



CITY OF
YORK
COUNCIL

Contaminated Land Strategy

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1 EXECUTIVE SUMMARY

City of York Council is responsible for the enforcement of contaminated land legislation in the city. We aim to protect people, property and the environment from contaminants in the ground and encourage the brownfield regeneration of contaminated sites. The council's contaminated land work contributes towards our corporate priorities of a thriving, sustainable and healthy city.

The council's environmental protection unit will inspect the whole of the city for contaminated land, and will take action to prevent harm from occurring. It is government policy to ensure that the polluter pays, and we have powers to require polluters to clean-up contaminated land that may cause harm or water pollution.

Contaminated land and the law controlling it are complicated issues. Identifying contaminated land is a technically demanding process, and a great deal of information is generated. One of our responsibilities is to ensure that the contaminated land inspection process is carried out in a rational and efficient manner. It is also necessary to show that resources will be allocated to tackling the most serious problems first.

This strategy explains how we will go about inspecting the city for contaminated land, and how we will manage the information that we generate. The strategy also includes information on timescales and progress made to date.

Note: The council's original contaminated land strategy was published in July 2001, followed by an update and review document published in February 2005. There have been many changes in contaminated land legislation and guidance over the last few years, so a complete review of the strategy was undertaken in January 2010.

2 INTRODUCTION

2.1 Regulatory Context

The law on contaminated land is made under Part 2A of the Environmental Protection Act 1990 [1] and is commonly referred to as 'Part 2A'. Part 2A came into force on 1st April 2000, following the enactment of section 57 of the Environment Act 1995 and the Contaminated Land (England) Regulations 2000. These Regulations were replaced in 2006 by The Contaminated Land (England) Regulations 2006 [2], to include land that is contaminated by virtue of radioactivity.

Part 2A was introduced specifically to address the historical legacy of contaminated land. Its intended role is to enable the identification and clean-up of land on which contamination is causing unacceptable risks to human health or the wider environment, or lasting exposure to radiation where action is likely to be justified.

2.2 Definition of Contaminated Land

Section 78A (2) of Part 2A 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 reason of substances in, on or under the land, that –

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

However if harm is due to radioactivity, regulation 5(1) of The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 define contaminated land as:

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

- a) harm is being caused; or**
- b) there is a significant possibility of harm being caused”.**

Statutory Guidance (Circular 01/2006) has been produced by the Department for Environment, Food and Rural Affairs (DEFRA) [3] to outline how the regulations are expected to work and to give guidance on specific terms e.g. significant harm. Subsequent non-statutory guidance on the legal definition of contaminated land [4], published in July 2008, provides DEFRA’s view on how local authorities should interpret a significant possibility of significant harm.

For land to meet the statutory definition of contaminated land there must be a significant pollutant linkage, which consists of a source, a pathway and a receptor.

- ◆ A **SOURCE**: the physical presence of a contaminant in, on or under the ground, in quantities large enough to be a potential hazard.
- ◆ A **PATHWAY**: a means by which the source can come into contact with something or someone that could be harmed.
- ◆ A **RECEPTOR**: something or someone that could be harmed by the contamination – for example a person using the land, a stream close to the land, or a building built on the land.

If a source, a pathway and a receptor are all present then the risk of significant harm, harm attributable to radioactivity, or water pollution should be

assessed. If the statutory definition given above appears to be met then the land will be classified as contaminated land.

2.3 The Role of City of York Council under Part 2A

Part 2A identifies local authorities as the main regulating body for contaminated land. Under this role the council is responsible for a number of tasks, including;

- ◆ Development of a strategy detailing how we intend to implement Part 2A, its aims, objectives and interactions;
- ◆ Identification and assessment of sites which could potentially fall under the definition of contaminated land, as detailed in Part 2A;
- ◆ Identification of sites where we may be the appropriate person;
- ◆ Identification of potential special sites and relevant consultation with the Environment Agency;
- ◆ Initial assessment of the condition of the sites suspected to be contaminated;
- ◆ Further investigation of sites suspected to be contaminated;
- ◆ Regulation of all sites identified as contaminated land under the definition within Part 2A, excluding special sites;
- ◆ Remediation of sites or the serving of remediation notices, as and when necessary;
- ◆ To determine responsibility and apportion costs for remediation;

- ◆ To produce and maintain a public register of sites determined as contaminated under Part 2A.

2.4 The Role of the Environment Agency under Part 2A

The Environment Agency has the below responsibilities in regulating contaminated land;

- ◆ To assist local authorities in investigating contaminated land;
- ◆ To provide site specific guidance to local authorities regarding contaminated land, particularly where water pollution is involved;
- ◆ To act as the enforcing authority when a site is designated as a special site. Note: For contamination land to be classified as a special site it must meet the definition described in The Contaminated Land (England) Regulations 2006 [2], which is outlined in appendix C of this strategy.
- ◆ To prepare national reports on the state of contaminated land in England and technical guidance as necessary.

2.5 Interaction with Other Regulatory Regimes

Part 2A has been designed to operate alongside and compliment several other pieces of legislation. Part 2A, will not be used where existing legislation may be enforced, providing this legislation adequately deals with the issues of contaminated land, or where the contamination has arisen due to a breach of an existing licence or permit.

2.5.1 Planning and Development Control

Contaminated land, or the possibility of it, is a material planning consideration under the Town and Country Planning Act 1990. The council must therefore consider the potential implications of contamination, both when it is developing plans and when it is considering individual applications for planning permission.

Contaminated land issues that arise through planning applications will be controlled through the planning regime inline with Planning Policy Statement 23 (PPS23), Annex 2 - Development on Land Affected by Contamination [5]. PPS23 gives detailed guidance on the development of land which may have been affected by contamination, and also provides local authorities with the opportunity to require that land contamination is assessed and, if necessary remediated, as a condition of planning permission. The Yorkshire and Humberside Pollution Advisory Council (YAHPAC) has published technical guidance regarding the development on land affected by contamination [6].

Since the launch of PPS23 many sites that were identified as potentially contaminated have received planning permission for redevelopment. These sites have been assessed and where necessary remediated by the developer at no cost to the council.

In addition to the planning system, building regulations (made under the Building Act 1984) require developers to take measures to protect new buildings and their future residents from the effects of contamination. An example of this would be the installation of gas protection measures into properties.

Officers from the environmental protection unit work closely with the council's development control and building control teams to ensure that issues of land contamination are dealt with effectively by the developer to ensure that land is suitable for its intended use.

2.5.2 Pollution of Controlled Waters

The Environment Agency has powers to take action to remedy or prevent pollution of controlled waters. Powers are available to the Environment Agency under the Water Resources Act 1991, the Water Framework Directive and the Groundwater Regulations.

Where pollution of controlled waters arises from substances in, on, or under land there is an overlap between these powers and Part 2A. Therefore in cases where contaminated land is affecting controlled waters, the council will work closely with the Environment Agency.

2.5.3 Waste Management

All waste disposal and processing sites should be subject to licensing under Part 2 of the Environmental Protection Act 1990 (as amended by the Environmental Permitting (England and Wales) Regulations 2007).

Contamination causing significant harm or pollution of controlled waters should be dealt with as a breach of a condition of the licence or permit rather than through Part 2A.

Where a waste site has been unlicensed or where the waste licence has been surrendered under the Control of Pollution Act 1974 regime, sites could potentially be contaminated land and would be dealt with under Part 2A.

2.5.4 Pollution Prevention and Control

The regime introduced by the Pollution Prevention Control Act 1999 (PPC) and the Environmental Permitting (England and Wales) Regulations 2007, control certain industrial activities prescribed under the regulations with the aim of preventing pollution from arising. This regime is enforced by either the council or the Environment Agency, depending on the process type.

Any pollution resulting from a permitted activity should be dealt with as a breach of a condition of the permit by the enforcing authority, rather than

through Part 2A. However, Part 2A may be used for old installations/activities which do not hold current permits.

2.5.5 Environmental Damage Regulations

The Environmental Damage Regulations (Prevention and Remediation) (England) 2009 are based on the 'polluter pays principle' so those responsible are required to prevent and remedy environmental damage. Environmental damage has a specific meaning in the regulations, covering only the most serious cases where there is an imminent threat or actual damage is occurring. When imminent threats or damage fall within the regulations, these regulations should be applied. Other provisions (such as Part 2A) remain in place to address damage outside of the regulations.

The Environmental Damage Regulations are enforced by local authorities, the Environment Agency, Natural England and the Marine and Fisheries Agency.

3 AIMS AND OBJECTIVES

3.1 Aims

It is envisaged that this strategy will help the council to improve and protect the condition of the environment and the health of residents in York.

