

# Contaminated Land Strategy 2013

Part 2A of the Environmental Protection Act 1990  
Contaminated Land (England)(Amendment) Regulations 2012



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## 1. INTRODUCTION

The contaminated land regime, which is set out in Part 2A of the [Environmental Protection Act 1990](#), was introduced in England on 1 April 2000. Part 2A provides a risk-based approach to the identification and remediation of land where contamination poses an unacceptable risk to human health or the environment. The objectives of the Part 2A regime are:

- a) To identify and remove unacceptable risks to human health
- b) To seek to ensure that contaminated land is made suitable for its current use
- c) To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development

Local authorities are the main regulators and take the lead role.

Every local authority has a duty to cause its area to be inspected from time to time for the purpose -

- a) of identifying contaminated land
- b) of enabling the authority to decide whether land is required to be a special site

The authority must act in accordance with guidance issued by the Secretary of State. The [Contaminated Land Statutory Guidance](#) by Defra and the [Radioactive Contaminated Land Statutory Guidance](#) by DECC was recently revised and published in April 2012.

Local Authorities must produce a formal contaminated land strategy document which clearly sets out how land will be identified for detailed inspection in an ordered, rational and efficient manner. The strategy must be kept under periodic review.

## NORTHUMBERLAND COUNTY COUNCIL

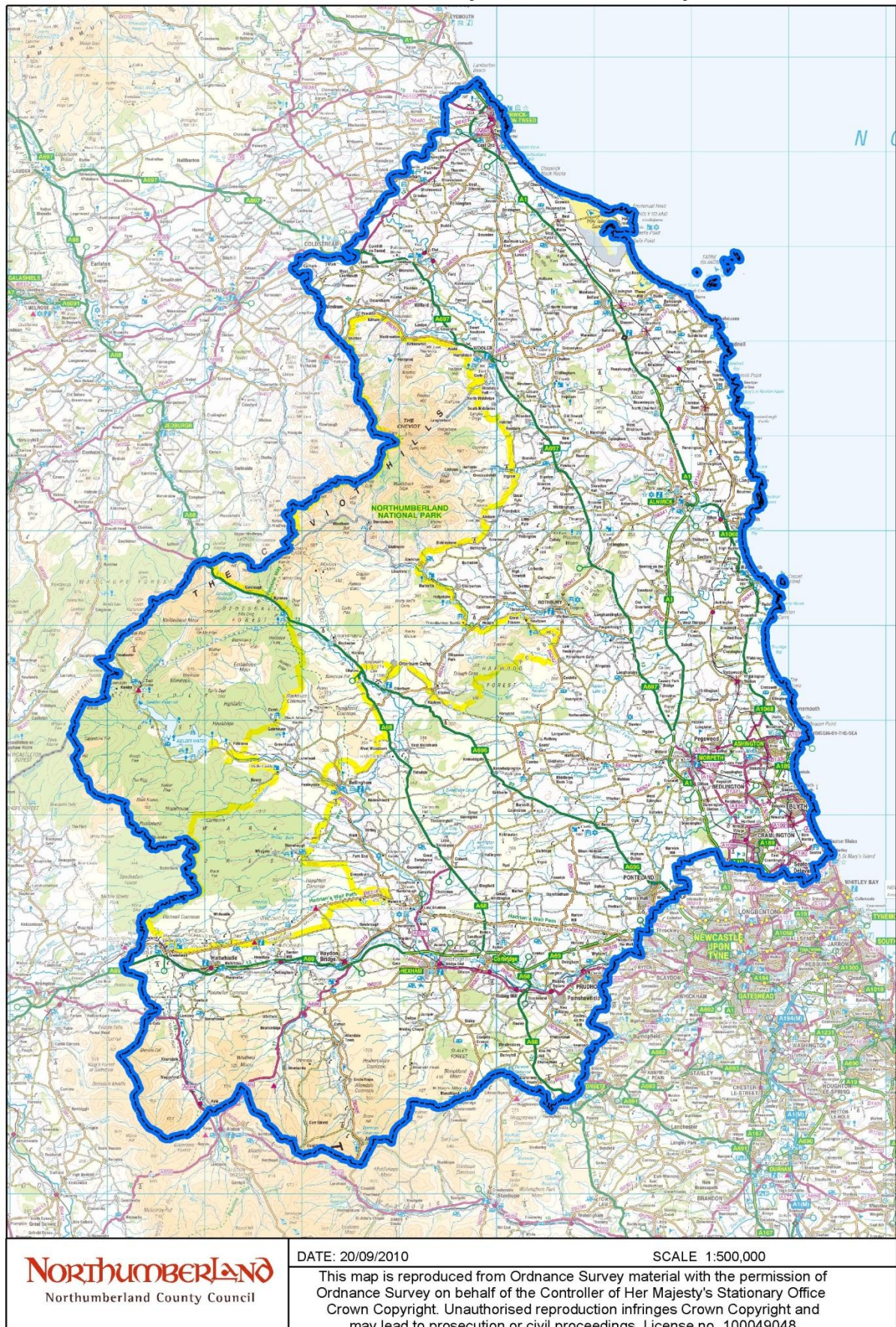
Following local government reorganisation a new unitary authority, Northumberland County Council was formed in April 2009 and brought together Northumberland County Council, Alnwick District Council, Berwick-upon-Tweed Borough Council, Blyth Valley Borough Council, Blyth Port Health Authority, Castle Morpeth Borough Council, Tynedale District Council and Wansbeck District Council.

The Contaminated Land Strategy 2010 was adopted by Northumberland County Council in Spring 2011 which consolidated information from the previous district strategies to enable a consistent approach to inspection across Northumberland.

This review follows revisions to the Statutory Guidance published in April 2012. There is no formal mechanism in place for approval of local authority strategies.



**Figure 1**  
**Northumberland County Council Boundary**



## **2. LOCAL OBJECTIVES**

### **Vision and Values**

Northumberland County Council has a vision of 'leading Northumberland to a greater future'.

The values embedded in all aspects of service delivery and partnership working are strength, fairness, approachability and innovation. The contaminated land strategy aims to meet all of these values through robust, fair procedures for inspection of potentially contaminated land.

### **Sustainable Community Strategy**

Northumberland's Sustainable Community Strategy outlines the long term, collective ambition and vision for the County. By 2021, all residents in Northumberland will feel better able to:

- enjoy a good standard of living
- live safely and in comfort; lead healthier lifestyles
- readily access the things they need
- care about the environment

Ensuring that the environment, where people live, work and visit, is not at risk from historic contamination will fulfil these objectives.

### **Strategic Priorities**

Relevant priorities are:

- safeguarding and sustaining the environment
- improving health, care and wellbeing
- supporting the development of safe and strong communities

Investigations into potentially contaminated sites will ensure that residents within the county are protected from harm.

### **Corporate Priorities**

The Council's corporate priorities for 2011/14 are

- respect and enhance our environment
- grow Northumberland's economy
- empower residents, families and communities
- promote community health and wellbeing

Northumberland County Council faces a number of challenges over the next few years to deliver services with fewer financial resources. We have a duty to safeguard and protect residents at greatest risk – Public Protection will investigate land where there is the greatest risk from historic contamination in line with the strategy and statutory guidance.



Planning documents that are relevant to the new unitary authority (statutory and non-statutory) to guide development have been brought together in the [Northumberland Consolidated Planning Policy Framework](#)

The Core Strategy is anticipated to be adopted in Summer 2014.

### 3. PART 2A OF THE ENVIRONMENTAL PROTECTION ACT 1990

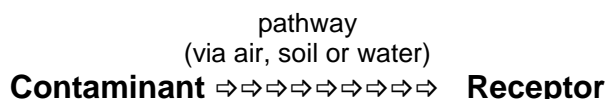
Contaminated land is defined as:

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

- Significant harm is being caused or there is a significant possibility of such harm being caused; or
- Significant pollution of controlled waters is being, or is likely to be caused

What may and may not constitute the various categories of harm is described in the [statutory guidance](#).

Local authorities must search their Districts for land which has both sensitive receptors and sources of potential contamination. Where they have good reason to believe these both exist, they must undertake a formal risk assessment to establish whether there is the potential for them causing harm or pollution as described. This is known as a contaminant linkage.



Where they are satisfied that significant harm is occurring, or there is a significant possibility of such harm, or significant pollution of controlled waters, they must declare that a significant contaminant linkage exists and that the land is therefore contaminated land by definition. In every case where the land does not fall within the category of a special site, they must commence regulatory action.

### ROLES AND RESPONSIBILITIES

The primary regulator in respect of these powers in this area is Northumberland County Council. The role in broad terms includes:

- To cause the area to be inspected to identify potentially contaminated sites
- To determine whether any particular site is contaminated (by definition)
- To determine whether any such land should be designated a 'special site'
- To act as enforcing authority for contaminated land not designated as a 'special site'

The Environment Agency has four main roles:

- To assist local authorities in identifying contaminated land
- To provide site specific guidance to local authorities on contaminated land
- To act as enforcing authority for contaminated land designated a 'special site'
- To publish periodic reports on contaminated land

Where the presence of contaminated land has been confirmed the enforcing authority must:

- Establish who should bear responsibility for remediation
- Decide after consultation what must be done in the form of remediation and ensure it is effectively carried out
- Determine liability for the costs of the remedial works
- Maintain a public register of regulatory action in relation to contaminated land

## **DEALING WITH CONTAMINATION**

There are many situations where land is contaminated but where it does not meet the legal definitions of Part 2A.

### **a) Development on Contaminated Land**

Planning and Development Control systems are in place to control development on land that may be contaminated by a previous use. The [National Planning Policy Framework](#) sets out current planning policy for England (paragraphs 120 and 121 are specific to contaminated land issues).

[Building Regulations](#) (Building Act 1984) Approved Document C requires measures to be taken to protect new buildings from the effects of contamination.

New developments will continue to be remediated through planning conditions and building control to ensure that sites are investigated thoroughly and remediated to an acceptable standard for their future use.

### **b) Other Regulatory Regimes**

Industrial processes permitted under the Environmental Permitting Regulations 2010 (Part A1 and Part A2 processes) control emissions to air, water and land. The environmental permit requires that any deterioration in the condition of the land that has occurred as a result of the permitted activities is dealt with and the land is returned to a satisfactory state when the permit is surrendered. This does not deal with contamination arising as a result of non-permitted activities undertaken at the site, and, historic contamination that has occurred before the permitted activities. The Part 2A regime should be used to deal with these issues.

Other incidents of land contamination may be regulated under waste management licensing (Environmental Protection Act 1990 Part II), Water Resources Act 1991 or COMAH Regulations 1999. The Environmental Damage Regulations 2009 will be considered for events that occurred after March 2009.

## **4. CHARACTERISTICS OF NORTHUMBERLAND**

### **Geography**

Northumberland covers an area of 5013km<sup>2</sup> with a population of 316000. It borders Cumbria to the west; County Durham to the south; Scottish Borders to the north; Newcastle and North Tyneside to the south and has 208km of coastline. Northumberland is the most sparsely populated county within England and is largely rural in nature. Approximately 50% of the population is situated in the South East of Northumberland.

### **Heritage**

Northumberland has a violent history due to Viking invasions and border disputes with Scotland. Roman remains and fortifications are evident at Hadrian's Wall, a world heritage site and the county is home to more castles than any other county in Britain.

The industrial history of Northumberland is linked to the natural resources of the land. Red Whin, brick-red fine grained granite quarried for roadstone at Biddlestone was used to line the Mall in London. Northumberland played a key role in the Industrial Revolution with the rich coal seams mined extensively, particularly in the south east.

