

Revised Contaminated Land Strategy

Mole Valley District Council

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1. Introduction

Under the contaminated land provisions contained in Part IIA of the Environmental Protection Act 1990, the Council is required to inspect land in its district for contamination. In September 2001 a strategy was submitted to the Department for the Environment, Food and Rural Affairs (DEFRA), detailing how the authority will take a rational, ordered and efficient approach to this inspection. In light of the successful work carried out to date this strategy revises the Contaminated Land Strategy produced by Mole Valley District Council in July 2001. Subsequent reviews will take place every five years following on from 2010.

The status thus far is:

- Around 1500 potential sites have been recorded on a database
- Historical mapping of the entire District has now been reviewed to ensure as many sites as practical have been identified.
- 294 sites have been classified as requiring no further inspection
- 7 detailed site investigations have been completed

The objectives that under lie Mole Valley's approach to land contamination is to identify, characterise and remove unacceptable risks to human health and the environment, and to ensure that the costs burdens are proportionate, manageable and economically sustainable. The challenge for regulatory authorities should not be under-estimated as decisions need to be robust, consistent and transparent whilst highly complex technical assessments of environmental risk require time and expertise to review and approve (Rothstein et al, 2006)¹

The Councils previous strategy committed it to a number of key aims:

- Ensure all future developments are "suitable for use"
- Ensure that most pressing and serious problems are located first
- Identify pollutant linkages affecting other "potentially sensitive" Receptors
- Efficient Data Management via the Land Use GIS.
- Prioritise potentially contaminated sites

In total fifteen separate objectives were identified under these aims in order to ensure good compliance with the regulations. The aims were used to group the objectives

and provide a strategic approach to managing resources. Each aim required two to five objectives to be implemented and **all objectives** were **successfully implemented** although the prioritisation and risk assessment model still requires further work as detailed in Section 3.

1.1 Local Authority Duties

Section 78B of the Environment Act 1995³ requires a Local Authority to carry out periodic inspection of their area for the purpose of identifying contaminated land. Paragraph B9 of the Secretary of States Statutory guidance² sets out the conditions for this inspection ie:

The local authority should take a strategic approach that is... rational, ordered, efficient, proportionate and seeks to deal with the most serious problems first.

Once an area of potential contamination is identified the Council then has three broad tasks:

- i. Establish if there is an actual risk to health or the environment.
- ii. Identify how to fix the problem
- iii. Allocate Costs to the “appropriate persons”

This document details the most important processes that the Council has developed and summarises the manner in which the Council will approach its duties over the next five years.

1.2 Requirements for a Strategic Approach

Part B of the Statutory Guidance requires local authorities to take "a strategic approach to the identification of land which merits detailed individual inspection". Paragraph B9 lays down the criteria the strategy must meet:

- i. Rational, ordered and efficient;
- ii. Proportionate to the seriousness of any actual or potential risk;
- iii. Seek to ensure the most pressing and serious problems are located first;
- iv. Concentrate resources on investigating areas where the authority is most likely to identify contaminated land; and
- v. Efficiently identify requirements for the detailed inspection of particular areas of land.

1.3 Aims of the Strategy Review

This revised strategy document is intended to pull together existing procedures, working practices and information items that have developed over time to fulfil the requirements for a strategic approach detailed in section 1.2 above. It is also intended to be;

- Internal reference document for MVDC staff
- Ensure a consistent approach to the public that can be flexible enough to cope with most circumstances related to an enquiry about land contamination

This revised strategy also outlines proposed future work over the next 5 years in particular emphasising system development and recovering costs of maintaining the system

2 Background

The following Section details the Councils general duties under Part 2A of the environmental protection Act these duties can be summarised as the following overarching objective:

Objective 1: The Council will continue to robustly investigate the risks to life and property by diligently considering, on both the strategic and a case by case basis, the level of contamination in the ground and the magnitude of harm that contamination is causing. The detailed conclusions of these investigations will continue to be made available through the access to Environmental Information Regulations.

2.1 Definition of contaminated land under Part IIA

Section 78A(2) defines contaminated land for the purpose of Part IIA as:

"any land which appears to the Local Authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that -

"(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

"(b) pollution of controlled waters is being, or is likely to be caused;..."

OR with respect to radioactive contamination defined in section 78A(2)(as modified) as:

"any land which appears to the Local Authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that

"(a) harm is being caused, or

"(b) there is a significant possibility of such harm being caused;.."

So, although land may have been subjected to a former contaminative use, unless there is a **significant possibility** of it presenting a **significant risk** to a receptor such as a human being, crops, animals, buildings or controlled waters, then it will not require action by the local authority.