The role of the strategy is to detail how contaminated land will be considered under the Part 2A definition of contaminated land. The strategy details how the council's Part 2A responsibilities have been prioritised, with justifications for these decisions.

The strategy will not include the regeneration and development of sites where planning permission has been, or is currently being sought, as contaminated land issues can be governed by the enforcement of appropriate planning conditions. However, developments built prior to the 1st April 2000 on potentially contaminated land will be included in the inspection programme, to ensure that the condition of the land is suitable for its current use.

The statutory guidance [3] details the underlying principles that should be applied when developing a contaminated land strategy, which include;

- ◆ be rational, ordered and efficient;
- ◆ be proportionate to the seriousness of any actual or potential risk;
- ◆ seek to ensure that the most pressing and serious problems are located first;
- ◆ ensure that resources are concentrated on investigating areas where the authority is most likely to identify contaminated land; and

- ◆ ensure that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land.

3.2 Objectives

To ensure the requirements of the statutory guidance [3] are met, the contaminated land strategy has several key objectives;

- ◆ to meet the requirements placed on the council to produce a strategy for the implementation of Part 2A;
- ◆ to document how the council intends to meet the criteria of the statutory guidance;
- ◆ to provide a framework for the identification, prioritisation, assessment, determination and remediation of contaminated land and to subsequently reduce the risks posed to human health and the environment;
- ◆ to provide information to the Environment Agency for the national report on contaminated land;
- ◆ to put into practice the 'suitable for use' and 'polluter pays' principles to ensure suitable remediation is carried out on all necessary sites;
- ◆ to provide a greater understanding for the need to investigate and remediate contaminated land;
- ◆ to improve internal and external communications with regard to contaminated land; and

- ◆ to inform land owners, the general public and stakeholders of the council's intentions in relation to contaminated land by the publication of this strategy document.

4 THE CITY OF YORK

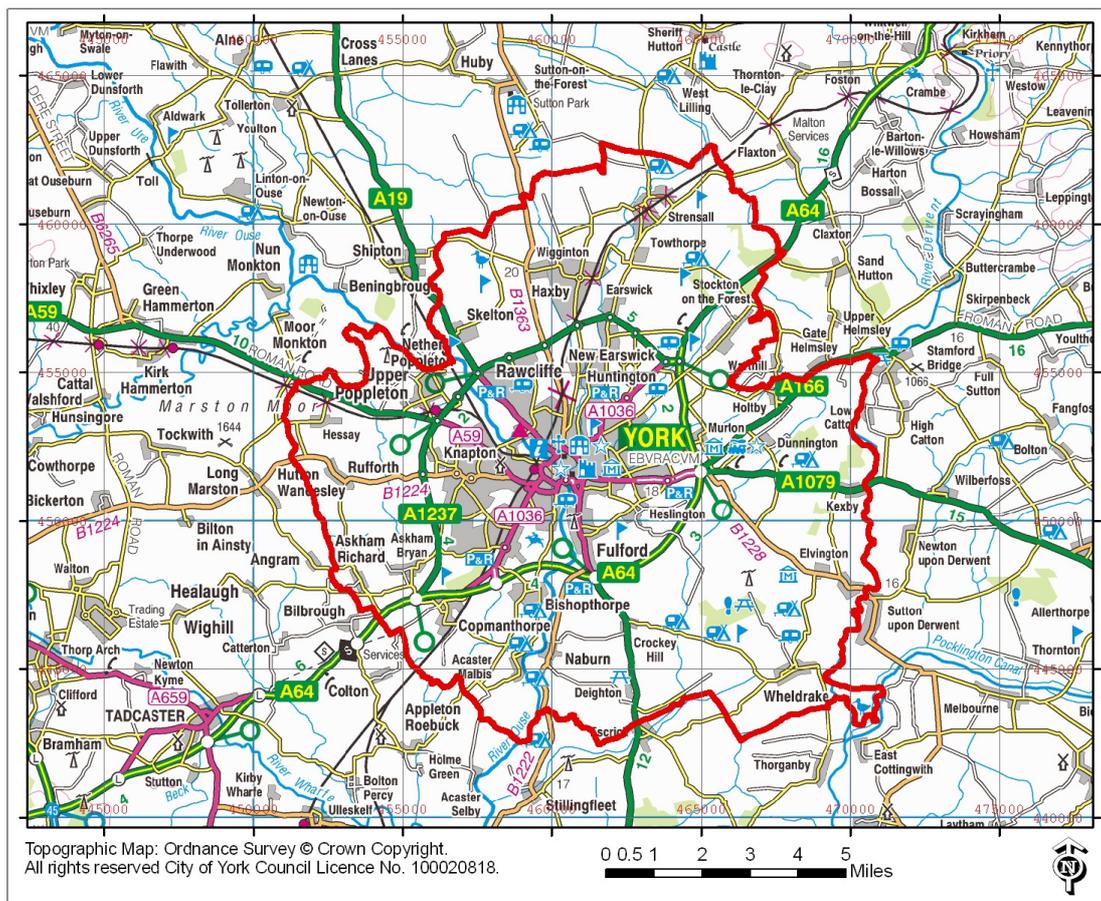
4.1 Characteristics of the Area

The City of York lies in the centre of the vale of York, approximately 30 miles north east of Leeds and 50 miles inland from the east coast.

York is one of England's most historic cities, with a diverse history that can be traced back nearly 2,000 years. It is a compact walled city dominated by York Minster (the largest gothic cathedral in Northern Europe). The city attracts more than four million visitors each year due to its wide range of world-class attractions, museums and galleries.

Today, the City of York Council area covers approximately 105 square miles (272 square kilometres) and has a population of around 195,400. The majority of the population resides within the urban area, with the remaining being located in the numerous villages surrounding the city (see figure 4.1).

Figure 4.1: Map showing the boundary of the City of York Council area



4.2 Current and Past Industrial Activities

Contamination can arise from a wide variety of processes and activities associated with industry and its development and growth. The industrial history of an area can therefore provide an unparalleled insight into the areas that might contain and be affected by contamination.

The City of York has had a long and varied history, evident from the many historical buildings and monuments that remain today. In the middle ages, York was an important port and manufacturing centre for wool, leather and other crafts.

By the 17th century the textile industry and port activity had declined and by the 18th century York was more like a market town than an industrial centre,

with a diverse range of small crafts such as brewers, bakers, tailors, jewellers, shoe makers, coopers, pipe makers and butchers.

The railways came to York in 1839, bringing the industrial age with them. The railway carriage works became a major employer (of over 5,000 people) and by the late 19th century other industries, such as confectionary, flour milling and the manufacture of optical instruments, had also come to York.

During the 20th century confectionary was a big industry in York, with Rowntree's Cocoa Works and Terry's Confectionary Works both manufacturing within the city. Printing, sugar production and the manufacture of railway carriages and optical instruments were also important industries during this period.

Over the last 20 years, much of the major manufacturing industry has declined in York. Today the city largely relies on the service sector and science based employment.

4.3 Historic Buildings and Ancient Monuments

Buildings, property, ancient monuments and important archaeological sites are all classified as receptors that should be protected under Part 2A.

The City of York is an important area for archaeology and is one of only five historical centres in England to be designated as an area of archaeological importance. York has about 1,800 listed buildings and structures and 22 scheduled ancient monuments. We will liaise with the council's principle archaeologist and English Heritage, prior to undertaking intrusive investigations and remediation works in the vicinity of these sites.

4.4 Geology

Geology is the study of the structure of rocks, minerals and soils in specific geographical areas. The City of York is covered by the 1:50,000 British Geological Survey maps, sheet numbers 62, 63, 70 and 71. These maps show that the bedrock in the area is Sherwood Sandstone.

The superficial deposits overlying the sandstone consist predominantly of sands and gravels with some areas of clay and till. Bands of alluvium deposits can also be seen to intersect the city along the paths of the River Ouse and River Foss.

Sands and gravels, till and alluvium are deposits with a variable permeability and can be considered to provide a potential pathway to the underlying sandstone. Clay deposits across the city are of varying thickness and can be considered to have a relatively low permeability and may in some circumstance provide protection to the underlying sandstone, however this should not be assumed without justification.

4.5 Hydrology and Hydrogeology

Hydrology is the study of the occurrence, distribution, movement and properties of all waters on the earth's surface and in its atmosphere.

The City of York has two main surface watercourses, which are the River Ouse and the River Foss. The Environment Agency classifies the water quality of the River Ouse as 'good' and the River Foss as 'fair'.

Hydrogeology is the study of water movement through rock beneath the earth's surface. Water beneath the earth's surface is called groundwater and its vulnerability is classified based on the characteristics of the water-bearing rock (aquifer). The three aquifer classifications are; major aquifers, minor aquifers and non-aquifers.

