

Sandwell Metropolitan Borough Council

January 2013

**CONTAMINATED LAND INSPECTION
STRATEGY**

**ENVIRONMENTAL PROTECTION ACT 1990 –
PART IIA**

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EXECUTIVE SUMMARY

The current Contaminated Land Regime originally came into force in April 2000 with the objective of managing the legacy of land contamination resulting primarily from historic industrial activities. To facilitate a policy of sustainable development, there is a general requirement to reduce potential environmental and health risks to an acceptable level and to bring polluted land back in beneficial use in an economic manner, with costs proportionate to risk/ benefit, based where possible on the “*polluter pays*” principle.

The principle legislative basis for addressing the issue of contaminated land in England and Wales is Part IIA of the Environmental Protection Act 1990 (“the Act”), brought into force through the enactment of the Environment Act 1995. The Act places a responsibility on local authorities to “*cause its areas to be inspected from time to time for the purposes of identifying contaminated land*”. Accompanying statutory guidance requires local authorities to take a “*strategic approach*” and publish their methodology in a written strategy.

The formulation of a Contaminated Land Strategy is the initial step in the process of ensuring that contaminated land presents no unacceptable risk within an area by way of its identification and prioritisation, leading to remediation works as required. Such work may be either consensual or legally enforced and can be a complex issue with regard to assertion of remedial requirements, apportionment of liability and if necessary recovery of costs for the undertaking of remediation works.

DEFRA recently reviewed the contaminated land regime in England. Although this review concluded that the primary legislation (Environmental Protection Act 1990 – Part IIA) remained fit for purpose and should be retained, it was considered necessary to revise the accompanying statutory guidance. The amended Statutory Guidance was published in April 2012, and whilst maintaining the precautionary principle, aims to provide a more streamlined approach to decision making with the objective of preventing costly and unnecessary remedial works.

The implementation of the revised statutory guidance will not fundamentally impact on the application of contaminated land legislation in Sandwell. Due to the varied industrial history of the Borough, an extensive potential legacy of contaminated land exists. Since the publication of the initial Contaminated Land Strategy in April 2001, a discerning and rational approach has been applied to ensure that all potentially contaminated sites receive a clear, efficient and all-encompassing assessment. It has been the policy of Sandwell to utilise the planning regime as the principal means for investigating and remediating potentially contaminated sites and it is considered that this will continue to be the primary route for bringing contaminated and derelict land back into beneficial use. The regeneration of such sites is integral to the achievement of the Council’s aspirations, detailed within the ‘*Great Place*’ element of the ‘scorecard’, by promoting regeneration of the Borough, returning derelict and contaminated sites to beneficial use, providing safe and clean neighbourhoods and improving the quality of areas of green space.

1. Introduction

This document is produced in order to fulfil the Council's obligations with regard to the Environmental Protection Act 1990 – Part IIA (EPA 1990 Part-IIA). This is a first revision of the original document (published in April 2001), produced to reflect revised accompanying Statutory Guidance (published in April 2012).

As is common place within areas with a history of industrial development, such as Sandwell, there remains an inherited legacy of land contamination arising from a range of past activities including industrial processes, mining and waste disposal. The potential exists for such contamination to pose a risk to human health or the wider environment, in response to which the current legislative regime has been formulated.

2. Background to the Contaminated Land Regime

The objective of the implementation of the EPA 1990 Part-IIA (introduced in England in April 2000) was to provide a mechanism for the identification and remediation of contaminated land, and subsequent prioritisation of such sites according to the likelihood of interaction between current use, contaminant presence and environmental setting. Although the legislation is designed to compliment the planning regime, which remains the primary driver for remediation of contaminated land, the EPA 1990 – Part IIA provides a means by which local authorities (and the Environment Agency) can to take proactive action with regard to contaminated land which is not under-going development, but is considered to pose an unacceptable risk.

The primary principles of the legislation comprise the “*Suitable for use*” approach and “*the polluter pays*”. The assessment process for prospective sites of concern should evaluate sites in terms of their current use and circumstances. Furthermore, the legislation seeks to place the cost burden of dealing with contamination on, in the first instance, the polluter and secondary, the landowner. This extends to the recovery of costs in the instance that the Local Authority undertakes “works in default”.

The objective of this strategy update is to ensure that Sandwell continues to discharge its responsibilities in relation to ‘contaminated land’ in accordance with the recently revised statutory guidance.

3. General Policy of the Local Authority

Due to the industrial heritage of the Borough of Sandwell, the Council has adopted a long-standing pro-active approach to the issue of

contaminated land. Initially, the removal of pollution and dereliction associated with historic industrial processes was prioritised as part of an overall aim to regenerate the Borough. Historically, the Council has worked closely with the Black Country Development Corporation and Advantage West Midlands to facilitate development. Although these bodies are no longer in operation, the Council will look to take advantage of any further such schemes should they become available.

The hazards associated with landfill gas generation on closed landfill sites have been an issue for the Council since the late 1980s. The Council owns a number of former marlpits, which were infilled, and are now mainly used for recreational purposes. Many of these have been investigated, and controls installed to deal with gas generation. Historically, this work was funded mainly by Supplementary Credit Approval (SCA) from the DETR and comprised installation of landfill gas control measures, primarily vent trenches acting as a “break” between undeveloped landfilled areas and nearby residential properties. The Council has continued to undertake an annual maintenance programme to remove overgrowth and carry out repairs.

The Council takes the view that dealing with contaminated land is not confined solely to the service of remediation notices on polluters or landowners. Indeed, this is likely to happen in only a minority of cases. The principal route for land to be reclaimed will continue to be through the planning process.