2.2 Principle of Pollutant linkage

The DETR Circular 02/2000 (superceded by defra circular 01/2006) follows established approaches to risk assessment, including the concept of **pollutant linkages**:

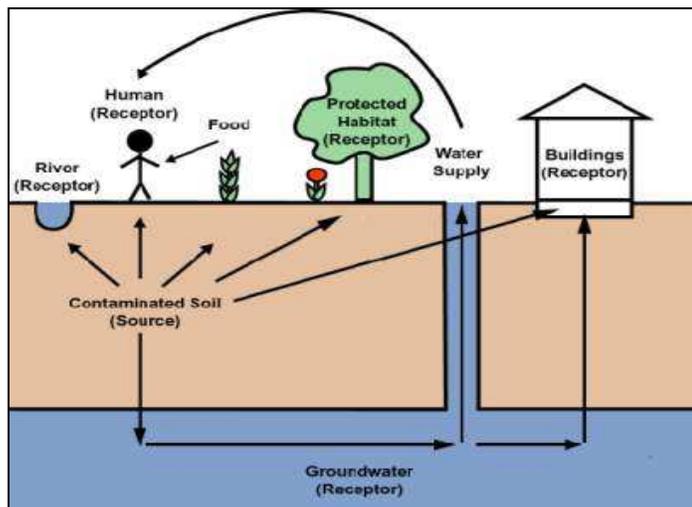


Figure 1 : Example of a conceptual model (East Lindsey District Council 2006)

A **pollutant linkage** is the relationship between a source (**contaminant**), a **pathway** (the route by which a receptor could come into contact with the contaminating substance) and a **receptor** (i.e. part of the ecosystem that could be adversely affected by the contamination such as ground water, human beings, flora and fauna). A 'pollutant' is the contaminant in a pollutant linkage. Unless all three elements of a pollutant linkage are identified in respect of a piece of land, the land will not be identified as contaminated land.

2.3 Risk Assessment

The identification of contaminated land is based on the principle of risk. Managing environmental 'risk' is a key part of Part IIA and the 'risk-based' nature of the system implies that not arbitrary but anticipatory in its approach (for example, by focussing regulatory action solely on particular past land uses or at some particular point in time, such as when the land is being sold).

DETR Circular 01/2006 promotes a **risk-based approach** in dealing with contaminated land. The aim of this type of approach is to protect human health and the environment without wasting finances on cleaning up sites that do not pose a significant risk. The need for, and extent of, any remediation will be based on a site-specific risk assessment of the facts.

2.4 The Basis of Risk Assessment In The UK

In America and many other countries there is an assumption that land will be cleaned up to a set of standards that represent minimal risks. However, the UK regime is very sophisticated, it might even be described as "too clever", thus in the UK the level of remediation required depends on the level of risk presented by the contaminants in the ground. The Model procedures for Management of Land Contamination (CLR11) talk in terms of;

- i. **RISK ESTIMATION** predicting the **magnitude, and probability** of the **"possible consequences"** and
- ii. **RISK EVALUATION** deciding whether a risk is unacceptable.

2.5 Mole Valley District Council's Approach to risk

The UK regime is predicated on the identification and removal of **unacceptable risks** considered likely to cause **Significant Possibility Of Significant harm (SPOSH)**. Although there is currently no definitive guidance on what represents an unacceptable risk within the field of contaminated land, there is within the work place. This is detailed in the Health and Safety Executive (HSE) document Reducing Risks Protecting People 2001 which indicates the imposition of a 1 in 10,000 risk of **DEATH** is unacceptable in relation to the general public.

Table A and B of Annex 3 of the Secretary of States Guidance sets the conditions by which SPOSH can be judged. Although death is included the guidance more

usefully specifies “disease” as being the “unhealthy condition of the body or part”. The Council has therefore taken the view that SPOSH can be derived by taking the HSE intervention level of 1 in 10,000 and using that as the risk level at which the Council needs to be able to demonstrate a significant level of disease/harm is occurring

There is also good guidance on the consideration and communication of risk issues from SNIFFER (Scotland and Northern Ireland forum for Environmental Research) and ATSDR (Agency for Toxic Disease Registry)

<http://www.atsdr.cdc.gov/risk/riskprimer/presentation.html>.

The Council concluded from these document sources that it should consider the **level of risk** that ordinary people would normally accept as part of their every day lives. Although we recognise it is not ideal to compare different risks from different activities it is informative to consider the level of risk that the general public are willing to **voluntarily contend** with in their every day lives. Inevitably these risks are linked to the risk of **death** not **harm** but in view of the difficulty of measuring such things it is still considered a useful exercise. Table 2 below details a range of the pertinent risks identified.

Table 2: A Range of common activities and the associated risks they represent

Risk	Activity
1- 4 in 50	Risk of death if exposed- HPA action level for RADON
1 in 1000	Risk of death if none immunised child catches measles
1 in 20,000	Risk of maternal death in pregnancy in developed world.

This information and the HSE document forms the basis of the Councils view that no part of a site should be remediated unless, on balance of probabilities, there is evidence to suggest the presence of an unacceptable level of contamination resulting in SPOSH at an estimated risk of an adverse health effect in a person’s lifetime of 1 in 10,000.

In the UK regime this means that in the case of residential properties we will protect the most sensitive receptor (a child of 0-6 years) from exposure to contaminants, at such levels and to such extent, that they are likely to provide a 1 in 10,000 risk of significant disease throughout the adult's life. This decision goes to the heart of SPOSH and is extremely difficult to quantify. A key part of the assessment process is estimating the level of risk to which the receptor will be exposed. In the UK human health risks are modelled in the CLEA (Contaminated Land Exposure Assessment) model a piece of bespoke software provided by the Environment Agency. The CLEA model can provide an estimate of the amount of contamination it is acceptable to leave in the ground but the estimate for each contaminant can vary substantially due to toxicological and site uncertainties.