Major aquifers are highly permeable formations usually with a known or probable presence of significant fracturing. They may be highly productive and able to support large abstractions for public supply and other purposes.

Minor aquifers can be fractured or potentially fractured rocks that do not have a high primary permeability, or other formations of variable permeability including unconsolidated deposits. Although seldom producing large quantities of water they are important for local supplies and in supplying base flow to rivers. Major aquifers may occur below a minor aquifer.

Non-aquifers are generally those formations that are regarded as containing insignificant quantities of groundwater. Groundwater flow through such rocks does however take place and should be considered in assessing the risk associated with persistent pollutants. Major or minor aquifers may occur beneath non-aquifers.

The City of York is covered by sheet 12 of the 1:100,000 groundwater vulnerability maps, produced by the Environment Agency (formerly the National Rivers Authority). The map identifies the local area as either minor aquifer or non-aquifer, based on the superficial deposits. However, the underlying bedrock in the area is Sherwood Sandstone, which is classified as a major aquifer. For this reason, the Environment Agency treats the whole area as a major aquifer during considerations for work/abstraction requests.

Please note that the thickness and permeability of the superficial and bedrock geology varies across the York area and detailed investigations should be undertaken on a site-specific basis when embarking on site investigations.

4.6 Ecological Systems

Part 2A enables local authorities to take action to prevent significant harm to sites of ecological importance. The legislation only recognises protected locations as receptors if they are included in table A of annex 3 of the

statutory guidance [3], these are summarised in appendix B. Such statutory protected sites include sites of special scientific interest (SSSI), national nature reserves and special areas of conservation.

A number of areas of ecological importance are present in York, these include 9 SSSI's, three special areas of conservation, a national nature reserve and a special protection area - further details of these can be found in Table 4.1.

Table 4.1 – Main Areas of Ecological Importance in York

Site Name	Grid Reference	Designation	Characteristic
Derwent Valley	SE678287 - 825757	- SSSI - Special Area of Conservation - National Nature Reserve - Special Protection Area	Represents classic river profile
Derwent Ings	SE703466 - 703347	- SSSI - Special Area of Conservation	Neutral alluvial flood meadows, fen & swamp communities, with freshwater habitats
Fulford Ings	SE608491	- SSSI	Flood plain mire located on low lying land
Church Ings	SE594456	- SSSI	Two unimproved alluvial flood meadows
Naburn Marsh	SE600479	- SSSI	Flood meadows
Acaster South Ings	SE594437	- SSSI	Two alluvial flood meadows
Askham Bog	SE570480	- SSSI	Remnant of valley mire
Heslington	SE638475	- SSSI	Important tall herb fen

Tillmire			plant communities, with marshy grassland and associated breeding birds
Strensall Common	SE650600	- SSSI - Special Area of Conservation	Acidic lowland heath

A number of wildlife sites have also been designated by the council. The council's planning and sustainable development team identified these sites through national guidance under planning policy statement 9 (PPS9). They represent examples of the cornerstone of biodiversity in York and the surrounding areas. Each was selected to comprise examples of a wide range of habitats, plants and animals occurring in the district.

4.7 Council Ownership of Land

The council owns a variety of land and property throughout the city. This land predominately consists of residential and community uses, including housing, schools, parks and playing fields. As part of the inspection of the district for contaminated land the council will consider its own land and land that it has previously owned.

The council considers that it is possible that there is some land where council activities may have caused contamination. Examples of such activities are vehicle maintenance and refuelling and waste management activities.

Some sites have been redeveloped since 2000. It is considered that the majority of these sites were cleaned up (remediated) prior to redevelopment, to a level considered suitable for their proposed uses.

5 THE INSPECTION PROCESS

5.1 Information Collection

The contaminated land inspection process includes all types of land, both council-owned and not council-owned.

In order to efficiently store and manage contaminated land information, the council has developed a computerised geographical information system (GIS). The GIS holds a range of information, such as the location of past industrial activities with the potential to cause contamination. The information has been collected from a number of different sources, as detailed below.

5.1.1 *Historic Maps*

Historic maps (post 1849) have been reviewed at 10-year intervals where possible, in order to identify the locations of past industrial activities. It is not always possible to identify the exact use of buildings from maps, as many are detailed as depots, warehouses or works. The information must therefore be cross-referenced with alternative sources of data, as detailed in the subsections below. Information on site boundaries and the changing locations of sites will also be noted and recorded on the GIS.

5.1.2 *Trade Directories*

Historical trade directories, held in York central library, provide addresses of former companies, industries and retail outlets. This information can be used with the data collected from historic maps to assist in identifying the use of buildings designated as warehouses or works etc. Where possible, trade directories have been viewed at three-year intervals (post 1843) in an endeavour to capture any changes not documented on the historic maps. Information collected on operations that may give rise to contamination has been inputted onto the GIS.

5.1.3 City of York Council Records

Council records will be reviewed as an ongoing process. Information relating to potentially contaminative processes, such as premises holding petroleum licenses and the locations of underground tanks, have been identified and recorded on the GIS.

Council owned land has been identified from current and historic property databases and added onto the GIS.

The city archives and planning records will also be reviewed as necessary on a case-by-case basis. All relevant information collected will be inputted onto the GIS.

5.1.4 Environment Agency Records

Data has been provided by the Environment Agency detailing the locations of active landfill sites, closed landfill sites, discharge consents and groundwater abstraction points etc. This information has been added onto the GIS. Any additional data received by the Environment Agency regarding the location of receptors, possible pathways and potential sources, or site-specific information requested by the council will be added onto the GIS.

5.1.5 Geological and Hydrogeological Maps

The geology of the area was assessed using geological maps provided by the British Geological Survey.

The hydrology of the area was assessed using groundwater vulnerability maps provided by the Environment Agency (formerly the National Rivers Authority).

These maps have been acquired in an electronic format and added onto the GIS for risk assessment purposes.

5.1.6 *Current Maps*

Current maps have been added onto the GIS. These maps provide information on possible receptors, such as areas of residential housing, schools, parks and playgrounds etc.

5.2 Evaluation of Information

The GIS has been used to carry out a desktop survey of the entire district. This was achieved by overlaying the many different GIS map layers and identifying sites where a source, a pathway, and a receptor (i.e. a pollutant linkage) are all potentially present. At present 3669 potentially contaminated sites have been identified on the council's GIS.

5.3 Prioritisation of Sites

Prioritisation was originally completed in-house and incorporated a policy decision to rank closed landfill sites as the highest priority. This decision was based on the number and size of closed landfill sites in York, their proximity to receptors, their frequent use as public open space, the wide variety of potential contaminants frequently found at such sites and the limited amount of information available on them.

Once an initial assessment of the closed landfill sites was complete, a more detailed prioritisation system was needed. In 2008, sophisticated GIS based prioritisation software was procured from the British Geological Survey to prioritise the 3669 potentially contaminated sites.

The prioritisation software uses the pollutant linkage concept, as outlined in Part 2A legislation. The software has been developed to allow scoring of the different sources, pathways and receptors for a site and its surroundings. The simple scoring system can then be used to allow qualitative ranking of potentially contaminated sites. The scores obtained are mapped to establish the highest priority sites within York.

The software places each site in one of five priority categories (A – E). Table 5.1 shows how the council has defined these categories.

Table 5.1 – Description of Priority Categories

Category	Description
A	Contaminants certainly or probably present. One or more pathways to identified receptors are likely to exist. There is a high risk of an unacceptable impact on identified receptors. The current use of the site may not be suitable. High priority, with action to inspect the site being required in the short term.
B	The presence of contaminants is likely. One or more pathways to identified receptors are likely to exist. There is a high-medium risk of an unacceptable impact on identified receptors. The current use of the site may not be suitable. High to medium priority, with action to inspect the site being required in the short to medium term.
C	Contaminants may be present. One or more pathways to identified receptors are likely to exist. There is a medium-low risk of an unacceptable impact on identified receptors. Medium to low priority, with action to inspect the site being required in the medium to long term.
D	Contaminants may be present. There is a medium-low risk of the existence of pathway(s) to identified receptors. It is unlikely that the contaminants will have a significant effect on identified receptors. Low priority, with action to inspect the site being required in the long term.
E	Contaminants may be present. There is a low risk of the existence of pathway(s) to identified receptors. It is highly unlikely that the contaminants will have a significant effect on identified receptors. Low priority, with action unlikely to be needed whilst site remains in present use or is undisturbed.

Please note that the software cannot identify contaminated land, but it does prioritise land which has the potential to be contaminated. It is designed to be used with expert judgement to assess whether the combination of sources, pathways and receptors requires a detailed investigation. A detailed inspection will then enable a determination to be made as to whether any significant pollutant linkages are present.