Lead mining was successful in the north Pennines from 1750 until 1850, and the largest silver mine in the world was present at Allenheads until its closure in 1896.

Alongside mineral extraction, fishing and farming were traditional trades, all of which present potential sources of contamination.

Secondary industries, such as ports, ship repair yards, tanneries, abattoirs, brick and tile works, lime processing, and timber treatment works developed. Towns and villages were serviced by an extensive railway network, sewage works, gasworks and hospitals, all of which further contributed to the potential presence of contamination across the county.

More recently waste disposal sites, chemical manufacturing processes and military use have the potential to contaminate land.

### **Geology**

The Cheviot Hills are the remains of a Devonian volcano and are the oldest rocks in the region. Igneous intrusions of the Whin Sill are evident across Northumberland e.g. ridges along Hadrian's Wall and cliffs at Bamburgh Castle.

Northumberland is principally composed of sedimentary rocks of carboniferous age which have played a vital role the history and economics of the area. Carboniferous limestones, composed of sandstones, mudstones and limestones outcrop in the north and north east of the county. This is overlain by the millstone Grit series consisting of limestones, shales and sandstones in the south west and central east



of the county.

South east Northumberland is dominated by lower and middle coal measures with coal, sandstone and mudstone layers that reflect changes in land and sea levels. Most of the county's 120 coal mines were located within this area and were heavily exploited until the gradual decline of the coal and steel industries from the 1930's.

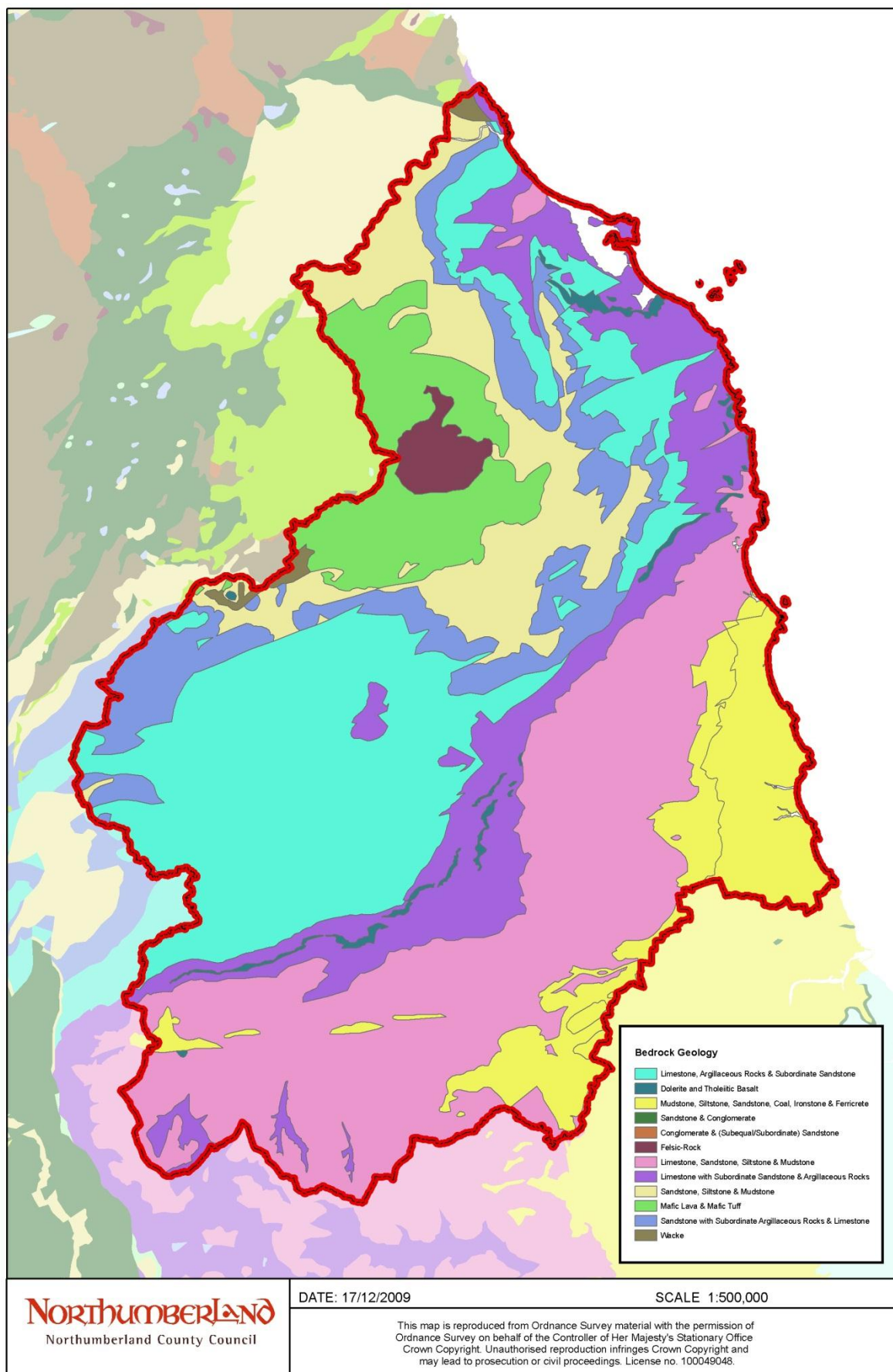
Glacial drift deposits of varying composition and thickness lie over much of the county. The drift geology comprises of glacial till, boulder clay, glacial sands and gravels.

## **Hydrology and Hydrogeology**

The main rivers in Northumberland are the Tweed, Till, Aln, Coquet, Wansbeck, Blyth, North Tyne and South Tyne. These rivers have a high conservation and ecological value with salmon, sea trout, wild brown trout, otters, pearl mussels and white-clawed crayfish among the species they support. The Rivers Coquet, Till and Lower Tweed are designated Sites of Special Scientific Interest (SSSI). The chemical water quality throughout Northumberland is generally very good.

The principal aquifer in Northumberland is the Fell sandstone which provides the public water supply around Berwick, Wooler and Rothbury. The sandstone is capable of supporting large abstractions and releases stored groundwater in the form of springs. The Water Framework Directive (WFD) status of this aquifer around the Berwick area is poor due to over abstraction as well as elevated nitrate concentrations.

A number of secondary aquifers are important for local supplies. These comprise limestones and sandstones and are the source of numerous springs which are used widely for rural private water supply along with small boreholes. Limestones and sandstones are permeable, and therefore susceptible to groundwater contamination and migration of contaminants. The superficial deposits (glacial till, sands and gravels etc) overlying these rocks provides an element of protection to all groundwater. The thicker, more impermeable deposits provide more protection than the thinner more freely draining deposits. The Whin Sill cuts across Northumberland. It is highly fractured and while it does not store large amounts of groundwater, groundwater can transmit through it via fractures. The WFD status of the secondary aquifers are all good for quantitative status, some are poor chemical status due to historic mining of coal and metals.



**Figure 2**  
**Bedrock Geology of Northumberland**

## 5. IDENTIFICATION OF POTENTIALLY CONTAMINATED LAND

Contaminated land information previously held by the Districts has been reviewed to ascertain the extent to which any specified receptors are likely to be found in the County and the history, scale and nature of industrial or other potentially contaminative uses. Previous uses considered potentially contaminative are listed in appendix 5.

### POTENTIAL SOURCES OF CONTAMINATION

Source	Information
<b>Industrial History</b>	Potential sources of historic contamination have been identified using historic map data, local information and trade directories. The data is stored in Geographical Information Systems.
<b>Current Industry</b>	Industrial areas of the county will be inspected in accordance with the statutory guidance to establish whether there is potential for contamination to exist and whether it is controlled by another agency.
<b>Environmental Permitting Regulations 2010</b>	There are currently 124 processes authorised by the Council and these range from cement batching plants to unloading of petrol at service stations. Many of these processes have the potential to pollute the land. There are currently 93 processes regulated by the Environment Agency. The regime should control unauthorised discharges to land but their presence will need to be noted and the potential for long term pollution assessed, particularly post closure.
<b>Hazardous Substances</b>	Northumberland County Council is a Hazardous Substances Authority for the purposes of the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 1992. This legislation requires consent to allow the presence on land of hazardous substances above a specified quantity. These regulations were amended by the Planning (Control of Major Accident Hazards) Regulations 1999 to take account of the Control of Major Accident Hazards (COMAH) Regulations 1999.
<b>COMAH sites</b>	The Control of Major Accident Hazards Regulations 1999 are enforced by the Environment Agency and Health & Safety Executive to control both on and off site risks from industries with a high potential for disaster from dangerous substances (flammable, toxic or explosive). There are currently 2 top tier COMAH sites within Northumberland and 3 lower tier sites.
<b>NIHHS sites</b>	It should be noted that all sites notified to the HSE under the Notification of Installations Handling Hazardous Substances (NIHHS) Regulations 1982, as well as COMAH sites, will be held on the hazardous substances register, so there should be no need to consult with the HSE on their



	location.
<b>Explosives</b>	are not directly covered by the hazardous substances regulations but are controlled by the Health & Safety Executive under licences issued under the Explosives Act 1875. Any licensed sites will be identified.
<b>Current Landfill and Waste Processing Plants</b>	are licensed by the Environment Agency under Environmental Permitting Regulations 2010.
<b>Closed landfill sites</b>	A potentially significant source of risk, especially those which operated before the licensing requirements of the Control of Pollution Act 1974. Closed landfills in the county will be identified and their association with any specified receptors considered in detail. Waste Management will be consulted for information (including monitoring data) relating to sites filled by former parish, district, borough and county councils.
<b>Sewage works and land used for the disposal of sewage sludge</b>	Land dedicated for the disposal of sewage sludge is notified to the Environment Agency under the, Sludge (Use in Agriculture) Regulations 1989. This land, together with all operating and redundant sewage works will be identified and assessed.
<b>Mines and Mineral Extraction</b>	The geology of the area has resulted in large areas used for the extraction of minerals. Many of the resulting quarries were then filled with refuse or other materials. Past quarrying sites will be assessed for the risk they present.
<b>Metalliferous mines</b>	Studies are ongoing into the impact of historic metalliferous mining in the North Pennines area because of elevated lead and zinc levels in River Tyne sediments. Progress on projects will be followed and cross boundary impacts assessed with relevant stakeholders.
<b>Coal Mines</b>	The Coal Authority has liability for surface hazards and subsidence damage under the Coal Mining Subsidence Act 1991. They should be notified if any surface hazards or subsidence damage are identified.
<b>Waste or Derelict Land</b>	often owned by the utilities, railways or local authorities is left seemingly abandoned because it has no particular use or is difficult to access. Information will be assessed through the register of derelict land.
<b>Ministry of Defence Land</b>	Land occupied by Defence Agencies within Northumberland will be considered in relation to specific receptors.
<b>Previously Developed Contaminated Sites</b>	The inspection of the County will identify many potentially contaminated sites which have been developed over the years. In some cases the methods and extent of remediation may be unknown, in others it may be known but the remediation suspected of being inadequate. Planning and Building Control information will be assessed to identify sites of concern.

## 6. POTENTIAL SPECIFIED RECEPTORS

To assess the extent of harm on receptors for the purposes of defining land as contaminated, the Statutory Guidance issued by the Secretary of State under Part 2A of the Environmental Protection Act 1990 will be followed.

The identification of receptors only affects the current use of the land. Any change regarding future use will need to be assessed under the Planning regime. At the time of writing, for assessment of contamination by radiation, only human beings will be considered as a receptor in accordance with the statutory guidance.

