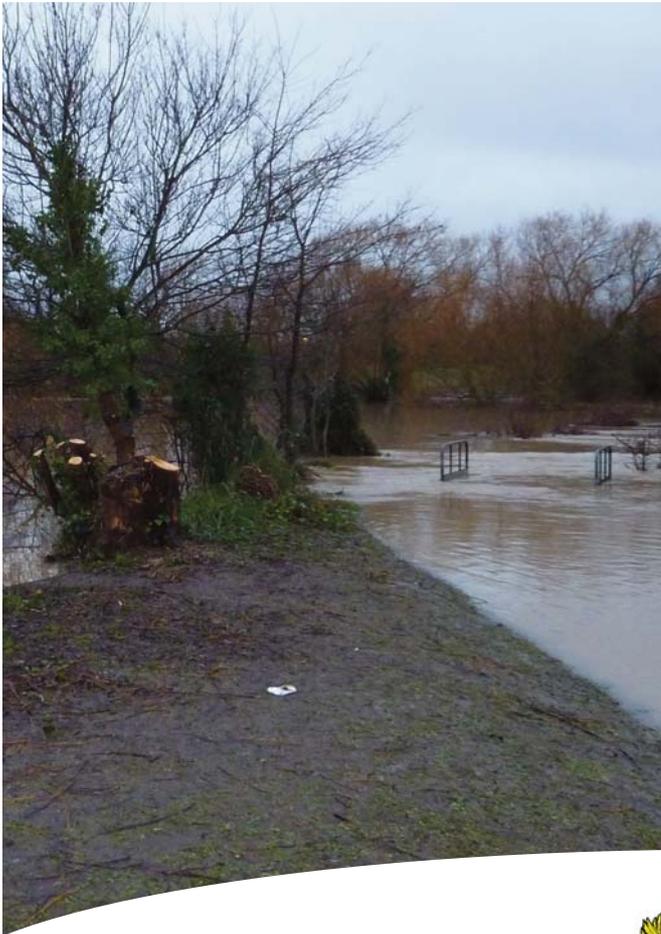


# Contaminated Land Strategy



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## Introduction and Overview

### 1 Background to the Legislation

- 1.1 Industrial change and demographic shift during the 20<sup>th</sup> century resulted in the need for large-scale reorganisation of our towns and cities. Industries moved out or disappeared altogether leaving large, 'brown field', gaps in our urban landscape. At the same time, changes in heating methods, and the advent of the consumer society, has had a significant effect on the type and volume of refuse it has been necessary to landfill. Inevitably, these changes have left behind a legacy of contaminated land which in some cases may be harmful.
- 1.2 The Government, in its response to the 11<sup>th</sup> report of the Royal Commission on Environmental Pollution in 1985, announced that the Department of the Environment was preparing a circular on the planning aspects of contaminated land. The draft of the circular stated that:
- Even before a planning application is made, informal discussions between an applicant and the local planning authority are very helpful. The possibility that the land might be contaminated may thus be brought to the attention of the applicant at this stage, and the implications explained.
- 1.3 Thus suggesting that it would be advantageous for the planning authorities to have available a list of potentially contaminated sites.
- 1.4 In 1988 the Town & Country Planning (General Development) Order required local planning authorities to consult with waste disposal authorities if development was proposed within 250m of land which had been used to deposit refuse within the last 30 years.
- 1.5 In January 1990 the House of Commons Environment Committee published its first report on contaminated land. This document, for the first time, expressed concern that the Government's suitable for use approach, "... may be underestimating a genuine environmental problem and misdirecting effort and resources". The committee produced 29 recommendations, including the proposals that:
- The Department of the Environment concern itself with all land which has been so contaminated as to be a potential hazard to health or the environment regardless of the use to which it is to be put, and;
  - The Government bring forward legislation to lay on local authorities a duty to seek out and compile registers of contaminated land.
- 1.6 Immediately following the House of Commons report the Environmental Protection Act 1990 had at section 143, a requirement for local authorities to compile, 'Public registers of land which may be contaminated'. If enacted this would have required local authorities to maintain registers of land which was, or may have been contaminated, as a result of previous (specified) uses. In March 1992 however, the concern about the blighting effect of such registers resulted in a press release published by the Secretary of State delaying the introduction of section 143 stating:
- The Government were concerned about suggestions that land values would be unfairly blighted because of the perception of the registers.

- 1.7 Subsequently in July 1992, draft regulations were released with significantly reduced categories of, contaminative uses, “.... to those where there is a very high probability that all land subject to those uses is contaminated unless it has been appropriately treated”. It was estimated that land covered by the registers would be only 10 to 15% of the area previously envisaged. This, however, still did not satisfy the city, so on the 24 of March 1993 the new Secretary of State (Michael Howard) announced that the proposals for contaminated land registers were to be withdrawn and a belt and braces review of land pollution responsibilities to be undertaken.
- 1.8 This resulted in the Department of the Environment consultation paper, **Paying for our Past** (March 1994), which elicited no less than 349 responses. The outcome of this was the policy document, **Framework for Contaminated Land**, published in November 1994. This useful review emphasised a number of key points:
- The Government was committed to the, “polluter pays principle”, and, “suitable for use approach”.
  - Concern related to past pollution only (there were effective regimes in place to control future sources of land pollution).
  - Action should only be taken where the contamination posed actual or potential risks to health or the environment and there are affordable ways of doing so.
  - The long-standing statutory nuisance powers had provided an essentially sound basis for dealing with contaminated land.
- 1.9 It was also made clear that the Government wished to:
- Encourage a market in contaminated land;
  - Encourage its development, and
  - That remediating land to allow for any use was neither sensible nor feasible.
- 1.10 The proposed new legislation was first published in June 1995 in the form of section 57 of the Environment Act, which amended the Environmental Protection Act 1990 by introducing a new Part IIA. After lengthy consultation on statutory guidance this came into force in April 2000.

## 2 Explanation of Terms

- 2.1 The legislation and guidance is very heavily punctuated with many complex and often unusual terms. To assist in the interpretation of these an extensive glossary has been included in DETR Circular 2/2000, **Environmental Protection Act 1990: Part IIA – Contaminated Land**. This has been re-produced at Appendix 6 to this document for ease of reference.

### 3 National Objectives of the New Regime

- 3.1 The Government believes contaminated land to be “an archetypal example of our failure in the past to move towards sustainable development”. The first priority has therefore been specified as the prevention of new contamination via the pollution control regimes.
- 3.2 Secondly there are three stated objectives underlying the suitable for use approach as follows:
- to identify and remove unacceptable risks to human health and the environment;
  - to seek to bring damaged land back into beneficial use; and
  - to seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.
- 3.3 The suitable for use approach recognises that risk can only be satisfactorily assessed in the context of a specific use with the aim of maintaining an acceptable level of risk at minimum cost, thereby, “not disturbing social, economic and environmental priorities”.
- 3.4 The specific stated objectives of the new regime are:
- To improve the focus and transparency of the controls, ensuring authorities take a strategic approach to problems of land contamination;
  - to enable all problems resulting from contamination to be handled as part of the same process (previously separate regulatory action was needed to protect human health and to protect the water environment);
  - to increase the consistency of approach taken by different authorities; and
  - to provide a more tailored regulatory mechanism, including liability rules, better able to reflect the complexity and range of circumstances found on individual sites.
- 3.5 In addition to providing a more secure basis for direct regulatory action, the Government considers that the improved clarity and consistency of the new regime, in comparison with its predecessors, is also likely to encourage **voluntary remediation**. It is intended that companies responsible for contamination should assess the likely requirements of regulators and plan remediation in advance of regulatory action.
- 3.6 There will also be significant incentive to undertake **voluntary remediation** in that the right to exemption to pay Landfill Tax will be removed once enforcement action has commenced.

3.7 The Government also considers the new regime will assist developers of contaminated land by reducing uncertainties about so called, “residual liabilities”, in particular it should:

- reinforce the suitable for use approach, enabling developers to design and implement appropriate and cost-effective remediation schemes as part of their redevelopment projects;
- clarify the circumstances in which future regulatory intervention might be necessary (for example, if the initial remediation scheme proved not to be effective in the long term); and
- set out the framework for statutory liabilities to pay for any further remediation should that be necessary.

## 4 Local Objectives

4.1 The Council welcomes the introduction of Part IIA of the Environmental Protection Act 1990, which compliments the Council’s own Corporate aims and objectives.

4.2 The **Rochford District Council Corporate Plan** was first published in March 2000. The plan identifies seven key objectives, of which the following are of particular relevance to this strategy:

- **Promote a Green and Sustainable Environment**

The Council can make a contribution to a green and sustainable environment in a number of ways – as a purchaser of goods and services, through the planning process and other regulatory functions, through the delivery of its own services, and through influencing the operating practices of its partners and contractors.

- **Improve the Quality of Life for Residents**

The District Council, through the provision of its services and the operation of its regulatory functions, can do much to impact upon the quality of life of the local residents. Where the Council is not the key provider, then it can still contribute through working with and/or lobbying the responsible organisations in an attempt to ensure that the quality of life of the District's residents is maintained and enhanced.

4.3 Similarly, the **Rochford District Local Plan**, adopted in April 1995, identifies the following objectives:

- to improve the quality of life of the inhabitants of the District by providing the best possible environment, and satisfying social needs by making provision for the necessary health, housing, educational, community and leisure facilities in the interest of the total well being of all groups within the population;
- to make provision for the residential, industrial and commercial development proposed in the Structure Plan First Alteration;

- to preserve and enhance the natural beauty of the District and protect the flora and fauna and their habitats;
- to conserve and enhance the architectural and historic heritage of the District.

4.4 The **Rochford District Local Agenda 21 Strategy**, refers to sustainable development which it defines as:

"development that delivers basic environmental, social and economic services to all residents of the community without threatening the viability of the natural, built and social systems upon which the delivery of each of these services depend"

Sustainable development is a programme that aims to improve the quality of life for all.