3 Prioritisation of sites for inspection

In order to meet its statutory duty to inspect (Section 78B of the Environmental Protection Act) the Council must ***“cause its area to be inspected from time to time for the purpose- of identifying contaminated land”***. The objective of this section is to ensure the Council has a good data management process and supporting infrastructure;

Objective 2: *To continue to provide clear and transparent information to residents of Mole Valley and other stake holders such as developers and consultants involved in the sale and development of land and provide. Also to provide a framework by which new information can be captured and recorded in order to refine and improve the classification and understanding of those sites representing the greatest potential risk.*

This section describes in broad terms the methodology for the prioritisation of those sites identified as being “potentially contaminated”.

3.1 Prioritisation Model

Paragraph B9 of the Secretary of States Guidance require the Local authority to have a strategic approach to inspection. Mole Valley District Council has developed a detailed assessment model to facilitate this process the current simplified model is detailed in Annexe 1 of this document. The purpose of the model is to identify potential hazards to particular receptors and estimate the magnitude and probability of the risks.

The Council is currently in the process of **replacing its existing risk assessment model** with a much more refined model detailed below. The Mole Valley Risk Assessment Model otherwise known as the prioritisation model, will be implemented as part of the Councils new open GIS system and will assist in making the Councils historical land use database much more available to the public.

The prioritisation model once implemented will consist of three distinct stages each of which will be linked to spatial data sets in accordance with the Draft Mole Valley Risk Assessment Model. For the sake of brevity an outline of the main precepts of the model is detailed below, the main draft model is available as a word document on request.

3.2 Detailed Outline of Proposed Prioritisation Model

Stage 1: Source Characterisation

Establish the activities on the site and consider if all parts of the site are of similar risk levels.

If NO rezone site

If YES proceed to rank the overall source risk

Source Risk =

Severity of potential contaminant (SV) x (EI) Environmental Impact

Stage 2: Pathway Characterisation

Establish the ease of movement through the environment and proximity of priority receptors such as children in residential housing, playgrounds or schools.

Stage 3: Receptor Characterisation.

Count the total number of vulnerable receptors on or within the desired critical distance and establish if **PRIORITY** receptors are present.

- If no priority receptors present then low risk factors applied.
- If priority receptors are present then Medium or high risk factors applied

Based on stages 1-3 summarised above and the detailed prioritisation model a numerical calculation will be carried out to rank the sites in order of priority.

Stage 4 Detailed site Inspection: Sites deemed to be high risk have detailed record searches carried out using

- **Planning Records**
- **Building Control Records**
- **Consultant reports**

Stage 5: Judgement: Based on the evidence found in these records all sites are classified with a judgement placing them in a risk category. Each risk category broadly ascribes the magnitude of the potential risk and the likely action the local authority considers necessary to make a judgement under part IIA. These judgments, listed in the table below, enable the council to meet the requirements of the secretary of state to be rational ordered and efficient and enable clear concise communication of information to both professionals and private residents

Table 3 – Mole Valley Classification system for Potentially Contaminated Land

Category	Description
1	Probable Contaminated Land- Intrusive Investigation renecessary. Full Review of existing site data required to develop detailed investigation strategy and conceptual model.
2	Medium Risk - Intrusive investigation required to resolve potential risks. Clean up considered likely under part IIA and priority action recommended.
3A	Low to Medium Risk- Intrusive investigation recommended to resolve potential risks. Clean up can not be excluded under part IIA.
3B	Low to Medium Risk- Existing information suggests intrusive investigation unlikely to show contamination is at such levels and such extent that SPOSH can be demonstrated Clean up is considered unlikely to be required under Part IIA
4	Low risk- Likelihood of contamination is considered low and if present the impact is such that clean up could not be reasonably justified
5	Insufficient information- further research needed to make a decision.

3.3 Detailed Inspection of Sites

Mole Valley District Councils first Contaminated Land strategy detailed a significant programme of information collection combined with procurement of specialist IT systems. Increasingly Councils work in an incredibly data rich environment and these developments have substantially aided delivery of the strategy the most significant developments are listed below:

- Implementation of the BS7666 addressing standard enabling the identification of all residential and commercial properties as unique parcels of land.
- The availability of spatially plotted historical planning records dating back to 1940
- Procurement of historical data sets including maps and spatially plotted land use data

As described earlier the district has almost 1500 sites in its district. No matter how sophisticated the risk assessment model that is applied it is impossible to accurately assess the risks from any site without actual soil data. The inspection strategy therefore is predicated on the fact that any risk assessment carried out is at best a guess. In some circumstances this guess will not be good enough and stakeholders must be advised to collect their own information the key persons this effects are:

- Developers and persons with an interest in the future development of land
- Persons buying and selling property- including householders.

The initial prioritisation system detailed above in Section 3.2 is designed to be an iterative process. Information is processed within a centralised map based information system (Geographical Information System- GIS) implemented in accordance with the original contaminated land strategy. In particular the system was designed to enable multiple inspections as new data comes to light. This method of allowing multiple rounds of inspection enables the Council to best direct its efforts to those areas with the most significant and substantial issues while at the same time allowing further rounds of inspection as requested by other stakeholders in the process such as developers or residents.