### i. Human Beings

The current population of Northumberland County is approximately 316000 with 48% of the population situated within the south east of Northumberland. Human receptors may be present at any location within the County. Tourism is an extremely important part of Northumberland's economy. The potential for persons living on or frequenting a potentially contaminated site will be considered in every case but priority will be given to sites where infants are present.

To assess any possible human health effects, Northumberland Council will follow the Statutory Guidance which lists descriptions of harm.

### ii. Ecological Receptors

The county boasts a myriad of sites of nature and wildlife value. There are many sites of national and international importance due to the valuable habitats and geology of the area. [Berwickshire and North Northumberland Coast](#) is an area of outstanding natural beauty and a designated European Marine Site (EMS).

There are 4 [RAMSAR sites](#)\*

There are 14 [Special Areas of Conservation](#)

There are 6 [Special Protection Areas](#)

There are 114 [Sites of Special Scientific Interest](#)

There are 9 [National Nature Reserves](#) within Northumberland.

There are 27 [Local Nature Reserves](#)

Marine Nature Reserve

(\*Ramsar sites are wetlands of international importance designated under the Ramsar Convention.)

Significant impact of contamination is unlikely but all areas will be identified, examined and advice sought from County Ecologists, Natural England and the Environment Agency regarding harm. The effects on eco-receptors will be assessed using the Statutory Guidance.

Section 40 of the [Natural Environment and Rural Communities Act 2006](#) places a duty on local authorities to consider biodiversity in the work that they do. It should be noted that occasionally contaminated land may support living organisms that would not ordinarily be found in the area, creating a valuable ecological system. Specialist

advice would be sought on the likelihood of rare species and habitats being present within the site under investigation.

There are a number of non-statutory Local Wildlife Sites (formerly Sites of Nature Conservation Interest) within the County identified by the Northumberland Wildlife Trust which can be viewed on: <http://www.magic.gov.uk/> Northumberland Wildlife Trust and the County Ecologists will be consulted regarding non-statutory sites.

There are also a number of protected species within the area such as bats, otters, water voles, great crested newts, freshwater pearl mussels, river jelly lichen and freshwater white-clawed crayfish. In addition, there are a wide range of Northumberland Biodiversity Action Plan habitats and species, and geodiversity sites.

We will consult internal and external stakeholders regarding work that may affect these receptors although they may not necessarily be considered as ecological receptors for the purposes of Part 2A. If works are likely to affect these species adherence to mitigation measures such as precautionary working methods together with licences may be required.

#### **iv. Property**

##### **Animals and Crops**

In accordance with the Statutory Guidance, the types of receptor and the degree or nature of harm described will determine whether the receptor is relevant in terms of the Part 2A Regime.

Timber crops, agricultural and horticultural crops will be assessed and crop yields will be investigated where necessary.

Home grown produce - allotments will be identified and their potential for contamination considered as a result of previous land uses and activities. Similarly, domestic gardens will also be considered.

Agricultural livestock, game and other owned animals will be taken into consideration where necessary.

##### **Buildings and Ancient Monuments**

All buildings and underground services (within the footprint of the building) are potential receptors and will be considered in every case where contamination and buildings exist.

The [Historic Environment Record](#) (HER) is a database that contains more than 22,000 records with information about archaeological and historic remains as diverse as prehistoric settlements and Hadrian's Wall to historic gardens and the defences of World War II. The Northumberland County Council Conservation Officer and Archaeologist (and if necessary, [English Heritage](#)) will be consulted for up to date information on ancient monuments in Northumberland and the potential impact of



contaminants. It is recognised that many former industrial sites may have some archaeological value and the County Archaeologist will be consulted when the site is in or near an unscheduled archaeological site. Any intrusive investigative or remediation works may require a summary heritage assessment and if necessary a method statement to seek to avoid damage to archaeology. In certain circumstances, it may be necessary to undertake additional archaeological mitigation work such as an archaeological watching brief.

## **v. Water**

All controlled waters within the County will be considered as a receptor when inspecting a particular area. Controlled waters include all watercourses, lakes, lochs, coastal waters and water contained in underground strata (groundwater). See appendix 2. Substances will be regarded as having entered controlled waters where they are dissolved or suspended in those waters or, if they are immiscible with water, they are in direct contact with those waters on or beneath the surface of the water.

Land will not be designated as contaminated land where

- a substance is already present in controlled waters
- entry into controlled waters of that substance from land has ceased
- it is not likely that further entry will take place.

The [Environment Agency](#) will be consulted for information regarding water quality, public water supply abstraction points and other licensed water abstractions.

Information will also be sought from the Environment Agency to assess whether an initial investigation into contaminated land could be affected by pollution incidents in the vicinity or authorised discharges to controlled waters.

The Water Framework Directive aims to protect and enhance the quality of controlled waters. River catchments within Northumberland are included in the River Basin Management Plans for Northumbria. The River Basin Management Plan for the Solway Tweed may also affect the boundary between Northumberland and the Scottish Borders. Investigations involving controlled water receptors will have regard to these documents.

## **7. PRIORITISATION OF INSPECTIONS**

In accordance with the Statutory Guidance, the Council will give priority to detailed inspection of land most likely to pose the greatest risk to human health or the environment.

Potentially contaminated sites are categorised using the GeoEnviron Contaminated Land Module. Desk based information will be used for Stage 1 prioritisation to produce a risk ranking score for individual receptors (i.e. human health, groundwater, surface water, ecology/property). The score generated will enable sites to be categorised as high, medium or low. Human health will be the main priority for the Council for future inspection.

Stage 2 prioritisation will enable high risk sites to be prioritised further by using more detailed historical information along with site walkovers and limited sampling.

The system provides flexibility for inclusion of new information on sites and the database will be updated regularly. As more knowledge of sites is obtained, these assessments will be revised and their priority may change. The categories are currently high, medium or low. High priority sites should be inspected within the next 10-15 years. Medium priority sites should be inspected in 20-30 years and low priority sites are unlikely to be inspected in the foreseeable future.

Further work is required to improve the database further by including sites that have been remediated through planning and reduce scores accordingly.

## **8. INSPECTION OF POTENTIALLY CONTAMINATED LAND**

### **OBTAINING DESK TOP INFORMATION**

The suggestion that land may be contaminated can have a significant impact on public perception regarding amenity and financial value. The Council aims to obtain as much information as possible about a site without causing unnecessary alarm. In addition to information from the contaminated land database, this may involve detailed inspection of historical data such as planning and building control files. The Council may also consult others such as: Environment Agency, Department for Environment, Food and Rural Affairs, Natural England, Health & Safety Executive, Health Protection Agency, developers and previous occupiers.

### **INSPECTION OF LAND**

Where evaluation of data indicates a significant contaminant linkage may exist, further site investigations may be required. This is likely to be carried out by a specialist consultant with appropriate experience and expertise. Intrusive investigations will be carried out in accordance with appropriate technical procedures and current guidance to ensure that they:

- a) are effective
- b) do not cause any unnecessary damage or harm

- c) do not cause pollution of controlled waters.

If information indicates that there is no evidence of a significant contaminant linkage, no further inspection will be carried out.

## **POWERS OF ENTRY**

Statutory powers of entry enable the Council to carry out its duties under Part 2A. (see appendix 6). The Council will not use these powers to obtain information about the condition of land, where:

- it can obtain detailed information from third parties without the need for entering the site; or
- a relevant person provides the information within a reasonable and specified time.

## **LAND WHICH MAY BE A SPECIAL SITE**

If land is identified as a potential special site, the Environment Agency will be consulted and subject to agreement may be authorised by the Council under section 108 of the Environment Act 1995 to carry out further intrusive investigation.

The Council will remain responsible for decisions relating to the determination of contaminated land.

## **9. RISK ASSESSMENT**

The revised Statutory Guidance introduced a new categorisation system to assess contaminated land sites. The categories are summarised in figure 4.

The Council will make full use of new technical tools and advice where appropriate (e.g. generic assessment criteria, category 4 screening levels, background concentrations) which are being developed to help in the application of the Statutory Guidance.

Land placed in categories 1 and 2 will be designated as contaminated land and land placed in categories 3 and 4 will not meet the legal definition of contaminated land.

A [National Panel of Experts](#) has been set up to support Local Authorities in making decisions on whether land is or is not contaminated. The intention of the panel is to assist local authorities in the "difficult cases" relating to human health issues only which are viewed to be borderline category 2/category 3 which the Council has not been able to resolve.

For borderline sites, the Council may request assistance from the expert panel.



**Figure 3**  
**Summary of Categories of Contamination**

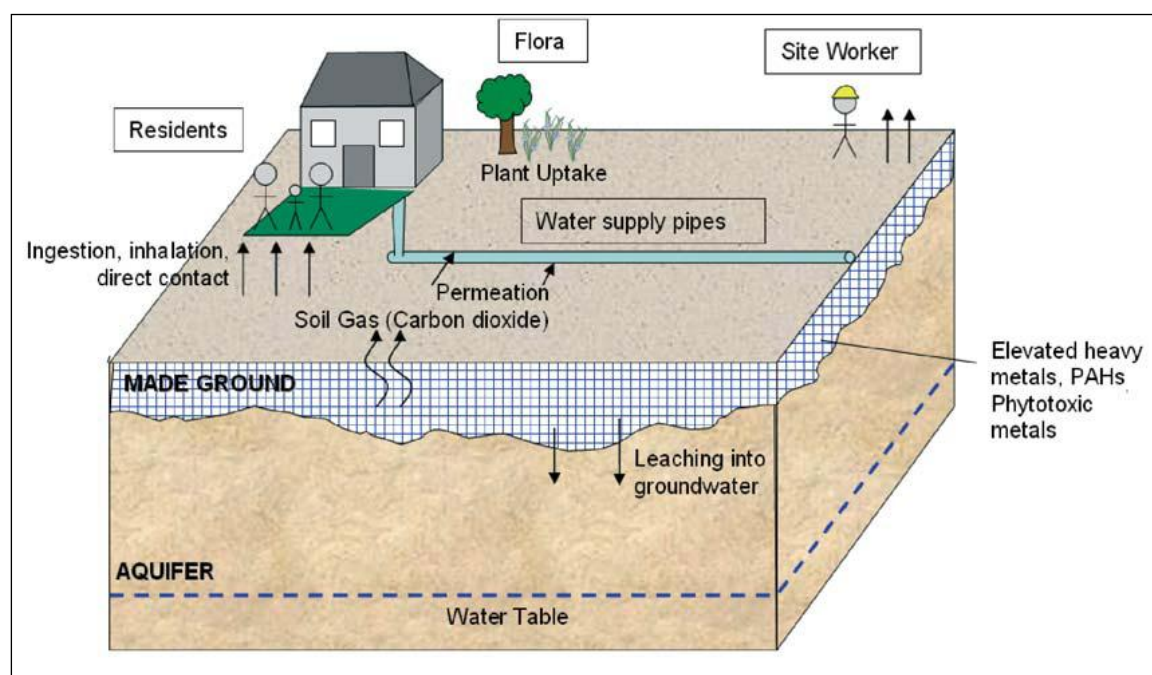
Category	Human Health	Controlled Waters
1	Unacceptably high probability that significant harm would occur if no action is taken to stop it. Significant harm may have been caused or similar situations have caused such harm before in UK.	Strong case that significant possibility of significant harm to controlled waters would occur if no action was taken to stop it.
2	Land is capable of being determined on grounds of significant possibility of significant harm. Although there may be no direct evidence that similar situations or levels of exposure have caused actual harm, there is a strong case for taking action on a precautionary basis.	There is insufficient evidence to place the land in category 1 but the risks are sufficient to pose a significant possibility of significant harm on a precautionary basis.
3	No strong case for determination of land on grounds of significant possibility of significant harm. Risks are not low but intervention is not warranted under Part 2A. The landowner/occupier may choose to take their own action to reduce risks.	The test for category 1 and 2 are not met and regulatory intervention under Part 2A is not warranted. It is unlikely that significant pollution would occur.
4	<ul style="list-style-type: none"> <li>• No contaminant linkage has been established</li> <li>• Normal levels of contaminants in soil</li> <li>• No exceedances of Generic Assessment Criteria</li> <li>• Exposure to contaminants is small compared to environmental exposure to other sources</li> </ul>	<ul style="list-style-type: none"> <li>• No contaminant linkage has been established</li> <li>• Pollution caused is not significant and has little impact</li> <li>• Water pollution is similar to that caused by background contamination (geological conditions or low level diffuse pollution caused by common human activity)</li> </ul>

## 10. DETERMINATION OF CONTAMINATED LAND

There are four possible grounds for determining land is contaminated:

- a) Significant harm is being caused
- b) Significant possibility of significant harm being caused
- c) Significant pollution of controlled waters is being caused
- d) Significant pollution of controlled waters is likely to be caused

In making any determination the Council will take all relevant information into account, carry out appropriate scientific assessments, and act in accordance with the statutory guidance. The determination will identify all three elements of the contaminant linkage and explain their significance. A conceptual site model will also be produced to illustrate the pollutant linkages. A risk summary will be used to document the relevant decisions and understanding of the risks on site.



