal with contaminated land was first published in the form of section 57 of the Environment Act which amended the Environmental Protection Act 1990 by insertion of a new Part IIA. The new statutory provisions came into force in April 2000. Since then, much guidance has been introduced including, in 2012, a shorter, simpler and more focused version of the statutory guidance, Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance (Department for Environment, Food and Rural Affairs, April 2012), which gave greater clarity to regulators as to how to decide when land is, and is not, actually contaminated land.

This strategy details how Basildon Borough Council will undertake its regulatory duty to identify contaminated land under Section 78B of the Environmental Protection Act 1990 and by publishing the strategy it is acting in accordance with DEFRA's Contaminated Land Statutory Guidance.

The Council has two specific roles: firstly, to undertake an assessment of its area for contaminated land through a strategic approach and, secondly, where contaminated land posing an unacceptable risk to health or the environment is identified, to ensure the contamination is remediated to reduce that risk to an acceptable level.

Local Objectives

Basildon Borough Council's overarching vision is to improve the lives of all residents across our five towns and create opportunity and prosperity for local people and businesses. We have **three promises** to the people who live, work and learn in the borough. We will concentrate our resources to work together to shape a borough that has:

- **Strong, safe and healthy communities with access to quality homes**
- **Vibrant town centres and a thriving economy for everyone**
- **Enhanced local environment and increased pride in our borough**

This strategy is consistent with these objectives. The ongoing implementation of the contaminated land regime is fundamental in ensuring the safe development of areas affected by contamination. Such development will support the growth of the local economy and protect the health and safety of local people and those visiting the borough.

Regulatory context

Identification

Basildon Borough Council has a duty under Part IIA of the Environmental Protection Act 1990, to identify, inspect and remediate land which may be contaminated. The Act states at section 78B (1) that:

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

-
- identifying contaminated land; and
- enabling the authority to decide whether any such land is land which is required to be a special site

Defining contaminated land

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 -

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

(b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused;

Where harm is attributable to radioactivity, the definition of contaminated land has been modified by The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 as:

(c) harm is being caused or there is a significant possibility of harm being caused.

Roles and responsibilities

The primary regulators in respect of the Part IIA regime are local authorities.

The local authority has a duty to:

- Cause their areas to be inspected for contaminated land
- Determine whether any particular site meets the statutory definition of contaminated land and what, if any, remediation is required
- Act as the enforcing authority for all contaminated land, unless the site meets the definition of a “special site”, in which case the Environment Agency will act as the enforcing authority

The Environment Agency has a secondary regulatory role in assisting local authorities, providing site-specific local guidance, dealing with “special sites” and publishing periodic reports on the state of land contamination nationally.

Dealing with 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

The Strategy

Characteristics of the Basildon Borough Council area

Geographical location

Basildon is located in the heart of the south-east of Essex about 29 miles from London and close to good communication routes. The Basildon Borough itself is made of Basildon in the south and Billericay and Wickford in the north. The Borough covers 42.5 square miles (11,007 hectares) just to the north of the Thames and has a growing population now thought to be approximately 174,500 (2011 census data). Basildon was developed as a new town and had a strong manufacturing base. This has declined in recent years but is still strong and adapting to new conditions. Billericay and Wickford are old established towns with a mixed general economy including some manufacturing. However, since the construction of the railway in the last century, a growing proportion of the populations of these towns have commuted to work in London. A new station was built in Basildon in the mid 70s and a similar trend of increased commuting has been observed.

Early History of the Borough

The name of Basildon is of Saxon origin meaning "Beorhtels Hill", but the history of the Borough goes back to the early Stone Age. During four centuries of Roman occupation, the surrounding countryside became more urban with roads, towns and industries and in the 4th century during the early Saxon period, the local villages as we know them today began to take shape.

The first recorded name for Billericay appeared in 1291 as "Byllica" and the town was in part of the Parish of Great Burstead until the 19th century. Billericay was a flourishing commercial centre; however the effects of the Industrial Revolution left their mark on the town and its importance gradually declined.

The town of Wickford was inhabited in Roman and Saxon times, however little is known about the early history of the town. Before the 20th century, Wickford was a typical Essex agricultural village, however after World War II, large numbers of people moved to Wickford due to its convenient location in the commuter belt.

Recent History

Due to the population explosion after World War II, the Labour Government was desperate for house building sites outside London and the decision was made in February 1949 to appoint the Basildon Development Corporation to build a New Town to house 50,000 people. In 60 years, Basildon has changed from being a rural community to a bustling town.