4.5 The strategy includes a number of aims in support of this programme:

- **Pollution** – Pollution limited to levels which natural systems can cope with, without damage.
- **Natural Environment and Biodiversity** – The diversity and quality of the natural environment maintained and enhanced.
- **Built Environment** – To ensure residents are positive about the condition of their locality.

Ensure that the **Rochford District Local Plan** takes into account sustainability principles, particularly when earmarking land for new housing.

Through the Rochford District Council Economic Regeneration Service and the District Local Plan, encourage the return and refurbishment of empty commercial/residential properties and derelict land to productive use, rather than diminish greenfield sites.

4.6 The Council's **Environment Policy** states that:

Rochford District Council is committed to minimising the environmental impacts of the organisation and to the improvement of the local, national and global environment in whatever way it can within resource limits.

4.7 This **Contaminated Land Strategy**, in identifying and ensuring the safe remediation of contaminated land, will therefore play a key role in the sustainable development of the District.

## 5 About this Strategy

5.1 The Act itself states at section 78B (1) that: Every local authority shall cause its area to be inspected from time to time for the purpose:

- of identifying contaminated land; and
- of enabling the authority to decide whether any such land is land which is required to be a special site (see Appendix 1, Special Sites).

- 5.2 Section 78B (2) states that the authorities must act in accordance with guidance issued by the Secretary of State in this respect. Statutory guidance has now been published within Department of the Environment Transport & Regions Circular 02/2000, dated the 20<sup>th</sup> of March 2000. Specific technical guidance on the drafting of Inspection Strategies has also been circulated in draft form for consultation on the 7<sup>th</sup> of April 2000.
- 5.3 The statutory guidance makes clear that in order to carry out this duty Authorities must produce a formal contaminated land strategy document which clearly sets out how land which merits detailed individual inspection will be identified in an ordered, rational and efficient manner, and in what time scale.
- 5.4 The strategy must be completed, formally adopted by the Council, and published, within a period of fifteen months from the publication of the guidance (by July 2001). Copies of the final document must also be forwarded to the Environment Agency. Subsequently the strategy must be kept under periodic review.
- 5.5 In order to satisfy the far reaching objectives of the new regime it will be necessary to investigate land throughout the whole of the District and collate significant volumes of information. This will ultimately enable the Authority to make the sometimes difficult and inevitably complex decisions relating to its condition, the risks it presents and who may be liable for it at law. This strategy is the commencement of that process and seeks to express as clearly as possible how each stage will be addressed.
- 5.6 It should be noted that there is no formal mechanism in place for approval of local authority strategies, though the Environment Agency, County Council, Natural England, English Heritage, DEFRA and, any statutory regeneration bodies, should be consulted (see Appendix 2 for details of consultees).

## 6 Roles and Responsibilities

- 6.1 The primary regulators in respect of these new powers are the **local authorities**. In Rochford District Council the strategy will be under the control of the Head of Environmental Services and the Portfolio Holder for the Environment. It should be noted that this is a complex and demanding enforcement role, which will be carried out in accordance with the Environmental Services' Enforcement Policy.
- 6.2 The statutory guidance states "**The local authority has the sole responsibility for determining whether any land appears to be contaminated land**".
- 6.3 This is a significant responsibility, which reflects existing local authority duties under the statutory nuisance regime and Town & Country Planning, development control. The role in broad terms includes to:
- cause the area to be inspected to identify potentially contaminated sites;
  - determine whether any particular site is contaminated (by definition);
  - determine whether any such land should be designated a 'special site';
  - act as enforcing authority for contaminated land not designated as a 'special site'.

6.4 The **Environment Agency** also has four main roles to:

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

6.5 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.

## 7 Outline of the Statutory Procedure

7.1 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
- Pollution of controlled waters is being, or is likely to be caused.

7.2 What may and may not constitute the various categories of harm is described in the statutory guidance. Controlled waters include inland freshwater, groundwater and coastal waters (see Appendix 3, Pollution of Controlled Waters).

7.3 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 in accordance with established scientific principles in order to establish whether there is the potential for them coming together and causing harm or pollution as described. This is known as a pollutant linkage.

7.4 Where they are satisfied that significant harm is occurring, or there is a significant possibility of such harm, or pollution of controlled waters, they must declare that a significant pollutant 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.

- 7.5 This involves a series of complex procedures, which must include:
- A formal written record of the determination.
  - Formal notification of all interested parties.
  - Determination the physical extent of the land.
  - The extent and seriousness of the risks (need for urgent action).
  - The number and type of pollutant linkages.
  - The effect each significant pollutant may have on controlled waters (if any).
  - The most appropriate and cost effective remedial scheme for each significant pollutant linkage.
  - Identification of liability groups and appropriate persons, for each pollutant linkage.
  - Assessment of hardship in the case of each appropriate person.
  - Effective remediation of the site and recovery of costs where appropriate.
- 7.6 A series of consultations must also be carried out at each stage with the ultimate aim of securing **voluntary remediation** (without the need for enforcement action). Where the land does fall within the definition of a special site, the Environment Agency becomes the enforcing authority. In these cases, however, the local authority must still make the determination and formally notify the interested parties.
- 7.7 In certain circumstances the local authority may carry out the remedial works. In general terms it has this power where:
- Urgent action is necessary (see Appendix 5, Powers of Entry and the Appointment of "Suitable Persons"; Urgent Action).
  - There is no appropriate person.
  - The authority is precluded from taking enforcement action (specified reasons).
  - The authority agrees to carry out the works on behalf of an appropriate person.
  - A remediation notice has not been complied with
- 7.8 In non-urgent cases where a remediation notice is necessary and all the required consultations have been completed, the notice must be served on the appropriate person(s) no sooner than three months after the contaminated land has been identified or declared a special site. The notice itself may require further investigation of the site and as a result more pollutant linkages may be identified. Where that is the case the enforcing authority must go through the same processes again to identify appropriate persons and remedial actions. The enforcing authority must at all times consider the potential for hardship and undertake cost benefit analysis in respect of all remedial actions. Where remedial actions are undertaken in default of a notice the enforcing authority has the power to recover costs in certain circumstances.

## 8 Situations where this Regime does not Apply

- 8.1 As stated in 3 above, the primary aim of the Government is to prevent new contamination occurring. There are several situations therefore where existing pollution control legislation would apply to control the effects of land contamination:
- (a) **Integrated Pollution Control** (Environmental Protection Act 1990 Part I and Prescribed Processes and Substances Regulations 1991 Schedule 1 Part A) – There are certain processes prescribed under the above regulations, for a pollution control regime known as, Integrated Pollution Control (IPC). This is enforced by the Environment Agency and includes prevention of pollution to land. Section 27 of the Act gives the Environment Agency power to take action to remedy harm caused by a breach of IPC controls, including land contamination.
  - (b) **Integrated Pollution Prevention and Control** (Pollution Prevention Control Act 1999 and Pollution Prevention and Control Regulations 2000). The Integrated Pollution Prevention and Control regime, which came into force on the 1<sup>st</sup> of October 2000, requires a site report to be submitted as part of an application. The site report will describe the condition of the site and, in particular, identify any substances in, on or under the land that may be a pollution risk. The report will aid the Regulator in deciding whether the site is suitable and in setting appropriate conditions. It will then act as a reference point used to identify any change in the condition of the site on surrender of the permit and any necessary remediation to achieve the pre-existing level. The local authority will need to investigate whether there is a requirement to take action under Part IIA for pre-existing contamination on submission of the IPPC application or on surrender of the IPPC permit.
  - (c) **Waste Management Permitting** (Pollution Prevention Control Act 1999 and Environmental Permitting Regulations 2010) – All waste disposal and processing sites (including scrap yards) should be subject to permitting. Contamination causing harm, or pollution of controlled waters, should be dealt with as a breach of the conditions of the permit. In exceptional circumstances, where the problem arises from an unpermitted activity, it is possible that Part IIA could apply. An example of this would be a leak from an oil tank outside the permitted tipping area.
- 8.2 Where there has been an illegal tipping of controlled waste (fly tipping) this should also be dealt with under the Environmental Protection Act 1990 Part II (section 59).
- (d) **Pollution of Controlled Waters not arising from land** (Water Resources Act 1991 section 161) – Where a pollution incident has occurred and the pollutant is discharged directly into the body of water, or it has left land and it is entirely in the body of water (i.e. the land is no longer causing pollution), the Water Resources Act 1991 will apply.
  - (e) **Discharge Consents** (Water Resources Act 1991 Part III) – No remediation notice can require action to be taken, which would affect a discharge authorised by consent.

- (f) **Change of Land Use** – Where land becomes a risk to potential new receptors as a result of a change of use, the Town & Country Planning Development Control regime will continue to apply as before.
- (g) **Risk of Harm to Employees** – Where there is a risk of harm to persons at work from land contamination, this should be dealt with under the Health and Safety at Work etc Act 1974. The enforcing authority will be either the Health & Safety Executive or this Council depending on the work activity.
- (h) **Risk of Harm Following an Incident at a COMAH Site** (Control of Major Accident Hazard Regulations 1999) – Where there has been a release, explosion or other major incident, which has caused land contamination, the restoration should be carried out as part of the COMAH on site/off site emergency restoration plan.