The council's site prioritisation work has identified 3669 potentially contaminated sites. Table 5.2 shows the number of sites within each risk priority category:

Table 5.2 – Number of Sites within Each Priority Category

Category A:	77 potentially contaminated sites
Category B:	1,561 potentially contaminated sites
Category C:	458 potentially contaminated sites
Category D:	372 potentially contaminated sites
Category E:	1,201 potentially contaminated sites

The process for identifying potentially contaminated land is an ongoing activity. Further information may come to light at any stage in the procedure, and we will take into account information obtained from or volunteered by the public, site owners, businesses and voluntary organisations. New and updated information will also often be provided as a result of exchanges of information between departments (particularly between the environmental protection unit and development control) and with the Environment Agency and other statutory bodies.

5.4 Detailed Site Investigations

The council will commence the detailed inspection of sites in priority order. Within each priority category, land that was previously and is currently owned by the council will be identified first, followed by non-council owned land. This

approach will be adopted to allow the council to set precedents on the identification and remediation of contaminated sites and to demonstrate its commitment to discharging its responsibilities under Part 2A. It is hoped that this approach will be followed by other land owners and encourage the voluntary remediation of sites.

Detailed inspection is done on a site by site basis. The purpose is to gain sufficient information to determine whether or not there is a significant pollutant linkage and whether the site is contaminated land under Part 2A. Staff from the council's environmental protection unit will carry out detailed inspections and will appoint external consultants to assist where necessary.

Detailed site investigation can be costly, so the council will fund these by making applications to DEFRA under its contaminated land capital grants programme. However, the council can only bid for support if it is 'likely' rather than only 'reasonably possible' that contamination is actually present and that a receptor is present. In other words, the council will always have to carry out initial investigations to obtain such evidence before we can apply to DEFRA for support. If the bid for funding is successful then a capital grant will be provided to fund the detailed investigation.

Typically, a detailed inspection may include the following activities:

- ◆ Liaison with site owners/occupiers ensuring those with a responsibility for the land are kept informed of progress;
- ◆ A site visit and walkover survey to assess any visual problems on site and identify the proximity of sources and receptors;
- ◆ A review of all documentation relevant to the site, to include information held by the site owners/occupiers, the council, the Environment Agency and other relevant bodies;

- ◆ A review of past and present site activities;
- ◆ Liaison with statutory consultees and investigation of any past pollution incidents.
- ◆ Collection of soil, water and ground gas samples as required. Sampling will be carried out in accordance with British Standard 10175 - code of practice for investigation of potentially contaminated sites [7], British Standard 5930 - code of practice for site investigations [8], and British Standard 8485 - Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments [9].
- ◆ Where necessary, conduct a risk assessment to determine if a significant pollutant linkage is present.

Once sufficient site information has been collected a report will be produced detailing further action to be undertaken on a site-specific basis. The report will include site characterisation details and a risk assessment.

5.5 Determination of Contaminated Land and Remediation

Once the detailed inspection is complete, the council will be in a position to determine whether or not the site is statutory contaminated land. The statutory guidance [3] outlines how councils must do this.

There are six reasons for determining that a site is contaminated land, these are listed below:

- ◆ Significant harm is being caused
- ◆ There is a significant possibility that significant harm is being caused

- ◆ Pollution of controlled waters is being caused
- ◆ Pollution of controlled waters is likely to be caused
- ◆ Harm attributable to radioactivity is being caused
- ◆ There is a significant possibility that harm attributable to radioactivity is being caused

The statutory guidance gives details of the receptors that can be considered, and explains what constitutes 'significant harm'. The term 'pollution of controlled waters' also has a specific legal meaning. These statutory terms and definitions are explained further in the glossary.

The model procedures for the management of land contamination (CLR11), published by the Environment Agency in 2004 [10], provides a technical framework for structured decision-making about contaminated land. In making a determination, councils must carry out an appropriate technical assessment to identify specific significant pollutant linkages.

When the pollutant linkage concerns a receptor where another statutory body has a regulatory role, the council will ensure that the relevant body has been consulted, and that our approach reflects their advice. The most common instance of such consultation is likely to be with the Environment Agency regarding the pollution of controlled waters.

One significant pollutant linkage is enough to designate a site as statutory contaminated land, but often there will be many linkages. If a site is shown to have a complete pollution linkage, then it must be remediated (cleaned-up) to make it safe.

A site shown to have a complete pollution linkage may not always be determined as contaminated land under Part 2A. This is because the council

aims to encourage the voluntary remediation of sites through constant interaction and discussions, rather than through a process of 'naming and shaming' individuals or companies. However, if no alternative solutions can be reached, then the site will be determined to ensure that it is dealt with accordingly.

The following actions will be taken if a site is determined as contaminated land under Part 2A:

- ◆ The appropriate person for the site, this being the person(s) involved during previous discussions, will be officially notified that the site is contaminated under Part 2A;
- ◆ A site designation notice will be issued within seven working days of identification;
- ◆ A remediation notice will be issued within seven working days of determination if voluntary remediation is not an option, providing this is not within three months of notification of the appropriate person(s);
- ◆ Ongoing follow up work will ensure that remediation is completed and verification that the site is now suitable for use.

A copy of the risk assessment undertaken prior to determination of a site will be held by the environmental protection unit. Once a site has been identified for determination, the Environment Agency will be notified officially and will provide site-specific guidance as necessary.

The council will make decisions about contaminated land on the basis of information available at the time. The decision relates to 'current use' which means any use which is currently being made, or is likely to be made, and which is consistent with any existing planning permission

6 TIMESCALES AND PROGRESS

6.1 Progress Since 2001

The tasks required to be undertaken by the council can be used as progress indicators. Progress on these activities and on our priority actions is summarised in table 6.1.

Table 6.1 – Progress Since 2001

Task	Progress	Completion Date
Publication of a contaminated land strategy	Completed	2001
Provide training for staff to ensure they are competent to carry out the council's duties under Part 2A	Training programmes developed and implemented for staff.	Ongoing
Design a GIS or database to increase accessibility and the cross reference ability of relevant data.	Completed	2001
Identification of potential sources	Review of trade directories, historical maps and internal council records completed.	2001
Identification of potential receptors	Information acquired on residential areas, parks, schools, controlled waters, ecological systems, property	2001

	and buildings (including scheduled ancient monuments).	
Initial prioritisation of sites	Initial prioritisation completed in-house. Based on the source and receptor information, the council made a policy decision to rank closed landfill sites as the highest priority.	2001
Initial assessment of closed landfill sites	The council's environmental protection unit has assessed all closed landfill sites and conducted detailed investigations of 9 landfills.	2007
Commence action on urgent cases	As cases arise or where new knowledge comes to light	Ongoing
Further prioritisation of sites	Sophisticated GIS based prioritisation software was purchased to enable the detailed prioritisation of sites.	2008
Detailed site investigations	Ongoing inspection programme. The council is currently undertaking detailed investigations of priority A and B sites.	Ongoing
Set up and maintain a public register of contaminated land	Completed, but will continue to update as necessary.	Ongoing
Review and update the council's contaminated land strategy	<ul style="list-style-type: none"> - Initial strategy published 2001. - Update and review published in 2005. - Full review and republication of the strategy in 2010. 	Ongoing (next review due in 2013)

6.2 Timetable for Detailed Site Investigations

The GIS and prioritisation software have been used to perform a preliminary risk assessment on each site using a source-pathway-receptor analysis to determine the risk it poses to human health, controlled waters, ecological systems and property. The software places each site in one of five priority categories, where A is the highest priority and E is the lowest priority. Detailed site investigations will be undertaken in priority order.

The risk rating assigned to a particular site may be amended and new sites can be added to the inspection programme if new information comes to light during the course of our work. For example, this might include a change of use of surrounding land (which introduces new receptors) or the potential for pollutant linkages to become significant as a result of unplanned events such as flooding, subsidence or a pollution spillage.

Since the adoption of the initial contaminated land strategy in 2001, the council has conducted detailed investigations at a number of former landfill sites. Details of these investigations are included below:

- ◆ 2009/10 - the council was awarded a DEFRA grant of £51,000 to investigate two closed landfill sites off Askham Lane and Moor Lane.
- ◆ 2007/08 - the council was awarded a DEFRA grant of £38,634 to investigate five closed landfill sites off Fulford Cross.
- ◆ 2006/07 - the council was awarded a DEFRA grant of £33,150 to investigate three closed landfill sites - at Nun Ings, Huntington Road and Fifth Avenue.
- ◆ 2004/05 - the council was awarded a DEFRA grant of £32,500 to investigate a closed landfill sites off Water End.