Physical geography

Solid and Drift Geology

The basic solid geology of the area is London Clay overlying chalk. There are no outcrops of chalk in the area although there are some drift deposits of sand and gravel, mostly to the north of the Borough. To the south of the Borough, the surface deposits are predominantly alluvium and associated river and estuarine deposits on low lying marshland.

Known information on contamination

A survey undertaken in the 1990s of derelict and contaminated land in the Basildon Borough identified 31 hectares of vacant or derelict land that were contaminated, representing less than 0.3 per cent of the total land area. Sites identified include elevated heavy metals at an ex-industrial site previously occupied by a variety of industries including scrap yards and engineering works; elevated methane at an ex-County waste disposal site; and spontaneous combustion at a redundant sewage sludge lagoon. As well as the above mentioned sites, there are several former gasworks, metal works and brickworks that will require investigation.

In general, the borough is predominantly a semi-rural area with a few heavy processing industries and only a small number of mineral excavation sites. The sites that are contaminated reveal typical characteristics of heavy metal contamination and methane generation and remedial work may be necessary on some sites to overcome these problems.

Approach to strategic inspection of the Basildon Borough Council 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 Borough; and
- The history, scale and nature of industrial or other potentially contaminative uses.

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

- Human beings
- Ecosystems
- Property
- Controlled waters

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

- Relevant geology, hydrogeology 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” (as specified in the Contaminated Land (England) Regulations 2006, as amended).

Potential sources of contamination

- Industrial history – with sites identified from:
 - Ordnance survey maps dated between 1872 - present
 - Contaminated land survey dated 1990
 - Mineral Waste Application sites identified by Essex County Council
- Current industry
- Part B Installations as defined by The Environmental Permitting (England & Wales) Regulations 2016 as amended
- Part A (1) and (2) Installations as defined by The Environmental Permitting (England & Wales) Regulations 2016 as amended
- Hazardous substances as defined by Control of Substances Hazardous to Health Regulations 2002 (COSHH)
- Control of Major Accident Hazards Regulations 2015 (COMAH)
- Explosives
- Current landfill and waste processing sites
- Closed landfills sites
- Sewage works and land used for sewage sludge disposal
- Mines and mineral excavations
- Waste or derelict land
- Ministry of Defence land
- Previously developed contaminated sites

Potential specified receptors

- Humans
- Ecosystems
- Property
 - Buildings
 - Ancient monuments
 - Agricultural and horticultural crops
 - Timber crops
 - Home grown produce
 - Agricultural livestock, game and other owned animals
 - Ecological receptors
- Water
 - Aquifers
 - Public water supplies
 - Private water supplies
 - Other authorised abstraction points
 - Other specified receptors

Identification of sites of potential contamination in the Basildon Borough

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.

The strategy for identification of sites of potential contamination will be based on a desktop survey of the Borough to identify areas of land where:

- Previous uses indicate that contamination may exist
- There is no existing pollution control regime in place
- There are known receptors within a determined area of influence

Prioritisation

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 Contaminated Land Research Report 6, entitled 'Prioritisation and Categorisation Procedures for Sites which may be Contaminated' (Department of the Environment, Transport and the Regions 1995) This approach will ensure that all further investigatory work relates to the seriousness of the potential risk and therefore the most pressing problems are identified and quantified first.

Sites have been ranked throughout the Borough in conjunction with work carried out by Essex County Council and the Essex Contaminated Land Consortium.

The Council holds records of all parts of the Borough that we are constantly updating in line with these criteria.

Rationale used for prioritisation

Potential sources were identified from:

- OS Historical Maps dated:
 - 1872 – 1953
 - 1953 – 1993
- Contaminated Land Survey carried out by Basildon Borough Council in October 1990
- Essex County Council waste and minerals planning registers

The sources were ranked according to the Chartered Institute of Environmental Health 'Desk Reference Guide to Potentially Contaminative Land Uses' (Appendix 1).

An 'unknown infill' category required modification as it encompassed both large mineral sites and small infilled farm ponds. As infilled ponds were considered generally to be of lower priority, the problem was addressed by splitting the category into two based on the size of the site:

- Landfill / mineral extraction - site > 2 hectares
- Small ponds – size < 2 hectares

Potential receptors were identified from the Local Plan and from information provided by the Environment Agency for controlled waters (Special Protection Zones and surface water). Receptors were collated by the Essex Contaminated Land Consortium Working Group and ranked according to sensitivity (Appendix 2).