NHBC & Environment Agency (2008) Guidance for the Safe Development of Housing on Land affected by Contamination R&D Publication 66:2008 Vol 1

**Figure 4**  
**Example of a Conceptual Site Model**

### FORMAL NOTIFICATION OF CONTAMINATED LAND

Prior to determination, the Council will inform owners, occupiers, appropriate persons and the Environment Agency that it intends to determine the land as contaminated. It may be possible to postpone determination if proposals are made to deal with the problem voluntarily to an appropriate standard and timescale.

Once an area of land has been declared contaminated by statutory definition, the Council will prepare a written record to include:

- a) The location, boundaries and area of the land including Ordnance Survey grid references
- b) a risk summary (in layman's terms) to include:
  - an understanding of the risks
  - the contaminants involved
  - the contaminant linkages
  - the potential impact including the possibility that the impact may occur
  - timescale over which risks may become manifest,
  - the uncertainties behind the assessment,
  - risks in context and
  - views on possible remediation
- c) a summary of the way the requirements of the statutory guidance were satisfied

The Council will formally notify, in writing, all relevant parties that the land has been declared contaminated, these to include:

- a) the owner(s)
- b) the occupier(s)
- c) appropriate person(s)
- d) the Environment Agency

At the notification stage it may not be possible to identify all the relevant parties, particularly the appropriate persons. The Council will act on the best information available and review the situation as more information comes to light.

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

- a) a copy of the written record of determination;
- b) copies of site investigation reports (or details of their availability)
- c) an explanation of why the appropriate persons have been chosen as such
- d) details of all other parties notified
- e) written explanations of the test for exclusion and apportionment.

It may be at this stage that the Council will need further information on the condition of the site to characterise any significant contaminant linkages identified. If that is the case an informal attempt will be made to obtain this information from the appropriate persons already identified.

## **IDENTIFICATION OF POTENTIAL SPECIAL SITE**

If the Council are of the opinion that the contaminated land is a special site (see appendix 1) it will inform the Environment Agency of that decision. The Agency will then consider whether it agrees that the land should form a special site. If it does not agree it will notify the Council and the Secretary of State within 21 days with a comprehensive statement explaining its reasons. In the event of a disagreement over the designation of a special site, the decision will be referred to the Secretary of State.

If the Environment Agency agrees with Council, or it fails to notify the Council it disagrees within 21 days, the land will be designated a special site. The responsibility for securing remediation then passes to the Environment Agency, though the Council must complete the formal notification process.

## **11. REVIEW OF INFORMATION**

The Council recognises that it is not possible to know the exact contamination status of any land with absolute certainty and that scientific understanding of risks may evolve over time. Investigations may be re-opened if new information becomes available for a site that may affect the risk assessment and categorisation of the site.

Inspection may identify contamination that would form a significant contaminant linkage should new receptors be introduced. This information will be carefully recorded and the site monitored. Should such a site be identified for future development the information obtained during the investigation will be made available to the planning officer and the developer.

Once sufficient information has been obtained which confirms a contaminant linkage does not exist (category 4), or, if it does, it is not significant (category 3), then the investigation will cease and a written statement will be produced which will be given to the landowner and other interested parties.

Determinations of contaminated land may be reviewed where further information significantly alters the original decision for determination. The Council can retain, revoke or vary the original determination. Written records will be kept alongside the initial determination documents and interested parties informed accordingly.

## **12. LIABILITY**

Land may be declared contaminated upon the identification of only one significant contaminant linkage. Full liability cannot therefore be determined until all significant contaminant linkages on the site have been identified. When all significant contaminant linkages have been identified liability must be apportioned. This has five distinct stages as follows:

- i. Identifying potential appropriate persons and liability groups
- ii. Characterising remediation actions
- iii. Attributing responsibility to liability groups
- iv. Excluding members of liability groups
- v. Apportioning liability between members of a liability group

The process commences with the establishment of liability groups. All appropriate persons for any one linkage are a, 'liability group'. These may be Class 'A' or Class 'B' persons.

APPROPRIATE PERSONS - Class 'A' - These are, generally speaking the polluters, but also included are persons who, "knowingly permit".

This includes developers who leave contamination on a site which subsequently results in the land being declared contaminated.

**APPROPRIATE PERSONS - Class 'B' -** Where no Class 'A' persons can be found liability reverts to the owner or the occupier. These are known as Class 'B' persons.

The Council will make all reasonable enquiries to identify Class 'A' persons before liability reverts to owner occupiers.

The matter of appropriate persons must be considered for each significant contaminant linkage. Therefore where a site has had a series of contaminative uses over the years, each significant contaminant linkage will be identified separately and liability considered for each.

### **APPORTIONMENT OF COSTS**

Generally speaking the members of a liability group will have the total costs falling on the group as a whole apportioned between them. It may also be necessary to apportion costs between liability groups. There are three basic principles which apply to exclusion and apportionment tests:

- i. The financial circumstances of those concerned have no relevance;
- ii. The Council must consult persons affected to obtain information (on a reasonable basis having regard to the cost). If someone is seeking to establish exclusion or influence an apportionment to their benefit then the burden of providing the Council supporting information lies with them.
- iii. Where there are agreements between appropriate persons the local authority has to give effect to these agreements.

### **LIMITATION ON COSTS TO BE BORN BY APPROPRIATE PERSONS**

There are six tests specified in the statutory guidance to identify Class 'A' groups who should be excluded from liability. These will be applied in sequence and separately for each contaminant linkage. The exclusion of Class 'B' persons is much less complex, the single test merely excludes those who do not have an interest in the capital value of the land. Tenants therefore are excluded.

When the Council has apportioned the costs of each remediation action and before serving remediation notices, it will consider whether any of those liable may not be able to afford it. If, after taking into consideration the statutory guidance it decides that one or more of the parties could not, it will not serve a remediation notice on any of the parties. The Council will instead, consider carrying out the work itself and produce and publish a remediation statement. See appendix 4 for the Cost Recovery Policy.



## **13. REMEDIATION**

Before remediation notices are served by the Enforcing Authority, voluntary remediation schemes will be encouraged.

The Council will do all in its power to consult appropriate persons, owners, occupiers about their views on the state of the land. Where a housing estate is affected for example, it would be reasonable to expect house owners, land owners, developers, lenders, insurers, surveyors, geotechnical engineers, residents groups all to have differing views according to their position.

Remediation notices are served as a last resort (not withstanding urgent cases), and then only after consultation. Notices will be authorised after two tests are satisfied:

- the remediation actions will not be carried out otherwise.
- the Council has no power to carry out the work itself.

If these are met the Council will serve a remediation notice on each appropriate person. It cannot be served less than three months after formal notification that the land is contaminated unless urgent action is deemed necessary (where there is imminent risk of serious harm).

### **SPECIFYING REMEDIATION**

The Head of Public Protection will specify what remediation measures are to be carried out in the remediation notice and these must be reasonable. The Council must have regard to:

- practicability, effectiveness and durability
- health and environmental impacts
- financial costs
- benefits with regard to the seriousness of harm or pollution.

The aim of the remediation will be to ensure that the land is no longer contaminated by definition.

### **REMEDIATION BY THE ENFORCING AUTHORITY**

Before the Enforcing Authority can serve a remediation notice it will first determine whether it has the power to carry out any of the remediation actions itself. There are specific circumstances where this may be the case:

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

## **ORPHAN SITES**

Orphan sites are those where it is not possible after reasonable enquiries to find anyone responsible for them (Class A or Class B persons) or where persons can be found but they are exempted from liability for specified reasons. These are described in the statutory guidance as orphan linkages

Exemptions from liability apply where:

- i. The land is contaminated by reason of pollution of controlled waters only and no Class A persons can be found (Class B persons cannot be liable for polluting water from land).
- ii. The land is contaminated by reason of the escape of a contaminant from one piece of land to another and no Class A persons can be found.
- iii. The land is contaminated land by reason of pollution of controlled waters from an abandoned mine.
- iv. The person was acting in relevant capacity (insolvency practitioner/official receiver etc).

## **URGENT ACTION**

Urgent action must be authorised where the Council is satisfied that there is imminent danger of serious harm or serious pollution of controlled waters being caused as a result of contaminated land. In such circumstances the procedures identified in the statutory guidance will be followed which may involve forced entry into the premises (see also appendix 6).

The Council will undertake the remediation in urgent cases where it is the enforcing authority if it is of the opinion that the risk would not be mitigated by enforcement action. In the case of a special site the Council will declare the land contaminated land in accordance with the statutory procedure, and then notify the Environment Agency who will then be responsible for the remediation.

In appropriate cases the Council will seek to recover costs of remediation works it has completed. See appendix 4 for the Cost Recovery Policy.

## **14. LAND OWNED BY NORTHUMBERLAND COUNTY COUNCIL**

It is recognised that Northumberland County Council does own land that may be found to be contaminated.

In the legislation, local authorities have sole responsibility for the identification and determination of contaminated land that meets the statutory definition. This responsibility cannot be delegated to any other person or body.

Northumberland County Council will effectively remain the Enforcing Authority, unless the site is designated a special site, in which case the Environment Agency will become the Enforcing Authority.

The procedures followed for identification, determination and remediation of contaminated land that is owned by the Council will be the same as for any other landowner and appropriate records will be kept on the Public Register.

To this end a formal relationship should be maintained between the Department responsible for enforcement of the new regime and that responsible for Council owned land.

## **LAND OUTSIDE NORTHUMBERLAND COUNTY CAUSING SIGNIFICANT HARM TO LAND OR CONTROLLED WATERS WITHIN NORTHUMBERLAND COUNTY**

If it appears to the council that land outside its area but adjoining or adjacent to it is in such a condition that substances in, on, or under it are causing a significant harm to land or controlled waters within its own area, then this authority will seek to investigate the matter in cooperation with the neighbouring local authority (Borders Council, Eden District Council, Cumbria County Council, Durham County Council, Newcastle City Council or North Tyneside Council) and, if appropriate, the Environment Agency or Scottish Environment Protection Agency.

The legacy of metalliferous mining in the Pennines involves many cross boundary issues and effects. Studies into the impacts of contamination from historic land uses have been carried out and communication links established with neighbouring authorities and relevant stakeholders.