A significant number of sites have been, or are in the process of being, dealt with through the development control process - in these cases the costs of site investigation are borne by the developer. The council will apply relevant planning conditions to developments and will monitor the works to ensure that the conditions have been met.

At present, 1.0 full time equivalent member of staff in the environmental protection unit is dedicated to the regulation of Part 2A and to assisting development control in the safe redevelopment of contaminated sites. Based on the current level of resources, an initial 15-year programme for the inspection of category A and B sites is proposed, as detailed in table 6.2.

Table 6.2 – Initial Inspection Programme

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Category A sites															
Category B sites															

The council will propose a timetable for inspecting the category C, D and E sites on completion of the above programme, although category E sites will only require action if the current use of the site changes or if the site is otherwise disturbed.

The timescales outlined above do not account for time taken by planning applications or issues that may arise and require immediate attention. As such scenarios cannot be predicted in advance, the completion dates above may be subject to review and alteration.

This inspection programme will be reviewed every three years during the review of the strategy.

6.3 Current Contaminated Land Determinations

To date, the council has not determined any sites as contaminated land under the Part 2A regulatory regime.

6.4 Review of the Strategy

The council will routinely review its inspection strategy to ensure that it continues to represent an efficient use of resources and remains effective in meeting the requirements of the legislation. We intend to review the strategy once every three years, as the Yorkshire and Humberside Pollution Advisory Council (YAHPAC) consider this to be an appropriate review period.

In some circumstances we might need to review the strategy before the scheduled date. Examples of changes that might trigger an unscheduled review are:

- ◆ Amendments or changes to the law on contaminated land, or changes in legislation that is closely related (e.g. water pollution or waste management legislation).
- ◆ Changes to the structure or area of responsibility of the principal regulators (i.e. the council or the Environment Agency).
- ◆ Large scale environmental emergency affecting York (e.g. catastrophic water pollution incident).
- ◆ Significant changes in the budget allowance and available funding for contaminated land duties.
- ◆ Establishment of precedents in court cases which lead to alterations in interpretation of contaminated land law.

7 PROCEDURES

7.1 Statutory Powers of Entry

Under section 108(6) of the Environment Act 1995, local authorities have been granted powers of entry in conjunction with Part 2A for sites believed to be contaminated and causing actual significant harm to receptor(s). These powers allow designated officers to enter premises and inspect the area and any records connected to the site to determine if significant harm is being caused.

Written notice will be issued to the site owner/occupier seven working days prior to entry; unless it is deemed by the investigating officer that immediate action is required to prevent immediate significant harm to public health or the environment.

7.2 Special Sites

For a site to be classified as a special site it must meet the criteria outlined in the Contaminated Land (England) Regulations 2006, as summarised in appendix C. The regulation of special sites falls to the Environment Agency. However, it is the responsibility of the council to identify and designate these sites before further action can be taken. No site will be designated as a special site without detailed discussions with relevant personnel within the Environment Agency. Where the council already has information that would allow the classification of a special site, arrangements can be made so the Environment Agency carries out the inspection of the site on behalf of the council. Once sites are designated as 'special', regulation and enforcement are passed on to the Environment Agency.

The following action will be undertaken when identifying special sites;

- ◆ Identification and description of the aspect(s) of the site leading to its classification as a special site.
- ◆ Initial discussions with the Environment Agency regarding designation.
- ◆ 21 day allowance is permitted for the Environment Agency to object to the designation of a special site.
- ◆ Contact the site owner within five working days of confirmation from the Environment Agency, or after the 21 day objection period if required, to inform them of current position and of the new regulator.

7.3 Requests for Information and Complaints

It is anticipated that requests for information and complaints will be received regarding potentially contaminated land from members of the public, businesses or community groups.

All requests for information and complainants will be acknowledged within 3 days of receipt and we will provide a timescale for a full reply. Please note that circumstances may arise where specific information cannot be released due to commercial confidentiality or where legal action is required to enforce a remediation notice. Details of when information will be treated as confidential are given in appendix E.

Land will not be designated as contaminated by the council merely on anecdotal information. Further investigations will be undertaken to demonstrate with formal evidence that a complete source-pathway-receptor linkage exists.

7.4 Enforcement Policy

The council intends to carry out its responsibilities under Part 2A in a clear and transparent manner. It will endeavour to promote voluntary remediation of sites designated as contaminated and will only proceed with enforcement action when all other avenues have been exhausted. However should enforcement action be required, for example due to the failure to fulfil the requirements of a remediation notice, action will be taken in accordance with the council's enforcement policy (see appendix D).

7.5 Part 2A Public Register

The council is required to maintain a register of contaminated land. This will be held by the environmental protection unit and will comprise of paper files, including the information contained on the GIS. These will be available to the public for viewing during office hours by appointment or, information on a site-specific basis can be obtained for a nominal charge for officer time and resources.

As required by the regulations the public register will contain information on;

- ◆ The identification of special site designations;
- ◆ remediation notices served;
- ◆ site reports relating to remediation work undertaken in response to a remediation notice;
- ◆ validation of remediation work;
- ◆ appeals against remediation notices;
- ◆ details of convictions

7.6 Liability

The term 'appropriate person' is used in Part 2A to refer to any organisation or individual who will bear responsibility for carrying out any remediation required by the council (or the Environment Agency).

When contaminated land is identified, it will be determined by means of identifying one or more significant pollutant linkages. The appropriate person is then responsible for removing the significant pollutant linkage(s) at the site.

We will initially seek to discover the organisation or individual that caused the contamination. This person is a 'class A appropriate person'. In some instances there may be more than one class A appropriate person, and they will be held liable for the costs of remediation in proportion to the amount or severity of contamination that they have caused.

If no class A appropriate person can be found, Part 2A states that liability will fall to the current landowner or occupier. These people are referred to as 'class B appropriate persons'.

There are some circumstances where a significant pollution linkage may exist but no appropriate person can be found. In such circumstances, the significant pollution linkage becomes an 'orphan linkage'. Where an orphan linkage is the only significant pollutant linkage identified, the enforcing authority (normally the council or the Environment Agency) will bear the cost of any remediation required. Further details are defined in the statutory guidance [3].

In more complicated cases where there are two or more significant pollution linkages, of which some are orphan linkages, we will consider each of these separately. There are circumstances where all or part of the remediation costs for orphan linkages are recoverable from appropriate persons identified for other significant pollutant linkages. These circumstances generally apply

where the remediation required for the orphan linkages are also required for some or all of the other significant pollution linkages for which appropriate persons have been identified.

The council will seek to identify and consult with people who may be appropriate persons as soon as possible during the detailed inspection process. It is our intention to agree voluntary remediation for contaminated land sites wherever possible. Remediation notices will only be served where voluntary action is not forthcoming within a reasonable time frame. We recommend that anyone who believes that they may be an appropriate person should in the first instance refer to Part 2A legislation [1] and the supporting statutory guidance [3].

7.7 Rights of Appeal against a Remediation Notice

Any person who receives a remediation notice has 21 days within which to appeal against the notice. Where a remediation notice is served, an appeal is made to the Secretary of State.

Once an appeal has been duly made to the appropriate body, the remediation notice is suspended until the appeal is determined or withdrawn. Both the council and the Environment Agency have powers to serve a remediation notice.

The council has responsibility for issuing and enforcing all remediation notices on sites other than those designated as special sites. Whereas, the Environment Agency has responsibility for the issuing and enforcement of all remediation notices on sites designated as 'special'. Appeals against these notices should be made to the Secretary of State. The process and requirements for appeal against a remediation notice will be included within the remediation notice at the time of issue.

7.8 Recovery of costs

It is the intention of Part 2A that appropriate persons will pay the costs of remediation, either by volunteering to do so or by compulsion following service of a remediation notice. However, there are a number of exemptions where appropriate persons may not have to pay for the works.

In view of the wide variation in situations which are likely to arise (including the history and ownership of land, and liability for its remediation) the council will need to have regard to the particular circumstances of each individual case and the following general principles:

- ◆ The council will aim for an overall result which is as fair and equitable as possible to all who may have to meet the costs of remediation, including national and local taxpayers.
- ◆ The ‘polluter pays’ principle – where the costs of cleaning up contaminated land are borne by the polluter. The council will consider the degree and nature of responsibility of the appropriate person for the creation, or continued existence, of the circumstances which lead to the land in question being identified as contaminated land.