Pathways have been accounted for by setting spatial correlation to the source; co-location and buffers of 50m and 250m have been used according to guidance in Contaminated Land Research Report 6 (Appendix 3).

The preliminary prioritisation has been assessed by calculating a PPS (provisional priority score):

$$\text{PPS} = (\text{Source} + \text{Receptor}) \times \text{Weighting}$$

Risk categories are then allocated to each site according to the PPS range outlined below:

PPS Range	Priority Category
2000 – 1170	1
1169 – 950	2
949 – 550	3
549 – 0	4

It must be understood that the assessments at this preliminary stage are made on a limited amount of incomplete basic data and information, such as old surveys, maps, geological information etc. As more knowledge of the site is obtained, these assessments will be revised.

Obtaining further information on sites of potential contamination and the risk assessment process

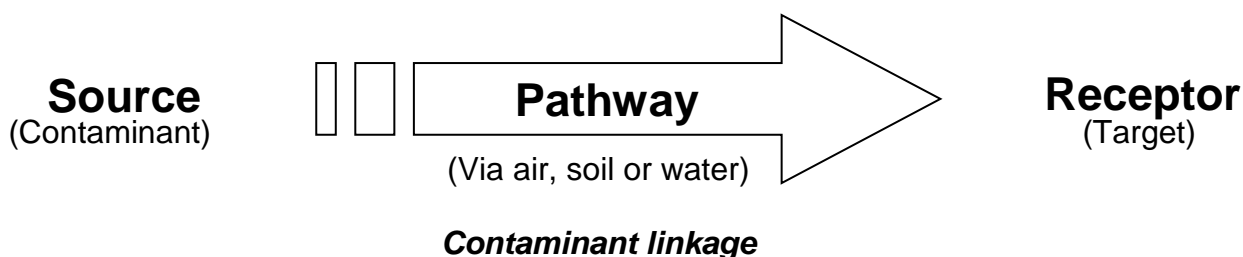
The Council has the sole responsibility for determining whether any land appears to be contaminated land. It cannot delegate this responsibility. This applies even where the Environment Agency has carried out an investigation on behalf of the Council.

The Council will seek to obtain as much information about potential sites 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:

- Environment Agency
- Department for Environment, Food and Rural Affairs
- Health and Safety Executive
- Developers
- Previous occupiers
- British Geological Society

The Council will also carry out a site visit and reconnaissance walkover.

All of the above information, once obtained, will form a desktop study (Phase I Investigation) which will either confirm or negate that a contaminant linkage exists.



Unless all three elements of a contaminant linkage are identified, land cannot be determined as contaminated.

Once sufficient information confirms that there is little reason to consider that the land might pose an unacceptable risk, inspection activities will cease and no further action will be taken. The Council will keep a record of its reasons for deciding that the land is not contaminated land.

However, if the information obtained confirms that an unacceptable risk could reasonably exist, the Council will proceed to detailed investigation, including intrusive Phase II site investigation, to determine whether a significant contaminant linkage exists. A significant contaminant linkage is one which gives rise to a level of risk sufficient to justify a piece of land being determined as contaminated land.

Detailed investigation and risk assessment

Where evaluation of all available data suggests a significant contaminant linkage may exist, it may be necessary to visit the site and carry out intrusive sampling to test for contaminants that may be present in the soil and groundwater. These types of investigation and subsequent analysis are time consuming and costly. Other than in a case of emergency, the

authority will only carry out such investigation if there is an available budget. The works will always be carried out by suitably qualified and experienced personnel.

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

- are effective;
- do not cause any unnecessary damage or harm; and
- 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.

The Council will seek to ensure that its risk assessment is relevant to the land in question and that it is based on risks that are reasonably likely to exist.

The detailed investigation and risk assessment needs to be robust enough for the Council to decide whether, on the balance of probabilities, significant harm to human health, or other relevant receptors, is being caused. When such a condition is met, the land can be determined as contaminated land.