### 8.3 In addition there are several other situations where the relationship with Part IIA needs clarification:

- (i) **Contaminated Food** (Food Standards Act 1999) – Part I of the Food and Environment Protection Act 1985 gave Ministers emergency powers to prevent the growing of food on, inter alia, contaminated land. Following the establishment of the Food Standards Agency this power is now vested in the Secretary of State. Where the Council suspect's crops may be affected from contaminated land to such an extent they may be unfit to eat, they will consult the Food Standards Agency and Ministry of Agriculture Fisheries and Food to establish whether an emergency order may be necessary. It should be noted, however, that remediation of the site if necessary would be carried out through the new powers in Part IIA.
- (j) **Radioactivity** – Part IIA does not apply to contamination caused by radioactivity, but the Secretary of State does have the power to make Regulations to that effect. Until such Regulations are created and brought into force, the Council will liaise with the Environment Agency where radioactive contamination is suspected or confirmed.
- (k) **Organisms** – Part IIA does not apply to contamination caused by organisms such as bacteria, viruses or protozoa, as they do not fall within the definition of substances. This could affect land contaminated with Anthrax spores, E-coli, etc. The Council will liaise with the Environment Agency in relation to MOD land and the DEFRA on all other sites. It should be noted that even though contaminated sites used in connection with biological weapons must be designated Special Sites (see Appendix 1, Special Sites) this applies only to non-biological contamination.
- (l) **Statutory Nuisance** – (Environmental Protection Act 1990 Part III) – The relationship between Part IIA and statutory nuisance is not straight forward. Suffice to say if land is declared contaminated land by definition, it cannot be considered a statutory nuisance. This is understandable and ensures there is no duplication or confusion between the two regimes. If however the land is investigated and found not to be contaminated land but, "land in a contaminated state" (defined as land where there are substances in, on or

under the land which are causing harm, or there is a possibility of harm being caused), it also can not be considered a statutory nuisance for the purposes of Part III of the Act. Precisely in what circumstances might land be declared, “in a contaminated state”, remains to be seen. Where land is not contaminated land or in a, contaminated state, but is causing a nuisance from odours, it could be considered a statutory nuisance as before.

### 9 Land under Ownership of an Enforcing Authority

- 9.1 Where the local authority determines that it is itself the appropriate person for the remediation of contaminated land, it is precluded from serving a Remediation Notice. The Corporate Property Officer will, however, prepare and publish a remediation statement and where necessary, a remediation declaration for the land.
- 9.2 To this end a formal relationship will be maintained between Head of Environmental Services, the division responsible for enforcement of the new regime and the Head of Legal, Estates & Member Services, the officer responsible for Council owned land. All information relating to the identification, assessment and remediation of Council owned land must be fully reported to satisfy the needs for transparency. See also 11, The Need for Team Working below.

### 10 Land Located Outside the District Boundaries

- 10.1 Where contaminated land is located outside the District boundaries, but affecting receptors within the District, the Council will treat that land as if it were situated within its area. Prior liaison will however take place between the two concerned Councils to ensure that the most appropriate enforcing authority carries out any relevant action.

### 11 The Need for Team Working

- 11.1 This strategy impacts on potentially all divisions of the Council, in particular:
- **Environmental Services** – will be responsible for the enforcement of the contaminated land regime. The division will also provide information and advice to the Asset Manager, including relevant site transference reports where Stage II investigations are recommended.
  - **Planning & Transportation Services (Planning Policy & Development Control)** – the inspection of the District will identify areas of potentially contaminated land, which may be developed, awaiting development, derelict, protected or green belt. This may result in the need for the division to re-examine past development control files or identify development routes for contaminated sites, which may subsequently impact on the Local Plan. Development Control will need to take into account any information held under this regime when considering new planning applications. To assist in the identification of receptors, the Local Plan will be entered on to the Council's Geographical Information System (GIS) database.

- **Planning & Transportation Services (Building Control)** – have the duty to enforce protection measures in new build projects to mitigate the impact of contamination on property. Information they hold will be essential to quantify risks. Transfer of relevant Building Control records will be necessary in order to complete the Council's GIS database.
- **Head of Legal, Estates and Member Services** – this is a highly complex piece of legislation which could have significant implications for the Council, landowners and occupiers. The Head of Legal, Estates and Member Services' opinion will be required on many aspects including those relating to enforcement, liability, powers of entry, data protection, and access to information etc.
- **Head of Legal, Estates and Member Services** – will undertake the maintenance of the Public Register and associated GIS database. To assist in the identification of relevant Council land, the Land Terrier will be entered on to the Council's GIS database.
- **Council Asset Manager** – will lead the Council on the remediation of any contaminated sites it is found to be responsible for.
- **Head of Legal, Estates and Member Services** – land under highways, pavements, verges and common areas may be contaminated and present a risk to potential receptors. Highways Authorities must maintain registers under Part III of the New Roads and Street Works Act 1991 regarding, amongst other things, streets with, "special engineering difficulties". This includes risks from contamination.
- **Head of Legal, Estates and Member Services** – significant volumes of data will need to be held both on database and the GIS.
- **Rochford Housing Association** – land in use and controlled by this private sector landlord may be contaminated and require remediation
- **Head of Finance, Audit & Performance Management** – this legislation can have significant resource implications for the Council both as an Enforcing Authority and landowner (see also 13, Financial and Manpower Implications). The Head of Finance, Audit & Performance Management should also ensure that sufficient and adequate insurance is held by the Council in respect of this new regime.

11.2 The need for close corporate team working to ensure the smooth implementation of the strategy can not therefore be overstressed.

## 12 Internal Working Group

12.1 If and when necessary, the Asset Manager will chair an internal working group of relevant officers. The working group will be responsible for the formulation and implementation of policies for the identification and remediation of contaminated land, where the Local Authority is itself an appropriate person.

- 12.2 In addition to those divisions/units named above, officers from People & Policy and Information Technology & Web will also be members of the working group. It will not be necessary for all disciplines to be involved on a continuous basis; however, officers will need to inform themselves of the requirements and implications of the contaminated land strategy.

### **13 Financial and Manpower Implications**

- 13.1 The Government accepted that successful operation of this regime would necessitate considerable resources. Accordingly, as part of the Government spending review in July 1998 a sum of £50M was made available to local authorities over three years to develop inspection strategies, carry out site investigations and take forward enforcement action. In addition £45M is to be spent on remediation over the same period through the contaminated land Supplementary Credit Approval (SCA) programme.
- 13.2 Funding aspects of the strategy are considered in Part 8.

## The Strategy

### Part 1 – Description of the Rochford District Council area and how its particular characteristics impact on the Inspection Strategy

#### Introduction – The District

1. Rochford District covers an area of approximately 65 square miles with a population of 78,000. Its Northern and Eastern boundaries are formed by the Rivers Crouch and Roach and the Thames Estuary. The Southern boundary is contained by the A127, Southend Arterial Road whilst the Western boundary spills across the A130, Chelmsford Road.
2. The area is predominately green belt and includes the historic Hockey Woods and the island of Foulness, which are both sites of special scientific interest, the Roach Valley Conservation Zone and the Magnolia Nature Reserve.
3. Industry in Rochford was traditionally based on the land and the rivers; farming, brick making and boat building still feature today. The flourishing agricultural industry arises from the many acres of high quality land existing in the District. Six modern industrial estates exist within the District.
4. Much of the land is low lying, with the only areas of high ground located in the South West. A subsoil layer of impermeable London Clay covers the underlying chalk strata. Water resources available for the public water supply are very limited. It is estimated that 95% of the water demand within south Essex is achieved by importing water.
5. Foulness Island, located in the East of the District, is the largest of Essex Islands and the fourth largest island off the coast of England. Its 6,310 acres are mostly under military control as a base for weapons testing, although large areas of the island are farmed. Foulness and the adjoining Maplin Sands are internationally famous as a haven for wildlife.
6. London Southend Airport, located adjacent to the Southern District boundary, has announced expansion plans which include a possible fourth railway station for the District.

#### Strategic approach to the identification of Contaminated Land in the Rochford District

7. In developing a strategic approach it is necessary to consider:
  - the extent to which any specified receptors are likely to be found in the District;
  - the history, scale and nature of industrial or other potentially contaminative uses.

8. Land can only be considered contaminated if it impacts in a certain way on specified receptors, these are:
- (a) Human beings
  - (b) Eco systems:
    - Areas of special scientific interest (*Wildlife & Countryside Act 1981 section 28*)
    - National/local nature reserves (*Wildlife & Countryside Act 1981 section 35/National Parks & Access to the Countryside Act 1949 section 21*)
    - Marine nature reserves (*Wildlife & Countryside Act 1981 section 36*)
    - Areas for the special protection of birds (*Wildlife & Countryside Act 1981 section 3*)
    - Special areas of conservation & special protection areas (*Conservation (Natural Habitats etc.) Regulations 1994 regulation 10*)
    - Any candidate special areas of conservation or potential special protection areas/Any habitat or site afforded planning policy protection (*Planning Policy Guidance Note 9 – Nature Conservation, para 13*)
  - (c) Property:
    - Buildings (including below ground)
    - Ancient monuments
    - All crops including timber
    - Produce grown domestically or on allotments for consumption
    - Livestock
    - Other owned or domesticated animals
    - Wild game subject to shooting or fishing rights
  - (d) Controlled Waters:
    - Territorial sea water (to three miles)
    - Coastal waters
    - Inland fresh waters (rivers, streams, lakes, including the bottom/bed if dry)
    - Ground waters (Water Resources Act 1991 s104 (see also Appendix 3, Pollution of Controlled Waters))

9. In undertaking its duties to inspect the District under section 78B (1) of the Act, the Council will take into consideration the particular characteristics of the area, including:
- Relevant geology, hydro geology and hydrology
  - The location of:
    - sensitive water receptors
    - sensitive property receptors
    - relevant ecological receptors
    - all existing human receptors, and;
    - Potential sources of contamination
10. Consideration will also be given to the existence of sites and receptors which if found to be contaminated land would be designated special sites (see Appendix 1, Special Sites).

### Potential Sources of Contamination

- (a) **Industrial History** – A comprehensive list of potentially contaminative uses has been appended at 4. The first step in the process of identifying potentially contaminated sites will be to closely examine historical data in the form of old Ordnance Survey plans and photographs from the early part of the century to the present day. The historical series of Landmark plans have been obtained and are held on the County GIS as part of the joint Districts/County Council initiative. A lot of past industry will also still be within recent memory so local knowledge will be important at this stage. To aid this process all the Town and Parish Council's will be consulted.
- (b) **Current Industry** – The present industrial areas of the District are potential sources of contamination and these will be inspected in accordance with the statutory guidance to establish whether there is a potential of contamination to exist, and, if there is, whether it is controlled by another agency.
- (c) **Environmental Protection Act 1990 Part I** – 'Part B' processes authorised for air pollution control by this Council. There are currently 32 processes authorised by the Council under Part I of the Act. These range from small waste oil burners to roadstone coating processes. Many of these processes have the potential to pollute the land.
- (d) **Environmental Protection Act 1990 Part I** – 'Part A' processes authorised for integrated pollution control (IPC) by the Environment Agency. There are currently two processes authorised by the Environment Agency under Part I of the Act. The IPC 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.