In general, this will mean that the council will seek to recover its reasonable costs in full. However, the council will consider waiving or reducing the recovery of costs to the extent that it considers appropriate and reasonable, either:

- ◆ To avoid any hardship, which the recovery may cause to the appropriate person. The term “hardship” is not defined in Part 2A, and therefore carries its ordinary meaning – hardness of fate or circumstance, severe suffering or privation; or
- ◆ To reflect one or more of the specific considerations set out in chapter E of the statutory guidance [3].

In certain circumstances, the council may consider deferring recovery of its costs and securing them by a charge on the land in question. Such deferral may lead to payment from the appropriate person either in instalments or when the land is next sold.

The council will inform the appropriate person of any cost recovery decisions taken, explaining the reasons for those decisions.

8 STRATEGY CONSULTATION

This strategy has been produced by the council's environmental protection unit, with internal consultation with other council departments and external consultation with statutory consultees and key stakeholders.

In preparing this strategy, a number of statutory bodies, adjoining local authorities and other organisations that may be interested in contaminated land have been consulted. A list of consultees is given in Table 8.1. All consultation responses have been carefully considered in the preparation of this strategy.

It is our intention to continue to take contributions from consultees who have not yet made a response and from any other individual or organisation that would like to comment on this strategy. We propose to consider these responses as part of our regular reviews of the strategy.

Table 8.1: List of Consultees

Organisation	Address
Department for Environment, Food & Rural Affairs (DEFRA)	Contaminated Land Branch Ashdown House 123 Victoria Street London SW1E 6DE
East Riding of Yorkshire Council	Council Offices Church Street Goole DN14 5BG

English Heritage (Yorkshire Region)	37 Tanner Row York YO1 6WP
Environment Agency	Coverdale House Aviator Court Clifton Moor York YO30 4GZ
Food Standards Agency	Aviation House Room 707c 125 Kingsway London WC2B 6NH
Hambleton District Council	Civic Centre Stone Cross Northallerton North Yorkshire DL6 2UU
Harrogate Borough Council	Springfield House Kings Road Harrogate HG1 5NX
Health Protection Agency	North Yorkshire team IT Centre York Science Park Heslington York YO10 5DG
Local Planning Authority	City of York Council 9 St. Leonard's Place York YO1 7ET

Natural England (North Area Team)	Genesis 1 University Road Heslington York YO10 5ZQ
Ryedale District Council	Ryedale House Malton North Yorkshire YO17 7HH
Selby District Council	Civic Centre Portholme Road Selby North Yorkshire YO8 4SB

9 CONTACTING US

9.1 Viewing the Contaminated Land Strategy

This strategy document is available to download free-of-charge from the pollution section of the council's website. It is also available to view in paper format in York central library and in the council's reception at 9 St. Leonard's Place.

A private copy of this strategy can be provided upon request, but will carry a nominal charge. Such requests should be directed to the council's senior contaminated land officer.

9.2 Viewing the Public Register

A public register detailing regulatory activity on contaminated land can be viewed in the pollution section of the council's website. You may also view the register during normal office hours by visiting the council reception at 9 St. Leonard's Place and enquiring for the environmental protection unit.

9.3 Public Access to Information

The environmental protection unit hold a wide range of information on GIS, including the location of past industrial activities and landfill sites. In line with Part 2A, we intend to investigate all areas of past industrial activity and we can provide information on whether specific sites are included in our Part 2A inspection list.

Information on a site-specific basis can be made available to the public, for a nominal charge to cover officer time and resources. However, please note that circumstances may arise where specific information cannot be released

due to commercial confidentiality or where legal action is required to enforce a remediation notice.

9.4 General Enquiries

Enquiries regarding contaminated land can be made by telephone, e-mail, or in writing. The council has a policy that all such requests will be responded to within 10 working days. There may be a charge to cover our costs to reply to some kinds of query, but we will always tell you in advance if there is a charge. Please note that some information is confidential. Details of when information will be treated as confidential are given in appendix E.

Enquiries should be directed to:

Senior Contaminated Land Officer
Environmental Protection Unit
City of York Council
9 St. Leonard's Place
York
YO1 7ET

Tel: 01904 551533

Fax: 01904 551590

email: environmental.protection@york.gov.uk

REFERENCES

- [1] **Environmental Protection Act 1990, Part 2A:** inserted by the Environment Act 1995, Section 57. See Environment Act 1995 for text of Part 2A.
- [2] **The Contaminated Land (England) Regulations 2006.** Statutory Instrument (SI 2006/1380).
- [3] DEFRA (2006). **Circular 01/2006: Environmental Protection Act 1990 Part 2A, Contaminated Land.** DEFRA, London.
- [4] DEFRA (July 2008). **Guidance on the Legal Definition of Contaminated Land.** DEFRA, London.
- [5] Office of the Deputy Prime Minister (2004). **Planning Policy Statement 23: Planning and Pollution Control. Annex 2: Development on Land Affected by Contamination.** ODPM, London.
- [6] Yorkshire and Humberside Pollution Advisory Council (March 2009). **Development on Land Affected by Contamination: Technical Guidance for Developers, Land Owners and Consultants.** YAHPAC.
- [7] British Standards Institute (2001). **BS 10175:2001: Investigation of Potentially Contaminated Sites – Code of Practice.** BSI, London.
- [8] British Standards Institute (1999). **BS 5930:1999: Code of Practice for Site Investigations.** BSI, London.

[9] British Standards Institute (2007). **BS 8485:2007: Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments**. BSI, London.

[10] Environment Agency (2004). **CLR11: Model Procedures for the Management of Land Contamination**. Environment Agency, Bristol.

GLOSSARY OF TERMS

This strategy document uses a number of terms that are defined in the statutory guidance and which are contained within Part 2A legislation. The meanings of the most important of these terms are detailed below and where appropriate a reference to the relevant section of Part 2A has been included.

Appropriate Person:	Defined in section 78A(9) as: 'any person who is an appropriate person, determined in accordance with section 78F, to bear responsibility for any thing which is to be done by way of remediation in any particular case.'
Class A person:	A person who is an appropriate person by virtue of section 78F(2) (that is because he has caused or knowingly permitted a pollutant to be in, on or under the land).
Class B person:	A person who is an appropriate person by virtue of section 78F(4) or (5) (that is, because he is the owner or occupier of the land in circumstances where no class A person can be found with respect to a particular remediation action).
Contaminant:	A substance which is in, on or under the land and which has the potential to cause significant harm or the pollution of controlled waters.
Contaminated Land:	Section 78A (2) 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 reason of substances in, on or under the land, that; a) significant harm is being caused or there is

	<p>a significant possibility of such harm being caused; or</p> <p>b) pollution of controlled waters is being, or is likely to be, caused.'</p> <p>OR with respect to radioactive contamination defined in section 78A(2) (as modified) as; 'any land which appears to the local authority in whose area the land is situated to be in such a condition, by reason of substances in, on or under the land, that;</p> <p>a) harm is being caused; or</p> <p>b) there is a significant possibility of harm being caused.'</p>
Controlled Waters:	Defined in section 78A(9) by reference to Part 3 (section 104) of the Water Resources Act 1991; this includes territorial and coastal waters, inland fresh waters and ground waters.
Enforcing Authority:	Defined in section 78A(9) as: <p>a) in relation to a special site, the Environment Agency;</p> <p>b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated.</p>
Environment Agency:	An executive non-departmental public body, which aims to protect and improve the environment and to promote sustainable development.
Geology:	The study of the structure of rocks, minerals and soils in specific geographical areas
Harm:	Defined in section 78A(4) as: 'harm to the health of living organisms or other interference with the ecological systems of which

	<p>they form part and, in the case of man, includes harm to his property.'</p> <p>OR with respect to radioactive contamination defined in section 78A(4) (as modified) as: 'lasting exposure to any person being resulting from the after effects of a radiological emergency, past practice or past work activity.'</p>
Hydrogeology:	The study of water movement through rock beneath the earth's surface.
Hydrology:	The study of the occurrence, distribution, movement and properties of all waters on the earth's surface and in its atmosphere.
Inspection using statutory powers of entry:	Any detailed inspection of land carried out through use of powers of entry given to an enforcing authority by section 108 of the Environment Act 1995.
Intrusive Investigation:	An investigation of land (for example by exploratory excavations) which involves actions going beyond simple visual inspection of the land or assessment of documentary evidence. Also known as site investigation.
Local Authority:	Defined in section 78A(9) as meaning any unitary authority or district council etc.
Orphan Linkage:	A significant pollutant linkage for which no appropriate person can be found, or where those who would otherwise be liable are exempted by one of the relevant statutory provisions.
Owner:	Defined in section 78A(9) as: 'a person (other than the mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not

	let at a rack rent, would be so entitled if it were so let.'
Part 2A:	Part 2A of the Environmental Protection Act 1990.
Pathway:	One or more routes or means by which a receptor; a) is being exposed to, or affected by, a contaminant, or b) could be so exposed or affected.
Public Register:	Register maintained by the enforcing authority under section 78R of particulars relating to contaminated land.
Pollutant:	A contaminant which forms part of a pollutant linkage.
Pollutant Linkage:	The relationship between a contaminant, a pathway and a receptor.
Pollution of controlled waters:	Defined in section 78A(9) as; 'The entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter.'
Prioritisation:	The process of scoring sites based on the potential contaminant sources, pathways and receptors for a site and its surroundings. This creates a prioritised list of sites, which can then be inspected in priority order.
Receptor:	Either: a) a living organism, a group of living organisms, an ecological system or a piece of property which: i) is in a category listed in table A in chapter A as a type of receptor, and ii) is being, or could be, harmed, by a contaminant; or b) controlled waters which are being, or could be, polluted by a contaminant; or