Further categorisation of risk assessed sites

In deciding whether or not land is contaminated land on grounds of significant possibility of significant harm to human health, the Council will give all sites a post-assessment categorisation:

- Category 1 Human Health - Significant possibility of significant harm exists
- Category 2 Human Health - The risks from the land are of sufficient concern for the land to pose a significant possibility of significant harm
- Category 3 Human Health - The risks from the land are not of sufficient concern and therefore the legal test for significant possibility of significant harm is not met
- Category 4 Human Health - There is sufficient evidence to determine that the land poses no risk or the risk is low

Categories 1 and 2 are areas of land where the Council considers it likely that such land will be determined as contaminated land. Categories 3 and 4 are areas of land that will not be determined as contaminated land.

Risk summaries

Prior to formal determination of contaminated land, the Council will produce an easily understandable risk summary for any land where, on the basis of its risk assessment, it considers it likely that the land in question may be determined as contaminated land. The risk summaries will be produced for land assessed as Category 1 Human Health and Category 2 Human Health. The risk summary will include:

- Summary of the Council's understanding of the risks
- Description of the Council's understanding of the uncertainties behind its assessment
- Description of the risks in context
- Description of the Council's initial views on possible remediation

Determination of contaminated land

Upon completion of a risk summary outlined above, the Council will decide the physical extent of land that should be determined and may sub-divide the relevant land for the purposes of determination. The Council will also inform the owners and occupiers of the land and any other person who appears to the authority to be liable to pay for remediation. Notice shall be given to:

- Environment Agency
- Owner of the land
- Any person who appears to the authority to be in occupation of the whole or any part of the land
- Each person who appears to the authority to be an appropriate person

If there is an urgent need to determine particular land, the Council will make the determination as expeditiously as possible. Determination will only be postponed if:

- The landowner or some other person undertakes to deal with the problem to a standard and timescale agreed satisfactory by the authority
- A significant contaminant linkage would only exist if the circumstances of the land were to change in the future

Record of determination

The Council will prepare a publicly available and easily understandable written record of determination that land is contaminated land, which will clearly and accurately identify the location, boundaries and area of the land. The record will explain why the determination has been made and will include a conceptual model and a summary of the relevant assessment of evidence. The record will also include a summary of why the Council considers that the land has met the designated requirements of the statutory guidance.

Remediation activity

Following production of a record of determination on an area of land, the Council will decide how the land should be remediated. The authority will decide whether this should be done through either the issue of a remediation notice, voluntary remediation and/or carrying out remediation action itself. The Council will encourage voluntary action to deal with land contamination where it considers it reasonable and practicable to do so. The Council may decide to consult relevant guidance or act on the advice of a suitably qualified experienced practitioner in dealing with the remediation. Remediation should aim to remove any significant contaminant linkages and/or remedy harm or pollution that has been caused by a significant contaminant linkage. The Council will ensure that any requirement it makes in regards to remediation is reasonable, having particular regard to:

- The practicability, effectiveness and durability of remediation
- The health and environmental impacts of the chosen remedial options
- The financial cost which is likely to be involved; and
- The benefits of remediation with regard to the seriousness of the harm or pollution of controlled waters in question

The Council will ensure that any remedial treatment action is verified by a suitably qualified and experienced practitioner.

Liability

In determining liability, the Council will make an initial identification of persons who may be responsible for paying for remediation. Persons who caused or knowingly permitted a contaminant linkage (Class A persons) will be identified first, if they can be found. If no Class A persons can be found, the authority will seek to identify owners or occupiers of the land in question (Class B Persons). The Council will attribute responsibility between Class A and B liability groups and consider whether any members of the group should be excluded. The Council will then decide how to apportion liability between the members of each liability group. If no Class A or B persons can be identified, the site becomes an 'Orphan Linkage' and in some cases, the Council will be liable for the cost of any remediation which is carried out.

Recovery of remediation costs

The Council may seek to recover the costs of remediation which it has carried out on behalf of Class A or B persons. When deciding whether to recover the cost or a proportion of the cost of remediation, regard will be given to any hardship which the recovery may cause to the person from whom the cost is recoverable.

Projected costs and timescales for implementation

Implementation of the Part IIA regime is an ongoing process. The Government recognises that implementation of the legislation will involve considerable expenditure. For the above reasons, sites will only be investigated in a detailed nature, if funding is made available.