## **15. COMMUNICATIONS ISSUES**

Communications about land contamination and proposed remediation solutions can be very complex. Effective risk communication is essential to ensure that all stakeholders are well informed about the potential impact of contamination on human health, property and the environment.

Good relationships with internal and external stakeholders have been maintained for dealing appropriately with contaminated land issues. Specialist advice will be sought from relevant stakeholders. The Council will refer to guidance from [SNIFFER UKLQ13 Communicating Understanding of Contaminated Land Risks](#) to develop site specific risk communication strategies.

## **16. MANAGING INFORMATION**

In addition to the requirements of Part 2A of the Environmental Protection Act 1990, to publish a Contaminated Land Strategy and maintain a public register recording regulatory action, the Council must comply with other regulations concerning the provision of information to the general public.

Implementation of the strategy will result in significant volumes of data being held on computer data bases and geographical information systems. Although there is no statutory obligation to disclose this information, the Council must comply with Regulations when dealing with requests for information.

The Council may have to respond to requests for information on land it has identified

for inspection of the County.

From January 2005, a request for information could fall under one of three access regimes:

- Freedom of Information Act 2000 (FOIA)
- Environmental Information Regulations 2004 (EIRs)
- Data Protection Act 1998

The form of the request can be written (by letter, e-mail or fax) and, under Environmental Information Regulations, oral (by telephone or in person).

### **FREEDOM OF INFORMATION ACT 2000**

The Freedom of Information Act gives the public a right of access to information held by public authorities. Requests for information must be made in writing either by letter, e-mail or fax. The Council must respond to a request for information within 20 working days.

### **ENVIRONMENTAL INFORMATION REGULATIONS 2004**

The Environmental Information Regulations allow the public to request environmental information from public authorities.

Environmental Information means any information in written, visual, aural, electronic or any other material form in the possession of Northumberland Council or held by another person on behalf of the Council.

The information covered can be divided into six main areas:

- State of the elements of the environment - air, water, soil, land, flora and fauna (including human beings)
- Emissions and discharges – noise, energy, radiation, waste and other such substances
- Measures and activities such as policies, plans and agreements affecting or likely to affect the state of the elements of the environment
- Reports, cost-benefit and economic analyses
- State of human health and safety
- The built environment

There is a presumption to disclose environmental information. The Council is legally obliged to provide such information, subject to certain exemptions, usually within 20 working days. Any exception to this rule must be justified. Any withholding of information must be explained fully with reasons given for the refusal to disclose information.

The main reasons for refusing to give out information are where disclosure would affect:

- the course of justice
- details of legal proceedings
- international relations, national defence or public security

- commercial confidentiality
- intellectual property rights
- personal data
- volunteered information that could not have been supplied under a legal obligation
- the protection of the environment
- or where a document is unfinished
- or when information is not accessible

Most exemptions are subject to the public interest test, which means that information can only be withheld if the public interest in doing so outweighs the public interest in disclosure. In any circumstances where there is doubt over the disclosure of information, the Council Solicitor will be consulted.

Failure to disclose information may constitute a breach of the Environmental Information Regulations. If a third party purchased land which the Council had identified as potentially contaminated, but failed to notify them of this, they could take further action against the Council if such land was subsequently declared to be contaminated and lost value.

A fee may be charged for some information. Where a fee is applicable, the applicant will be notified prior to any charges being incurred. Where the Council must refuse a request for any of the reasons stated in the Regulations it will provide details of the reasons in writing at no cost to the applicant.

## **DATA PROTECTION ACT 1998**

The Data Protection Act applies to personal data which, on its own or referenced against other data held by the Council, can be used to identify a living individual.

Where the applicant for the data is the data subject, the Data Protection Act will apply. An individual has a general right of access to personal data that relates to them. Access requests must be made in writing and with enough information to locate the data requested. A response must be made within 40 days. If data refers to other people that have not consented to disclosure, then data can be withheld.

Where the applicant is a third party, the FOIA and EIRs apply and there is an exemption to disclosure. The Council cannot give out information about one individual to another individual.

The implications of holding information about an individual relating to the condition of potential contaminated land will be considered in detail with the Council's Solicitor before records are compiled.

## **CONTAMINATED LAND PUBLIC REGISTER**

The only information that is required to be stored on the public register is that relating to regulatory action and remediation as specified in the Statutory Guidance.

The contaminated land public register will be maintained at the offices of the Central



Environmental Protection Team. Members of the public will be able to view the register free of charge during normal office hours. Requests for copies of documents must be made to the Head of Public Protection and may be charged for.

The Environment Agency also maintains a public register and certain information will be copied between both public registers. The Council will submit information to the Environment Agency at key stages of the identification and remediation of contaminated land.

## **COMPLAINTS FROM THE PUBLIC**

Complaints about the potential for contaminated land will be investigated in accordance with existing protocols to establish whether the complaint is justified and which enforcement process would be most appropriate.

Procedures are in place to:

- Record that information or a complaint has been received
- Designate an appropriate officer to deal with the request
- Record the request and response
- Ensure appropriate records are maintained.

Complaints may also be received about the fact that a particular site has been identified for further investigation. Advice will be provided, particularly when an environmental search has identified that land may be contaminated and the issue has been raised through conveyancing.

## **17. REVIEW PROCEDURES**

Whilst the Council has a duty to inspect the County, 'from time to time', to identify contaminated land, the frequency of inspection is not prescribed. In practice inspection will depend on the availability of resources.

In addition to the routine review of inspection findings there will be situations which will trigger re-assessment including:

- Change of use of surrounding land (introduction of new receptors)
- The potential for contaminant linkages to become significant or urgent as a result of unplanned events (e.g. flooding, subsidence, spillages etc), or a change in circumstances
- Identification of a localised effect which could be associated with the land
- Responding to new information

The strategy will be reviewed by the Head of Public Protection every 5 years and any proposed changes will be reported to the Cabinet and incorporated as necessary. Particular matters that will be kept under review include:

- The content of the strategy generally
- Priorities for further investigation of potentially contaminated sites

- The potential for the introduction of new receptors
- The potential for new contamination
- Progress on voluntary remediation
- The enforcement process generally and the identification of appropriate persons particularly
- Identification of special sites
- Progress with the implementation

## 18. FINANCIAL AND STAFF IMPLICATIONS

Identification of potentially contaminated sites within the County and their prioritisation for further more detailed inspection involves the use of site specific risk assessment software. There are maintenance costs involved in maintaining the database and its integration with Council GIS systems.

Significant sums may be required to make more detailed investigation of sites and, possibly take enforcement action and remediation action. Should a significant investigation and/or remediation be identified, it would be anticipated that an application for funding from the Contaminated Land Capital Projects Programme (CLCPP) administered by the Environment Agency would be made specifically relating to that site.

The CLCPP is intended to support local authority work arising under Part 2A of the Environmental Protection Act 1990, and in particular their responsibilities for investigating and in some cases remediating contaminated land. Priority will be given to urgent schemes dealing with sites that are, or may be, presenting serious threats to human health or the wider environment.

The cost recovery policy for Northumberland County Council can be found in appendix 4.

It should be noted that these arrangements relate specifically to the Council's enforcement role and not that as land owner. Should land in possession of the Council be identified as contaminated land then funding of remediation will be considered on a case by case basis.

Implementation of the strategy potentially impacts on all departments of the Council but particularly Planning and Development Control, Building Control, ICT, Communications, Asset Management, Conservation, Archaeology, Land Charges and Legal.

## 19. MILESTONES

Adopt contaminated land strategy	Summer 2013
Desk top studies of high priority sites	Ongoing
Review of data	Ongoing
Review of strategy	Summer 2018

# GLOSSARY OF TERMS

Many of the terms used in this Strategy are defined in the Environmental Protection Act 1990 and in the Statutory Guidance. An extensive glossary is contained in the DEFRA Circular 01/2006 entitled Environmental Protection Act 1990: Part 2A Contaminated Land. This glossary is intended to explain the complex terminology.

**Apportionment:** a division of the liability and costs of carrying out any remediation action between two or more appropriate persons.

**Appropriate Person:** any person responsible for any remediation action which the enforcing authority determines is to be done.

**Assessment Action:** any action taken to assess the condition of the contaminated land in question, or any controlled waters affected by that land or any land adjoining or adjacent to that land.

**Attribution:** the process of apportionment between liability groups. i.e. deciding who is responsible for creating/continuing risk of contamination

**Building:** any structure or erection, and any part of a building including any part below ground, but not including plant or machinery comprised in a building.

**Class A Liability Group:** a liability group consisting of one or more Class A persons.

**Class A Person:** a person who has caused or knowingly permitted a contaminant to be in, on or under the land.

**Class B Liability Group:** a liability group consisting of one or more Class B persons.

**Class B Person:** a person who is the owner or occupier of the land where no Class A person can be found.

**COMAH** Control of Major Accident Hazards

**Contaminant:** a substance which is in, on or under the land and which has the potential to cause harm or to cause pollution of controlled waters.

**Contaminated Land:** is 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.

**Controlled Waters:** defined by reference to Part III (section 104) of the Water Resources Act 1991; this embraces territorial and coastal waters, inland fresh

waters, and ground waters.

**Current Use:** any use which is currently being made, or is likely to be made, of the land and which is consistent with any existing planning permission (or is otherwise lawful under town and country planning legislation). This definition is subject to the following qualifications:

- a) The current use should be taken to include any temporary use, permitted under town and country planning legislation, to which the land is, or is likely to be, put from time to time;
- b) The current use includes future uses or developments which do not require a new, or amended, grant of planning permission;
- c) The current use should, nevertheless, be taken to include any likely informal recreational use of the land, whether authorised by the owners or occupiers or not, (for example children playing on the land); however, in assessing the likelihood of any such informal use, the local authority should give due attention to measures taken to prevent or restrict access to the land; and
- d) In the case of agricultural land, however, the current agricultural use should not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land.

**DEFRA:** Department of the Environment, Food and Rural Affairs.

**DETR:** Department of the Environment, Transport and Regions.

**Ecological System Effect:** significant harm of a type listed in box 2 of Table A of Chapter A in Statutory Guidance.

**EIR:** Environmental Information Regulations 2004

**Enforcing Authority:**

- a) In relation to a special site, the Environment Agency;
- b) In relation to contaminated land other than a special site, the local authority in whose area the land is situated.

**EPA:** Environmental Protection Act 1990

**FOIA:** Freedom of Information Act 2000

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

**Human Health Effect:** significant harm of a type listed in box 1 of Table A of Chapter A in Statutory Guidance.

**Industrial, trade or business premises:** premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purpose of manufacturing.

**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, limited sampling or assessment of documentary information.

**Liability Group:** the persons who are appropriate persons with respect to a particular significant contaminant linkage.

**Local Authority:** means the County or district councils or where appropriate the unitary authority.

**Monitoring Action:** making inspections from time to time for the purpose of keeping the condition of the land or waters under review.

**NIHHS:** Notification of Installations Handling Hazardous Substances

**Orphan Linkage:** a significant contaminant linkage for which no appropriate person can be found, or where those who would otherwise be liable are exempted by one of the relevant statutory provisions.

**Owner:** a person (other than a mortgage 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, or through, which a receptor:

- a) Is being exposed to, or affected by, a contaminant, or
- b) Could be exposed to, or affected by, a contaminant.

**Contaminant:** a contaminant which forms part of a contaminant linkage.

**Contaminant Linkage:** the relationship between a contaminant, a pathway and a receptor.

**Pollution of Controlled Waters:** defined as: "the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter."

**Possibility of Significant Harm:** a measure of the probability, or frequency, of the occurrence of circumstances which would lead to significant harm being caused.