Reference to Sandwell Metropolitan Borough Council Unitary Development Plan Local Development Framework – Annual Monitoring Report – December 2011, states that;

“The Sandwell of 2020 will be a thriving, sustainable, optimistic and forward looking community. Sandwell residents will live in a transformed and safe living environment, will enjoy excellent health, rewarding work, experience choice in their lives, and have a positive view of life in Sandwell. Sandwell will have a positive role in a revitalised West Midlands. It will continue to be a diverse but harmonious mix of industrial/commercial activity and urban living, in which traditional environmental conflicts will have been minimised and the principles of sustainable development applied.”

In accordance with The National Planning Policy Framework (NPPF) (introduced in March 2012) planning applications will be determined with a presumption in favour of sustainable development.

Sandwell Council has introduced the *Sandwell Scorecard* to outline the Council’s key priorities on a 3-year basis. The scorecard provides a means to inform residents of the Borough of the Council’s objectives and obtain feedback regarding progress towards these.

The Borough of Sandwell has a long and varied history of industrial

land use, resulting in a legacy of potentially contaminated sites. Regeneration of the Borough to provide a safe and progressive environment is integral to the achievement Scorecards objectives, with particular regard to elements - 'Great Place' and 'Great Prospects'. Implementation of the Contaminated Land strategy will assist in the provision of robust and pragmatic regeneration within the Borough, returning derelict and contaminated sites to beneficial use, providing safe and clean neighbourhoods and improving the quality of areas of green space.

The implications of the Contaminated Land Strategy will be considered within the production of Borough-wide plans and strategies such as the Environmental Policy, Unitary Development Plan, Economic Development Strategy and Local Development Framework. Officers within Environmental Health will ensure that issues relating to Contaminated Land are represented with appropriate steering groups and committees, such as the Asset Management Group which has responsibility for the disposal of Council owned land resources.

4. Definition of Contaminated Land

The legislative regime prescribes a very specific definition of 'contaminated land', which focuses on risk in the context of current use and circumstances of previous land uses. The specific definition stated within the Section 78(A) of the Act is as follows;

“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, or is likely to be, caused.”*

Further to the above, reference should be made to the interpretation of this definition as published within *DEFRA Contaminated Land Statutory Guidance (April 2012)* which applies the principle of risk assessment, to establish the likelihood of “*significant harm*” and the overarching concept of “*contaminant linkages*”.

A *Risk Assessment* approach evaluates the probability of harm occurring and *should* this be the case, the magnitude of any consequences. Within the scope of contaminated land assessment, consideration is only given to the current use of the site in question and reflects a *suitable for use* approach with regard to land condition and potential impacts. As a result attention should be drawn to the fact that

a change in use will have a consequential impact on the outcome of any risk assessment of the land.

The Act defines '*Harm*' as;

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

To simplify, harm as defined above could refer to impacts on aspects such as human health, protected ecological systems and property (in terms of buildings, livestock and crops etc).

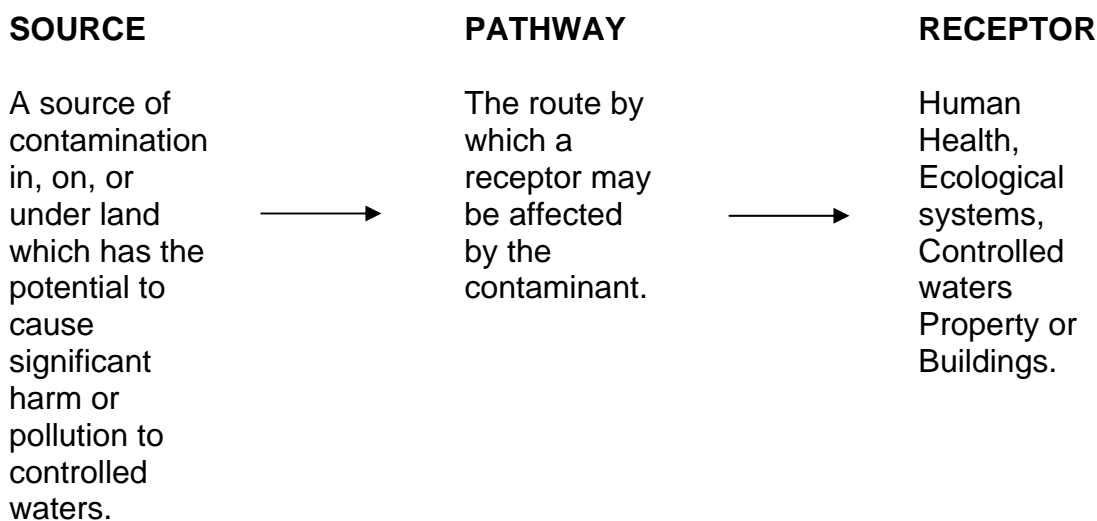
5. Amendments to the Contaminated Land Regulations and Statutory Guidance 2012

DEFRA recently commissioned a review into the contaminated land regime in England for the first time since its original introduction in 2000, the purpose of which was to evaluate the effectiveness of the existing legislation. In summary, the review confirmed that the original legislation (EPA – Part IIA) remained fit for purpose; although it concluded that there were flaws in the accompanying Statutory Guidance which reduced its effectiveness. The intention of the revised Statutory Guidance (as issued in April 2012) whilst maintaining the precautionary approach laid out in the Act, is to simplify the decision making processes enabling regulatory bodies to make quicker decisions as to whether sites fulfil the statutory definition of contaminated land. The intended consequence of this simplification is to improve resource allocation, preventing unnecessary costly remediation of lower risk sites and ensure that sites which actually demonstrate the highest risk are dealt with first. To facilitate this process a four-category test has been devised to clarify which sites require remediation, enabling more efficient targeting of resources. Presently, the finalisation of technical tools to support this process, such as *LQM/ CIEH Dose Response Roadmaps* is awaited.

