London Borough of Richmond upon Thames

Contaminated Land Strategy

Following Public Consultation, approved for Publication by Richmond Council, 14th August 2001

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

August 2001

Executive Summary

Section 57 of the Environment Act 1995 has inserted Part IIA into the Environmental Protection Act 1990. Under this new regime the Council is required to inspect land within the Borough for contamination. Local Authorities are the primary enforcers of this new regime, which came into force in England on 1st April 2000 and were given 15 months to prepare a strategy for the identification and inspection of contaminated sites. The strategy takes into the principles set out in the Department of the Environment Transport and Regions (DETR) circular (02/2000).

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

- Protect human health
- Protect controlled waters
- Protect designated eco-systems
- Prevent damage to property
- Prevent any further contamination of land
- To encourage voluntary remediation

A 6-year programme of inspection will be undertaken, which will include a desk study. The aim is to gather information from various sources including historical landuse and the location of sensitive receptors, which will help identify if land may be contaminated.

Once potentially contaminated sites have been located the Council will then carry out further, more detailed investigation. This will involve a more detailed review of information about the site, including any investigative reports, associated with a site. If contamination is potentially at a site, then a more detailed site investigation, a risk assessment and where appropriate an intrusive site investigation will be undertaken. These more detailed site investigations will confirm the presence or absence of a 'significant pollution linkage'.

If the Council considers that the site, is causing or likely to cause significant harm or pollution to controlled waters, it will seek suitable remediation. Wherever possible the Council will always seek voluntary remediation, but will use its statutory powers where necessary.

The Council will also maintain a 'contaminated land register' under the new regime, which will be made available to the public.

Contents

INTRODUCTION & OVERVIEW

1 - BACKGROUND TO THE LEGISLATION

Subsequent to the response on the 11th report of the Royal Commission on Environmental Pollution in 1985, the Department of the Environment prepared a circular on the planning aspects of contaminated land, which states that:

> *Prior to planning applications being made, informal discussions between an applicant and the local planning authority are very helpful. Land might be contaminated may thus be brought to the attention of the applicant at this stage, and the implications explained.*

Controls through the planning system aim to ensure that the effects of historical contamination do not cause any harm to future users of the site.

The Department of the Environment produced a consultation paper, *Paying For our Past* in March 1994, which resulted in the policy document, *Framework for Contaminated Land*, published in November 1994. This review emphasised a number of key points, which include:

- The Government was committed to the, “polluter pays principle”, and, “suitable for use approach”.
- Concern related to past pollution only (there were effective regimes in place to control future sources of land pollution).
- Action should only be taken where the contamination posed actual or potential risks to health or the environment and there are affordable ways of doing so.

In response to these key points new legislation came into force in April 2000 in the form of section 57 of the Environment Act, which amended the Environmental Protection Act 1990 by introducing a new Part IIA. This means that a new duty has been placed on Local Authorities to produce a contaminated land strategy.

2 THE STRATEGY

The Act itself states at section 78B (1) that every local authority shall cause its area to be inspected from time to time for the purpose of:

(a) identifying contaminated land; and
(b) enabling the authority to decide whether any such land is land which is required to be a special site (appendix 1).

The Council is required to produce a contaminated land strategy which clearly sets out how land which merits detailed individual inspection will be identified in an ordered, rational and efficient manner.

The London Borough of Richmond upon Thames in response to the implementation of this legislation will appoint a Contaminated Land Officer to enable it to carry out its statutory duties.

3 EXPLANATION of TERMS

The new legislation defines contaminated land as:

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

a) significant harm is being, or there is significant possibility of such harm being caused; or
b) significant pollution of controlled waters is being or is likely to be caused”.

Harm is defined in section 78A (4) of the Environmental Protection Act 1990 as:

“ harm to 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”.

4 NATIONAL OBJECTIVES OF THE NEW REGIME

The national objectives of the new regime include a move towards sustainable development. The first priority has therefore been specified as the prevention of new contamination via the pollution control regimes and a suitable for use approach.

5 LOCAL OBJECTIVES

The London Borough of Richmond Council welcomes the introduction of Part IIA of the Environmental Protection Act 1990, which compliments the Council’s own Corporate aims and objectives.

The **London Borough of Richmond upon Thames Community Plan (2001-2004)** identifies 5 key themes, including:

- creating a Borough where people live in a ‘green’ and clean environment.

The **Unitary Development Plan Review (1999)** states that the Council will seek to identify contaminated land, whether in private or public ownership and will take necessary measures to ensure that the contamination is treated appropriately, in order to protect public health and the natural environment and bring sites into beneficial use. Before considering applications for the development of sites which are possibly contaminated, the Council will require developers to undertake an assessment of the types and concentration of contaminants present and provide a statement of the method and scope of the assessment and remedial measures proposed. Prior to development remedial action will be undertaken ensuring safety both during and after development. The level of remediation required will be that sufficient to render sites harmless, taking into account the views of the Environment Agency and other appropriate guidelines, and also be at a level appropriate to the use proposed.