**Receptor:** is 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.

**Register:** the public register maintained by the enforcing authority of particulars relating to contaminated land.

**Relevant Information:** information relating to the assessment of whether there is a significant possibility of significant harm being caused, which is:

- a) scientifically-based;
- b) authoritative;
- c) relevant to the assessment of risks arising from the presence of contaminants in soil; and
- d) appropriate to the determination of whether any land is contaminated land for the purposes of Part 2A, in that the use of the information is consistent with providing a level of protection of risk in line with the qualitative criteria set out in Tables A and B of Chapter A.

**Remediation:** is:

- a) the doing of anything for the purpose of assessing the condition of:
  - i) the contaminated land in question;
  - ii) any controlled waters affected by that land; or
  - iii) any land adjoining or adjacent to that land;
- b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose:
  - 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
  - iii) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters."

**Remediation Action:** any individual thing which is being, or is to be, done by way of remediation.

**Remediation Declaration:** a document prepared and published by the enforcing authority recording remediation actions which it would have specified in a remediation notice but is precluded from specifying them in a notice.

**Remediation Notice:** a notice specifying what an appropriate person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

**Remediation Statement:** 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:** a combination of:

- a) the probability, or frequency, of occurrence of a defined hazard (for example, exposure to a property of a substance with the potential to cause harm); and
- b) the magnitude of the consequences.

**Significant Harm:** means any harm which is determined to be significant in accordance with the statutory guidance in Table A of Chapter A.

**Significant Contaminant:** a contaminant which forms part of a significant contaminant linkage.

**Significant Contaminant Linkage:** a contaminant linkage which forms the basis for a determination that a piece of land is contaminated land.

**Significant Possibility of Significant Harm:** a possibility of significant harm being caused which is determined to be significant in accordance with the statutory guidance in Chapter A.

**Special Site:** any contaminated land:

a) which has been designated as such a site; and

b) whose designation as such has not been terminated by the appropriate Agency

The effect of the designation of any contaminated land as a special site is that the Environment Agency, rather than the local authority, becomes the enforcing authority for the land.

**Substance:** any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

# APPENDICES

## **APPENDIX 1**

### **SPECIAL SITES**

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

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

- Polluting controlled waters (in certain circumstances)
- On sites subject to 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;
- With waste sulphuric acid tar lagoons (on sites used for refining benzole, used lubricants or petroleum)
- Used as an oil refinery
- Used to manufacture or process explosives
- Used to manufacture or dispose of atomic, chemical or biological weapons\*
- Used for other nuclear purposes\*
- Owned or occupied by a defence organisation for naval, military or air force purposes\* (not off base housing / NAFFI)
- Held for the benefit of Greenwich Hospital\*
- Which is contaminated by virtue of radioactivity.

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

4. Procedure in relation to the investigation and declaration of special sites is covered in section 8 & 9 above.

\*non-biological and non-radioactive contamination only

## **APPENDIX 2**

### **LIST OF CONTACTS**

#### **NEIGHBOURING AUTHORITIES**

##### **Carlisle City Council**

Environmental Quality Section

Community Services,

Carlisle City Council,

Civic Centre,

Carlisle CA3 8QG

Tel: 01228 817559

E-mail: [Environmentalquality@carlisle.gov.uk](mailto:Environmentalquality@carlisle.gov.uk)

##### **Cumbria County Council**

Headquarters

The Courts

Carlisle

Cumbria

CA3 8NA

Phone: 01228 606060

E-mail: [info@cumbriacc.gov.uk](mailto:info@cumbriacc.gov.uk)

##### **Durham County Council**

Head of Environment, Health and Consumer Protection

Civic Centre

Newcastle Road

Chester-le-Street

County Durham

DH3 3UT

E-mail: [contaminatedland@durham.gov.uk](mailto:contaminatedland@durham.gov.uk)

##### **Eden District Council**

Town Hall

Penrith

Cumbria

CA11 7QF

Tel: (01768) 212334.

E-mail: [pollution@eden.gov.uk](mailto:pollution@eden.gov.uk)

##### **Gateshead Council**

Environmental Health

Civic Centre

Regent Street

Gateshead

NE8 1HH

Tel: 0191 4333000

Email: [environmentalhealth@gateshead.gov.uk](mailto:environmentalhealth@gateshead.gov.uk)



**Newcastle City Council**

Environmental Protection

Civic Centre

Barras Bridge

Newcastle Upon Tyne

NE99 1RD

Tel: 0191 211 6102

E-mail: [environmentandregeneration@newcastle.gov.uk](mailto:environmentandregeneration@newcastle.gov.uk)

**North Tyneside Council**

Environmental Health

Quadrant East

First Floor Left

16 The Silverlink North

Cobalt Business Park

North Tyneside

NE27 0BY

Tel: 0191 6436635

E-mail: [environmental.health@northtyneside.gov.uk](mailto:environmental.health@northtyneside.gov.uk)

**Scottish Borders Council**

Environmental Health

Town Hall

High Street

Hawick

TD9 9EF

Tel. 01450 364706

E-mail: [acarson@scotborders.gov.uk](mailto:acarson@scotborders.gov.uk)

E-mail: [garethstewart@scotborders.gov.uk](mailto:garethstewart@scotborders.gov.uk)

**ENGLISH HERITAGE****English Heritage**

Bessie Surtees House

41 - 44 Sandhill

Newcastle upon Tyne

NE1 3JF

Tel: 0191 269 1200

Fax: 0191 261 1130

E-mail: [northeast@english-heritage.org.uk](mailto:northeast@english-heritage.org.uk)

**National Monument Record Enquiries**

Enquiry and Research Services

National Monuments Record

English Heritage

Kemble Drive

Swindon

SN2 2GZ

Tel: 01793 414600  
Fax: 01793 414606  
E-mail: [nmrinfo@english-heritage.org.uk](mailto:nmrinfo@english-heritage.org.uk)

### **NATURAL ENGLAND**

Natural England,  
North East Region  
The Quadrant,  
Newburn Riverside,  
Newcastle upon Tyne,  
NE15 8NZ  
Tel: 0300 060 2219  
Fax: 0300 060 2302  
Email: [northeast@naturalengland.org.uk](mailto:northeast@naturalengland.org.uk)

### **ENVIRONMENT AGENCY**

The Council will consult and liaise with the Environment Agency on matters relevant to the Agency's various functions. It will also seek site specific advice where necessary in accordance with the Environment Agency's formal role.

This process will, as far as is reasonably practicable (taking into consideration the limitations on both parties), be carried out broadly in accordance with the Memorandum of Understanding.

Groundwater and Contaminated Land Team  
Environment Agency  
Tyneside House  
Skinnerburn Road  
Newcastle Business Park  
Newcastle upon Tyne  
NE4 7AR  
Tel: 0800 807060  
Fax: 0191 2034004  
Email: [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)

### **SCOTTISH ENVIRONMENT PROTECTION AGENCY**

Clearwater House  
Heriot Watt Research Park  
Avenue North  
Riccarton  
EDINBURGH  
EH14 4AP  
Tel: 0131 449 7296  
Fax: 0131 449 7277

## **DEFRA CONTAMINATED LAND TEAM**

Contaminated Land Branch  
Department for Environment, Food and Rural Affairs  
Area 3C, Nobel House  
17 Smith Square  
London  
SW1P 3JR  
Tel: 0207 238 6285  
Email: [contaminatedland.enquiries@defra.gsi.gov.uk](mailto:contaminatedland.enquiries@defra.gsi.gov.uk)

## **FOOD STANDARDS AGENCY**

Food Standards Agency  
Aviation House  
125 Kingsway  
London WC2B 6NH  
Switchboard: 020 7276 8000  
E-mail: [helpline@foodstandards.gsi.gov.uk](mailto:helpline@foodstandards.gsi.gov.uk)

## **HEALTH & SAFETY**

Health and Safety Executive  
Arden House  
Regent Centre  
Gosforth  
Newcastle upon Tyne  
NE3 3JN  
Tel: 0845 3450055  
Fax: 0191 2026300  
E-mail: [hse.infoline@natbrit.com](mailto:hse.infoline@natbrit.com)

Northumberland Care Trust  
Merley Croft  
Loansdean  
Morpeth  
Northumberland  
NE61 2DL  
Tel: 0191 217 2500  
Fax: 0191 217 2501  
Email: [contactus@northumberland-pct.nhs.uk](mailto:contactus@northumberland-pct.nhs.uk)

Public Health England  
Floor 2  
Citygate  
Gallowgate  
Newcastle-upon-Tyne  
NE1 4WH  
Tel: 0191 202 3888  
E-mail: [HPA.enquiries@hpa.org.uk](mailto:HPA.enquiries@hpa.org.uk)

## **REGENERATION BODIES**

### **Homes and Communities Agency**

Arpley House  
110 Birchwood Boulevard  
Birchwood  
Warrington  
WA3 7QH  
Tel: 0300 1234 500  
Email: [mail@homesandcommunities.co.uk](mailto:mail@homesandcommunities.co.uk)

## **OTHER CONTACTS**

### **British Geological Survey**

Central Enquiries  
Kingsley Dunham Centre  
Keyworth  
Nottingham  
NG12 5GG  
Tel: 0115 936 3143  
Fax: 0115 936 3276  
E-mail: [enquiries@bgs.ac.uk](mailto:enquiries@bgs.ac.uk)

### **The Coal Authority**

200 Lichfield Lane  
Mansfield  
Nottinghamshire  
NG18 4RG  
Tel: 01623 637 000  
E-mail: [thecoalauthority@coal.gov.uk](mailto:thecoalauthority@coal.gov.uk)

### **Northumberland Wildlife Trust**

Northumberland Wildlife Trust  
St Nicholas Park  
Gosforth  
Newcastle upon Tyne  
Tyne and Wear  
NE3 3XT  
Phone: (0191) 284 6884  
Fax: (0191) 284 6794  
Email: [mail@northwt.org.uk](mailto:mail@northwt.org.uk)

### **Northumberland National Park Authority**

Eastburn  
South Park  
Hexham  
Northumberland  
NE46 1BS  
Phone: 01434 605555

Fax: 01434 611675  
Email: [enquiries@nnpa.org.uk](mailto:enquiries@nnpa.org.uk)

**Ministry of Defence**

Estates Officer  
Otterburn Training Area  
Otterburn  
Northumberland  
Tel: 0191 2611046

Commanding Officer  
RAF Boulmer  
Boulmer Road  
Longhoughton  
Alnwick  
Northumberland  
NE66 3JF  
Tel: 01665 604760

**Network Rail Property Contacts**

Director,  
Network Rail  
40 Melton Street  
London  
NW1 2EE  
Tel: 020 7557 8000  
Fax: 020 7557 9000

## **APPENDIX 3**

### **Environmental Protection Act 1990 Part 2A Contaminated Land Remediation Cost Recovery Policy**

This policy aims to promote transparency, fairness and consistency within the process of remediation cost recovery under Part 2A of the Environmental Protection Act 1990 in compliance with the statutory guidance.

The policy specifies circumstances where the Authority would be prepared to consider waiving or reducing the recovery of remediation costs having given due regard to hardship and other relevant factors. The policy will be made available as appropriate in the pursuance of duties under the above Act.

#### **1. Cost Recovery Principles**

Costs incurred for remediation work carried out by Northumberland County Council on contaminated land, as determined under with Part 2A of the Environmental Protection Act 1990, can be charged to the relevant '*Appropriate Person/s*', subject to certain conditions.

Northumberland County Council will recover costs following the '*Polluter Pays*' principle by virtue of which all reasonable costs of remediation are to be borne by the polluter where possible.