6. The Principles of Contaminant Linkages

The risk assessment approach to the identification of contaminated land relies on the presence of three criteria – termed a contaminant linkage. Such a linkage **MUST** be deemed to be present for a site to satisfy the statutory definition of contaminated land. The principle of the contaminant linkage is illustrated as follows;

Figure 1 – Source/ Pathway/ Receptor relationship



It is necessary for the Council to deem that all three elements of the contaminant linkage are present before it can make the judgement that any land appears to satisfy the statutory definition of “contaminated land”.

7. Aim of Sandwell Metropolitan Borough Councils’ Contaminated Land Strategy

In accordance with the statutory guidance (both original guidance and revised) SMBC continues to adopt a strategic approach with regard to the identification of potential contaminated land considered to require further assessment. The Council set out its original approach in its original strategy document adopted in April 2001. The document made reference to the following objectives;

- To prepare and publish a written strategy for the identification of Contaminated Land within the Borough, to be adopted by July 2001;

- To adopt a strategic approach to the identification of land which merits detailed inspection, which is consistent with the principles of risk assessment;
- To make the protection of human health the main priority;
- To assist and provide information to the Environment Agency for any of its reports on contaminated land;
- To ensure consistency of approach with other relevant Corporate and functional strategies; and
- Where at any time land is found to be contaminated within the terms of the act, it will be dealt with immediately.

The ethos of the above is to deal with land identified to pose unacceptable risk to human health or other stated receptors in terms of its current usage. The strategy is not meant to deal with land which may contain contaminants but is not having any deleterious impact on human health or the wider environment.

8. Sandwell Metropolitan Borough Council Progress to Date

SMBC commenced its progress of the contaminated land assessment process following publication of its original strategy in 2001. The process commenced with a first pass assessment of historic and environmental information in conjunction with a review of present day land use (at the time) to identify potential sites of concern. This process is on-going as regeneration of the Borough continues. To date, a total of 1,166 sites have been identified as potential “sites of concern” and are thus deemed to require further assessment. To date 224 of these sites have been assessed with a decision reached for 83% of these. One such site has been deemed to satisfy the statutory definition of “contaminated land” and is currently subject to voluntary remediation within the development process. In the case of the remaining 17% of assessed sites, the Council holds insufficient information regarding these and hence further investigation work is considered to be necessary.

Historically, Sandwell MBC has progressed intrusive investigations of potential sites of concern utilising external funding available through the DEFRA/ EA Contaminated Land Capital Project. As of the 2012/13 funding window, it is noted that available funding has reduced significantly, with the majority of funding understood to have been committed to on-going remediation projects.

9. Future progression of Part IIA Investigation works within Sandwell MBC

Whilst external funding via grant schemes such as the EA Contaminated Land Capital Project remains available, it is the intention of Sandwell MBC to continue to apply for further grant funding whenever such opportunities arise. However, at the time of publication it is considered likely that the economic climate will preclude an extensive progression of the contaminated land strategy through this course of funding. In view of this it is considered that the main source of progression will be through the planning process via the enforcement of site investigation and remediation planning conditions.

Taking account of the above Sandwell MBC will continue to progress the objectives of the Contaminated Land Strategy in a strategic manner, the emphasis of which will be the protection of human health. Sites identified as potential “Sites of Concern” will in the first instance be subject to Phase 1 Investigation (referred to as a desk-top study), whereby all available documentary sources of information applicable to the site will be gathered and analysed with the objective of reaching a decision with regard to the sites status in terms of Part IIA.

10. Strategic Approach to Inspection

The statutory guidance requires the authority to take a strategic approach with regard to the identification of land which may merit further inspection

The Council published its first Contaminated Land Inspection Strategy in April 2001. The initial process of identification of potential sites of concern (SOC) involved the review of plans of the Borough, both present day and historic, to identify areas of former industrial activity and features such as legacy landfill sites, waste processing sites and sewage works, the results of which were then compared to present day information in terms of land use and environmental situation. It was considered that this process would establish sites of concern, whereby a potential contaminant linkage was present. Following identification of such sites, site specific information was examined in each case in accordance with *CLR 6: Prioritisation & categorisation procedure for sites which may be contaminated*. The methodology was considered to be sufficiently robust for determining prioritisation of sites for further assessment in a strategic manner.

Through application of this strategy the Council will continue, as required, to identify potentially contaminated sites within the Borough for further assessment.