The **Housing Strategy 2001-2005** identifies the need for additional housing within the borough. The strategy states that some of the provision will be met through building new houses. Due to a shortage of land within the borough for development and as the competition for land is increasing, new developments are being located on old industrial land that potentially may be contaminated.

Richmond Council's strategic objectives under the new regime will therefore be:

- to inspect and identify contaminated land in the Borough
- to consult the Environment Agency and other relevant bodies
- to refer special sites to the Environment Agency
- to determine who the 'appropriate persons' are
- to review and apportion appropriate liabilities
- to review the Council's own contaminated land liabilities
- to negotiate remediation strategies with the appropriate persons
- to encourage voluntary remediation in preference to regulatory action
- to serve remediation notices if necessary
- to review Orphan Sites and Hardship Provisions
- to ensure the remediation of land identified as contaminated
- to carry out the remediation of a site, if required, and then recover the costs from the appropriate persons
- consider appeals
- to periodically review all contaminated land within the borough
- to compile and maintain a Public Register

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

6 ROLES AND RESPONSIBILITIES

In the London Borough of Richmond upon Thames as a primary regulator, the strategy will be under the control of the Policy and Design Manager within the Environment, Planning and Review Section. It should be noted that this is a complex and demanding enforcement role, which will be carried out in accordance with the Council's Enforcement Policy and the Cabinet Office/LGA Enforcement Concordat.

This Council will therefore:

- inspect the area for contaminated land
- determine whether any particular site meets the statutory definition of contaminated land
- act as the enforcing authority for all contaminated land, unless the site meets the definition of a 'special site', (which is when the environment agency will be the enforcing authority).
- act as Enforcing Authority for contaminated land not designated as a 'special site'

The Environment Agency has a secondary role in assisting local authorities, providing site specific local guidance, dealing with 'special sites' and publishing periodic reports on the state of the land nationally. Other statutory bodies will also be involved in providing guidance and information.

7 OUTLINE OF THE STATUTORY PROCEDURE

The Council will search the Richmond Borough for land, which has both sensitive receptors and sources of potential contamination. Where there is good reason to believe these both exist, a formal risk assessment in accordance with established scientific principles, will be undertaken, in order to establish whether there is the potential for them coming together and causing significant harm or pollution. This is known as a pollutant linkage.

If satisfied that significant harm is occurring, the Council must conclude that the land is therefore contaminated land by legal definition. The Council will commence regulatory action, where the land does not fall within the category of a special site.
The Council will initiate a series of complex procedures that will include:

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

The Authority will undertake a series of consultations, which will be carried out at each stage with the ultimate aim of securing voluntary remediation (i.e. without the need for enforcement action).

The Council will in certain circumstances carry out the remedial works where:

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

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

THE STRATEGY

1 DESCRIPTION OF THE LONDON BOROUGH OF RICHMOND UPON THAMES AREA

1.1 INTRODUCTION

The London Borough of Richmond upon Thames covers 5,095 hectares in southwest London. The topography and landscape of the Borough is one of the most attractive areas in London, with Kew Gardens, the three Royal Parks, Richmond Park, Bushy Park and Home Park (leading to Hampton Court Palace); together with many small open spaces contribute to the attractive landscape and cover one third of the borough. The open spaces, including the rivers and the islands are important wildlife habitats, which are either owned by the Council or the Crown. Public open spaces cover a third of the Borough, which range from Royal Parks to small parks and playgrounds in residential areas.

Whilst the Borough would not be considered as an area of heavy industrialisation, it possessed a wide range of industrial uses which may have, in the past, resulted in land contamination.

1.1.1 Population

The Office of National Statistics show that in 1999, mid year estimates were 192,200.

1.1.2 Historic Land Use

The larger historical uses are obvious with respect of their potential to cause contamination. Smaller industries may have remained undetected and therefore unremediated. Hence records of historic land use including industrial use are important sources of information and will be inspected as part of the Council's investigation.

1.1.3 Solid and Drift Geology

Information about the Borough's solid and drift geology will be important in determining whether sites are potentially contaminated sites and are likely to have an impact on the underlying groundwater or adjacent sites. Sites, which are underlain by low permeability clays, are likely to pose less of a risk to groundwater or adjacent areas than sites underlain by more permeable sandstones, gravels or limestone.

The Council will therefore as part of the strategy, ascertain the underlying geology within the Borough. It is mainly sand and gravels over London clay. At present we are awaiting the reprinting of the relevant maps.

1.1.4 Surface waters

The River Thames flows through the Borough for 28km of its length. As it meanders through the Borough it flows past open stretches of woodland and parkland, Victorian industrial waterfront and urban frontages. There is public access to much of the riverbank in the Borough either by towpath or riverside open space. There are areas along the Thames that are liable to flooding.