- (e) **Hazardous Substances** – this 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 recently amended by the Planning (Control of Major Accident Hazards) Regulations 1999 (SI 981) to take account of the new COMAH Regulations (see (f) below). There are currently no authorised sites in the District. The Head of Planning Services maintains a register for this purpose.
- (f) **COMAH Sites** – The Control of Major Accident Hazards Regulations 1999 (SI 743) are enforced by the Environment Agency and Health & Safety Executive (joint competent authority) 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 no sites within the District.
- (g) It should be noted that all sites notified to the HSE under the Notification of Installations Handling Hazardous Substances Regulations 1982 (NIHHS sites) and COMAH sites, will be held on the hazardous substances register, so there should be no need to consult with the HSE on their location.
- (h) **Explosives** – 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 licenced sites will be identified.
- (i) **Current Landfill and Waste Processing Sites** – are permitted by the Environment Agency under the provisions of Part II of the Environmental Protection Act 1990. Details of all these sites have already been provided by the Agency for this purpose.
- (j) **Closed Landfill Sites** – are a potentially significant source of risk, especially those which operated before the permitting requirements of the Control of Pollution Act 1974. All closed landfills in the District will be identified and their association with any specified receptors considered in detail.
- (k) **Sewage Works and Land used for the Disposal of Sewage Sludge** – 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.
- (l) **Mines and Minerals Extraction** – the geology of the area has resulted in areas used for the extraction of minerals, particularly brick clay. Many of the resulting quarries then being filled with refuse or other materials. These can present a particular risk to water resources. An attempt will be made to identify all past quarrying sites and assess the risk they present.
- (m) **Waste or Derelict Land** – often owned by the utilities, railways or local authorities is left seemingly abandoned because it has no particular use or is difficult to access. These areas can accumulate unwanted materials and can be used to dispose of wastes and effluents illegally.

- (n) **Ministry of Defence Land** – areas of land occupied by the Defence Infrastructure Organisation have a significant potential for contamination. They will be investigated, in association with the Environment Agency as required, in accordance with the statutory guidance.
  - (o) **Previously Developed Contaminated Sites** – the inspection of the District 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 and but the remediation suspected of being inadequate.
11. As mentioned above, a more comprehensive list of previous uses considered potentially contaminative are listed in Appendix 4 for information. Any site with the potential to cause pollution will be identified at this preliminary stage.

### Potential Specified Receptors

- (a) **Human** – The present population of the District is 78,293 distributed amongst the three main population centres of Rayleigh, Rochford and Hockley. The remainder distributed throughout the many villages and smaller settlements of the rural area. Human receptors may therefore be present to some degree at almost any location within the District. The potential for persons either living on or frequenting a potentially contaminated site will be considered in every case, but priority will be given to sites with infants.
- (b) **Property**
  - **Buildings** – 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.
  - **Ancient Monuments** – as listed by English Heritage will be specifically identified as part of the strategy and the potential impact of contaminants considered.
  - **Agricultural and Horticultural Crops** – Being a largely rural area crop growing regions will not be specifically identified but taken into consideration as necessary. Where contamination is known or suspected associations with poor yield and crop failure will be investigated.
  - **Home Grown Produce** – There are many acres of allotments within the District and these will all be identified and their potential for contamination considered as a result of previous uses or activities. Similarly any domestic gardens likely to be contaminated will be identified and assessed.
  - **Agricultural Livestock, Game and other Owned Animals** – Again being a largely rural area the presence of livestock in an area will not be specifically identified but taken into consideration as necessary.

- (c) **Ecological Receptors** – All receptors listed in 1.5(b) above will be identified as part of the inspection strategy. There are several specified sites including SSSIs and other areas of ecological importance. Significant impact of contamination is unlikely but all areas will be identified, examined and any risks carefully quantified with English Nature and the Environment Agency.
- (d) **Water**
- **Aquifers** – All aquifers will be specifically identified with their location, depth and vulnerability according to cover. Potential risks from identified sources of contamination will be considered carefully with the Environment Agency.
  - **Public Water Supplies** – All public water supply abstraction points will be identified with their location, depth, strata/surface water supply they draw from and volume of supply.
  - **Private Water Supplies** – The protection of private water supplies is particularly important. The Council already monitors the single private water supply still in use in the District as part of its duties under the Water Industry Act 1991 Part II and Private Water Supplies Regulations 1991.
  - **Other Authorised Abstraction Points** – All authorised abstraction points will be identified such as those used for agricultural or recreational use.
  - **Other Specified Receptors** – All other water receptors such as rivers, streams, tributaries, reservoirs, lakes etc. will be identified as part of the inspection strategy.

12. Details of statutory and non-statutory consultees and contact points are included in Appendix 2.



7. Previous uses considered potentially contaminative are listed in Appendix 4.
8. Potentially contaminated land shall, prior to detailed investigation, be listed and categorised according to a preliminary assessment of risk. The method used will be based on that described in DETR Contaminated Land Research Report 6, entitled, ‘Prioritisation & Categorisation Procedure for sites which may be Contaminated’ (CLR 6). This is to ensure all further investigative work relates directly to seriousness of the potential risk and therefore the most pressing problems are identified and quantified first.
9. CLR6 was published in 1995 and has been used as a basis for the prioritisation of sites. Some of the wording has been slightly changed in the description of the Priority Categories below, new words have been identified by underlining>.
10. CLR 6 describes four Priority Categories (PCs):

<b>Priority Category 1</b>	<p>Site likely not to be suitable for present use and environmental setting.</p> <p>Contaminants probably or certainly present and very likely to have an unacceptable impact on key targets.</p> <p>Urgent assessment action needed in the short term.</p>
<b>Priority Category 2</b>	<p>Site may not be suitable for present use and environmental setting.</p> <p>Contaminants probably or certainly present and likely to have an unacceptable impact on key targets.</p> <p>Assessment action needed in the medium term.</p>
<b>Priority Category 3</b>	<p>Site considered suitable for present use and environmental setting. Contaminants may be present but unlikely to have an unacceptable impact on key targets.</p>
<b>Priority Category 4</b>	<p>Assessment action unlikely to be needed whilst the site remains in present use or otherwise remains undisturbed.</p>
	<p>Site considered suitable for present use and environmental setting.</p>
	<p>Contaminants may be present but very unlikely to have an unacceptable impact on key targets.</p>
	<p>No assessment action needed while site remains in present use or undisturbed.</p>

11. To assist in the prioritisation procedure a simple scoring system has been devised as follows:

- Likelihood of contaminants on the site:
  - 1 – most unlikely
  - 5 – good chance
  - 10 – known to be present
  
- Existence of receptors within area of influence:
  - 1 – most unlikely
  - 5 – good chance
  - 10 – known to exist
  
- Likelihood of impact of contaminants on receptors (pathway):
  - 1 – most unlikely
  - 5 – good chance
  - 10 – certain

12. This preliminary process is known as a CRP (contaminant receptor pathway) assessment. Initial trawls may identify sites where either particular contaminants are likely or known to exist, or sensitive receptors are known to exist. No assessment should be undertaken unless both are suspected or confirmed. Where there is doubt the situation will be kept under review.

CRP Score	PC
26-30	1
21-25	2
16-20	3
10-15	4

Relationship of CRP score to Priority Category:  
(where a PC score of 1 is the highest priority)

13. As Priority Category 1 sites are likely not to be suitable for their present use, these will be investigated as soon as possible after they are identified.

**Complaints from the Public**

14. Complaints will continue to be received about fly tipping, accumulations, and the potential for contaminated land. These will be investigated in accordance with existing protocols to establish whether the complaint is justified. If so, the particular circumstances will be evaluated to establish which enforcement process would be most appropriate. See also paragraph 8 above, where the new contaminated land regime does not apply.

15. Complaints may also be received about the fact that a particular site has been identified for further investigation. This could give rise to concern, especially where a potential sale has failed as a direct result of the suggestion that the land may be contaminated. Those so affected may seek an early investigation to clarify their position, thereby seeking to circumvent the prioritisation process. Such requests for priority inspection will, where resources allow, be dealt with as considerately as possible. This is considered also in Part 6 on data handling and access to information.
16. Complaints concerning this strategy will be dealt with under the Council's 'Procedure for Customer Complaint and Comments'.

### **Concluding Comments on Identification and Prioritisation**

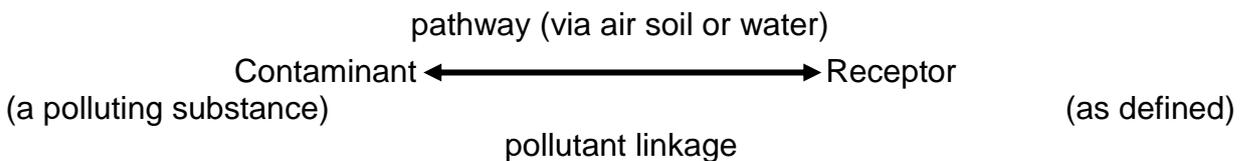
17. It must be understood that the assessments at this preliminary stage are made on a limited amount of incomplete basic data and information, such as old surveys, maps, geological information etc. As more knowledge of the site is obtained, these assessments will be revised and their Priority Category may change. The assessment of a site as Priority Category 1 does not necessarily infer the existence of a significant risk to one of the specified receptors, but it does identify the need for priority assessment of risk potential.