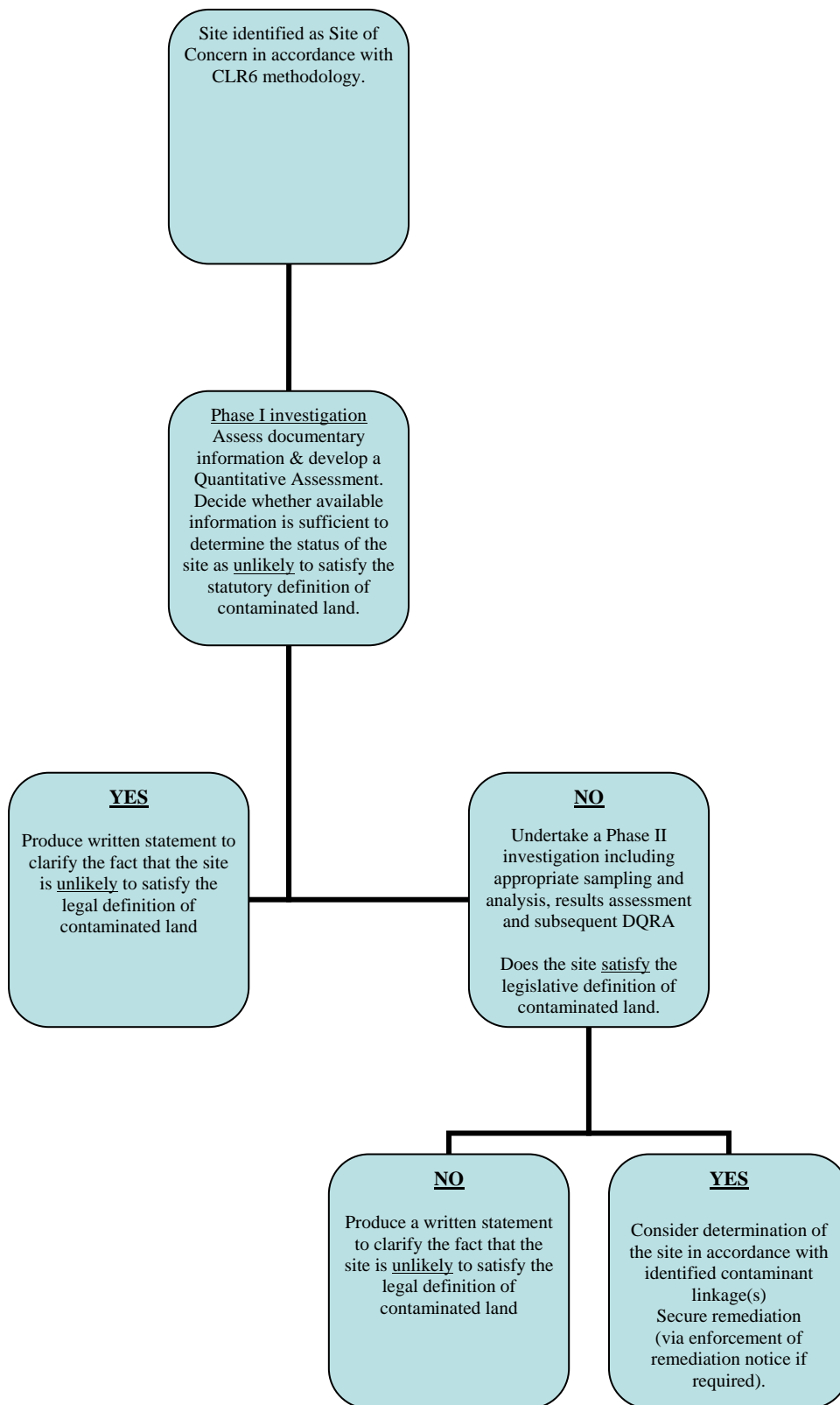
If required, Section 108 and Schedule 18 of the Environment Act 1995 empower the Local Authority to enter land in order to fulfil its duties in

respect of contaminated land. Unless land contamination is deemed to pose an imminent risk of serious harm to human health, or pollution of the environment, or such that it may be a danger to life or health, at least seven days' written notice of the proposed entry will be given to the person seemingly in occupation of the land in question.

In the instance that land is determined to be a 'Special Site', detailed investigation will be undertaken by the Environment Agency. The Council will authorise nominated Environment Agency personnel to exercise powers on its behalf.

At site specific level, SMBC will utilise recognised models and risk assessment methodologies to determine the extent to which sites may satisfy the statutory definition of contaminated land. Figure 2 illustrates the assessment process;

Figure 2 – Source/ Pathway/ Receptor relationship



11. Determining that land is NOT Contaminated Land

In instances where sufficient information is available, a decision will be made in accordance with the revised statutory guidance as to whether the site satisfies the statutory definition of contaminated land. In order that resources are allocated proportionally in terms of risk, the revised guidance places a duty on local authorities to bring its inspection and risk assessment process to an end *“as soon as it becomes clear to the authority that the land is unlikely to be contaminated land”*. In this regard it is considered that sites for which decisions are reached at the Phase 1 stage will be predominantly those whereby information indicates that the legal definition of contaminated land will not be satisfied.

With regard to sites found not to satisfy the legal definition of contaminated land Sandwell MBC will, in accordance with the revised statutory guidance, produce a written statement making clear the reasons for deciding that the land is not contaminated. The statement will be made available in the form of a Part IIA statement. In the instance that site assessment has required the implementation of a Phase II investigation, Sandwell Metropolitan Borough Council will issue a written statement to all appropriate stakeholders at the point at which a decision regarding the status of the site has been reached.

12. Determining that land IS Contaminated Land

The responsibility for determining sites as “contaminated land” rests solely with the local authority. In accordance with the relevant legislation and guidance, SMBC will determine sites according to four possible grounds;

- I. Significant harm is being caused to a human, or relevant non-human, receptor;
- II. There is a significant possibility of significant harm being caused to a human, or relevant non-human, receptor;
- III. Significant pollution of controlled water is being caused; or
- IV. There is a significant possibility of significant pollution of controlled waters being caused.

In the instance that sites within the Borough are considered to fulfil the statutory definition of contaminated land the authority will give consideration to the extent of the area to be determined and any necessary sub-division, the urgency of the determination and also ensure that all appropriate persons are informed prior to determination being made. Where possible a period of time will be allowed prior to determination to enable relevant parties to make representations.

Furthermore, consideration will be given to the postponement of determination should an undertaking be obtained from the landowner (or other relevant body) that appropriate and timely remediation be carried out voluntarily, or the circumstances of the land be significantly changed resulting in the breaking of the contaminant linkage.

Following the determination of a site as “Contaminated Land” the authority will produce a written record. This will include clear delineation of the site in question, including a boundary plan and Ordnance Survey Co-ordinates and also clearly state the rationale behind the determination being made. This record will be made available to the public and as far as possible will be produced in such a manner as to be easily understood by a non-technical audience.