Other main rivers within the Borough include, the River Crane, the Longford River and Beverley Brook.

1.1.5 Hydrogeology and Groundwater Vulnerability

Hydrogeological information will detail the locations of any major aquifers (used for abstraction for public supplies), minor aquifers (important as local supplies) and non-aquifers within the borough. Details of the Borough's hydrologeology and groundwater vulnerability will provide information on the sensitivity of its groundwater. The Council is in the process of identifying and purchasing the relevant maps. At present there are no Source Protection Zones in the borough.

1.1.6 Areas of Conservation Designations

The biodiversity of the Borough is one of its major natural assets, with a large number of sites of nature conservation importance:

- Richmond Park (Site of Special Scientific Interest, SSSI)
- Other Sites of Nature Importance (OSNI)
- Five local Nature Reserves, including Crane Park Avenue, Oak Avenue, Ham Lands, Lonsdale Road Reservoir and Barnes Common.
- Tree Preservation Orders on many trees within the borough
- 63 Conservation Areas

A network of open land forming green corridors extends across the borough, which provide an important ecological network for plants and animals.

1.1.7 Built Environment

There are four Scheduled Ancient Monuments (three of them are listed buildings) in the Borough and 1,130 buildings on the statutory list of Buildings of Special Architectural and Historic Interest. There are also many other buildings, although not on the statutory list, make significant contributions to the built appearance and quality in the borough.

1.1.8 Archaeology

There are large areas, including Richmond Park, Hampton Court Park, Kew Gardens and Bushy Park, where archaeological potential exists.

1.1.9 Known Information on Contamination

The Council holds information on the past historic use in some parts of the borough; this information will be assessed as well as other sources to ascertain the potential extent of contamination in the borough.

1.2 STRATEGIC APPROACH TO THE IDENTIFICATION OF CONTAMINATED LAND

In developing a strategic approach the Council in line with Part B.9 of the DETR Circular (02/2000 on Contaminated Land) will;

- "be rational, ordered and efficient
- be proportionate to the seriousness of any actual or potential harm
- seek to ensure that the most pressing and serious problems are located first
- ensure that the resources are concentrated on investigating areas where the authority is most likely to identify contaminated land and;
- ensure that the authority efficiently identifies the requirements for the detailed inspection of particular areas of land"

After determining the location of sites where contamination may potentially exist, the Council will assess the location of receptors, which will include;

- Human beings
- Eco systems
- Property
- Water

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

- Relevant geology, hydro geology and hydrology
- The location of sensitive water receptors,
- The location of sensitive property receptors
- The location of relevant ecological receptors
- The location of all existing human receptors, and;
- Potential sources of contamination

Richmond Council will as part of its investigation into the siting of 'sensitive receptors' consult with other organisations, both statutory consultees and non-government organisations.

The Council has purchased a set of historical ordnance survey maps in a digital format from Landmark Information Group Ltd, which is being used on 'dataMAP', the Council's Geographical Information System (GIS).

The historic maps are from four separate time periods (epochs):
Epoch 1 – 1866 to 1893
Epoch 2 – 1895 to 1898
Epoch 3 - 1912 to 1915
Epoch 4 – 1932 to 1935

The historic land use database will identify the boundaries of areas of potentially contaminated land.

1.3 POTENTIAL SOURCES OF CONTAMINATION

The Council will adopt a holistic approach to identify all potentially contaminating land uses within the borough. However the Council recognises that the following land uses may potentially contribute to contaminated land:

- Industrial History
- Current Industrial Use
- Environmental Protection Act 1990 Part I –'Part A' and 'Part B' processes
- COMAH sites - The Control of Major Accident Hazards Regulations 1999
- Current Landfill and Waste Processing Sites
- Closed Landfill Sites
- Sewage Works

Where other Regulations are relevant e.g. Waste Management Licensing, any contamination will be pursued via the most appropriate regime.

The Council appreciates that there are other land uses, which contribute to contaminated land (appendix 3 is a list of potentially contaminative land uses), any site with the potential to cause pollution will be identified at the preliminary stage.

PART 2

2.1 IDENTIFICATION OF POTENTIALLY CONTAMINATED SITES AND THEIR PRIORITISATION ACCORDING TO RISK

The Council will undertake the identification of contaminated land 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 by the Council.

Potentially contaminated land shall, prior to detailed investigation, be listed and categorised according to a preliminary assessment of risk. This is to ensure all further investigative work relates directly to seriousness of the potential risk and therefore the most pressing problems are identified and quantified first.

The Council then has to assess if a pollution linkage exists The concept of pollution linkage is a source (contaminant) – pathway – receptor. Unless all three elements of the pollution linkage are identified with respect to the site, then the site should not be identified as contaminated land.