Although all decisions involving land contamination have the same fundamental basis. The summary below shows how the work flow is split into a number of strands depending on the process by which the issue has been identified:

Strand 1 Development Control: The onus of the development control process is to confidently demonstrate the unacceptable risks have been removed and the site is “safe and suitable for use”. Key issues in this process are:

- Identification of high risk sites likely to be contaminated and
- Identification of high risk developments that will introduce vulnerable receptors so potentially increasing the risk of harm.
- Identification of uncertainty

Development control is now a very data rich process, all historical planning applications back to 1940 are available in a fully spatial database, increasingly this data can be pulled through into the Councils Geographical information systems (GIS) to provide a very detailed understanding of the site risks. This information can then better inform the planning process and ensure that appropriate schemes of inspection and protection are put in place. These decisions are then made in accordance with the criteria identified in the Council planning matrix (Annexe 2).

Strand 2 Investigation of Complaints: where a complaint is made about a particular site it will be investigated using a "fast track" approach normally within 5

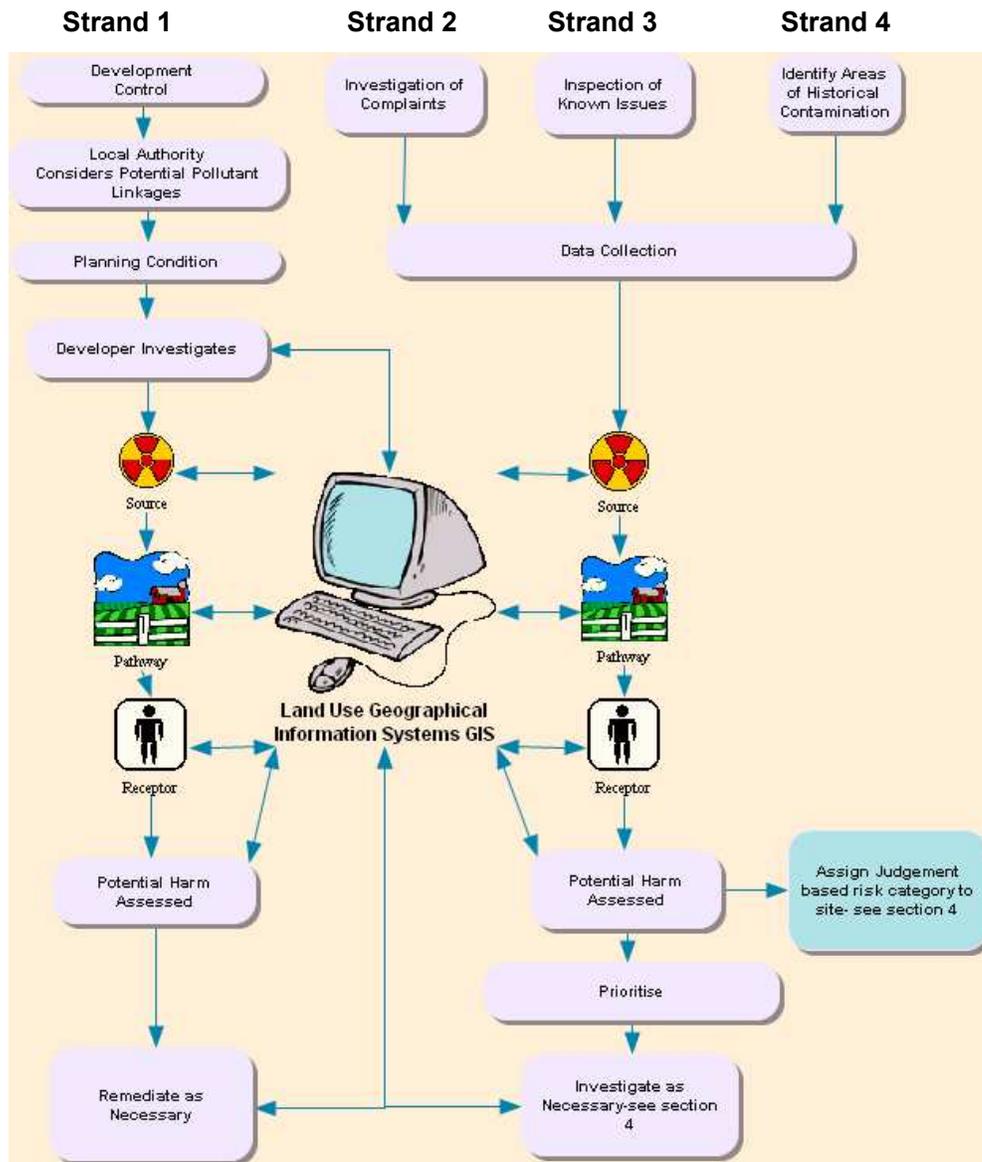
working days, in accordance with the **preliminary risk assessment model** detailed in Annexe 1. Sites which can not be resolved through this process will be referred for consideration through strand 3 below.