	<p>c) a person subjected to lasting exposure resulting from the after-effects of a radiological emergency, past practice or past work activity.</p>
<p>Remediation:</p>	<p>Defined in section 78A(7) as</p> <p>'a) the doing of anything for the purpose of assessing the condition of;</p> <ul style="list-style-type: none"> i) the contaminated land in question; ii) any controlled waters affected by that land; or iii) any land adjoining or adjacent to that land; <p>b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose -</p> <ul style="list-style-type: none"> i) of preventing or minimising, or remedying or mitigating the effects of any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or ii) of restoring the land or waters to their former state; or <p>c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.'</p> <p>OR with respect to radioactive contamination defined in section 78A(7) (as modified) as:</p> <p>'a) the doing of anything for the purpose of assessing the condition of –</p> <ul style="list-style-type: none"> i) the contaminated land in question; or ii) any land adjoining or adjacent to that land; <p>b) the doing of any works, the carrying out of any</p>

	<p>operations or the taking of any steps in relation to any such land for the purpose -</p> <ul style="list-style-type: none"> i) of preventing or minimising, or remedying or mitigating the effects of any harm by reason of which the contaminated land is such land; or ii) of restoring the land to its former state; or <p>c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land.’</p>
Remediation Notice:	Defined in section 78E(1) as a notice specifying what an appropriate person is to do by way of remediation and the periods within which he is required to do each of the things so specified.
Remediation Statement:	Defined in section 78H(7). It is a statement prepared and published by the responsible person detailing the remediation actions which are being, have been, or are expected to be, done as well as the periods within which these things are being done.
Risk:	The combination of: <ul style="list-style-type: none"> a) the probability, or frequency, of occurrence of a defined hazard (for example, exposure to a property of a substance with the potential to cause harm); and b) the magnitude (including the seriousness) of the consequences.
Significant harm:	Defined in section 78A(5). It means any harm which is determined to be significant in accordance with chapter A of the statutory guidance.
Significant possibility	A possibility of significant harm being caused

of significant harm:	which, by virtue of section 78A(5), is determined to be significant in accordance with chapter A of the statutory guidance.
Site Investigation:	An investigation of land (for example by exploratory excavations) which involves actions going beyond simple visual inspection of the land or assessment of documentary evidence. Also known as intrusive investigation.
Special Site:	<p>Defined by section 78A(3) as</p> <p>'Any contaminated land -</p> <ul style="list-style-type: none"> a) which has been designated as such a site by virtue of section 78C(7) or 78D(6)...; and b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4)...' <p>The effect of a site being designated as a Special Site is that the Environment Agency, rather than the local authority, becomes the enforcing authority for the land.</p>
Substance/Source:	<p>Defined in section 78A(9) as:</p> <p>'Any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.'</p> <p>OR with respect to radioactive contamination defines in section 78A(9) (as modified) as:</p> <p>'Whether in solid or liquid form or in the form of a gas or vapour, any substance which contains radionuclides which have resulted from the after-effects of a radiological emergency or which are or have been processed as part of a past practice</p>

	or past work activity, but shall not include radon gas or the following radionuclides: Po-218, Pb-214, At-218, Bi-214, Rn-218, Po-214 and Tl-210.'
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APPENDIX A – POSSIBLE SOURCES OF CONTAMINATION

- ◆ Smelters, foundries, steel works, metal processing & finishing works
- ◆ Coal & mineral mining & processing, both deep mines and opencast
- ◆ Heavy engineering & engineering works, e.g. car manufacture, shipbuilding
- ◆ Military/defense related activities
- ◆ Electrical & electronic equipment manufacture & repair
- ◆ Gasworks, coal carbonisation plants, power stations
- ◆ Oil refineries, petroleum storage & distribution sites
- ◆ Manufacture & use of asbestos, cement, lime & gypsum
- ◆ Manufacture of organic & inorganic chemicals, including pesticides, acids/alkalis, pharmaceuticals, solvents, paints, detergents and cosmetics
- ◆ Rubber industry, including tyre manufacture
- ◆ Munitions & explosives production, testing & storage sites
- ◆ Glass making & ceramics manufacture
- ◆ Textile industry, including tanning & dyestuffs
- ◆ Paper & pulp manufacture, printing works & photographic processing
- ◆ Timber treatment
- ◆ Food processing industry & catering establishments
- ◆ Railway depots, dockyards (including filled dock basins), garages, road haulage depots, airports
- ◆ Landfill, storage & incineration of waste
- ◆ Sewage works, farms, stables & kennels
- ◆ Abattoirs, animal waste processing & burial of diseased livestock

- ◆ Scrap yards
- ◆ Dry cleaning premises
- ◆ All types of laboratories
- ◆ Burial sites and graveyards
- ◆ Agriculture – specifically the excessive use or spills of pesticides, herbicides, fungicides, sewage sludge & farm waste disposal
- ◆ Naturally occurring contamination

APPENDIX B – PART 2A RECEPTORS

The receptors detailed below are those contained within the statutory guidance [3] and considered under Part 2A. For further details of possible receptors and what constitutes significant harm, please refer to the statutory guidance [3].

- ◆ Human beings

- ◆ Any ecological system, or living organism forming part of such system, within a location which is:
 - i) A site of special scientific interest
 - ii) A national nature reserve
 - iii) A marine nature reserve
 - iv) An area of special protection for birds
 - v) Any European site within the meaning of regulation 10 of the Conservation Regulations 1994 e.g. special areas of conservation and special protection areas.
 - vi) Any candidate special areas of conservation or special protection areas
 - vii) Any habitat afforded protection under paragraph 6 of planning policy statement 9 (PPS9) e.g. RAMSAR sites
 - viii) Any nature reserve under section 21 of the National Parks and Access to the Countryside Act 1949

- ◆ Property in the form of;
 - i) Crops, including timber
 - ii) Produce grown domestically, or on allotments for consumption
 - iii) Livestock
 - iv) Other owned or domesticated animals
 - v) Wild animals which are the subject of shooting or fishing rights

- ◆ Property in the form of buildings. For this purpose “building” means any structure or erection, and any part of a building including any part below ground level, does not include plant/machinery within a building.

- ◆ Controlled waters, as defined by the Water Resources Act 1991. Including groundwater, rivers, streams etc.

APPENDIX C – DEFINITION OF A SPECIAL SITE

A special site is a contaminated land site that is regulated by the Environment Agency instead of the local authority. The definition of a special site as given in the Contaminated Land (England) Regulations 2006 [2] is reproduced in the extract text below for information only. Reference should be made to the full text of the legislation and statutory guidance for a full legal definition and for details of references where quoted.

Contaminated land of the following descriptions is prescribed for the purposes of section 78C(8) as land required to be designated as a special site:

- a) land affecting controlled waters in the circumstances specified in regulation 3;
- b) land which is contaminated land by reason of waste acid tars in, on or under the land;
- c) land on which any of the following activities have been carried on at any time;
 - i) the purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal; or
 - ii) the manufacture or processing of explosives;
- d) land on which a prescribed process designated for central control has been or is being carried on under an authorisation, where the process does not solely consist of things being done which are required by way of remediation;
- e) land on which an activity has been or is being carried on in a Part A(1) installation or by means of Part A(1) mobile plant under a permit,

where the activity does not solely consist of things being done which are required by way of remediation;

- f) land within a nuclear site;
- g) land owned or occupied by or on behalf of -
 - i) the Secretary of State for defence;
 - ii) the defence council,
 - iii) an international headquarters or defence organisation, or
 - iv) the service authority of a visiting force, being land used for naval, military or air force purposes;
- h) land on which the manufacture, production or disposal of -
 - i) chemical weapons,
 - ii) any biological agent or toxin which falls within section 1(1)(a) of the Biological Weapons Act 1974 (restriction on development of biological agents and toxins), or
 - iii) any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act (restriction on development of biological weapons) has been carried on at any time;
- i) land comprising premises which are or were designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991 (arrangements for development etc of nuclear devices);
- j) land to which section 30 of the Armed Forces Act 1996 (land held for the benefit of Greenwich hospital) applies;

k) land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land; and

l) land which -

i) is adjoining or adjacent to land of a description specified in any of sub-paragraphs (b) to (k); and

ii) is contaminated land by virtue of substances which appear to have escaped from land of such a description.