### Part 3 – Obtaining further information on Pollutant Linkages and the Risk Assessment Process

1. The Council has the sole responsibility for determining whether any land appears to be contaminated land, it can not delegate this responsibility. This applies even where the Environment Agency has carried out an investigation on behalf of the Council (see paragraph 11 below).
2. Once the Council become aware of the (possible) existence of a pollutant linkage they must, in accordance with their prioritisation procedure, commence the risk assessment process. The definition of contaminated land (see 7, Outline of the Statutory Procedure) is based on the principles of risk assessment. For the purposes of the guidance risk is defined as the combination of:
  - the probability, or frequency, of occurrence of a defined hazard; and
  - the magnitude of the consequences.
3. There are two steps in applying the definition of contaminated land:

#### Step 1

The Council must satisfy itself that at least one pollutant linkage exists



This, for the purposes of this strategy is termed a **Stage 1 risk assessment**.

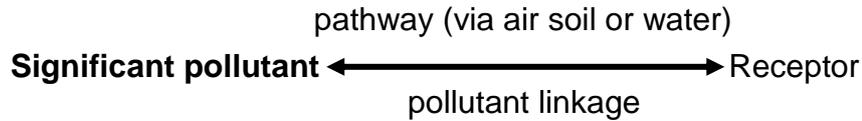
The contaminant(s) must have the potential to have a defined detrimental impact on the receptor(s) and the pathway has to be plausible. It is not necessary for direct observation of the pathway but if a reasonable scientific assessment suggest the two could come together then a pollutant linkage is said to exist and the authority must proceed to step two.

#### Step 2

At this stage a more detailed investigation must be undertaken to confirm that the pollutant linkage identified is:

- resulting in significant harm (or the significant possibility of such harm) being caused to the receptor(s); or
- resulting in (or likely to result in) the pollution of controlled waters

If either of these are confirmed then the land becomes contaminated land by definition and the pollutant linkage becomes, 'significant'.



This, for the purposes of this strategy is termed a **Stage 2 risk assessment**.

- The detailed investigation of contaminated land is invariably a very time consuming and expensive process, therefore it must be emphasised that all investigations will be carried out on an incremental basis and terminated immediately it is clear that no significant pollutant linkage exists.
  - Similarly where one significant pollutant linkage has been identified and others are suspected, it will generally be the case that the Council will cease their investigation at this stage and declare the land contaminated. Further investigation of other possible pollutant linkages may then be required as part of the enforcement process.
  - In cases where imminent risk of serious harm or serious pollution of controlled waters has been confirmed, the Council will authorise urgent action in accordance with paragraph 5.13 of this strategy.
  - **Obtaining Desk Top Information** – As has been explained in the introduction to this strategy, the suggestion that land may be contaminated can have a significant impact on the way others view it, and in particular, its perceived value. The Council will therefore seek to obtain as much information as possible about a suspected site without causing unnecessary alarm. This may involve detailed inspection of historical data in its possession such as Planning and Building Control files. Also the consultation of others who may possess information such as:
    - The Environment Agency
    - Ministry of Agriculture Fisheries and Food
    - The Health & Safety Executive
    - Developers
    - Previous occupiers; and others
4. Details of several sources of information are listed in 1.8 above.
5. Once sufficient information has been obtained which confirms a pollutant linkage does not exist, or, if it does, it is not significant, then the investigation will cease and no further action will be taken. It may be, however, that circumstances will be identified whereby a significant pollutant linkage could occur at some time in the future. Then arrangements will be made to keep the situation under review.

6. **Inspection of Land** – Where evaluation of all available data suggests a significant pollutant linkage may exist, it may be necessary to visit the site and carry out some form of on site testing, or take away samples for analysis. In every case this will be carried out by a, “suitable person”, adequately qualified to undertake the work (see Appendix 5, Powers of Entry and the Appointment of "Suitable Persons"). The utmost discretion will be used at all times to minimise the effect on occupiers of the land.
7. Intrusive investigations will be carried out in accordance with appropriate technical procedures to ensure:
  - They are effective;
  - do not cause any unnecessary damage or harm; and
  - do not cause pollution of controlled waters.
8. To ensure the most appropriate technical procedures are employed the Council will have regard to the most up to date Government guidance available.
9. **Powers of Entry** – Statutory powers of entry are conferred on the Council to enable it to carry out its functions under Part IIA. These are also considered in Appendix 5. There are no circumstances in which the Council will use these powers to obtain information about the condition of land, where:
  - It has already been provided with detailed information on the condition of the land from third parties without the need for entering the site; or
  - A person offers to provide such information within a reasonable and specified time, and does so.
10. **Land which may be a Special Site (See Appendix 1, Special Sites)** – Where the Council are aware that land it intends to investigate would, if declared contaminated land, be a special site, it will notify the Environment Agency in writing requesting any information it may have on the land and the likelihood of pollutant linkages. According to the wishes of the Environment Agency, it may be that a joint investigation will be undertaken.
11. Where the Environment Agency (or their agents) wish to carry out formal investigation on behalf of the Council their officers will need to be appointed as, “suitable persons”, in accordance with Appendix 5. The Environment Agency do not have the power under Part IIA to investigate land which may be contaminated land without the authorisation of the Council unless it is a special site.
12. **Determining Land is Contaminated** – There are four possible grounds for determining land contaminated:
  - Significant harm is being caused.
  - There is a significant possibility of significant harm being caused.
  - Pollution of controlled waters is being caused.
  - 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 pollutant linkage and explain their significance.

13. In an attempt to ensure the situation can be understood as widely as possible, a simple conceptual model (initially in diagrammatic form) will be produced for all relevant pollutant linkages, and multi-stage assessment forms completed, which clearly demonstrates the decision making process.
14. **Where the Significance of a Pollutant Linkage cannot be adequately determined** – Situations may arise where, on the information available, it is not possible to determine whether a pollutant linkage is significant in accordance with the statutory guidance. In such case the Council will determine that, on the balance of probabilities, it would seem the land does not fall within the statutory definition of contaminated land, but the situation will be kept under review and reopened at any time new information becomes available.
15. Similarly, inspection may identify contamination that would form a significant pollutant linkage should new receptors be introduced. In such circumstances this information will be carefully recorded and the site monitored where the introduction of relevant new receptors seems likely. 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.

## **Part 4 – The Written Record of Determination and Formal Notification**

1. Once an area of land has been declared contaminated by statutory definition, the Council will prepare a written record to include:
  - a description of the pollutant linkage(s) confirmed, including conceptual model;
  - a summary of the evidence which confirms the existence of the pollutant linkage(s);
  - those who appear to be responsible for any remediation action ('appropriate person' in the legislation);
  - a summary of the way the requirements of the statutory guidance were satisfied.
2. The Council will then to formally notify in writing all relevant parties that the land has been declared contaminated, these to include:
  - the owner(s);
  - the occupier(s);
  - those who appear to be responsible for any remediation action ('appropriate person' in the legislation);
  - the Environment Agency;
3. At the notification stage it may not be possible to identify all the relevant parties, particularly the appropriate persons. The Council will, however, act on the best information available to it at this time and keep the situation continually under review as more information comes to light.
4. If the Council considers that the contaminated land might be a special site, it will need to consult with the Environment Agency. If, having regard to such advice, it decides to designate the land as a special site it must give notice of such to the Environment Agency. The Agency must notify the Council within 21 days if it does not agree and copy the notification to the Secretary of State. The Council must then refer its decision to the Secretary of State.
5. 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.
6. The legislation and statutory guidance has been designed to try to encourage voluntary remediation (without the need for enforcement action). 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 copy of the written record of determination;
  - copies of site investigation reports (or details of their availability);

- an explanation of why the appropriate persons have been chosen as such;
  - details of all other parties notified.
7. The appropriate persons will also be provided with written explanations of the test for exclusion and apportionment.
8. It may be at this stage that the Council will need further information on the condition of the site to identify whether any additional significant pollutant linkages exist. If that is the case an informal attempt will be made to obtain this information from the appropriate persons already identified.

## Part 5 – Liability and Enforcement

1. Land may be declared contaminated upon the identification of only one significant pollutant linkage. Full liability can not therefore be determined until all significant pollutant linkages on the site have been identified (see also Part 3, paragraph 6 above). When all significant pollutant linkages have been identified the procedure relating to the apportionment of liability must commence. This has five distinct stages as follows:

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

2. These procedures are complex and cumbersome. 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.

- **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.
- **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.

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

4. **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:

- The financial circumstances of those concerned have no relevance;
- 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.
- Where there are agreements between appropriate persons the local authority has to give effect to these agreements.

5. **Limitations on costs to be born by Appropriate Persons** – There are six tests specified to identify Class ‘A’ groups who should be excluded from liability. These will be applied in sequence and separately for each pollutant 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.
6. 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.

### The Enforcement Process

7. Before remediation notices are served the extensive consultation process will be completed and ample encouragement given to arrive at an informal solution. The Council will do all in its power to consult the appropriate person(s), owners, occupiers etc. about their views on the state of the land. This could be a difficult and most protracted process and cause delay. 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, etc. all to have differing views according to their position.
8. Remediation notices are served only as a last resort (not withstanding urgent cases), and then only after this lengthy consultation process has been exhausted. Notices will be authorised after two tests are satisfied:
  - That the remediation actions will not be carried out otherwise.
  - That the Council has no power to carry out the work itself.
9. If these are met the Council will serve a remediation notice on each appropriate person. It can not be served less than three months after formal notification that the land is contaminated unless the urgent action is deemed necessary (where there is imminent risk of serious harm).
10. **Specifying Remediation** – The Head of Environmental Services will specify what remediation measures are to be carried out in the remediation notice. These will be both appropriate and cost effective employing what the statutory guidance terms, ‘best practicable techniques’. The aim of the remediation will be to ensure that the land is no longer contaminated, taking the shortest and lowest cost route. This means in most cases attention will be focused on the pathway, rather than the contaminant or receptor.
11. The “reasonableness” of the requirements are, however, paramount, a concept which is considered at some length in the guidance. It is determined in relation to the cost of carrying out the remediation against the cost of failing to (i.e. the costs, or potential costs, resulting from the continuing pollution).

### Remediation by the Local Authority

12. Before the Council 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 five specified circumstances where this may be the case:
- Where urgent action is required (see below).
  - 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.

### Urgent Action

13. 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 (see also Appendix 5, Powers of Entry and the Appointment of "Suitable Persons").
14. 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.
15. 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.
16. In appropriate cases the Council will seek to recover costs of remediation works it has completed.