In accordance with the statutory guidance, SMBC will reconsider any determinations made in the instance that further information becomes available with the potential to alter the original decision. Should remediation work be undertaken which removes the contaminant linkage (and hence “stops the land being contaminated”) a statement will be issued by the authority to this effect.

Should SMBC vary or revoke a determination a statement will be issued detailing the rationale behind the revocation and clarification as to the changed status of the site.

13. Identifying and Notifying Responsible Persons and Determination of Liability

Where the Council has deemed a site to meet the statutory definition of ‘contaminated land’ it will, wherever possible, establish;

- The land owner;
- The occupier of the land;
- The “appropriate person” to bear responsibility for remediation action.

Written notification will be provided to the above and the Environment Agency, stating that the land has been determined as contaminated. Such notification will include the following information;

- A copy of the notification detailing the rationale behind the determination ;
- The reasoning behind the identification of the “appropriate persons”;
- Details of those who have been notified and the capacity in which they have been notified; and
- Sufficient details to enable persons identified as “appropriate persons” to identify what information they need to provide in order to make a case for ‘exclusion’ from liability.

Following determination of a site as 'contaminated', the Council will apportion liability, in terms of who is the 'appropriate person' to bear the responsibility for remediating the contaminated land. In accordance with the EPA 1990 – Part IIA, liability will be aligned as follows;

Class A person: 'The person, or persons, who knowingly caused or knowingly permitted the substance/s, by reason of which the land is considered to be 'contaminated'.

In the instance where, after reasonable enquiry, the 'Class A person' cannot be identified liability passes to;

Class B person: 'The owner or occupier of the 'contaminated land'.

In the instance that neither a "Class A" or "Class B" appropriate person can be identified, the site in question will be termed an "Orphan Site", in which case the responsibility to bear the cost of remediation works will pass to the Council, in accordance with the legislation.

In certain circumstances the designation of "Class A" person can be applied to those who were responsible for introducing the "contaminant linkage" which has caused the land to be deemed contaminated in terms of EPA (1990)-Part IIA. This designation could apply to a developer responsible for the construction of residential properties on a contaminated site without undertaking appropriate remedial works.

14. Cost Recovery

Following determination of land as 'contaminated' and specification of remediation requirements, the Council will determine and apportion liability for remediation (or part thereof) with regard to relevant advice given within the revised Statutory Guidance. In some cases however, the situation may arise where the Council may have to bear the cost of remediation (or a portion thereof) in the first instance. Such cases could include situations where immediate remedial action is required, where the site is deemed to be an "orphan site" or where, in accordance with considerations set out within the statutory guidance "hardship" will be caused to those identified as "appropriate persons". This case is particularly relevant with regard to "Class B" persons who could include owners of residential premises, or operators of small businesses, which are deemed to occupy "contaminated land" about which they had no prior knowledge and are deemed to have insufficient resource to affect remediation works.

Where the Council has identified that others should bear liability for the remediation works it has undertaken, the Council will seek to recover all *reasonable* costs in accordance with the Statutory Guidance.

In the instance that there is a likelihood that “hardship” will arise as a direct result of remediation costs, the council must have due regard to this and as such there is provision within the regulations for the Council to waive or reduce the recovery of remediation costs as deemed necessary, on the basis that an acceptable case for “hardship” is made. In order to determine “hardship” the council would need to be satisfied that at the time of purchase the owner of the land did not know and could not have been reasonably expected to know, that the land in question was “contaminated”.

In the case of residential owner/ occupiers a “hardship” waiver would be given only to the extent to which remediation costs would be lowered to a level that the “appropriate person” would then bear no more of the cost than would be reasonable, taking account of their income, capital and outgoings. In the case of a business occupier cost recovery would be waived to the extent required to prevent the business becoming insolvent as a result of the cost of remediation works.

In the case of “Orphan Sites” the Council will give consideration to the placement of a charge against the property, enabling the recovery of costs at a later date.

In the instance that the Council is liable for remediation costs, capital support will be sought where available through the Environment Agency Local Authority Contaminated Land Capital Programme.

15. Remediation of Contaminated Land

Following determination of a site as Contaminated Land (in accordance with the EPA 1990-Part IIA), SMBC will consider the requirements of the remediation process and if necessary issue a remediation notice requiring such work to be done. In accordance with legislative requirements, such remedial works will be aimed at removing or permanently disrupting significant contamination linkages to ensure they are no longer significant and permanently reduced below an unacceptable level. Furthermore, this work will include remediation of any harm or pollution which has occurred.

Prior to any enforced remediation (via the issue of a remediation notice), the Council will endeavour to secure remediation works undertaken by the appropriate person without the need for enforcement action. It will be ensured that any such works achieve a remedial standard equal to, or better than, that which would have been specified in any remediation notice and are undertaken within an appropriate timescale.

In the instance that agreement cannot be reached with regard to remediation measures, or where remedial works undertaken are

deemed insufficient or inappropriate, the Council will serve a remediation notice on the appropriate person(s). The notice will specify remedial measures required and a timescale for completion and will also provide a transparent and consistent cost/benefit analysis of remedial options considered.

In accordance with the EPA (1990) – Part IIA, the standard of remediation required by the Council will be sufficient only to ensure that the land no longer poses a sufficient risk to satisfy the legal definition of contaminated land.

16. Non-compliance with Remediation Notice(s)

Section 78M of the EPA – Part IIA, makes it an offence for the ‘Appropriate Person(s)’ not to comply with the requirements of a remediation notice. Should the instance occur that a remediation notice is not complied with, the Council will apply enforcement measures as follows;

- Prosecute those served with the notice – in the event of a person being found guilty of the offence on summary conviction (i.e. within a Magistrates Court) they shall be liable for a fine of up to £5,000, plus an additional daily fine of £500 for each day after conviction that the specified action remains outstanding.
- In the instance that the site in question is an industrial premises, trade or business premises, the fine may be up to £20,000, plus an additional fine of up to £20,000 per day.
- Should it deem it necessary, the Council may take proceedings to the High Court to secure a successful outcome.
- The Council may undertake the remediation action itself and recover the costs incurred in doing so (in accordance with Sections 78N and 78P of the Act).