In order to meet the definition of contaminated land, the Guidance requires that the pollution linkage should include one or more of the following:

- Is resulting in significant harm being caused to the receptor
- Presents a significant possibility of significant harm being caused to the receptor
- Is resulting in the pollution of controlled waters
- Is likely to result in the pollution of controlled waters

The terms ‘significant harm’ and ‘significant possibility of significant harm’ are defined in Appendix 4

Once a pollution linkage has been established, the risk assessment process will then commence.

Risk is defined as the combination of:

- the probability, or frequency, of occurrence of a defined hazard; and
- the magnitude of the consequences.

The Council will assess the risk of contamination by the use of a risk assessment model, possibly using a suitable computer package. The Council is developing its FLARE database to register contaminated land and rank each site according to the potential risk of contamination and harm. The database will be updated with information on contamination sources, receptor and pathway types, legal history, site details and ownership information. Information from the databases will be integrated with the GIS, so that contaminated land sites and their risk ratings can be seen on the mapping presentation.

When defining contaminated land the Council will consider the following two steps;

1. ensuring that at least one pollution linkage exists in that the contaminant (s) must have the potential to have a detrimental effect.
2. detailed investigations undertaken to confirm that the pollution linkage is resulting in significant harm to the receptor.

Similarly where one significant pollutant linkage has been identified and others are suspected, it will generally be the case that the Council will cease their investigation at this stage and declare the land contaminated. Further investigation of other possible pollutant linkages may then be required as part of the enforcement process.

Once the risk assessment has been undertaken the Council will prioritise its efforts to those locations within the borough were the risk of site contamination is considered to be greatest.

The Council will cease the investigation and take no further action once sufficient information has been obtained which confirms a pollutant linkage does not exist, or, if it does, it is not significant.

In carrying out its duties, the London Borough of Richmond will consider:

- The definition of harm
- The nature, degree and location of the contamination on the site
- The routes by which the contaminants would affect defined receptors at the site
- The time scales within which harm may occur
- The current use of the site

The Council will always seek to obtain as much information as possible about a suspected site without causing unnecessary alarm.

PART 3

OBTAINING FURTHER INFORMATION ON POLLUTANT LINKAGES

3.1 INSPECTION OF LAND

Where evaluation of all available data suggests a significant pollutant linkage may exist, the Council will carry out more detailed investigations to ascertain if it is necessary to visit the site and carry out some form of on site testing, or take away samples for analysis. In every case the Council will ensure that a, "suitable person", adequately qualified will undertake the work, drawing on additional suitable consultancy help if necessary.

Initially a site walkover will be carried out by the Council's Contaminated Land Officer to note if there is likely to be any significant pollution linkage's, as well as consideration to adjacent land and the presence of any sensitive receptors. After assessing the risk from the findings of the site walkover, if the land may be contaminated, then intrusive investigations will be carried out in accordance with appropriate technical procedures to ensure that they are effective; do not cause any unnecessary damage or harm; and do not cause pollution of controlled waters, historical features or archaeological interest.

At all stages in the investigation the Contaminated Land Officer will liase with the owners/occupiers of the land and full consultation will be carried out with other relevant bodies.

3.2 POWERS OF ENTRY

Statutory powers of entry are conferred on the Council to enable it to carry out its functions under Part IIA. There are no circumstances in which the Council will use these powers to obtain information about the condition of land, where:

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

Where the significance of a pollution linkage cannot be adequately determined on the information available and the land does not fall within the statutory definition of contaminated

land, the Council will keep the land under review and reopen the investigations at any time if new information becomes available.

3.3 LAND WHICH MAY BE A SPECIAL SITE

Where the Council is aware that land it intends to investigate would, if declared contaminated land, be a special site (appendix 1), it will consult with the Environment Agency. The Environment Agency does not have the power to investigate potentially contaminated land under the provision under the Part IIA without the authorisation of the Council.

PART 4

4.1 THE WRITTEN RECORD OF DETERMINATION AND FORMAL NOTIFICATION

Once an area of land has been declared contaminated by statutory definition, the Council will prepare a written record. The Council will then formally notify in writing all relevant parties that the land has been declared contaminated, these to include:

- the owner(s)
- the occupier(s)
- those liable for remediation ('appropriate persons' in the guidance)
- the Environment Agency

The Council will, act on the best information available to it at this time and keep the situation continually under review as more information comes to light.