Proposed timetable for the implementation of Part IIA

Duty	Year
Identification of potentially contaminated sites and prioritisation for further investigation (OS Maps dated 1872 – 1953 & 1953 – present)	Currently up to date
Identification of potentially contaminated sites and prioritisation for further investigation (Contaminated Land Survey 1990)	Currently up to date
Identification of potentially contaminated sites and prioritisation for further investigation (Essex County Council Planning Registers)	Currently up to date
Detailed inspection and assessment of priority category 1 potentially contaminated sites	Dependent on funding
Detailed inspection and assessment of all other potentially contaminated sites	Dependent on funding

Dealing with land contamination in a broader context

Planning regime

Although implementation of Part IIA requires significant funding, the Council will aim to bring brownfield land back into use, as part of the development control process. Assessment of the risks posed by potentially contaminated land and the subsequent provisions for agreed remediation and verification is an integral part of development control. All incoming planning applications shall be scrutinised by the Environmental Health Service and where necessary consideration shall be given to attaching a contaminated land condition to a planning consent where any of the following criteria are met:

- Proposed development lies directly on or adjacent to a potential site of contamination
- Proposed development lies within 25m of a small unknown infill (excluding those identified from pre 1953 maps)
- Proposed development lies within 250m of a landfill or other large unknown infill (site specific assessment)
- Other small developments assessed on a site specific basis

The recommended planning condition will usually be selected from Model Conditions dependent on the size of development. To ensure a consistent approach across Essex, the recommendation to officers acting for the Council as planning authority will include referral to the Essex Contaminated Land Consortium's 'Land Affected by Contamination - Technical Guidance for Applicants and Developers', which gives full information on how to deal with land contamination in a planning context.

A contaminated land condition will only be discharged after the Council is satisfied that land contamination has been dealt with satisfactorily. The developer would have full responsibility for ensuring the safe development and secure occupancy of the site. Furthermore, the developer should also be able to demonstrate that he has acted in accordance with 'National House-Building Council Guidance for the Safe Development of Housing on Land Affected by Contamination'.

New Local Plan

Contaminated land is primarily considered in the Local Plan process through the undertaking of the Strategic Housing Land Availability Assessment (SHLAA) and statutory Sustainability Appraisals. The SHLAA is undertaken in accordance with the Council's approved methodology, which follows Government Guidance.

Land contamination may not prohibit development but it is a factor associated with sustainability, achievability and type of development possible and is therefore a necessary consideration for the SHLAA assessment process, particularly as Local Planning Authorities are encouraged to prioritise brownfield sites for development by the National Planning Policy Framework (NPPF).

The SHLAA ensures that all land submitted to the Council for consideration for new housing development is surveyed to examine a variety of constraints or characteristics such as its risk of flooding, its size, its access points and whether it is likely to be contaminated. Any sites which are allocated for development through the Local Plan and demonstrate that there could be soil contamination may require a ground investigation before commencement, which would be addressed through the planning application process.

Contaminated land strategy revision and review arrangements

A public consultation exercise was carried out in the development of this strategy when the opinions of a wide range of organisations and interested parties were sought.

This strategy will be periodically revised to ensure it remains effective and up to date. The Manager of Environmental Health Services shall be responsible for making minor modifications to the document, such as when new technical references are introduced. However, the Council will aim to undertake a thorough review of the strategy at least once every five years, as prescribed in the Contaminated Land Statutory Guidance (Department for Environment, Food and Rural Affairs, April 2012).

Environmental Health Services enforcement policy

Environmental Health Services enforce a wide range of legislation that seeks to safeguard the environment and the health, safety and well being of our community. The impact of decisions taken by Environmental Health Practitioners can be very significant on the individual or business concerned and so enforcement actions have to be carefully considered. Decisions in respect of contaminated land will always be made in accordance with the enforcement policy, which can be viewed on the Council's website.

Further information and contact details

The Council's Environmental Planning Officer works alongside developers, landowners and other regulatory bodies to ensure that the land in the Basildon Borough is 'suitable for use' and does not pose a risk to the environment as a whole.