### Orphan Linkages

17. 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**'.
18. Exemptions apply where:
- The land is contaminated by reason of pollution of controlled waters only and no class A persons can be found (this means class B persons can not be held liable for polluting water from land).

- The land is contaminated by reason of the escape of pollutant from one piece of land to another and no Class A person can be found.
  - The land is contaminated land by reason of pollution of controlled waters from an abandoned mine.
  - The person was acting in a 'relevant capacity'.
19. **In such cases, the enforcing authority should bear the cost of the remediation in accordance with the Secretary of State's guidance.**

### Part 6 – Data Handling and access to Information

1. The Council is required by Statute to produce this contaminated land strategy and formally publish it by the end of June 2001. Subsequently it must maintain a register of regulatory action taken under Part IIA, which must be made available for public inspection at all reasonable times (see paragraph 13 below).

#### The Environmental Information Regulations 1992

2. Implementation of the strategy will, however, also result in significant volumes of data, which will be held on computer databases and geographical information systems, as well as in paper form. There is no statutory obligation to disclose this information therefore the Council must comply with the requirements of the Environmental Information Regulations when dealing with requests for disclosure.
3. These Regulations require local authorities to make any environmental information they hold available upon request, subject to certain exemptions. These are complex but it would be likely that the Council will have to respond to requests for information on land it has identified as part of, for example, the inspection of the District, as outlined in Part 2 of this strategy. See Part 2, paragraph 15 on complaints about information held.
4. Below are broadly the exemptions to the right of environmental information. In all circumstances where there is doubt, the Head of Legal, Estates & Member Services will be consulted where:
  - held for judicial purposes;
  - disclosure would affect legal proceedings;
  - disclosure would affect international relations, national defence or public security;
  - disclosure would affect the confidentiality of deliberations by a relevant person, or the confidentiality of commercially sensitive matters;
  - it would involve the supply of a document or record which is still in the course of completion;
  - the information is not accessible.
5. “Information”, for the purposes of the Regulations includes records, registers, reports, returns, and information on computers.
6. It has been suggested that information held as a result of the Council’s initial inspection of the District and subsequent prioritisation for further investigation, could be classified as, ‘a record which is in the course of completion’, for the purposes of the Regulations, and therefore not be disclosed. Whilst this interpretation is appealing, it should be understood that sites should not be so identified unless there are sound reasons, based on scientific judgement, that a pollutant linkage may exist. Also once the preliminary inspection of the District has commenced, each assessment about each and every site, could constitute a, ‘record’, in itself.

7. More significantly, however, should a third party purchase land following a refusal on the part of this Authority to supply information requested on its condition, and the Authority had identified it at that stage as potentially contaminated land, that party may wish to seek a remedy against the Council should the site be subsequently declared contaminated land and lose value as a result.
8. Requests for information will therefore be dealt with promptly and no later than 28 days after they are made. A charge will be made for the supply of information in accordance with the Regulations. 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.

### The Data Protection Act 1984

9. The Data Protection Act applies to all personal data that is processed automatically; it does not apply to data processed manually. The Act seeks to give some protection to persons (known as data subjects) in respect of three potential dangers:
  - The use of personal information that is inaccurate, incomplete or irrelevant.
  - The possibility of access to personal information by unauthorised persons.
  - The use of personal information in a context or for a purpose other than that for which the information was collected.
10. Personal data is defined as data consisting of information which relates to a data subject who can be identified from the information, or from that and other information in the possession of the data user (the Council). Every individual member of the public can be considered a data subject, there is no age limit.
11. It should be noted that just about all information held on computers is considered as being, 'processed automatically', for the purposes of the Act. Therefore should the Council be unsure as to the legality of maintaining data on a computer it will keep a paper record only.
12. The implications of holding information relating to the condition of potentially polluted property, and the persons associated with that property and pollution; could be significant. The Council's Head of Legal, Estates & Member Services will therefore consider the matter in detail before records begin to be compiled.

### Contents of Formal Contaminated Land Registers

13. The only information required to be stored on a formal register is that relating to regulatory action and remediation. The contents are specified at length in schedule 3 of the Contaminated Land (England) Regulations 2000. This formal contaminated land register will be maintained at the Council offices, 19 South Street, Rochford. 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 Legal, Estates & Member Services and will be charged at the appropriate rate.

## Part 7 – Quality Control, Best Value Performance indicators and Arrangements for Review

1. The Government have stated:  
  
“The DETR will be developing performance indicators to assess overall progress in the task of identifying and remediating our inherited legacy of contaminated land”.
2. No such performance indicators have been developed to date, but it is suggested they will include:
  - Measures of the scale of regulatory activities; and
  - Indicators of the overall progress in the task of identifying and remediating contaminated land.
3. It is the Government’s intention in due course to establish targets for overall progress.
4. **Complaints and Information from Members of the Public** – This is also considered in 2.14 and 2.15 above. Procedures are in place to:
  - Record that information or a complaint has been received;
  - Demonstrate an appropriate officer has designated to deal with the request;
  - Record the request and response; and
  - Ensure appropriate records are maintained.

### Review

5. Whilst the Council has a duty to inspect the District, ‘from time to time’, to identify contaminated land, the frequency of inspection is not prescribed. In practice inspection may be a continuum, balancing a systematic approach with the availability of resources. The Council has a duty to review its inspection strategy on a regular basis and to meet its statutory responsibilities two main aspects of review need to be built into this strategy:
  - Triggers for reviewing inspection decisions, and
  - Review of the inspection strategy
6. In addition to the routine review of inspection findings (see Part 2, paragraphs 11 and 16; Part 3, paragraphs 8, 14 and 15 and Part 4, paragraph 3) there will be situations which will trigger re-assessment including:
  - Change of use of land or surrounding land (introduction of new receptors).
  - The potential for pollutant 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
7. The strategy will be reviewed at least annually and any proposed changes will be reported to the Portfolio Holder for Environment 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.

## Part 8 – Projected Costs and Timetable

1. As outlined in Part 6, paragraph 10, the Government has identified that to implement this highly complex and demanding piece of legislation will involve local authorities in considerable expenditure. As a result some £95M has been made available over three years as part of the standard spending assessment (£12M each year), with the rest available through the contaminated land supplementary credit approval (SCA) programme.
2. No additional staff have so far been employed at this Council to implement the requirements of Part IIA.
3. The next stage is the inspection of the District, identification of potentially contaminated sites, and their prioritisation for further more detailed inspection. A sum of £30,000 has been identified within the 2001/2002 budgets to defray these initial costs.
4. Subsequently potentially significant sums may be required to make more detailed investigation of sites and, possibly take enforcement action and carry out remediation action. It is very difficult at this stage to estimate what the full inspection of the District will reveal, and how much further work it will necessitate.
5. Should a significant investigation and/or remediation be identified, it would be anticipated that an application for SCA would need to be made specifically relating to that site. A further report requesting members' authority for this action would be made to committee at that time
6. It should be noted that these arrangements relate specifically to the Council's **enforcement role** and not that as landowner. 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. In the event of significant costs being involved it is likely that an application will also be made via the contaminated land SCA scheme.

### Proposed Timetable for the Implementation of Part IIA

Rochford District Council Duty	Year	Achievement
Production and publication of statutory contaminated land strategy	By July 2001	Published April 2001
Inspection of the District, identification of potentially contaminated sites and prioritisation for further investigation	2001 – 2002	Target met (329 potentially contaminated sites identified)
Assessment of relevant Council land by the Head of Legal Services, Estates and Member Services	2001 – 2002	Undertaken in relation to the Housing Stock transfer and on-going in connection with asset management.
Detailed inspection and assessment of priority category 1 sites	As soon as reasonably practicable after they become known to the Council	On-going within resources available
Detailed inspection and assessment of remaining potentially contaminated sites	2002 - 2005	On-going within resources available

### Appendix 1 – Special Sites

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.

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 – see Appendix 3, Pollution of Controlled Waters);
- On sites subject to Integrated Pollution Control (see Environmental Protection Act 1990 Part I – Prescribed Processes and Substances Regulations 1991 schedule 1 part A);
- 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 (non-biological contamination only);
- 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.

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

Procedure in relation to the investigation and declaration of special sites are covered in Part 3, paragraph 11; Part 3, paragraph 4 and 5 and Part 5 paragraph 15 above.

## **Appendix 2 – Contacts**

### **Relevant Council Officers**

- Head of Environmental Services
- Head of Finance, Audit & Performance Management
- Head of Legal Services, Estates and Member Services
- Head of Planning and Transportation Services
- Environmental Health & Licensing Manager
- Asset Manager
- ICT & Web Manager
- Corporate Communications Officer

### **List of Consultees and Contact Points**

#### **District Addresses**

- Rochford Housing Association
- Rayleigh Town Council
- Parish Councils
- Public Libraries
- Rayleigh Chamber of Trade
- Rochford District Chamber of Trade and Commerce
- Hockley Traders Association
- Rochford Primary Care Group

#### **Essex County Council**

- Director of Environmental Services Highways, Essex County Council, County Hall, Chelmsford, Essex CM1 1QH
- Environment Strategy Manager, Essex County Council, County Hall, Chelmsford, Essex CM1 1QH

### English Heritage

Details of all Ancient Monuments in the area can be obtained from the Planning Officer

#### Local Contact:

East of England Region  
Brooklands  
24 Brooklands Avenue  
Cambridge  
CB2 8BU  
Phone: 01223 582700

#### National Contact

Mike Corfield, Chief Scientist  
23 Saville Row  
London  
W1X 1AB  
Phone: 0207 973 3321  
Enquiries: 0207 973 3000  
Fax: 0207 973 3001

### English Nature

#### Local Contact:

Harbour House  
Hythe Quay  
Colchester  
CO2 8JF  
Phone: 01206 796666

#### Special Advisory Teams

Environmental Impacts Team (Taunton)  
English Nature  
Roughmoor  
Bishop's Hull  
Taunton Somerset  
TA1 5AA  
Phone: 01823 283211