The formal notification procedure commences the process of consultation on what remediation might be most appropriate. To aid this process the Council will therefore provide as much information to the relevant parties as possible, including where available:

a) a copy of the written record of determination;
b) copies of site investigation reports (or details of their availability)
c) an explanation of why the appropriate persons have been chosen as such
d) details of all other parties notified

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

PART 5

5.1 LIABILITY & ENFORCEMENT

The Council will make all reasonable enquiries to identify persons, who are essentially the polluters, or persons who 'knowingly permit' (class A) before liability reverts to the innocent owner / occupier (class B). The matter of appropriate persons will be considered for each significant pollutant linkage. Where there is more than one appropriate person associated with the site, the Council will apportion liability to reflect the amount of contamination that each may have caused. Exclusion from the apportionment of liability will be considered on a site-specific basis in accordance with Chapter D of the DETR circular 02/2000. All information concerning the reasons for exclusion and the apportionment of liability will be given to the appropriate person.

- Class ‘A’ – these are generally speaking polluters, but also persons who knowingly permit.

- Class ‘B’ – where no class ‘A’ persons can be found liability reverts to the owner or the occupier.

When the Council has apportioned the costs of each remediation action and before serving remediation notices, it will consider whether any of those liable may not be able to afford it. The Council will instead, consider carrying out the work itself and produce and publish a remediation statement.

5.2 THE ENFORCEMENT PROCESS

Before remediation notices are served the extensive consultation process will be completed and ample encouragement given to arrive at a voluntary solution. The Council will do all in its power to consult the appropriate person(s), owners, occupier’s etc about their views on the state of the land.

If the appropriate person agrees to voluntarily remediate the land, they must submit a remediation plan to the Council, which will specify particular remediation actions to be carried out, and the time scales within which they are to be performed.

Remediation notices will be served only as a last resort (not withstanding urgent cases), and then only after this lengthy consultation process has been exhausted and will not be served less than three months after formal notification that the land is contaminated unless the urgent action is deemed necessary (where there is imminent risk of serious harm).

The Contaminated Land Officer will specify what remediation measures are to be carried out in the remediation notice, giving regard to cost and ‘best practicable techniques’. The aim of the remediation will be to ensure that the land is no longer contaminated, taking the shortest and lowest cost route.

The contents of the remediation notice will include:
- Who is the appropriate person
- The nature of the problem
- What actions are to be undertaken for remediation
- The time scale for remediation
- Rights of appeal
- Other relevant information

Also if there is more than one person:
- The details of the other appropriate persons
- The proportion of costs which each appropriate person will bear in carrying out the remediation

A copy of the remediation notice will also be sent by the Council to:
- The owners/occupiers of the site
- The Environment Agency
- The person/company that will be required to grant rights over the site to enable the remediation work to be undertaken

5.3 REMEDIATION BY THE LOCAL AUTHORITY

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

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

5.4 URGENT ACTION

The Council where it is satisfied that there is imminent danger of serious harm or serious pollution of controlled waters as a result of contaminated land. The procedures identified in the statutory guidance will be followed which may involve the forced entry into the premises.

The Council will undertake the remediation in urgent cases where it is the enforcing authority if it is of the opinion that the risk would not be mitigated by enforcement action. In appropriate cases the Council will seek to recover costs of remediation works it has completed.

5.5 LAND UNDER OWNERSHIP OF AN ENFORCING AUTHORITY

It is apparent that a significant proportion of Council land is linked to sites which are of a particularly sensitive nature e.g. allotments, schools, public open spaces etc. Where land owned by the London Borough of Richmond is found to be contaminated, the Council will still carry out its duties to ensure that the land is remediated. If the council owned land is a special site, the requirements will be enforced the Environment Agency. The Council will undertake the same consultations, assessments and seek appropriate voluntary remedial works as necessary.

The Council will initiate a close working partnership with various departments within the London Borough of Richmond upon Thames to ensure the smooth implementation of the strategy.

5.6 HARDSHIP PROVISIONS

The Council will also take into consideration the principles of the ‘hardship’ in the DETR circular which states that:

1) “ whether recovery of the full cost attributable to that person would mean that the enterprise is likely to become insolvent and thus cease to exist; and
2) if so, the cost to the local economy of such a closure”.

The Council will consider waiving or reducing the cost of remediation if the Council judges that the cost of closure to be greater than that of remediation, therefore making the company insolvent.

Richmond Council will further investigate the hardship provisions and produce a policy document that will be submitted for adoption to the new executive cabinet arrangements.

5.7 ORPHAN SITES

Where orphan sites may occur as detailed in section D103 of the Circular,

- where ' the significant pollution linkage relates solely to the pollution of controlled waters (and not to significant harm) and no class A person can be found'
- where no class A or B person can be found. Those persons who would otherwise be liable are exempted by statutory provisions

The Council will consider bearing the cost of carrying out the appropriate remediation.

PART 6

6.1 DATA HANDLING AND ACCESS TO INFORMATION

6.1.1 DATA PROTECTION ACT 1998

The Act applies whenever a Data Controller processes personal data. Data includes both automatically collected and recorded information as well as manually held information.

Personal data is any information relating to an identifiable living individual. An individual whose records are being collated is known as the data subject. The person responsible for the Council's compliance with the Act is known as a Data Controller.

