



# Contaminated Land Strategy

February 2017

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<u>Contents</u>	Page
Executive Summary	3
1. Aims and Objectives	4
2. Legal Provisions	5
3. Requirements of Local Authority Contaminated Land Strategies	6
4. Relevant Characteristics of the Test Valley Area	7
5. Priorities	8
6. The Council's Strategic Approach to Dealing with Contaminated Land	9
7. The Approach to the Prioritisation of Detailed Inspection and Remedial Actions	12
8. Remediation of Land Contamination through the Building Control System	13
9. Public Register	14
Appendix A (List of Consultees)	15
References	16

## EXECUTIVE SUMMARY

Part 2A of the Environmental Protection Act 1990 places a duty on local authorities to identify 'contaminated land' and take action to ensure remediation is taken where necessary to prevent harm being caused.

The key objectives of the legislation are to identify and remove unacceptable risks arising from land contamination, bring brownfield land back in to beneficial use and ensure that the costs associated with dealing with land contamination are proportionate, manageable and economically sustainable.

To help achieve these objectives, local authorities are required to have in place a strategy which sets out its policy with respect to the investigation of contaminated land within its area. This strategy therefore provides a framework for all work involved with the identification, inspection and investigation of sites within the Test Valley area for which there is good evidence of significant harm being caused.

This strategy is a revision of previous strategies published in 2001 and 2007 and focuses resources in dealing with land contamination to three priority areas, namely:

- (i) Identifying land contamination through the Development Management system and thereby protecting new and existing sensitive developments from historic land contamination.
- (ii) Monitoring private water drinking supplies to identify potential sources of ground contamination and thereby protecting the consumers of such drinking water supplies.
- (iii) Working in partnership with the Environmental Agency and other regulatory bodies to identify potential sources of contamination that might impact upon the River Test, its tributaries and other sensitive ecological habitats.

# 1. Aims and Objectives

The purpose of the strategy is to fulfil the Council's obligations with respect to implementation of the contaminated land provisions of Part 2A of the Environmental Protection Act 1990.

The primary objectives of the strategy are to:

- (a) Identify and remove unacceptable risks to human health and environment resulting from land contamination.
- (b) Ensure so far as reasonably practicable that contaminated land is remediated sufficiently so as to be suitable for its current or intended use.
- (c) Ensure that the burdens faced by individuals, companies and the local community are proportionate, manageable and compatible with the principles of sustainable development.
- (d) Ensure that the approach reflects local circumstances and is rational, ordered and efficient.
- (e) Ensure that the Council's approach is proportionate to the seriousness of any actual or potential risk.
- (f) Ensure that resources are concentrated on priority sites or areas of land.

## **2. Legal Provisions**

The law covering the duties of local authorities with respect to land contamination is given in Part 2A of the Environmental Protection Act 1990. Further detailed provisions are provided in the Contaminated Land (England) Regulations 2006.

This legislation provides a regime for the identification and remediation of land where contamination is causing unacceptable risks to human health or the wider environment.

The Council has a duty to identify land which ought to be designated formally as 'contaminated land' and to secure its remediation. A formal strategy, which must be reviewed periodically, is required in order to set out its approach to the inspection of land.

In performing its functions, the Council is required to act in accordance with any statutory guidance. Statutory guidance has been issued by the Department for the Environment, Food and Rural Affairs (Defra) and this was last updated in April 2012. The statutory guidance provides a description of the mechanisms to tackle contaminated land and guidance on how the law ought to be implemented in practice.

### 3. Requirements of Local Authority Contaminated Land Strategies

The requirements of strategies are set out in the current statutory guidance and the key points are:

- (i) The strategy should be written and reviewed periodically, with an aim to conduct reviews at least every five years.
- (ii) The strategy should set out the Council's approach to carrying out its inspection duty under section 78B(1) which is:  
*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 designated as a special site.*
- (iii) The strategy should be formally adopted by the Council and published.
- (iv) The strategy should include the following:
  - Its aims, objectives and priorities, taking into account the characteristics of its area
  - A description of the relevant aspects of its area.
  - Its approach to strategic inspection of its area or parts of it.
  - Its approach to the prioritisation of detailed inspection and remediation activity.
- (v) The strategy should explain how the approach fits in with other Council mechanisms for dealing with land contamination, for example using the development control process.
- (vi) The strategy should outline how the Council will seek to minimise unnecessary burdens on Council Tax payers, businesses and individuals.