17. The role of the Environment Agency

The EPA (1990) – Part IIA makes provision for a category of contaminated land referred to as a “Special Site”. For any sites designated as a “Special Site” the Environment Agency rather than the Council is the enforcing authority. The descriptions of land which are required to be designated as Special Sites are set out in the Contaminated Land (England) Regulations 2006. In effect, Special Sites are those considered to be most seriously contaminated, as defined by the Regulations, and are grouped together into land uses, state ownership and controlled waters.

The Environment Agency has four main roles:

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

The Environment agency will have further involvement with regard to contaminated land as follows;

- As consultees on Planning Applications; and
- Indirectly, through their responsibilities with regard to waste disposal.

The Council will provide information to the Environment Agency, including;

- When a site is determined as "Contaminated Land"; and
- When remediation action is taken for a site;

18. Interaction with Other Regimes

It will be necessary to liaise with other regulators when considering the applicability of other statutory regimes which may deal with land contamination. These include the following situations;

Planning

The National Planning Policy Framework (NPPF) was introduced in March 2012 with the objective of providing guidance for Local Planning Authorities with regard to the drawing up of development plans. The guidance states that planning applications should be determined in accordance with up-to-date development plans, with a presumption in favour of sustainable development.

With regard to contaminated land the NPPF makes reference to the requirement to "*Encourage effective use of land by reusing land that has been previously developed*" (brownfield land). Furthermore,

paragraph 109 states that the planning system should enhance the natural and local environment by:

- *“preventing both new and existing development from contributing to, or being put at unacceptable risk from or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability” ; and*
- *“remediating and mitigating despoiled., degraded, derelict, contaminated and unstable land, where appropriate.”*

Further to the above, the framework reiterates the responsibility of the developer/ landowner for establishing “safe development” with regard to contamination/ stability, making reference to the “suitable for use” approach. With regard to remediation, a minimum standard is set that post development land should not be capable of being determined as “contaminated land” under the EPA 1990 Part-IIA.

In its role as the Local Planning Authority, the Council will consider the implications of land contamination in its development of its Local Plan. Further to this contaminated land is a material consideration in the determination of individual development applications submitted within the planning regime. Many sites within the Borough have already been subject to remediation through application of the planning controls within the redevelopment process. It is considered that future redevelopment of brownfield land through the planning regime will continue to be the primary mechanism for remediating contaminated sites within Sandwell. Any such remediation works will be enforced through planning conditions and not through the EPA 1990 Part-IIA.

Building Control

In accordance with the *Building Regulations 2000 Part C; Site Preparation and resistance to contaminants and moisture* officers are required to take account of land contamination only with regard to contaminants which may have an impact on building materials and services.

Environmental Permitting

It is a requirement of operators of industrial process regulated under the IPPC regime to undertake a baseline condition survey of land prior to being granted an operators license. In the instance that the site operator causes contamination of the site due to a breach of permit conditions, the operator is required to remediate the land so that it is returned to its baseline condition. With regard to enforcement, the Environment Agency is responsible for A1 processes and the Borough Council for A2 processes.

Water Pollution

Section 161 of the Water Resources Act 1991 empowers the Environment Agency to take action to prevent or remedy the pollution of controlled waters. Should the situation arise where contaminated land is identified to have the potential to pollute controlled waters, remediation will be brought about under the EPA (1990) – Part IIA by the Local Authority, through consultation with the Environment Agency. Where a pollutant is discharged directly into the body of water, and the land is no longer responsible for causing pollution, the Water Resources Act 1991 will apply, regulated by the Environment Agency.

Discharge Consents (Water Resources Act 1991 Part III)

No remediation notice can require action to be taken which would affect a discharge authorised by consent.

Radioactivity

The EPA (1990) - Part IIA regime was extended in August 2006 to include Radioactivity. The extended regime included provision for the identification and remediation of land in the instance that contamination is causing lasting exposure to radiation of human beings, where intervention is liable to be justified. Within the recent update to the Contaminated Land Statutory Guidance revised Statutory Guidance specific to radioactive contaminated land was issued in April 2012. The guidance refers only to contamination which has occurred due to the after effects of a radiological emergency or historical activities undertaken on site and applies only to unacceptable risk of human health. The Council will consider radioactive contaminated land within the terms of this guidance, in accordance with which inspection will only be undertaken should *reasonable grounds* of the likelihood of radioactive contamination be apparent.

Statutory Nuisance

If land is declared contaminated land by definition, it cannot be considered a statutory nuisance. This ensures there is no duplication or confusion between the two regimes.

Environmental Damage Regulations

The Environmental Damage Regulations transpose the requirements of Directive 2004/35 on environmental liability in regards to prevention and remediation of environmental damage in UK law. The regulations apply to operators of economic activities and are intended to cover only the most serious of cases, operating as a “backstop” with the emphasis on responsible person identifying an imminent threat and taking immediate preventative action accordingly. As with existing UK

legislation the regulations are based on the “polluter pays principle”. With regard to contaminated land the regulations refer to “Land Damage”, whereby contamination creates a significant risk of adverse effects on human health. With regard to enforcement of the regulations, Local Authorities are responsible for enforcement in the case of damage caused by operations regulated under the Environmental Permitting Regulations and land other than SSSI’s for activities other than those regulated under the Environmental Permitting Regulations.