6.1.2 Principles of Data Protection

Data must be:

a) fairly and lawfully processed
b) processed for limited purposes
c) adequate, relevant and not excessive
d) accurate
e) not kept longer than necessary
f) processed in accordance with the data subject's rights
g) secure
h) not transferred to countries without adequate protection

The Act applies:

a) when personal data is processed
b) where information collated identifies an individual
c) where there is a relevant filing system

The implications of holding personal data relating to the condition of potentially polluted property, and the persons associated with that property and pollution is significant.

It will therefore be Council policy to ensure that the Council's Legal Department and the Data Protection Controller consider it in detail before records begin to be compiled.

The register of regulatory action taken under Part IIA will be made available for public inspection in the Civic Centre, Twickenham at all reasonable times.

6.2 THE ENVIRONMENTAL INFORMATION REGULATIONS 1992

The Council will comply with the requirements of the Environmental Information Regulations when dealing with requests for disclosure. These Regulations require local authorities to make any environmental information they hold available upon request, subject to certain exemptions available to the public.

Exclusions of information from the register will be on the grounds of commercial confidentiality, national security and subject to the conditions given in the DETR circular.

Requests for information will be dealt with promptly. When information is supplied, an appropriate charge will be made relating to the time spent on the enquiry.

Where the Council refuses the request for information, which is confidential, it will provide details of the reasons for refusal in writing, at no cost to the applicant.

6.3 THE PUBLIC REGISTER

The contents of the register will include:

a) The site
- Location and extent of the contaminated site which will include its address, a site plan and a National Grid reference
- Why the site is contaminated
- The substances in, on or under the site
- If there has been any migration of contaminants to adjacent areas have been affected
- The current use of the site

b) Remediation
- The name and address of the persons or company on whom the notice has been served
- The remediation to be carried out and the time scales it is to be achieved by
- Details of appeals and apportionment of liability

The public will be informed about the availability of a contaminated land register by a press release and with updated information maintained and available on the Council website. The register will only contain details of the sites where a notice has been served.

PART 7

7.1 QUALITY CONTROL, PERFORMANCE INDICATORS AND ARRANGEMENTS FOR REVIEW

The Government has stated -

"The DETR will be developing performance indicators to assess overall progress in the task of identifying and remediating our inherited legacy of contaminated land".

No such performance indicators have been developed to date. The Council will participate in the West London Contaminated Land Cluster Group made up of Brent, Harrow, Hillingdon, Ealing, Hounslow, and Kingston. The purpose of the cluster group is to provide a forum for information exchange, advice and co-operation between the authorities.

7.2 COMPLAINTS FROM THE PUBLIC

The Contaminated Land Officer will, respond to concerns raised by the general public, business and other non-governmental organisations, about issues concerning possible contamination
Complaints may also be received about the fact that a particular site has been identified for further investigation. This could give rise to concern, especially where a potential sale has failed as a direct result of the suggestion that the land may be contaminated. Those so affected may seek an early investigation to clarify their position, thereby seeking to circumvent the prioritisation process. Such requests for priority inspection will, where resources allow, be dealt with as considerately as possible

Procedures to be adopted by the council include:

- Record that information or a complaint has been received;
- Demonstrate an appropriate officer has designated to deal with the request;
- Record the request and response; and
- Ensure appropriate records are maintained.
- To be kept informed of progress

7.3 REVIEW

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

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

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, spillage's etc), or a change in circumstances
- Identification of a localised effect which could be associated with the land
- Responding to new information

The strategy as a whole will be reviewed by the Contaminated Land Officer periodically and incorporated as necessary. Particular matters that will be kept under review include:

- The content of the strategy generally
- Priorities for further investigation of potentially contaminated sites
- The potential for the introduction of new receptors
- The potential for new contamination
- Progress on voluntary remediation
- The enforcement process generally and the identification of appropriate persons particularly
- Identification of special sites

PART 8

8.1 PROJECTED COSTS AND TIMETABLE

The Government has identified that to implement this highly complex and demanding piece of legislation will involve considerable expenditure to local authorities. As a result some £95M has been made available over three years as part of the standard spending assessment (£12M each year), with the rest available through the contaminated land supplementary credit approval (SCA) programme.

When the strategy is reviewed the next stage is the inspection of the District, identification of potentially contaminated sites, and their prioritisation for further more detailed inspection. This has been estimated to cost between £45,000 and £50,000 in the financial year 2001 to 2002.

Further funding may be required to make more detailed investigation of sites and, possibly take enforcement action and carry out remediation action. It is very difficult at this stage to estimate what the full inspection of the District will reveal, and how much further work it will necessitate. If necessary further funding will be sought for in subsequent years.

Should significant investigation and / or remediation work be identified, it would be anticipated that an application for SCA would be made specifically relating to that site.