If you would like more information regarding this strategy or about the contaminated land service the Council offers, please contact:

Environmental Planning Officer
Environmental Health Services
Basildon Borough Council
The Basildon Centre
St. Martin's Square
Basildon
Essex
SS14 1DL

Telephone: (01268) 533333
Email: ehs@basildon.gov.uk
Website: www.basildon.gov.uk

Appendices

Appendix 1

Source scores - (Desk Reference Guide to Potentially Contaminative Uses, 1999)

SOURCE	SCORE (S)
Asbestos	100
Organic/inorganic chemical production	93
Radioactive process / disposal	88
Gasworks / coke works / coal carbonisation	85
Waste disposal	85
Oil refinery / petrochemical production & storage	84
Pesticides manufacturing	83
Pharmaceutical	82
Fine chemicals / dyestuffs	82
Paint / varnish / ink manufacture	79
Animal slaughter / by-products	78
Tanning / leatherworks	77
Metal smelting / refining	74
Explosives including fireworks manufacturing	73
Iron / steelworks	72
Scrap yards	68
Engineering	66
Rubber manufacture	65
Tar / bitumen / lino / vinyl / asphalt manufacture	65
Concrete / ceramics / cement / plaster works	65
Mining / extraction	65
Electricity generation (excluding nuclear power)	64
Film / photographic processing	63
Disinfectants manufacture	62
Paper / print works	60
Glass manufacture	58
Fertiliser manufacture	58
Timber treatment works	58
Sewage treatment	54
Garages including fuel and repairs	53
Transport depots / haulage yards	53
Railway yards / sidings / tracks	53
Electrical / electronics manufacture	48
Textiles manufacture / dyeing	48
Laundry / dry cleaning (large-scale)	48
Dockyards / wharves	48
Food processing including breweries	45
Airports	45

Appendix 2

Receptor scores (Desk Reference Guide to Potentially Contaminative Uses, 1999)

	RECEPTOR	SENSITIVITY SCORE (R)
Human	Allotments	100
	Residential (with gardens)	100
	Residential (no gardens)	100
	Schools	98
	Recreation / parks / playing fields / open spaces	95
	Commercial / industry	86
Controlled Waters	Inner source protection zones	90
	Groundwater (private extraction)	85
	Groundwater (major extraction)	85
	Surface waters	60
	Drinking water abstraction	60
Ecological Systems	European designated sites SAC / SPA / RAMSAR	50
	SSSI / NNR / MNR	45
	County wildlife sites / SINC	30
	Local nature reserve	30
Property	Agricultural land	10
	Forestry	8
	Ancient monuments / listed buildings	5

Appendix 3

Suggested buffer distances (Contaminated Land Research Report 6, 1995)

BUFFER DISTANCE	DESCRIPTION	WEIGHTING (W)
Co-located		10
50m	Development	9
250m	Landfill and development	2
500m	Surface water	1

Appendix 4

Glossary of terms

The statutory guidance (and other parts of the Circular) use a number of terms which are defined in Part IIA of the 1990 Act, 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 in which the relevant term is defined.

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

Attribution

The process of apportionment between liability groups.

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).

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.

Class B liability group

A liability group consisting of one or more Class B persons.

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 significant harm to a relevant receptor, or to cause significant pollution of controlled waters.

Contaminant linkage

The relationship between a contaminant, a pathway and a receptor.

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) “significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused.”

Where harm is attributable to radioactivity, the definition of contaminated land has been modified by The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 as:

(c) harm is being caused or there is a significant possibility of harm being caused.”

Contaminated Land (England) Regulations 2006

Regulations (SI 2006/No. 1380) made under Part IIA, as amended.

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.

Enforcing authority

(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.

Essex Contaminated Land Consortium

Representatives made up of contaminated land officers and environmental health officers from each local authority within Essex. The group meet periodically in order to discuss contaminated land and associated issues.

Exclusion

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

Hardship

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

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.”

Intrusive investigation

An investigation of land (for example by exploratory excavations) that 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

Defined in section 78A(9) as meaning any unitary authority, Borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and 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

A route by which a receptor is or might be affected by a contaminant.

Pollutant

See contaminant.

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 that would lead to significant harm being caused.

Receptor

Something that could be adversely affected by a contaminant, for example, a person, an organism, an ecosystem, property, or controlled waters.

Register

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

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.

Remediation

(a) the doing of anything for the purpose of assessing the condition of –

- the contaminated land in question;
- any controlled waters affected by that land; or
- 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 –

- 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
- 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 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 statement

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.

Significant contaminant

A contaminant, which forms part of a significant pollutant linkage.

Significant contaminant linkage

A contaminant linkage, which forms the basis for a determination that a piece of land is, contaminated land.

Significant harm

It means any harm, which is determined to be significant in accordance with the statutory guidance.

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.

Special site

Any contaminated land as prescribed in section 78C(8) of the Environmental Protection Act 1990 Part IIA and as amended by the Contaminated Land (England) Regulations 2006.

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.”

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