The Cost Recovery Policy is limited only to Northumberland County Council's '*reasonable costs*'. This includes any direct costs incurred by Planning & Environmental Protection or other Units of the authority in managing or carrying out *remediation* of any land determined as contaminated. However, the Council will always seek to do such work economically; other costs might be regarded as unreasonable.

Section 78P of the Environmental Protection Act provides that:

“(1) Where, by virtue of section 78N(3)(a),(c),(e) or (f) the enforcing Authority does any particular thing by way of remediation, it shall be entitled, subject to sections 78J(7) and 78K(6)... to recover the reasonable cost incurred in doing it from the appropriate person or, if there are two or more appropriate persons in relation to the thing in question, from those persons in proportions determined pursuant to section 78F(7)...”

“(2) In deciding whether to recover the cost, and if so, how much of the cost, which it is entitled to recover under subsection (1) above, the enforcing Authority shall have regard –

(a) to any hardship which the recovery may cause to the person from whom the cost is recoverable; and

- (b) to any guidance issued by the Secretary of State for the purposes of this subsection”.

Northumberland County Council will aim to recover remediation costs in a manner that is both fair and equitable.

## **2. Cost Recovery Procedure**

Northumberland County Council will:

- Identify the *Appropriate Person/s* in respect to the designated contaminated land, as defined under the tests detailed in Section 78F under Part 2A of the Environmental Protection Act 1990.
- Determine whether any of the exemptions from liability under sections 78J, 78K or 78X(3) apply and then carry out the processes of *attribution, exclusion and apportionment* of liability.
- Establish the reasonable costs incurred in carrying out the remediation action.
- Apportion these costs between any identified *Appropriate Persons* for the Remediation Actions carried out.

Northumberland County Council will itself be responsible for any fraction of the costs that are apportioned to itself as an *Appropriate Person*, or which relate to *Orphan linkages* from the process of *attribution*.

The Council will consider whether the apportioned share of costs for the remediation actions would cause hardship on the relevant *Appropriate Person/s*.

Where recovering costs from a Class A appropriate person who also owns all or part of the contaminated land, the Council may recover its costs by serving a charging notice on the land. A charging notice cannot be used in other circumstances.

If the appropriate person does not repay the amount that the Authority is seeking to recover, then Northumberland County Council will consider pursuing a remedy in the County Court or the High Court as appropriate.

## **3. General Hardship and the Waiving of Costs**

### **Commercial Enterprises**

The same approach will be adopted to all types of commercial or industrial enterprises, which are identified as appropriate persons. This will apply to public corporations, limited companies, partnerships or an individual operating as a sole trader.

Where the cost of closure of the enterprise appears to be greater than the cost of remediation which the Authority would have to bear itself then consideration will be given to reducing the costs to the extent required to avoid making the enterprise



insolvent.

The Authority may choose to take account of such adopted policies relating to economic development of the County when determining cost recovery decisions.

Northumberland County Council will not waive or reduce the recovery costs where it is clear that an enterprise has deliberately arranged matters so as to avoid responsibility for the costs of the remediation.

### **Small and Medium Sized Enterprises**

Small and Medium Sized Enterprises are defined as an independent enterprise with fewer than 250 employees, and either an annual turnover not exceeding 40 million or an annual balance sheet total not exceeding 27 million.

The Authority will give consideration to:

- Whether the recovery of the full costs of remediation would mean that the enterprise is likely to become insolvent and thus cease to exist; and
- If so, the cost to the local economy of such a closure.

Northumberland County Council will consider whether the full recovery of remediation costs would cause any small or medium sized enterprise that is the appropriate person, to become insolvent and thus cease to exist. The Council will consider reducing the cost recovery to the extent required to avoid making the enterprise insolvent.

Northumberland County Council will not waive or reduce the recovery of costs where it is clear that an enterprise has deliberately arranged matters so as to avoid responsibility for the costs of the remediation.

### **Trusts**

Where the appropriate persons identified include those acting as trustees, the Authority will assume that such trustees will exercise all powers, which they have or may reasonably obtain, in order to make funds available from the trust or from borrowing that may be made available for the trust for the purpose of paying for remediation.

The Authority would consider waiving or reducing costs to a level that is equal to the amount that can be made available from the trust where total remediation costs would exceed those funds available.

Northumberland County Council will not consider reducing the costs.

- where it is clear that the trust was formed for the purpose of avoiding paying the remediation costs; or
- to the extent that trustees have personally benefited, or will personally benefit, from the trust.

## **Charities**

Northumberland County Council will consider reducing costs so as not to jeopardise the charities ability to provide benefit or amenity, which is in the public interest. The extent of such a reduction would depend on the individual circumstances of the case and charity and the measure of public benefit afforded by the organisation.

This approach will also be applied to charitable trusts and charitable companies.

## **Social Housing Landlords**

Northumberland County Council shall consider reducing or waiving costs if:

- the Appropriate body is a body eligible for registration as a social housing landlord under Section 2 of the Housing Act 1996.
- its liability relates to land used for social housing; and
- full recovery would lead to financial difficulties for the Appropriate Person, such that the provision or upkeep of the social housing would be jeopardised.

The extent of the waiver or reduction considered would be sufficient to avoid any such financial difficulties.

If hardship would be endured by the appropriate person/s then the Authority would explore options to reduce the possibility of such hardship being incurred. These options may include:

- considering whether it could recover more of its costs by deferring recovery and securing them by a charge on the land in question under Section 78P. Such deferral may lead to payment from an appropriate person, either in instalments or when the land is next sold.

The Authority may also consider whether cost recovery would be less likely to cause hardship if repayment was to be made in instalments over time. This may be particularly relevant where Northumberland County Council is able to secure its costs through a charging notice.

## **4. Specific Considerations for Class A Persons**

The Authority will not be willing to waive costs where it was in the course of carrying on a business that the Class A person caused or knowingly permitted the presence of the significant contaminants. Reduction of costs will be considered where the person was not carrying on a business as he/she will be less likely to have earned profit from such an activity.

## **Where Other Potentially Appropriate Persons have not been found**

Northumberland County Council will consider waiving or reducing its cost recovery from a Class A person who satisfactorily demonstrates that:

- Another identified person who cannot now be found, also caused or knowingly permitted the significant contaminant to be in, on or under the land in question; and
- If that other person were to be found the Class A person seeking the waiver or reduction would either be excluded from liability by virtue of the exclusion Tests set out in Part 5 Chapter D or the proportion of the costs would be significantly reduced by virtue of the guidance on apportionment in Part 6 Chapter D.

## **5. Specific Considerations for Class B Persons**

### **Costs in Relation to Land Values**

In some cases the costs of remediation of a site may exceed the value of the land in relation to its current or proposed use.

In such cases the Authority will consider waiving or reducing its cost recovery from a Part B person where that person satisfactorily demonstrates that remediation costs do indeed exceed the lands value. In this context 'value' will be taken to mean the value that the remediated land would have on the open market at the time the cost recovery decision is made, disregarding any possible blight arising from the contamination.

The extent of the waiver or reduction in costs recovery should not exceed that which will ensure remediation is not greater than the cost of the land in question.

### **Precautions Taken before Acquiring a Freehold or a Leasehold Interest**

Northumberland County Council will consider reducing costs recovery where a Class B person, who is the owner of the land, demonstrates to the satisfaction of the Authority that:

- He took such steps prior to acquiring the freehold, or accepting the grant of assignment of a leasehold, as would have been reasonable at that time to establish the presence of any contaminants;
- When he acquired the land, or accepted the grant of assignment of the leasehold, he was nonetheless unaware of the presence of the significant contaminant now identified and could not reasonably have been expected to have been aware of their presence; and
- It would be fair and reasonable, taking into account the interests of national and local taxpayers, that he should not bear the whole cost of remediation.

## **Owner Occupiers of Dwellings**

Where a Class B person owns and occupies a dwelling on the contaminated land in question, the Authority will consider waiving or reducing its costs recovery where that person satisfies the Authority that, at the time the person purchased the dwelling, he did not know, and could not reasonably have been expected to know, that the land was adversely affected by the presence of a contaminant.

Any such reduction or waiver will only be granted to the extent necessary to ensure that the Class B person in question bear no more of the cost of remediation than it appears reasonable to impose, having regard to income, capital and outgoings.

Where the appropriate person has inherited the dwelling or received it as a gift, the above tenets will be applied with respect to the time at which he received the property.

Where the contaminated land in question extends beyond the dwelling and its curtilage, and is owned and occupied by the same appropriate person the above tenets will be applied to the dwelling and its curtilage only.

### **6. Remediation under Written Agreement**

In any case where Northumberland County Council has carried out remediation under the terms of a written agreement with the Appropriate Person/s, any recovery of costs will be made under the terms of that agreement – the agreement is in effect a contract between the Council and the Appropriate Person(s).

In a case of this kind, the normal cost recovery powers, in Section 78P do not apply which means also that the limitations on recovery of costs relating to hardship and Statutory Guidance also do not directly apply.

### **7. Appropriate Persons Seeking Reduction or Waiving of Costs**

In any case where an appropriate person is seeking a reduction or waiving of remediation costs the Authority will require:

- Formal request made in writing to the Head of Public Protection
- The presentation of evidence in support of the above claim appertaining to one or more of the categories described above.

The Authority will seek to obtain such information as is reasonable having regard to:

- How the information may be obtained
- The costs, for all parties, involved in obtaining the information; and
- The potential significance of the information for any decision.

When the above circumstances are satisfied Northumberland County Council will give all due consideration to the request and provide the applicant with a decision in writing containing the reasoning behind how the decision was achieved

## **APPENDIX 4**

### **LIST OF POTENTIALLY CONTAMINATIVE LAND USES**

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

Abattoirs	Dye works
Adhesives manufacture	Dyers and finishers
Agriculture	Electricity generation
Aircraft manufacture	Electrical engineers
Airports	Electro platers
Allotments	Engineering works
Animal burial	Explosives manufacture (including fireworks)
Animal by-product processing	Farms
Anodisers	Fertiliser manufacture
Anti-corrosion treatment	Fellmongers
Asbestos products	Fibre glass works
Asphalt works	Food processing
Automotive engineering	Foundries
Battery manufacture	Fuel manufacture
Bearings manufacture	Fuel storage
Blacksmiths	Garages and depots
Boiler makers	Gas mantle manufacture
Bookbinding	Gas works
Brass and copper tube manufacture	Glass works
Brass founders	Glue manufacture
Brewing	Gum and resin manufacture
Burial sites, cemeteries, graveyards	Hatters
Car manufacture	Hide and skin processors
Carbon products manufacture	Ink manufacture
Cement works	Iron founder
Chemical manufacture and storage	Iron works
Chrome plating	Knackers yards
Ceramics manufacture	Lacquer manufacture
Coal carbonisation	Laundries
Coal merchant	Leather manufacture
Concrete batching	Metal coating
Coppersmiths	Metal manufacture
Descaling contractors (chemical)	Metal sprayers and finishers
Detergent manufacture	Mining
Distilleries	Mirror manufacture
Dockyards	Motor vehicle manufacture
Drum cleaning	Oil fuel distributors and suppliers
Dry cleaners	

Oil merchants  
Oil refineries  
Oil storage  
Paint and varnish manufacture  
Paper works  
Pesticides manufacture  
Petrol stations  
Photographic film works  
Photographic processing  
Paper manufacture  
Plastics works  
Plating works  
Power stations  
Print works  
Printed circuit board manufacture  
Radioactive materials processing  
Railway land  
Railway locomotive manufacture  
Refiners of nickel and antimony  
Resin manufacture  
Rubber manufacture  
Scrap metal dealers  
Sealing compound manufacture  
Sewage works  
Sewage sludge disposal areas  
Sheet metal merchants and works  
Ship breakers  
Ship builders

Shooting grounds  
Skein silk dyers  
Small arms manufacture  
Smokeless fuel manufacture  
Soap manufacture  
Solvent manufacture  
Solvent recovery  
Steel manufacture  
Stove enamellers  
Synthetic fibre manufacture  
Tank cleaning  
Tanneries  
Tar and pitch distillers  
Textile manufacture  
Thermometer makers  
Timber treatment  
Timber preservatives manufacture  
Tin plate works  
Transport depots  
Tyre manufacture and retreading  
Vehicle manufacture  
Vulcanite manufacture  
Vulcanisers  
Waste disposal  
Waste recycling  
Waste treatment  
Zinc works

## **APPENDIX 5**

### **POWERS OF ENTRY AND THE APPOINTMENT OF “SUITABLE PERSONS”**

1. Section 108 of the Environment Act 1995 gives the local authority power to authorise, in writing, “suitable persons”, to investigate potentially contaminated land. These powers are extensive and will be considered in detail with the Council’s Solicitor prior to any resisted entry being attempted. It should be noted that these powers are not available to the Environment Agency. The powers which a person may be authorised to exercise include:

- To enter at any reasonable time (or in urgent cases, at any time, if need be by force) any premises / land to make such examination and investigations necessary.
- To take samples, photographs, carry out tests, install monitoring equipment etc.