19. Enforcement of the Contaminated Land Regime

Within the Council, the responsibility of enforcing the EPA 1990 Part-IIA rests with the Environmental Health Department, which reports to Area Director for Homes and Communities. The Group Environmental Health Officer (Environmental Health) is the lead officer for this purpose.

20. Liaison with External Agencies

It is recognised that issues relating to contaminated land involve not only regulatory issues, but also wider considerations including commercial and financial implications, legal issues and the wider society. With this in mind the Council will examine contaminated land issues in an appropriately open and consistent manner. Consultation will be maintained with appropriate stakeholders and those with a legitimate interest. Such parties may include;

- Owners and occupiers of the land designated as being contaminated;
- Appropriate person(s);
- The Environment Agency;
- Utility providers (particularly water);
- Appropriate statutory bodies, which may include:
 - DEFRA;
 - The Food Standards Agency;
 - English Nature;
 - English Heritage.
- Ward Members.

21. Working with other Local Authorities

Sandwell Metropolitan Borough Council is bordered land under the jurisdiction of Walsall Council and Wolverhampton City Council to the north, Dudley Metropolitan Borough Council to the west and Birmingham City Council to the south and east. There is potential for sites found to satisfy the definition of contaminated land to cross

authority borders or impact upon land within the jurisdiction of a neighbouring authority. In the instance that trans-boundary contaminated land issues occur, Sandwell Metropolitan Borough Council will support work undertaken by neighbouring authorities or request their assistance where appropriate.

22. Review Mechanisms

It is acknowledged that the Contaminated Land Strategy is a dynamic framework developed to ensure on-going identification and management of contaminated land within the Borough. Regeneration within the Borough is on-going and as redevelopment occurs, or more information becomes available with regard to individual sites, it is likely that review and update of assumptions made will be required.

From time to time it may be deemed necessary to undertake inspections of potentially contaminated land outside the general inspection framework. Furthermore, in the instance that additional information becomes available it may be necessary to review previous inspection findings. The following list, although not exhaustive, indicates the situation in which such action may be taken;

- Proposed changes of site use or use of surrounding sites;
- Unplanned changes in land use (e.g. persistent trespass);
- Unplanned events (e.g. pollution incidents);
- Reports of localised health effects which may potentially relate to particular areas of land;
- Responding to information from other statutory bodies, land owners/ occupiers, members of the public etc.

Further to the above, the strategy will be reviewed from time to time to ensure it is effective in meeting its objectives. The strategy will be reviewed should changes / updates in legislation occur or if further relevant knowledge be developed.

23. Provision of Information

The EPA 1990 Part-IIA requires the Council to maintain a public register. The register should hold details regarding any formal action undertaken on a site deemed to satisfy the statutory definition of contaminated land. The register will be made freely available for access by the public and will hold the following information;

- Site location details, site plan and details of current use;
- Name and address of person(s) responsible for remediation;
- Grounds for determination as Contaminated Land;
- Apportionment of liability;
- Remediation Notices;

- Remediation statements and declarations;
- Notices relating to the designation of land as a special site (or withdrawal of any such designation) ; and
- Details regarding appeals.

Excepting that detailed above, information produced through the implementation of the inspection strategy will not be placed on the register. Such information will not, as a matter of course, appear in responses to searches of the register.

Information accumulated within the inspection process will be useful to the Council and other stakeholders for reference to assist with future assessments of land. This may arise for example, where planning applications are received for the redevelopment or change of use of sites or enquiries are made in the form of CON29 requests. Furthermore, information that is not deemed to be confidential may also be made available in response to queries about individual sites, for which a reasonable charge will be levied.

In the instance that the Environment Agency or other statutory bodies have a need to see information collated on sites (e.g. to produce 'State of the Environment' reports) it will be the intention of the Council to provide this.

24. Communication of Risk

The issue of Contaminated Land can be emotive and as such care will be given to the way in which various stakeholders or the general public are informed of risks associated with it. With regard to this the Council will endeavour to communicate all information regarding contaminated land in a clear and coherent manner using terminology appropriate to the particular stakeholders involved.

When contacting stakeholders for the purpose of carrying out further assessment of land, the Council will explain the reason as to why an area of land has been identified as potentially contaminated land and detail the risk based approach utilised to reach this conclusion. In due course, the outcome of the decision made regarding the site, following inspection, will be communicated to relevant stakeholders clearly and in good time.

Notwithstanding the above, in order to avoid undue alarm or stress, no proactive communication shall be made with a site owner or occupier, or other stakeholder, unless the desk study shows a strong possibility of a contaminant linkage being present.

To make the strategy more widely available the Council has placed a copy on its website.

APPENDIX 1

CHARACTERISTICS OF SANDWELL

Location of Sandwell

Sandwell is located within the heart of the West Midlands conurbation and is surrounded by Walsall Council and Wolverhampton City Council to the north, Dudley Metropolitan Borough Council to the west and Birmingham City Council to the south and east (see figure 4).



Figure 3 – Neighbouring West Midlands Authorities

A History of Sandwell

The Borough of Sandwell was formed in 1974 on Local Government reorganisation, by the amalgamation of the Warley and West Bromwich Authorities. It consists of six Black Country Towns which are Smethwick, West Bromwich, Tipton, Wednesbury, Rowley Regis, and Oldbury.

Sandwell's present urban appearance is largely the result of industrial development since the 18th Century, although the remains of early Sandwell can still be found in the surviving buildings, earthworks, archaeological remains, objects, street patterns, maps and documents.

The first canals were built by James Brindley in 1769 to 1772 between Birmingham and Wolverhampton, and Sandwell was soon at the heart of the canal network. The years 1750 to 1850 saw a hive of industrial activity, with coal mines, iron works and furnaces around the Borough.