Strand 3 Inspection of Known Issues: This is the backstop to the contaminated land strategy, as it fulfills the Council's requirement to inspect. However, in order to meet the wider duties within the Secretary of States Guidance this inspection must be **rational ordered and efficient**. In future it is the intention to develop an IT infrastructure to support the prioritisation of sites within MVDC in accordance with the prioritisation model described in the preceding section

Strand 4 Identification of Known areas of Historical Contamination: This activity is now largely complete as the Council has now examined most of the historical maps of its District.

The diagram over the page illustrates how the main strands of work are pulled together into an over all approach.

Figure 2: Mole Valley Work Flow



4 Detailed Intrusive Site investigation

In the event a site is identified as **requiring** site investigation i.e. it has been classified as **category 1 or 2**, in the Council's prioritisation model then the site will be prioritised for intrusive investigation. This section details the underlying principles behind the management of its site investigation process

Objective: 3 *The Council will continue to investigate its prioritised sites in a phased manner. Where resources permit it will also respond to significant new*

information with un-programmed work. All inspections will continue to be predicated on an optimum site investigation strategy in relation to value for money and the required speed of decision. Funding will be retrospectively claimed back from the DEFRA capital projects programme.

4.1 The Councils Approach to Site Investigation and Risk Assessment

Site investigation can either take place through Part 2A of the Environmental Protection Act or through planning. The UK generic approach to site investigation is set out in the CLR 11 Model Procedures for the Management of Contaminated Land (2004). In broad outline, the procedure for the investigation of potentially contaminated land and the assessment of its risk conforms to the following basic approach:

- **Hazard identification** – establishing contaminant sources
- **Hazard assessment** – analysing the potential for unacceptable risks (what pathways and receptors could be present, what pollutant linkages could result and what could the effects be)
- **Risk estimation** – predicting the magnitude and probability of the possible consequences (what degree of harm or pollution might result and to what receptors, and how likely is it) that may arise as a result of a hazard
- **Risk evaluation** – deciding whether a risk is unacceptable

The process is iterative and the above sequence has to be repeated for every stage of inspection and data collection. It is extremely uncommon for an appropriate answer to be obtained in a single iteration and most site investigations require three to four rounds of data collection. Furthermore each step requires different, frequently highly specialised, and increasingly expensive technical skills.

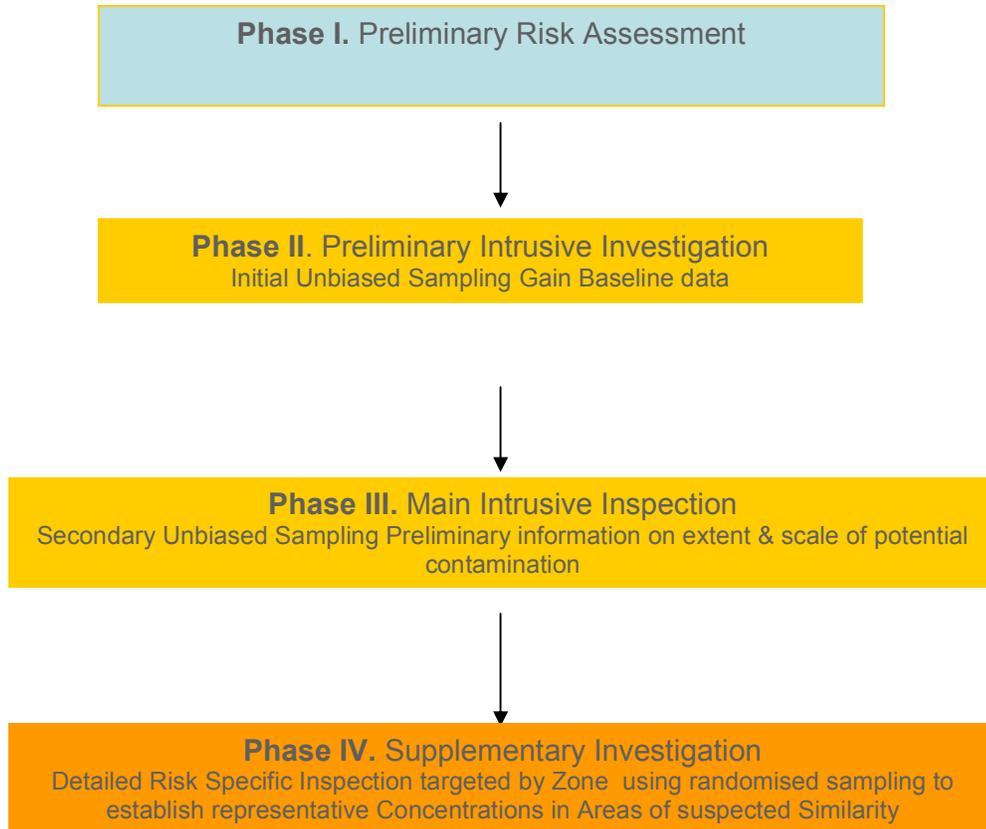
The Council has therefore developed a generic approach to site investigation that typically involves three rounds of site inspection work. Figure 4 below provides a broad outline of the Mole Valley process.