It should be noted that these arrangements relate specifically to the Council's enforcement role and not that as landowner. Should land in possession of the Council be identified as contaminated land then funding of remediation will be considered on a case by case basis. In the event of significant costs being involved it is likely that an application will also be made via the contaminated land SCA scheme by the Contaminated Land Officer.

PROPOSED TIMETABLE FOR THE IMPLEMENTATION OF PART IIA

Duty	Year
Production and publication of statutory contaminated land strategy	August 2001
Inspection of the District, identification of potentially contaminated sites and prioritisation for further investigation	2001 – 2003
Detailed inspection and assessment of priority sites	As soon as possible after they become known to the Council
Detailed inspection and assessment of remaining potentially contaminated sites	2003 - 2007

Appendix 1

SPECIAL SITES

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

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

- Polluting controlled waters (in certain circumstances - see appendix 2);
- On sites subject to Integrated Pollution Control (see Environmental Protection Act 1990 Part I - Prescribed Processes and Substances Regulations 1991 schedule 1 part A);
- With waste sulphuric acid tar lagoons (on sites used for refining benzole, used lubricants or petroleum);
- Used as an oil refinery;
- Used to manufacture or process explosives;
- Used to manufacture or dispose of atomic, chemical or biological weapons*
- Used for other nuclear purposes*;
- Owned or occupied by a defence organisation for naval, military or air force purposes* (not off base housing / NAFFI);
- Held for the benefit of Greenwich Hospital*.

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

4. Procedure in relation to the investigation and declaration of special sites is covered in 3.4 above.

*non biological and non radioactive contamination only

Appendix 2

POLLUTION OF CONTROLLED WATERS

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

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

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

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

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

4 The Local Authority will liaise with the Environment Agency on identifying and dealing with land pollution, which results in the pollution of controlled waters. Below is a summary of the issues relating to controlled waters.

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

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

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

- The Surface Water (Dangerous Substances) (Classification) Regulations 1989
- The Bathing Waters (Classification) Regulations 1991
- The Surface Water (Dangerous Substances) (Classification) Regulations 1992
- The Surface Water (River Eco System) (Classification) Regulations 1994
- The Surface Water (Abstraction for Drinking Water) (Classification) Regulations 1996
- The Surface Water (Fish life) (Classification) Regulations 1997
- The Surface Water (Shellfish) (Classification) Regulations 1997

- The Surface Water (Dangerous Substances) (Classification) Regulations 1997
- The Surface Water (Dangerous Substances) (Classification) Regulations 1998

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

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

*Specified aquifers are those contained in the following rocks:

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

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

a) Surface or coastal waters are affected but not breaching the Regulations in paragraph 7 above.

b) Groundwater (other than a principal aquifer specified as in 8 above) is contaminated and the water is not used for drinking.

10) where a pollution linkage includes a Thames Water public water supply source as a receptor, Thames Water will be notified immediately.

Appendix 3

LIST OF POTENTIALLY CONTAMINATIVE LAND USES

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

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

Tar and pitch distillers
Textile manufacture
Thermometer makers
Timber treatment
Timber preservatives manufacture
Tin plate works
Transport depots
Tyre manufacture and retreading
Vehicle manufacture
Vulcanite manufacture
Vulcanisers
Waste disposal
Waste recycling
Waste treatment
Zincworks