## 4. Relevant Characteristics of the Test Valley Area

The borough of Test Valley is 628 square kilometres in area and is predominantly rural, including the two market towns of Andover and Romsey. The Test Valley does not have a heritage of extensive heavy industry that might be expected to have created many highly contaminated sites. This has been borne out by the fact that, since the Part 2A regime was introduced, no sites have so far (as at the date of publish of this strategy) been designated as 'contaminated land'.

In addition, a feature of the area is that in recent years there has been a relatively high demand for development land, especially 'brownfield sites' in urban centres. This has meant that many of the largest former industrial sites have been redeveloped in recent years with planning controls to ensure the identification and remediation of any land contamination.

The countryside of the borough includes extensive areas with attractive rural landscapes, in particular the North Wessex Downs Area of Outstanding Natural Beauty, and the chalk valleys of the River Test and its tributaries. The countryside contains important ecological habitats, including designated Sites of Special Scientific Interest (SSSIs) and Special Areas of Conservation (SACs).

One of the main aims of the Part 2A regime is the protection of water resources. This is particularly important in the Test Valley due to the heavy reliance of the rivers, their associated ecology and inhabitants of the region on the ground water supplies from chalk aquifers. Generally, the flows of the River Test and its tributaries are stable and pure as a result of their steady supplies from these ground water sources, supporting a superb ecology.

A substantial proportion of local drinking water, in terms of both public and private water supplies, is supplied by chalk aquifers. The chalk aquifers are very shallow in many parts of the borough, making ground water vulnerable to surface contamination. Due to the permeability of chalk, potentially allowing contaminants to spread easily, the Environment Agency has designated several of the most sensitive aquifers as 'Source Protection Zones' in which new development may require specific controls to prevent pollution of water resources.

Whilst the superficial geology of central and northern parts of the Test Valley area are dominated by chalk, the geology of the southern part is characterised by areas of clays, sands and gravels. This has resulted in large areas being used for the mineral extraction. Some of the resulting pits and quarries have in the past subsequently been filled with waste materials, with potential land contamination implications for the redevelopment of such sites. Records of sites filled prior to the introduction of waste disposal licensing under the Control of Pollution Act 1974 are likely to be poor.

There are numerous sites occupied, or previously occupied, by Defence Agencies. Some of these sites may have been subject to some degree of ground contamination and specific records of usage are generally not available.

## 5. Priorities

It is clear from historic mapping that there are many sites within the Test Valley area that have had some kind of former industrial and/or potentially contaminative use. The vast majority of these sites will not warrant detailed investigation / remediation or designation as 'contaminated land', either because they are not contaminated to any significant degree, or because there is no receptor present and/or no viable 'pathway' for actual harm to be caused.

In some cases, land contamination investigations may have been carried out already for such sites, for example in support of planning applications. However, in many cases, insufficient information is available to reliably assess the risk of encountering contamination.

Therefore, the Council's strategy is to focus upon priority areas which are believed to provide a more efficient and rational approach that is also appropriate for the characteristics of the Test Valley. The Council's priority areas, which are explained more fully below, may be summarised as:

- A. Identifying land contamination through the Development Management system, thereby protecting new and existing sensitive developments from historic land contamination.
- B. Monitoring private water drinking supplies to identify potential sources of ground contamination, thereby protecting the consumers of such drinking water supplies.
- C. Working in partnership with the Environmental Agency and other regulatory bodies to identify potential sources of contamination that might impact upon the River Test, its tributaries and other sensitive ecological habitats.



## 6. The Council's Strategic Approach to Dealing with Contaminated Land

### A. Application of the Development Management System to Protect New Development

It is an obvious priority to ensure that future developments involving sensitive uses, most notably housing developments, are not adversely affected by contamination in the ground. There is a wide range of mechanisms by which land contamination could potentially adversely affect homes and their occupants, such as:

- Ingestion of contaminated soil and dust in gardens and landscaped areas;
- Ingestion of contaminants taken up by home produce;
- Landfill gas permeating into homes and building up to dangerous concentrations;
- Contaminants permeating into homes through services, such as plastic water pipes;
- Contamination to private water abstractions used for drinking, cooking and washing.