This approach allows for

- Staged review of data obtained as its obtained
- Effective allocation of resources by ensuring the scope and scale of each inspection is appropriate to the level of knowledge required and

- Appropriate communication between interested parties

Figure 4: Summary of Generic Inspection Process



4.2 A summary of the detailed Phase of Site Investigation

Phase I Preliminary Risk Assessment: This is the process of compiling the facts and relevant historical data to produce an initial conceptual model and the potential unacceptable risks requiring intrusive investigation. This process should also provide a costed project plan for the proposed investigation work.

Phase II Preliminary Intrusive Investigation: This inspection primarily consists of limited exploratory targeting of known risks identified in the conceptual site model (CSM) derived in Phase 1 combined with an element of unbiased grid based sampling. The purpose of this inspection is to gain valuable preliminary intelligence on the site with which to help build a more detailed CSM. This type of investigation is primarily limited by access and time on site

Phase III Main intrusive Inspection: This inspection is primarily based on unbiased grid based sampling, supplemented with appropriate targeted sampling of known structures. This stage of SI is designed to collect as much information as reasonably practicable to test and challenge the developing CSM. Data collection from this Phase of the inspection **must** be **optimal** for the question to be answered and the inspection completed in a reasonable period of time, typically 4-5 days. Multiple mobilisations might be considered on very large sites.

Phase IV Supplementary Intrusive Investigation This stage of inspection work is designed to collect large quantities of unbiased, randomised data within target zones to confirm or reject the CSM and identify probable significant pollutant linkages (SPL). The main purpose of this inspection is to quantify risk and delineate exposure patterns. The design of the inspection must be sufficiently rigorous to support determination of relevant areas of land if necessary under the contaminated land regime.

Annexe 3 **Inspection Process and Task Dictionary** shows in more detail the ancillary process related to these activities. In practice the overall process is iterative each level of additional detailed assessment may raise issues that require earlier and each tier of risk assessment facilitates further decisions in relation to the fate of the site such as:

- The type, extent, location and behaviour of potential contaminants
- Physical conditions on or around the site
- The characteristics of the people and the environment potentially affected by contaminants on the site

In some circumstances it may be appropriate to exit the process part way through. This could arise when enough is known about the potential risk either to leave the process altogether, for example because no unacceptable risk has been identified, or to move straight to the next part of the process. This helps to ensure that the effort expended in risk assessment is proportionate to the circumstances of the activity – a key requirement for applying the process.

Annexe 3 **Task Dictionary** provides a thematic sketch of the activities undertaken to support the site investigation process and summarises the complex operations required for successful organisation of a part IIA inspection.

With each iteration of inspection, the level of potential harm and the complexity of the assessment increases while the conservatisms in the decisions are reduced. At each stage the facts supporting the assessment must be recorded as a **DECISION DOCUMENT** which should then be used to determine the scope and scale of further investigation required at each point. Until ultimately the site risks are determined to be acceptable or unacceptable and the site must either be determined or the investigation terminated.

5 Communication Consultation and Information Availability

5.1 Background

The Council recognises that for a resident or small to medium sized enterprise becoming involved in any form of chemical contamination in the ground, let alone on your own property is a very alarming and disturbing event. Never the less the Council has a statutory duty to “inspect areas of land and carry out all the duties detailed in section 1 - 4 of this strategy.

This section documents the various methods and techniques the Council has developed over the last 10 years to communicate information and reassure various stakeholders that we are responsibly, and proportionately carrying out the duties required of us;

Objective 4: *The Council will continue with a policy of open and free communication with its residents and where necessary we will continue to hold public meetings and fund our advisors to attend these meetings so as to make them available to open scrutiny and debate.*

5.2 The Circumstances under Which Site Investigation is Initiated

Where the evidence suggests there is a significant possibility of unacceptable harm a site will be classified as category 1 or category 2 as defined in the Councils Prioritisation Model. The current definitions are in Table 3 above and though subject to amendment in the future can be summarised as

- **Category 1**– Immediate action required
- **Category 2**- Priority Action required

- **Category 3-** Unacceptable intake can not be excluded based on current information.

The purpose of this is to differentiate between areas of land where the Council considers its statutory duties apply and areas where the Council considers the onus of inspection lies with the landowner. Only where a site is deemed to be Category 1 or 2 would the Council consider investigation and enter into consultation. However, the aim of this strategy is to provide free and fair unbiased information to all stakeholders in all sites. It is not the Council's duty to "prove clean" thus category 3 sites will not automatically enter the regime until the Council deems there to be a sufficient evidence of the magnitude, extent and severity of contamination combined with the presence of sufficiently vulnerable receptors to demonstrate the presence of a likely significant pollutant linkage.

5.3 Consultation Mechanism prior to inspection

The Council will only investigate Category 1 and Category 2 sites and stakeholders will only be consulted when the following circumstances are met;

- the Council thinks there is **STRONG** evidence to support an inspection and
- the Environmental Health Department has adequate resources to implement an optimal inspection strategy.

5.4 Communication and Consultation Strategy (Class B persons)

Class B persons are landowners who did not cause or knowingly permit contamination on their property. The most common class B person is a householder who unwittingly bought a property that is adversely affected by contamination.