Innovators and entrepreneurs established major new industries in the Borough such as Kenrick's, Izens and Salters in cast iron manufacture in West Bromwich, Boulton and Watt making steam engines at Soho Foundry in Smethwick, and Chance's glassworks, Smethwick.

The railways started to replace the canal network from the 1850's, and as raw materials became exhausted, they were replaced by the secondary engineering and fabricating industries. Most of Sandwell is now built up and dates to the 19th Century and Victorian periods.

Geological Characteristics and Resources

The bedrock of the Black Country comprises a variety of sedimentary rocks (derived from existing rock that has been weathered, moved and deposited) including limestone, conglomerate, sandstone, siltstone, mudstone, coal, ironstone and claystone. Igneous dolerite rock (derived from solidified molten rock) can also be found in the area of Rowley Regis.

Some parts of the Black Country is overlain by poorly consolidated drift deposits which predominantly consist of boulder clay (till), silt, sand and gravel. These deposits are the result of prehistoric river action. Large areas of the Black Country are covered by a layer of man-made deposits comprising made ground and fill materials, much of it the product of mining and heavy industries in the area.

The historical prosperity of the area has been founded on the local availability of its mineral resources. Mineral resources fall into two categories, those that are extracted from surface workings, and those that can be mined or recovered from depth. In Sandwell the former includes opencast coal mining, sand, gravel, dolerite, and brick clay. Sandwell has also witnessed extensive mining for coal, ironstone and limestone, although the last working pit, Hamstead Colliery in Great Barr, closed in 1962.

The so-called 'thick coals or the ten yard seam provided a rich and easily accessible source of fuel, occurring at or near the surface in virtually level strata over much of the Tame Valley. By 1750, the principal areas of coal extraction lay around Wednesbury, Tipton and Coseley. Apart from domestic use, the main use for coal was its extraction for industrial purposes. The second mineral staple of the area was ironstone, found in geological association with coal. The main centre of ironstone extraction was around Wednesbury during the eighteenth century. Limestone occurred as a Silurian outcrop near Dudley, and was extracted and used as a flux in the iron industry, and calcined for use as cement lime.

Etruria Marl was widely exploited for brick making and the resulting voids have been predominantly filled with domestic and industrial waste over the last 100 years or more. Similarly, the Rowley Hills have

been extensively quarried for Dolerite and are subsequently the site of numerous landfill sites. The north of the Borough, the Proto-Tame channel, has been quarried for sand and gravel extraction leaving pits used for waste dumping.

Sandwell has witnessed a wide variety of industrial activities including mining, iron and steel manufacture, brick works, ferrous and non-ferrous foundries, chemical works, a wide range of engineering works, forging, gas works, coal tar distilleries and glass works. These industries were served by an extensive transport infrastructure based around the rail and canal systems, many of which have now been abandoned.

Groundwater Resources

Groundwater is contained within underground strata (aquifers) of various types. Abstractions from these aquifers can provide water for potable (domestic) water suppliers and varied industrial and agricultural uses. Groundwater is usually of a high quality and often requires very little treatment prior to its use. However, groundwaters are vulnerable to contamination from both direct discharges and indirect discharges into or onto land. Remediation of polluted groundwaters is a complex, timely and costly procedure so it is therefore vital that the pollution of groundwaters is prevented. Details of Aquifer Designations, Groundwater protection zones and licenced abstractions are available from the Environmental Agency's web site.

The majority of Sandwell overlays Secondary Aquifers. Secondary Aquifers can consist of fractured or potentially fractured rocks that do not have a high primary permeability. Aquifers of this type seldom produce large quantities of water for abstraction, but are useful sources for local supplies, especially industrial extraction. Secondary aquifers are also important in supplying base flow for river systems. Unproductive Strata refers to formations with negligible permeability that are generally regarded as not containing groundwater in exploitable quantities.

In Sandwell, 851 hectares overlay principal aquifers, 7192 hectares overlay Secondary A aquifers, and 514 hectares overlay Secondary B / undifferentiated aquifers.

Reference to the Sandwell 'Unitary Development Plan – Local Development Framework – Annual Monitoring Report December 2011' (covering period 1st April 2010 – 31st March 2011) indicates that within the stated period no objections were raised by the Environment Agency within the planning process with regard to water quality issues.

Surface Water Resources

The area of Sandwell is drained by the Rivers Stour and Tame and their numerous tributaries. Sandwell also has an extensive canal network that was, and to a lesser extent still is, widely distributed throughout this area. These waterways contributed historically to the water supply, drainage and communications of Sandwell, and therefore the industrial development of the Black Country.

Facts and Figures

The figures and statistics provided in this section are extracted from 'Unitary Development Plan – Local Development Framework – Annual Monitoring Report December 2011' (covering period 1st April 2010 – 31st March 2011).

Population (June 2011 estimate) :	292, 800
Area :	8600 ha
Dwellings :	160, 000

Sandwell is a densely populated area of the West Midlands, noted to exhibit a population density of 3404 persons per square kilometre.

Historically, Sandwell has faced a serious issue in terms of derelict/contaminated land as a direct result of the Borough's industrial history. However, with regard to the reclamation of derelict/ previously used land it is understood that in the period April 2010 to March 2011 a total of 14.95 ha of such land was reclaimed, a figure almost double that of the previous year. Of this figure 5.16 ha was utilised for industrial purposes, 4.27 hectares for residential development and 5.52 hectares for uses designated as 'other'. With regard to residential development, a total of 655 new units are stated to have been constructed, of which 99% were developed on brownfield land.

In addition to former industrial operations, mineral extraction within the Borough has resulted in a legacy of redundant excavations, many of which have subsequently been used for landfill purposes. No new applications have been made for new landfill sites, with none expected. Furthermore, no recent applications have been received for mineral extraction and as no further economically viable mineral reserves are considered to exist, this situation is considered unlikely to change.