Environmental Health Trading Standards and Licensing Services

Enforcement Policy

This document is the enforcement policy for City of York Council’s environmental health, trading standards and licensing services. It sets out the key principles under which officers will seek to achieve compliance with the legislation enforced by these services. In carrying out their duties officers will adhere to the principles of good enforcement set out in the ‘Statutory Code of Practice for Regulators’ and all other relevant codes of good practice.

1.0 Introduction

The main purposes of the environmental health, trading standards and licensing services are to maintain a fair and safe trading environment for consumers and businesses, to help reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York and to protect and improve the environment. We recognise that effective and well-targeted regulation is essential in achieving this.

We will ensure legal compliance by:

- Helping and encouraging businesses and individuals to understand comply with the law.
- Responding proportionately to breaches of the law.

2.0 Economic Progress

We will consider the impact that our regulatory activities may have on businesses, including consideration of costs, effectiveness and perceptions of fairness. We will only adopt a particular approach if the benefits justify the costs and in doing so will endeavour to keep any perceived burdens to a minimum.

(References to costs and benefits include economic, social and environmental costs and benefits).

3.0 Risk Assessment

We will allocate our resources where they will be most effective by assessing the risks due to non-compliance with the law. The risk factors include:

- the potential impact on residents, consumers and business in failing to meet legal requirements.
- the likelihood of non-compliance taking into account matters such as: the past history, the systems the business has in place, management competence and willingness to comply.

4.0 Advice and Guidance

We recognise that prevention is better than cure and will actively work with business and residents to advise on and assist with, compliance with the law.

In doing this we will ensure that:

- Legal requirements are made available and communicated promptly upon request.
- The information we provide will be in clear, concise and accessible language. Advice will be confirmed in writing where necessary.
- We will clearly distinguish between legal requirements and guidance aimed at improvements above minimum standards.

5.0 Inspections and Other Visits

All inspections and other visits to businesses will be undertaken after consideration of the risk the business poses if it fails to comply with the law (see paragraph 3.0 above), where the business has requested advice or where intelligence/information suggests that an inspection or visit is appropriate.

- Where we carry out inspections we will give feedback to the business on what the officer has found; this will include positive feedback to encourage and reinforce good practice.
- Where practicable we will co-ordinate inspections with other regulators to minimise the burden on businesses.
- Random inspection will be undertaken where government guidelines require us to do so. A small amount of random inspection may also be undertaken to test our risk assessments or the effectiveness of any action we have taken.

6.0 Information Requirements

We will only ask businesses for information that is necessary after considering the cost and benefit to obtaining the information. Where possible we will share this information with our partners (taking account of data protection) to prevent the need for providing the information more than once.

7.0 Compliance and Enforcement Actions

We recognise that most businesses and individuals wish to comply with the law, however firm action will be taken against those who flout the law or act irresponsibly.

We will carry out all of our enforcement duties, including taking formal enforcement action, in a fair, equitable and consistent manner. Whilst officers exercise judgement in individual cases, we will have arrangements in place to promote consistency including liaison with other agencies and authorities.

Formal enforcement action will only be considered and taken in the first instance in cases involving unfair commercial practices against consumers, commercial fraud, sales of age restricted products, occupational health and safety, public safety, a risk to public health (including food safety), statutory nuisances, animal health and welfare, damage to the environment, overloaded goods vehicles, dog fouling, trading standards offences committed by doorstep sellers and the sale of imitation firearms.

Formal enforcement action will also be considered and may be taken where advice has been ignored.

Where formal enforcement action is necessary, we will consider the most appropriate course of action (from the range of sanctions and penalties available) with the intention of:-

- Aiming to change the behaviour of the offender
- Aiming to eliminate any financial gain or benefit from non-compliance
- Being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with a criminal conviction.
- Being proportionate to the nature of the offence and harm caused

- Aiming to restore the harm caused by non-compliance
- Aiming to deter future non-compliance.

Before formal enforcement action is taken:

- There will be an opportunity to discuss the circumstances of the case, unless immediate action is required e.g. to prevent the destruction of evidence or there is an imminent risk to the environment or health and safety. This discussion will usually follow an interview under caution if a prosecution is being considered.
- Where immediate formal enforcement action is taken, which will usually be the service of a written notice, reasons for such action will be given at the time (if possible) and confirmed in writing within 10 working days.
- Where there are rights of appeal against formal enforcement action, notification of the appeal mechanism will be clearly set out in writing at the time the action is taken.
- Clear reasons will be given for any formal enforcement action taken, and confirmed in writing.

For the purposes of this policy 'formal enforcement action' includes serving a legal notice (e.g. an improvement, suspension, prohibition, fixed penalty or abatement notice), the seizure of goods, the seeking of an injunction, the issue of a 'formal' written caution and prosecution. In cases involving food safety and the issue of legal notices and voluntary closure of premises we will follow guidance set out in the appropriate Food Standards Agency Food Law Code of Practice.

If the formal enforcement action being considered is a prosecution we will also consider a number of additional factors in line with the Code for Crown Prosecutors and any other nationally recognised guidance such as the

Enforcement Management Model published by the Health and Safety Executive. These factors may include the following:

- The seriousness of the alleged offence
- The history of the party concerned
- The willingness of the business or the individual to prevent a recurrence of the problem and co-operate with officers
- Whether it is in the public interest to prosecute
- The realistic prospect of conviction
- Whether any other action (including other means of formal enforcement action) would be more appropriate or effective
- The views of any complainant and other persons with an interest in prosecution.

These factors are NOT listed in order of significance. The rating of the various factors will vary with each situation under consideration.

8.0 Accountability

We will be accountable for the efficiency and effectiveness of our activities, while remaining independent in the decisions we take.

- We shall provide businesses and individuals with effective consultation and opportunities for feedback on our service.
- Officers will be courteous, fair and efficient at all times, and will identify themselves by name.
- Any complaints about the way you have been treated will follow City of York Council's complaints procedure, which is easily accessible to all service users, and explains how to make a complaint and the

timescales involved. A copy of the complaints procedure can be obtained from 9 St Leonard's Place, York, by telephoning 01904 551550 or via our website at www.york.gov.uk

9.0 Application of our enforcement policy

All officers will have regard to this document when making enforcement decisions.

Any departure from this policy must be exceptional, capable of justification and be fully considered by the head of service before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made. In cases of emergency or where any exceptional conditions prevail, the chief executive may suspend any part of this policy where necessary to achieve effective running of the service and/or where there is a risk of injury or to health of employees or any members of the public.

10.0 Review

This document will be subject to an annual review with additional reviews as and when required. Improvements will be made if there are any changes in legislation or in local needs.

If you have any comments please contact the head of environmental health and trading standards by calling 01904 551550 or by writing to 9 St Leonard's Place, York YO1 7ET or email to trading.standards@york.gov.uk.

APPENDIX E – CONFIDENTIALITY OF INFORMATION

The majority of the information generated by, or supplied to the council about the condition of land will be in the public domain. This will be true whether or not the site appears on the public register.

Under certain circumstances the council may not be able to place information on the public register (or release it in response to other requests).

Circumstances where information is withheld include:

- ◆ Where this is in the interests of national security
- ◆ Where this is commercially confidential
- ◆ Where the information relates to the affairs of any individual or business

Where information has been excluded from the public register for reasons of commercial confidentiality, the council will place a statement on the register to indicate this.

The supply of any other environmental information held by the council is also subject to 12 specified exceptions (determined by the Environmental Information Regulations 2004), although non-disclosure of information may be subject to a public interest test – see below. These include:

- ◆ Where this is in the interests of national security
- ◆ Where the information is an issue in any legal proceedings or enquiry

- ◆ Where the information is still being completed, or is an internal communication of a relevant person

- ◆ Where this would affect the confidentiality of the deliberations of a relevant person

- ◆ Where this is commercially confidential

The confidentiality of any information supplied to the council by third parties is determined when the information is received. Where a third party states that information it supplies to the council is commercially confidential, or cannot be released for any of the other reasons given above, then the council asks for a justification to be provided giving the reasons for this. Information that is confirmed as confidential on the basis of a justification cannot be released to other parties. Where the council is unable to supply information it will give the reason for this.