Experience has shown that communication of the risks and a thorough explanation of the process people will be put through is as important as the technical proficiency with which the inspection is carried out. The Council has therefore developed a multi staged approach to its communications: Generally this stage consists of three letters:

- i. Initial Letter:** Explaining the circumstances of the issue, outlining what is the historical context of the problem, the risks and the Council's general proposals to deal with the matter.

ii. Preliminary Inspection Letter: This letter talks much more about the upcoming inspection detailing the proposed work and the Councils strategy for the site and requesting assistance for difficult access issues

iii. Notice of Inspection: This letter advises people of the precise extent and timing of the inspection and acts as formal notice of the work being carried out under statutory powers of entry (Section 108).

In **stages i and ii** the Council will take account of reasonable representations however **stage iii** will be carried under statutory powers in order to avoid compromising the integrity of the inspection.

Information Updates: Once the inspection has begun it is important that people are advised of progress. The lead times, phased work programming and the complexity of decisions means that inspections tend to take 12-18 months and in some cases possibly longer. The Council therefore endeavours to issue regular update letters every 2-3 months to keep interested persons updated on developments.

Public Meetings and Drop-in Sessions: Depending on the complexity of the work, the perceived risks and any anticipated delays in decision making, it is sometimes necessary to carry out public meetings or residential drop in surgeries. The Council has arranged a number of these meetings in the past and found them very successful.

5.5 Communication With Councillors

Ward Councillors will be informed as soon as land is identified for inspection and officers will ensure Councillors are provided with regular updates detailing how the inspection work is proceeding.

5.6 Communication and Consultation Strategy (Class A persons)

Class A persons are generally liable for much greater costs than class B person. A Class A person is deemed to have caused or knowingly permitted the contamination and therefore is potentially likely for the entire clean up costs of a given pollutant linkage. The Council would not normally engage in discussions with Class A persons until the Council has;

- **STRONG** evidence of a significant pollutant linkage;
- a clear view as to allocation of costs
- sufficient evidence to probably determine an area of land

In these circumstances the Council should enter into consultation, for a period of at least three months prior to determination, provided this consultation is not deemed detrimental to the legal outcome.

5.7 Information Availability- Current Position:

The Council currently shares basic information about the location and potential risk of former historical sites as part of its normal business use. Information is provided on a site by site basis under freedom of information provisions. Further information, including an opinion regarding, potential risks and any necessary regulatory actions are provided as a fee based service.

5.8 Information Availability Future Developments

The new outward facing GIS will provide external users with the ability to look up the potentially contaminated sites in their area based on their address details. Users will then be able to produce a variety of free information and fee based reports using the Mole Valley web site. The Council is committed to providing people with high quality information on a fair use basis. The current GIS project is planned to deliver:

- Free house holder report of risk and proximity for all 1,500 sites in Mole Valley
- Low cost map based information for a nominal fee of around £6-00.
- Higher cost detailed report of the historical character and risk along with other associated local matters of interest to house buyers for ~ £50

The GIS based reporting system has been jointly funded from Business Poces Review and the Environmental Health Contaminated Land budget

5.9 Acting on Information and avoidance of blight.

Section 3 of the strategy details how the Council deals with prioritisation, strand 2 deals with investigation of complaints. Clearly web enabling data on contaminated land will not only speed up and improve confidence in property purchases it also has potential for blight. This risk is mitigated by the following:

- The Council has completed its initial inspection of its area and has a thorough understanding of all the sites on its data base
- The Environmental Health Department has a fixed rate self help scheme that combines the Council's role as regulator with the private sector's knowledge and efficiency in carrying out routine site investigation. Providing residents with low cost information and a high quality decision regarding the level of potential risk .

The Self help scheme has been operating for around five years. It was first introduced in the North Holmwood estate. Since then the Environmental Health Department has become very experienced in supporting the sale of properties on potentially contaminated land and around **50 properties have been sold** for full market price in adverse circumstances. Where sites are believed to be marginal, ie there is a significant possibility of a plausible pollutant linkage the Council may exercise the option to part fund these inspections.

6 Allocation and Recovery of Costs

There is no power to recover costs from site inspection as these are currently largely funded by grants from central government. To date Mole Valley have investigated eight sites and our activities have impacted around 1000 households and the Council has been awarded around £350,000 in grant funding for site investigation work. Fortunately none of this activity has yet resulted in a site legally being determined as contaminated land.

This section outlines how the Council proposes to develop a hardship policy to enable recovery of costs from the appropriate persons involved in those sites where remediation is required

Objective 5: *The Council will develop a hardship policy to ensure fair allocation of costs, in accordance with the Secretary of States guidance, and maximise the Councils chances of obtaining Department of Environment funding for any future remediation project.*

If a **significant pollutant linkage** has been identified then the Council has a legal duty to consider if remedial works are likely. If remedial works are required Council has a duty to allocate costs to "appropriate persons". The "appropriate persons" who

are liable for costs are identified using a set of exclusion and apportionment rules in Chapter D of the Secretary of States Guidance. Apportionment of liability is exceedingly complicated and will only be done in direct consultation with both appropriate advisors and in discussion with the “appropriate persons”

6.1 Scope of the Act regarding cost recovery.

Section 78P enables the local authority to recover reasonable costs incurred from the “appropriate persons” who have been identified through the exclusion and apportionment process above. Paragraph E11(a) of the Secretary of States Guidance states the Council should have regard to the following

- E.11 In making any cost recovery decision, the enforcing authority should have regard to the following general principles:
 - (a) the authority should aim for an overall result which is as fair and equitable as possible to all who may have to meet the costs of remediation, including national and local taxpayers; and
 - (b) the “polluter pays” principle, by virtue of which the costs of remediating pollution are to be borne by the polluter; the authority should therefore consider the degree and nature of responsibility of the appropriate person for the creation, or continued existence, of the circumstances which lead to the land in question being identified as contaminated land.