Environmental Impacts & Marine Team (Peterborough)  
English Nature  
Northminster House  
Peterborough  
Cambridgeshire  
PE1 1UA  
Phone: 01733 455000

### **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 Draft Memorandum of Understanding.

### **Area Contaminated Land Officer**

Eastern Area Office  
Cobham Road  
Ipswich  
IP3 9JE  
Phone: 01473 727712

### **Regional Contaminated Land Co-ordinator**

Kingfisher House  
Goldhay Way  
Orton Goldhay  
Peterborough  
PE2 5ZR  
Phone: 01733 371811

### **National Part IIA Process Manager**

Environment Agency South  
West Manley House  
Kestrel Way  
Exeter  
EX2 7LQ  
Phone: 01392 444 000  
Fax: 01392 444 238

### **National Head Quarters**

Land Quality  
Rio House  
Waterside Drive  
Aztec West  
Bristol  
BS32 4UD  
Phone: 01454 624 400  
Fax: 01454 624 032

**National Groundwater and Contaminated Land Centre**

Olton Court  
10 Warwick Road  
Solihull  
B92 7HX  
Phone: 0121 711 2324  
Fax: 0121 711 5925

**National Centre for Eco-toxicology and Hazardous Substances**

Dr Danielle Ashton  
Evenload House  
Howberry Park  
Wallingford  
OX10 8BD  
Phone: 01491 828 544  
Fax: 01491 828 427

**National Centre for Risk Analysis and Options Appraisal**

Dr Raquel Duarte-Davies  
Steel House  
11 Tothill Street  
London  
SW1H 9NF  
Help desk: 0207 664 6897  
Fax: 0207 664 6911

**Food Standards Agency**

Contaminants Division  
Aviation House  
125 Kingsway  
London  
WC2B 6NH  
Phone: 0207 276 8277

**Health & Safety Executive**

Wren House  
Hedgerows Business Park  
Colchester Road  
Springfield  
Chelmsford  
Essex  
CM2 5PF  
Phone: 01245 706222  
Fax: 01245 706222

## **Her Majesty's Revenues and Customs**

Landfill tax is the responsibility of the HMRC.

### **Payments**

HM Revenue & Customs  
Alexander House  
21 Victoria Avenue  
Southend  
Essex  
SS99 1AY  
Enquiries Phone: 0845 010 9000

## **Department of the Environment, Food and Rural Affairs**

### **Local Contact**

Southgate Street  
Bury St Edmunds  
IP33 2BD  
Phone: 01284 754323

### **National Policy Advisor**

123 Victoria Street  
London  
SW1E 6DE  
Phone: 0207 238 6452

## **Statutory Regeneration Bodies**

### **Local Enterprise Partnership**

South East LEP Secretariat  
c/o Essex County Council  
County Hall  
Market Road  
Chelmsford  
Essex  
CM1 1QH

### **English Partnerships Head Quarters**

National Environmental Policy Co-ordinator  
Maple House  
149 Tottenham Court Road  
London  
W1T 7BN  
Phone: 0300 1234 500  
Email: [mail@homesandcommunities.co.uk](mailto:mail@homesandcommunities.co.uk)

**English Partnerships Senior Projects Manager (Contaminated Land)**

Arpley House  
110 Birchwood Boulevard  
Birchwood, Warrington  
WA3 7QH  
Phone: 01925 651144  
Fax: 01925 644657

**English Nature Head Quarters**

Foundry House  
3 Millsands  
Riverside Exchange  
Sheffield  
S3 8NH  
Phone: 0845 600 3078 (local rate)

**South Essex Health Authority**

NHS South Essex  
Phoenix Court  
Christopher Martin Road  
Basildon  
Essex  
SS14 3HG  
Phone: 01268 705000  
Fax: 01268 705100  
Email: see-pct.pals@nhs.net

## Appendix 3 – Pollution of Controlled Waters

1. Controlled waters are defined for the purposes of Part IIA as:
  - Coastal waters including docks.
  - Relevant territorial waters (usually to three miles).
  - Inland fresh waters (relevant rivers, watercourses, lakes, ponds, reservoirs – Including bottom/channel/bed, even if dry).
  - Groundwater (section 104 of the Water Resources Act 1991).
2. The pollution of controlled waters is simply defined as:
  - The entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter
3. There is no power in the Act to enable the Secretary of State to issue guidance on what degree of pollution may constitute pollution of controlled waters. This has been accepted as a potential area of conflict. When, however, considering cases where it is thought very small quantities of a contaminant are causing pollution, local authorities must consider what remediation it may be reasonable to require. This should act as a limiting factor thereby ensuring unrealistic demands are not made in relation to cases of very minor pollution.
4. Pollution of controlled waters will be dealt with by the appropriate enforcing authority. Below is a summary of the issues relating to controlled waters.
5. Where pollution of ground waters has occurred and the source can not be identified, or the polluting substances are contained entirely within the body of water (and not in or on the land), then Part IIA does not apply and the matter would be dealt with by the Environment Agency under section Part III of the Water Resources Act 1991 (see also Part 1, paragraph 8(c) above).
6. Where pollution has occurred from land which subsequently affects the wholesomeness of drinking water within the meaning of section 67 of the Water Industry Act 1991 (Water Supply [Water Quality] Regulations 1989/Private Water Supplies Regulations 1991), then the land becomes a **special site**.
7. Where pollution has occurred from land which results in surface water failing to meet the criteria in Regulations<sup>1</sup> made under section 82 of the Water Resources Act 1991, then the land becomes a **special site**.

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<sup>1</sup> The Surface Water (Dangerous Substances) (Classification) Regulations 1989 The Bathing Waters (Classification) Regulations 1991 The Surface Water (Dangerous Substances) (Classification) Regulations 1992 The Surface Water (River Eco System) (Classification) Regulations 1994 The Surface Water (Abstraction for Drinking Water) (Classification) Regulations 1996 The Surface Water (Fish life) (Classification) Regulations 1997 The Surface Water (Shellfish) (Classification) Regulations 1997 The Surface Water (Dangerous Substances) (Classification) Regulations 1997 The Surface Water (Dangerous Substances) (Classification) Regulations 1998.

8. Where the pollution of a specified aquifer<sup>2</sup> is caused by any of the following contaminants the land becomes a **special site**:
- Organohalogen compounds and substances which may form such compounds in the aquatic environment;
  - Organophosphorus compounds;
  - Organotin compounds;
  - Substances which possess carcinogenic, mutagenic or teratogenic properties in or via the aquatic environment;
  - Mercury and its compounds;
  - Cadmium and its compounds; Mineral oil and other hydrocarbons; Cyanides.
9. This, in effect, leaves local authorities with the potential responsibility for the pollution of controlled waters where:
- Surface or coastal waters are affected but not breaching the Regulations in paragraph 7 above.
  - Ground waters (other than a principal aquifer specified as in paragraph 8 above) is contaminated and the water is not used for drinking.

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<sup>2</sup> Specified aquifers are those contained in the following rocks: Pleistocene Norwich Crag; Upper Cretaceous Chalk; Lower Cretaceous Sandstones; Upper Jurassic Corallian; Middle Jurassic Limestones; Lower Jurassic Cotteswold Sands; Permo-Triassic Sherwood Sandstone Group; Upper Permian Magnesian Limestone; Lower Permian Penrith Sandstone; Lower Permian Collyhurst Sandstone; Lower Permian Basal Breccias, Conglomerates and Sandstones; Lower Carboniferous Limestones.

### Appendix 4 – List of Potentially Contaminative 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 necessarily infer the existence of a pollutant linkage.

Abattoirs	Fellmongers
Adhesives manufacture	Fibre glass works
Agriculture	Food processing
Aircraft manufacture	Foundries
Airports	Fuel manufacture
Animal burial	Fuel storage
Animal by-product processing	Garages and depots
Anodiser	Gas mantle manufacture
Anti-corrosion treatment	Gas works
Asbestos products	Glass works
Asphalt works	Glue manufacture
Automotive engineering	Gum and resin manufacture
Battery manufacture	Hatters
Bearing manufacture	Hide and skin processors
Blacksmiths	Ink manufacture
Boiler makers	Iron founder
Bookbinding	Iron works
Brass and copper tube manufacture	Knackers' yards
Brass founders	Lacquer manufacture
Brewing	Laundries
Car manufacture	Leather manufacture
Carbon products manufacture	Metal coating
Cement works	Metal manufacture
Chemical manufacture and storage	Metal sprayers and finishers
Chrome plating	Mining
Ceramics manufacture	Mirror manufacture
Coal carbonisation	Motor vehicle manufacture
Coal merchant	Oil fuel distributors and suppliers
Concrete batching	Oil merchants
Coppersmiths	Oil refineries
Descaling contractors (chemical)	Oil storage
Distilleries	Paint and varnish manufacture
Detergent manufacture	Paper works
Dockyards	Pesticides manufacture
Drum cleaning	Petrol stations
Dry cleaning	Photographic film works
Dyers and finishers	Photographic processing
Electricity engineers	Paper manufacture
Electrical engineers	Plastics works
Electro platers	Plating works
Engineering works	Power station
Explosives manufacture (including Fireworks)	Print works
Farms	Printed circuit board manufacture
Fertiliser manufacture	Radioactive materials processing

Railway land	Synthetic fibre manufacture
Railway locomotive manufacture	Tank cleaning
Refiners of nickel and antimony	Tanneries
Rubber manufacture	Tar and pitch distillers
Scrap metal dealers	Textile manufacture
Sealing compound manufacture	Thermometer makers
Sewage works	Timber treatment
Sewage sludge disposal areas	Timber preservatives manufacture
Sheet metal merchants and works	Tin plate works
Ship breakers	Transport depots
Ship breakers	Tyre manufacture and re-treading
Skein silk dyers	Vehicle manufacture
Small arms manufacture	Vulcanite manufacture
Smokeless fuel manufacture	Vulcanisers
Soap manufacture	Waste disposal
Solvent manufacture	Waste recycling
Solvent recovery	Waste treatment
Steel manufacture	Zinc works
Stove enamellers	

## **Appendix 5 – Powers of Entry and the Appointment of "Suitable Persons"**

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 Head of Legal Services prior to a 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.