Whereas the current Building Regulations do make provision for any land contamination encountered during building works, the scope of the Building Regulations is different and considerably narrower than that of the planning regime. This means that the Building Regulation mechanism is not sufficient to proactively identify and deal with all land contamination issues connected with a site and its intended use. The role of the Development Management system is to identify at an early stage any land contamination issues and thereby assess the suitability of a site, and indeed parts of the site, to the intended use, as well as plan an investigation and remediation strategy before building works begin and planning permission is given.

When planning permission is sought for sensitive developments, the potential for encountering significant land contamination will be assessed and, where appropriate, investigations required to determine the nature and extent of any remediation work. In this way, the costs of investigation and any appropriate remediation are borne by the developer or applicant. In accordance with current planning policy, each applicant should where appropriate demonstrate to the satisfaction of the Council that the condition of the land with respect to land contamination is suitable for its proposed new use.

By ensuring that any significant land contamination is identified and remediated as part of the planning permission, this also helps to protect existing sensitive developments nearby. For example, if when developing a 'brownfield' site contamination were identified, the Council would expect remediation measures to be taken to protect not only the development within the development site but also receptors outside of the site boundary which might be impacted to some degree.

In practical terms, proposed new developments are screened with the aim of identifying sites which are considered either:

- (i) To be at risk of historic land contamination due to the nature of the former use of the land; and/or
- (ii) To be of a scale and sensitivity that warrants a precautionary approach, usually consisting of a requirement for the undertaking of a 'Phase 1' assessment (i.e. desk study) to consider the likelihood of encountering significant land contamination.

With respect to (i), the Council has access to historic maps which are accessed through its electronic mapping system and certain past uses are routinely flagged up as possible planning constraints, triggering a planning consultation to the Environmental Protection team of the Council for further consideration and recommendations to be made.

With respect to (ii), the appropriateness of investigations is considered having regard to government guidance, aiming for requirements to be reasonable and proportionate to the perceived risks.

#### B. The Monitoring of Private Drinking Water Supplies to Help Identify Land Contamination

Test Valley has a relatively high number of private water supplies, estimated to serve over 2000 people. This is a significant number which is why, for the purposes of this strategy, it is seen as a priority area.

The Council is required to regularly monitor and risk assess the quality of private drinking water supplies supplying:

- More than one dwelling
- Single dwellings where the householder requests monitoring and/or a risk assessment to be carried out
- All food production uses where the quality of the food could be adversely affected by the quality of the water
- All supplies to workplaces and other 'commercial' buildings (including hotels and pubs)
- All supplies to public buildings (such as village halls)

As part of the risk assessment process, consideration is given to the proximity of any potential sources of contamination that might affect the quality of the drinking water and, if so, the water analysis will include parameters that might be found or indicative of the presence of any contamination. Where required, such risk assessments must be conducted at least every five years.

The risk assessment and sampling regime is therefore a mechanism for identifying any sites which may fulfil the criteria as 'contaminated land'. If there were ground contamination found near to any groundwater abstractions, there is a clear pathway for harm to be caused.

### C. Partnership Working to Protect Sensitive Ecological Habitats

The quality of the local environment and the protection of sensitive ecological habitats, especially those linked to the River Test and its tributaries, is highly valued by local people and therefore it is appropriate that the strategy focuses on preserving this as a priority.

The lead regulator for the protection of rivers, streams and groundwater aquifers is the Environment Agency and indeed any contamination adversely impacting these bodies of water would be investigated as a potential 'special site' by the Environment Agency. Nevertheless, the goals of the Environment Agency and the Council are aligned and a priority is to work in partnership with the Environment Agency to protect such resources.

In practical terms, this will mean exchanging information with respect to any suspected contamination and, in cases of doubt, agreeing or co-ordinating investigations.

### D. Other Triggers for Investigation

There will be occasions where additional inspections may be appropriate, the merits of which would be considered on a case by case basis. Triggers for undertaking such inspection may include:

- Pollution incidents – e.g. if an incident such as a oil/chemical spill has occurred.
- Substantial and well-founded concerns are raised about a particular site.
- Responding to information from other statutory bodies, owners, occupiers, or other interested parties.