2. At least seven days notice must be given to residential occupiers and to occupiers of land where heavy plant is to be used. Consent must be obtained to enter from the occupier, or failing that, a warrant obtained under Schedule 18 of the Act.

3. It should be noted that there are no circumstances in which the Council will use these powers to obtain information about the condition of land, where:

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

#### **URGENT ACTION**

4. Urgent action must be authorised where the Council is satisfied that there is imminent danger of serious harm or serious pollution of controlled waters being caused as a result of contaminated land. In such circumstances the procedures identified in the statutory guidance will be followed which may involve the forced entry into the premises.

5. The terms “imminent” and “serious” are unfortunately not defined, local authorities are advised to use the normal meaning of the words. There is, however, guidance on what may constitute “seriousness” when assessing the reasonableness of remediation.

6. The Council will undertake the remediation in urgent cases where it is the enforcing authority if it is of the opinion that the risk would not be mitigated by enforcement action. In the case of a special site the Council will declare the land contaminated land in accordance with the statutory procedure, and then notify the Environment Agency who will then be responsible for the remediation.



7. In appropriate cases the Council will seek to recover costs of remediation works it has completed.

8. All intrusive investigations will be carried out in accordance with appropriate technical procedures to ensure:

- a) They are effective
- b) They do not cause any unnecessary damage or harm
- c) They do not cause pollution of controlled waters

## **COMPENSATION**

9. Schedule 18 of the Environment Act 1995 makes clear the circumstances when a local authority must pay compensation for loss or damage as a result of the use of these powers. The Head of Public Protection will therefore ensure that only appropriate technical procedures are deployed, the utmost care is taken at all times, and the conditions carefully recorded before, during and after completion of the necessary works.

## **“SUITABLE PERSONS”**

10. The science and associated technical procedures relating to the investigation and assessment of contaminated land are extremely complex. Knowledge of several specialised disciplines is required together with an ability to interpret significant volumes of data and make a reasoned judgement, often in difficult circumstances.

11. The consequences of, ‘getting it wrong’, could, in many cases, have a major impact on the County and on people’s lives. On the one hand, an entire area could be unnecessarily blighted and homes rendered worthless over night, whilst on the other, a generation of children could be left at risk from an unidentified pathogen.

12. Neither the Act nor the guidance considers what may constitute a, “suitable person”, for the purposes of the investigation and assessment of contaminated land. There is no list of approved consultants or any professional organisation which oversees the training of contaminated land specialists. There is no minimum qualification and no recognised qualification. Consultants come from a range of backgrounds including:

- Environmental health
- Other environmental science disciplines (several)
- Surveyors
- Engineers
- Geologists
- Hydrologists
- Soil scientists
- Chemists
- etc

13. Ultimately, the responsibility for determining what land may and may not be declared contaminated, by definition, lies with the Head of Public Protection he will,

however, often need to rely on the advice of appointed, “suitable persons”. Under these circumstances criteria have been developed to assist in their selection.

## **PROCEDURE FOR THE APPOINTMENT OF “SUITABLE PERSONS” FOR THE PURPOSES OF PART 2A**

14. There are two prerequisites to commencing the process of appointing suitable external consultant / contractors:

- Adequate funding to support the process
- A well qualified person, ‘in house’, to act in the Client role

15. Such a person, as well as having sufficient knowledge and experience to specify the contract, must have sufficient time to monitor it also. The Head of Public Protection has been identified for this purpose.

16. Additional training will be required to provide an adequate foundation of knowledge upon which to carry out the role.

17. The Client officer will produce a comprehensive, unambiguous but succinct draft specification for each contract which clearly identifies the work to be carried out, its purpose, timetable and Client / Contractor responsibilities. Then he will produce a list of appropriate companies, taking care to seek out those most prominent and successful in the field, rather than only those who promote themselves to the Council. Each of these will then be contacted in turn for an informal discussion as to their capability, expertise and experience. Prior to commencing this process the Client officer will produce a selection of questions relevant to the contract to ask each company. This should then hopefully result in a short list of six or so companies who will be asked to quote / tender for the work based on a final specification.

18. A check list of information requirements is included at the end of this section.

19. Once appointed the Client officer will be responsible for monitoring the contract to ensure:

The contractors are kept fully aware of their responsibilities at all times  
Quality control requirements are met  
Amendments are quickly agreed and documented  
The time table is strictly adhered to  
The aim of the contract is achieved

## CHECKLIST OF INFORMATION REQUIREMENTS

CLIENT'S INFORMATION REQUIREMENTS	REQUIREMENTS OF THE CONSULTANT
<b>1. GENERAL</b>	
1.1 Background on company capability	How long has company been operating? What kind of work were they originally set up to do - is this an add on? Who traditionally are their clients?
1.2 Numbers and qualifications of staff	If a large company, what are the interests / sympathies of those in control. Do they consider local authorities as a serious market? How many staff are available for this type of work, will they need to subcontract?
1.3 CV and availability of key staff	Who will actually be doing the job, what are their qualifications and experience? Practical experience is KEY. Do they really understand Part 2A? Knowledge of environmental law & local government systems an important requirement.
1.4 Details of QA systems including: Allocation of responsibilities Project Management Technical Procedures Technical review Training Assessment of external suppliers	Where appropriate, need details of quality management systems indicating whether accredited by a third party. What technical procedures to be used. Which staff responsible, which will undertake technical review. How quality of subcontractors is to be ensured.
1.5 Management of Health & Safety	Identify H&S management procedures where appropriate. Do they understand the fundamental requirements of H&S legislation?
1.6 Track record on similar projects	Ever done similar work or is this a new departure?
1.7 Client references	Need several telephone numbers to enable rapid verification of statements made at interview.
1.8 Financial status	May not always be necessary but on large contracts where considerable financial outlay required need to demonstrate solvency. Bond may be required on large remediation contracts.
1.9 Details of insurance cover	Need to demonstrate insurance available 3 <sup>rd</sup> party liability and professional indemnity. Identify limitations / exclusions
1.10 Membership of professional and trade associations	May be necessary to make checks, Corporate membership of professional organisations, meeting CPD requirements?
1.11 Compliance with codes of practice	Can they demonstrate knowledge of the appropriate guidance, codes of practice etc relevant to the job?

<b>2. PROJECT SPECIFIC</b>	
2.1 Technical proposal	The proposal must make it absolutely clear that work will be carried out to comply with the requirements of the specification, what the results will be, and when they will be achieved.
2.2 Project management plan / working plan	A clear timetable must be available which states what stage will be reached by when and who will be responsible to deliver.
2.3 Details of sub-contractors	Subcontractors will be necessary on large technical projects. Must state who they are, contact points and lines of responsibility.
2.4 Details of technical procedures	Again, the working plan must clarify all procedures and lines of responsibility.
2.5 Reporting	Reporting procedures must be made absolutely clear. It is essential not to have masses of reports landing on the desk of the client officer which puts the responsibility back on him / her. The responsibility for doing what has been agreed to the agreed standard must lie with the contractor.
2.6 Programme & 2.7 Financial proposal	It may be that the Contractor will want to provide a guide price or include large contingency sums. The programme of work and the quotation must not be ambiguous. A lot depends on the quality of the original specification. Stage payments and timetables must be firm and with perhaps penalty clauses if fail to deliver on time.
2.8 Conditions of engagement	Contracts need not be long and wordy and should define responsibilities of both parties, liabilities etc succinctly.

## **APPENDIX 6**

### **References**

Part 2A of Environmental Protection Act 1990, c.43 (available to download from <http://www.legislation.gov.uk/>)

Contaminated Land (England) (Amendment) Regulations 2012, no.263 (available to download from <http://www.legislation.gov.uk/>)

Department for Environment, Food and Rural Affairs (2012). Environmental Protection Act 1990: Part 2A. Contaminated Land Statutory Guidance. DEFRA, London (available to download from <https://www.gov.uk/government/publications/contaminated-land-statutory-guidance>)

Department for Environment, Food and Rural Affairs (2008). Guidance on legal definition of contaminated land. DEFRA, London (available to download from <http://archive.defra.gov.uk/environment/quality/land/contaminated/documents/legal-definition.pdf>)

Department of the Environment (1995) Industry Profiles (various titles). DoE, London (available to download from <http://www.environment-agency.gov.uk/>)

Department for Communities and Local Government (2012) National Planning Policy Framework. DCLG, London (available to download from <https://www.gov.uk/government/publications/national-planning-policy-framework--2>)

Office of the Deputy Prime Minister (2004). Planning Policy Statement 23: Planning and Pollution Control. Annex 2: Development on Land affected by contamination. NHBC & Environment Agency, London

Office of the Deputy Prime Minister (2004). The Building Regulations 2000: Approved Document C – Site Preparation and Resistance to Moisture. ODPM, London

M J Carter Associates. (1995). CLR 6: Prioritisation and categorisation procedure for sites which may be contaminated DoE, London (available to download from <https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>)

Casella Stanger. (2004). Contaminated Land Report (CLR)11: Model Procedures for the management of land contamination. Environment Agency, Bristol (available to download from <http://www.environment-agency.gov.uk/>)

Yorkshire and Humberside Pollution Advisory Council (2012). Development on Land Affected by Contamination: Technical Guidance for Developers, Landowners and Consultants (available from the Council website)

National House Building Council, Environment Agency and Chartered Institute of Environmental Health (2008). R & D Publication 66: Guidance for the Safe Development of Housing on Land Affected by Contamination. NHBC & Environment Agency, London (available to download from [www.nhbc.co.uk](http://www.nhbc.co.uk))

Environment Agency website <http://www.environment-agency.gov.uk/>  
Scottish Environment Protection Agency website <http://www.sepa.org.uk/>

Defra website <https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>

Natural England website <http://www.naturalengland.org.uk/>

English Heritage website <http://www.english-heritage.org.uk/>

Homes and Communities Agency <http://www.homesandcommunities.co.uk/home>

Public Health England <https://www.gov.uk/government/organisations/public-health-england>

Food Standards Agency <http://www.food.gov.uk/>

# Acknowledgements

This document was prepared by officers of the Public Protection Group of Northumberland County Council.

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