Paragraph E12 of the Secretary of States Guidance requires the Council to avoid causing hardship.

The Statutory guidance makes it clear therefore that any cost allocation carried out in the event of a contaminated land site being identified must be fair and equitable to national and local tax payers. Furthermore paragraph E17 requires the Council to have a hardship policy, detailing how this is achieved, in order to promote “transparency, fairness and consistency”.

6.2 Mole Valley’s Approach to cost recovery

In event of a site being determined and works being carried out the Environmental Health Department proposes to introduce a cost recovery policy that meets the requirements of chapter E of the Secretary of States Guidance by identifying the level of contribution from both owner occupiers and commercial entities having regard to the Secretary of States Guidance

It should be noted that the Council can **ONLY** access central government funds once all **relevant contributions** from local and national stakeholders have been identified in accordance with the hardship policy.

Referances

1. The risks of risk-based regulation: Insights from the environmental policy domain

Henry Rothstein^a  , Phil Irving^b, Terry Walden^c and Roger Yearsley^b

[Environment International](#)

[Volume 32, Issue 8](#), December 2006, Pages 1056-1065
Environmental Risk Management - the State of the Art

2. Defra Circular 01/2006 Environmental protection Act 1990: Part 2A

Secretary of States Guidance

<http://www.defra.gov.uk/environment/quality/land/contaminated/documents/circular01-2006.pdf>

3. Environment Acto 1995

http://www.opsi.gov.uk/acts/acts1995/ukpga_19950025_en_1

ANNEXE 1

Conceptual Model for Preliminary Assessment of Pollutant Linkages

Introduction

The conceptual model outlined below is only very simple and must be treated with great caution. Each pollutant linkage must always be individually considered on its own merits. The model is only a tool for helping to decide if a given pollutant linkage should be considered in greater detail.

In principle the Council's order of priorities can be described as:

People> animals>environment> buildings

Greater weighting will always be given to a site where receptors coincide with a source. However, characteristics of the source pollutant will always have to be considered the determining factor if all other circumstances are equal.

Table A. Priority Receptors

Allotments
Schools and Nurseries
Residential property with Gardens
Parks and Playing fields
Nature Reserves including SSI's and SNCI's.
Groundwater protection Zones

- **Note 1** The quantity of residential property means that a full review of these sites will have to wait until an initial assessment of sources within the district has been completed.
- **Note 2:** The number of properties and the quantity of failed environmental searches should also be considered in prioritising residential areas.

Table B. Contaminants of Concern (Ranked in order of priority)

Pollutant Type	Hazard
Volatile hydrocarbon/Gas	Cancer risk & explosion
Mobile/Light Organic/Hydrocarbons	Cancer risk, explosion & risk to water
Immobile/Heavy hydrocarbons	Cancer risk and risk to water
Heavy Metals	Ingestion or contact

Table C Pathways.

Location/Geology	Hazard
Directly on top of source	Dependant on mobility of source contaminant. Significant possibility that pollutant linkage might exist
Within 50m of source probably in a permeable geological strata	
More than 50m from source*	

* **NB** Initially pollutant linkages will be screened out if the receptor is more than 50m from the source

ANNEXE 2

Planning Consultation Matrix.

Table 1- Risk based assessment of information required to accept application

	Required Pre-application Information				
Conland category L/M/H	Conservatory & Extension	Unoccupied Structure Change of use	Industrial commercial	Industrial commercial <u>major project</u>	<u>New Build</u> (Children Likely) eg residential schools etc
Low	None	None	None	Site walkover, historical desk study and independent risk assessment	Site walkover, historical desk study, independent risk assessment & BOQ
Medium	None	None	Site walkover, historical desk study & BOQ	Site walkover, historical desk study, independent risk assessment & BOQ	Site walkover, historical desk study, independent risk assessment & BOQ
High	None	Independent Risk assessment	Site walkover, historical desk study & BOQ	Site Investigation and specification for additional work	Site Investigation and specification for additional work

***New build Children Present:** The presence of children over prolonged periods of time increases the risk from the site. The most common reason for children to be present is the development of residential housing but other applications may involve children eg schools nurseries or play areas

Bill of quantities: On higher risk sites a bill of quantities needs to be submitted indicating the scope and scale of proposed inspection

* **Shaded Cells-** Applications in the shaded area should not be accepted without agreement from environmental health who **MUST** respond the following working day. Contact Rob Ivens, Duncan Carins or Tom Allen

Table 2- Requirement to Consult Environmental Health

	Type of development			
Historical Risk	Conservatory and extension	Residential Change of use	<u>New Build</u> Children Likely	<u>New Build</u> Unoccupied, Industrial or commercial building
Low	No	No	Yes	No
Medium	No	Yes	Yes	Yes
High	Yes	Yes	Yes	Yes