Appendix 4 Table A – Categories of Significant Harm

Receptor	Description of harm tot hat type of receptor that is to be regarded as significant harm.
1. Human Beings	Death, disease, serious injury, genetic mutation, birth defects or the impairment of reproductive functions For the purpose, disease is to be taken to mean an unhealthy condition of the body or a part of it and it can include, for example, cancer, liver dysfunction or extensive skin ailments. Mental dysfunction is included only insofar as it is attributable to the effects of a pollutant on the body of the person concerned. In this Chapter, the description of significant harm is referred to as a 'human health effect'
2. 'Any ecological system, or living organism forming part of such a system, within a location which is: • an area notified as an area of special scientific interest under section 28 of the Wildlife and Countryside Act 1981; ♦ any land declared a national nature reserve under section 35 of that Act; ♦ any area designated as a marine nature reserve under section 36 of that Act; ♦ an area of special protection of birds, established under section 3 of that Act; ♦ any European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994 (i.e. special Areas of Conservation and Special Protection Area); ♦ any candidate Special Area of Conservation potential Special Protection Areas given equivalent protection; ♦ any habitat or site afforded policy protection under paragraph 13 of Planning Policy Guidance Note 9 (PPG9) on nature conservation (i.e. candidate special Areas of Conservation, potential Special Areas and listed RAMSAR sites); or ♦ any nature reserve established under section 21 of the National Parks and Access to the Countryside Act 1949.	For <u>any</u> protected location: • harm which results in an irreversible adverse change, or in some other substantial adverse change, in the functioning of an ecological system within any substantial part of that location; or • harm which effects any species of special interest within that location and which endangers the long-term maintenance of the population of the special of that location. In addition, in the case of the protected location which is in an European Site (or a candidate Special Area of Conservation or a potential Special Protection Area), harm which is incompatible with the favourable conservation status of natural habitats at that location or species typically found there. Inn determining what constitutes such harm, the local authority should have regard to the advice of English Nature and to the requirements of the Conservation (Natural Habitats etc) Regulations 1994. In this Chapter, this description of significant harm is referred to as an 'ecological eco-system effect'.
3. Property in the form of; ♦ crops, including timber; ♦ produce grown domestically, or in allotments, for consumption; ♦ livestock; ♦ other owned and domesticated animals; ♦ wild animals that are the subject off shooting and fishing rights.	For crops a substantial, diminution in yield or other substantial loss in their value resulting from death, disease and other physical damage. For domestic pets, death, serious disease or serious physical damage. For other property in this category, a substantial loss in its value resulting from death, disease and other serious physical damage. The local authority should regard a substantial loss in value as occurring only when a substantial proportion of the animals or crops are dead or otherwise no longer fit for their intended purpose. Food should be regarded as being no longer fit for the purpose when it fails to comply with the provisions of the Food Safety Act 1990. When a diminution in yield or loss in value is caused by a pollutant linkage, a 20% diminution or loss should be regarded as a benchmark for what constitutes a substantial diminution or loss. In this Chapter, the description of significant harm is referred to as an 'animal or crop effect'.
4. Property in the form of buildings. For this purpose, 'building' means any structure or erection, or any part of a building including any part below ground level, but does not include plant or machinery comprised in a building.	Structural failure, substantial damage or substantially interference with any right of occupation. For this purpose, the local authority should regard substantial damage or substantial interference as occurring when any part of the building ceases to be capable of being used for the purpose for which it is or was intended. Additionally in the case of a Scheduled Ancient Monument substantial damage should be regarded as occurring when the damage significantly impairs the historic, architectural, traditional, historic, artistic and archaeological interest by reason by which the monument was scheduled. In this Chapter this description of significant harm is referred to as a 'building effect'.

Table B – Significant Possibility of Significant Harm

Descriptions of Significant Harm (as defined in Table A)	**Conditions for there being a significant possibility of Significant Harm**
1 Human Health effects arisen from • the intake of a contaminant, or • other direct bodily contact with a contaminant	If the amount of pollution in a pollution linkage; • which a human receptor in that linkage may take in, or • to which a human would otherwise be exposed, as a result of the pathway in that linkage would represent unacceptable intake or direct bodily contact; assess on the basis of relevant information on the toxicological properties of that pollutant. Such an assessment should take into account: • the likely total intake, or exposure to, the substance or substances which form the pollutant, from all sources including that from the pollutant linkage in question; • the relative contribution of the pollutant linkage in question to the likely aggregate intake of, or exposure to, the relevant substance or substances; and • the duration of intake or exposure resulting from the pollution linkage in question. The question of whether an intake or exposure is unacceptable is independent of the number of people who might experience or be affected by that intake or exposure. Toxicological properties should be taken to include carcinogenic, mutagencic, tetragenic, pathogenic, endocrine-disrupting and other similar properties.
2. All other human health effects (particularly by way of explosion or fire).	If the probability of frequency, of occurrence of significant harm of that description is unacceptable, assessed on the basis of relevant information concerning; • the type of pollution linkage, or • the type of significant harm arising from other causes. In making such as assessment, the local authority should take into account the levels of risk which have been judged unacceptable in other similar context and should give particular weight to cases where the pollutant linkage night cause significant harm which: • would be irreversible or incapable of being treated; • would affect a substantial number of people; • would result from a single incident such as a fire or an explosion, or • would likely to result from a short-term (that is less than 24 hour) exposure to the pollutant.
3. All ecological system effects	If either; • significant harm of the description is more likely than not to result from the pollutant linkage in question; or • there is a reasonable possibility of significant harm of that description being caused, and if that harm where to occur, it would result in such a degree of damage to feature of special interest at the location in question that they would be beyond any practicable possibility of restoration. An assessment made for these purposes should take into account relevant information for that type of pollutant linkage, particularly in relation to the ecotoxiciological effects of the pollutant.
4. All animal and crop effects	If significant harm of that description is likely to result from the pollutant linkage in question, taking into account relevant information for that type of pollutant linkage, particularly in relation to the type of pollution linkage, particularly in relation to the ecotoxoicological effects of the pollutant.
5. All building effects	If significant harm of that description is more likely than not to result from the pollutant linkage question during the expected economic life of the building (or, in the case of Scheduled Ancient Monument, the foreseeable future) taking into account relevant information for that type of pollutant linkage.