## **7. The Approach to the Prioritisation of Detailed Inspection and Remedial Actions**

Where more than one site is being considered in detail at the same time, priority will be given to the site with greatest / greater potential for harm. In some cases it may be appropriate to adopt a phased approach to investigation and focus on issues of greatest potential risk and/or parts of the site which are considered likely to have the greatest potential for contamination.

Following investigation of a site, the Council would then determine if the land in question meets the statutory definition of 'contaminated land'. Where any land is designated as 'contaminated land', there is a duty to notify certain interested parties of that fact and, with certain exceptions, also serve a remediation notice on the person(s) considered responsible or liable for the state of the land.

The most notable exception to the duty to serve a remediation notice is in the case where the Council considers that appropriate monitoring and/or remedial actions are being carried out by the relevant person on a voluntary basis. The Council will seek voluntary remediation wherever this is deemed to be appropriate and consistent with the statutory guidance.

The detailed procedures for determining whether land ought to be designated as 'contaminated land', and for the taking of all follow up actions, are provided in the current statutory guidance and need not be reproduced in this strategy.

In fulfilling its statutory obligations, the Council will be mindful of the financial implications of investigation and remediation work, seeking to avoid unnecessary burdens faced by individuals, companies and the society as a whole, and taking a proportionate approach to tackling risks associated with land contamination.

Any enforcement action will be consistent with relevant enforcement policies of the Council.

## **8. Remediation of Land Contamination through the Building Control System**

Building work is generally subject to Building Control under the current Building Regulations. The approval process may be carried out by the Council's Building Control Consultancy team, or, alternatively, any other Approved Inspector.

The requirements of the current Building Regulations stipulate that reasonable precautions must be taken to avoid danger to the health and safety caused by ground contaminants. Approved Document 'C' of the Building Regulations provides more detailed guidance relating to how contamination should be addressed through the Building Control system.

Appropriate investigation and remediation of land contamination issues will continue to be through the Development Management system and the Building Regulations. The Building Regulations will be particularly important to address contamination issues in the situations where:

- (a) The building works have not been subject to the Development Management process and, therefore, there has been no opportunity to apply planning controls; or
- (b) Previously unidentified hazards and risks have been encountered during building works.

The Council's Building Control Consultancy team has access to historic land-use information and will liaise with the Environmental Protection Team to ensure that building control requirements are consistent with any planning requirements and there is no duplication.

Officers from the Council's Environmental Protection Team will endeavour to offer advice and assist Building Control Surveyors as far as reasonably practicable to help ensure that contamination issues are appropriately addressed in accordance with good practice.

## 9. Public Register

The Council is required to maintain a register of sites designated formally as 'contaminated land', as well as details of certain regulatory action and remediation. There are provisions to exclude certain information from the public register because of considerations of national security or commercial confidentiality.

Information to be kept on the register includes:

- (a) Remediation notices;
- (b) Remediation information, including remediation declarations, remediation statements and notifications of claimed remediation;
- (c) Details of designated special sites;
- (d) Certain site-specific guidance issued by the Environment Agency;
- (e) Details of appeals against a remediation notice or a charging notice;
- (f) Details of relevant convictions

The register of contaminated land is maintained at the Council offices, Beech Hurst, Weyhill Road, Andover, Hampshire SP10 3AJ. Members of the public can view the register free of charge during normal office hours, though it should be noted that at time of publication of this strategy there are no entries on the register.

No charge will be made for simple enquiries concerning whether or not specified land is the subject of any entries of the contaminated land register. A charge may be made for providing copies of any documents placed on the register, in accordance with Council policy.

## **APPENDIX A**

### **List of Consultees**

<b>Internal Consultees</b>	
Building Control Manager	
Head of Planning and Building	

  

<b>External Consultees</b>	
Environment Agency	Canal Walk Romsey, Hampshire SO51 8DU

## **References**

Defra (April 2012), Environmental Protection Act 1990: Part 2A.  
Contaminated Land Statutory Guidance

The Contaminated Land (England) Regulations 2006, Statutory  
Instruments 2006 No.1380

The Building Regulations 2010, Statutory Instruments 2010 No.2214

Control of Pollution Act 1974, 1974 Chapter 40