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.

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 has been provided with detailed information on the condition of the land 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**

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.

The terms "imminent" and "serious" are 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.

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.

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

- are effective;
- do not cause any unnecessary damage or harm;
- do not cause pollution of controlled waters.

### Compensation

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 Community Services 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"

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.

The consequences of, 'getting it wrong' could, in many cases, have a major impact on the District 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.

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
- Geologist
- Hydrologist
- Soil scientist
- Chemists, etc.

Ultimately, the responsibility for determining what land may and may not be declared contaminated, by definition, lies with the Head of Community Services. 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.

Checklist of Information Requirements Client's Information Requirements	Requirements of the Consultant
1. <b>General</b>	
1.1 Background on company capability.	<ul style="list-style-type: none"> <li>• How long has company been operating?</li> <li>• What kind of work were they originally set up to do – Is this an add on?</li> <li>• Who traditionally are their clients?</li> </ul>
1.2 Numbers and qualifications of staff 1.3 CV and availability of key staff	<ul style="list-style-type: none"> <li>• If a large company, what are the interests/sympathies of those in control.</li> <li>• Do they consider local authorities as a serious market?</li> <li>• How many staff are available for this type of work, will they need to subcontract?</li> <li>• Who will actually be doing the job, what are their qualifications and experience?</li> <li>• Practical experience is <b>key</b>. Do they really understand Part IIA?</li> <li>• Knowledge of environmental law and local government systems an important requirement.</li> </ul>
1.4 Details of QA systems including: Allocation of responsibilities Project Management Technical Procedures Technical review Training Assessment of external suppliers	<ul style="list-style-type: none"> <li>• Where appropriate, need details of quality management systems indicating whether accredited by a third party.</li> <li>• What technical procedures to be used. Which staff responsible, which will undertake technical review.</li> <li>• How will quality of subcontractors be ensured.</li> </ul>
1.5 Management of Health & Safety	<ul style="list-style-type: none"> <li>• Identify H&amp;S management procedures where appropriate.</li> <li>• Do they understand the fundamental requirements of H&amp;S legislation?</li> </ul>
1.6 Track record on similar projects	<ul style="list-style-type: none"> <li>• Ever done similar work or is this a new departure?</li> </ul>
1.7 Client references	<ul style="list-style-type: none"> <li>• Need several phone numbers to enable rapid verification of statements made at interview.</li> </ul>
1.8 Financial status	<ul style="list-style-type: none"> <li>• 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.</li> </ul>
1.9 Details of insurance cover	<ul style="list-style-type: none"> <li>• Need to demonstrate insurance available 3<sup>rd</sup> party liability and professional indemnity. Identify limitations/exclusions</li> </ul>
1.10 Membership of professional and trade associations	<ul style="list-style-type: none"> <li>• May be necessary to make checks, corporate membership of professional organisations, meeting CPD requirements?</li> </ul>
1.11 Compliance with codes of practice	<ul style="list-style-type: none"> <li>• Can they demonstrate knowledge of the appropriate guidance, codes of practice etc. relevant to the job?</li> </ul>

<b>Checklist of Information Requirements Client's Information Requirements</b>	<b>Requirements of the Consultant</b>
<b>2.1 Project Specific</b>	
2.1 Technical proposal	<ul style="list-style-type: none"> <li>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.</li> </ul>
2.2 Project management plan/working plan	<ul style="list-style-type: none"> <li>A clear timetable must be available which states what stage will be reached by when and who will be responsible to deliver.</li> </ul>
2.3 Details of sub contractors	<ul style="list-style-type: none"> <li>Subcontractors will be necessary on large technical projects. Must state who they are, contact points and lines of responsibility.</li> </ul>
2.4 Details of technical procedures	<ul style="list-style-type: none"> <li>Again, the working plan must clarify all procedures and lines of responsibility.</li> </ul>
2.5 Reporting	<ul style="list-style-type: none"> <li>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.</li> </ul>
2.6 Programme and 2.7 Financial Proposal	<ul style="list-style-type: none"> <li>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.</li> </ul>
2.8 Conditions of Engagement	<ul style="list-style-type: none"> <li>Contracts need not be long and wordy, should define responsibilities of both parties, liabilities etc. succinctly.</li> </ul>

## Appendix 6 – Glossary of Terms

The Statutory guidance uses a number of terms, which are defined, in Part IIA of the 1990 Act, other Acts or in the guidance itself. The meanings of the most important of these terms are set out below, along with a reference to the section in the Act or the paragraph in which the relevant term is defined.

Terms which are defined in statutes (most in section 78A of the 1990 Act) are shown with underlining.

**Animal or crop effect:** significant harm of a type listed in box 3 of Table A of Chapter A.

**Apportionment:** any determination by the enforcing authority under section 78F(7) (that is, a division of the costs of carrying out any remediation action between two or more appropriate persons). Paragraph D.5(e)

**Appropriate person:** defined in section 78A(9) as:

“any person who is an appropriate person, determined in accordance with section 78F....., to bear responsibility for any thing which is to be done by way of remediation in any particular case.”

**Assessment action:** a remediation action falling within the definition of remediation in section 78A(7)(a), that is the doing of anything for the purpose of assessing the condition of the contaminated land in question, or any controlled waters affected by that land adjoining or adjacent to that land. Paragraph C.8(e)

**Attribution:** the process of apportionment between liability groups. Paragraph D.5(e)

**Building:** any structure or erection, and any part of a building including any part below ground.

**Building effect:** significant harm of a type listed in box 4 of Table A of Chapter A.

**Caused or knowingly permitted:** test for establishing responsibility for remediation, under section 78F(2); see paragraphs 9.8 to 9.14 of Annex 2 for a discussion of the interpretation of this term.

**Changes to Substances:** an exclusion test for Class A persons set out in Part 5 of Chapter D. Paragraphs D.62 to D.64

**Charging notice:** a notice placing a legal charge on land served under section 78P(3)(b) by an enforcing authority to enable the authority to recover from the appropriate person any reasonable cost incurred by the authority in carrying out remediation.

**Class A Liability group:** a liability group consisting of one or more Class A persons. Paragraph D.5(c)

**Class A person:** a person who is an appropriate person by virtue of section 78F(2) (that is, because he has caused or knowingly permitted a pollutant to be in, or under the land). Paragraph D.5(a)

**Class B liability group:** a liability group consisting of one or more Class B persons. Paragraph D.5(c)

**Class B person:** a person who is an appropriate person by virtue of section 78F(4) or (5) (that is, because he is the owner or occupier of the land in circumstances where no Class A person can be found with respect to a particular remediation action). Paragraph D.5(b)

**Collective action:** a remediation action which addresses together all of the significant pollution linkages to which it is referable, but which would not have been part of the remediation package for every one of those linkages if each of them had been addressed separately. Paragraph D.22(b)

**Common action:** a remediation action which addresses together all of the significant pollution linkages to which it is referable, and which would have been part of the remediation package for each of those linkages if each of them had been addressed separately. Paragraph D.22(a)

**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. Paragraph A12.

**Contaminated land:** defined in section 78A(2) 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.”

**Contaminated Land (England) Regulations 2000:** regulations (S.I. 2000/227) made under Part IIA – described in Annex 4.

**Controlled Waters:** defined in section 78A(9) 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.

**Cost recovery decision:** any decision by the enforcing authority whether:

- (a) to recover from the appropriate person all the reasonable costs incurred by the authority in carrying out remediation, or
- (b) not to recover those costs or to recover only part of those costs. Paragraph E.8

**Current use:** any use which is currently being 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 to 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. Paragraph A.26.

**Ecological system effect:** significant harm of a type listed in box 2 of Table A of Chapter A.

**Enforcing authority:** defined in section 78A(9) as:

- (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.

**Escaped Substances:** an exclusion test for Class A persons set out in Part 5 of Chapter D. Paragraphs D.65 to D.67

**Excluded Activities:** an exclusion test for Class A persons set out in Part 5 of Chapter D. Paragraphs D.47 to D.50

**Exclusion:** any determination by the enforcing authority under section 78F(6) (that is, that a person is to be treated as not being an appropriate person). Paragraph D.5(d)

**Favourable conservation status:** defined in Article 1 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

**Hardship:** a factor underlying any cost recovery decision made by an enforcing authority under section 78P(2). See paragraphs 10.8 to 10.10 of Annex 2 for a discussion of the interpretation of this term.

**Harm:** defined in section 78A(4) as:

“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.

**Industrial, trade or business premises:** defined in section 78M(6), for the purpose of determining the penalty for failure to comply with a remediation notice, as:

“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. Paragraph B.21

**Introduction of Pathways or Receptors:** an exclusion test for Class A persons set out in Part 5 of Chapter D. Paragraphs D.68 to D.72

**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. Paragraph B.20(c)

**Liability group:** the persons who are appropriate persons with respect to a particular significant pollutant linkage. Paragraph D.5(c)

**Local authority:** defined in section 78A(9) as meaning any unitary authority, District Council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

**Monitoring action:** a remediation action falling within the definition in section 78A(7)(c), that is “making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters”. Paragraph C.8(g)

**Orphan linkage:** a significant pollutant linkage for which no appropriate person can be found, or where those who would otherwise be liable are exempted by one of the relevant statutory provisions. Paragraph D.12, D.14 and D.17

**Owner:** defined in section 78(9) as:

“a person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let.”

Part IIA: **Part IIA 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 so exposed or affected. Paragraph A.14

**Payments Made for Remediation:** an exclusion test for Class A persons set out in Part 5 of Chapter D. Paragraphs D.51 to D.56

**Person acting in a relevant capacity:** defined in section 78X(4), for the purposes of limited personal liability, as any of the following:

- “(a) a person acting as an insolvency practitioner, within the meaning of section 388 of the Insolvency Act 1986 (including that section as it applies in relation to an insolvent partnership by virtue of any order made under section 421 of that Act;
- (b) as acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 if subsection (5) of that section were disregarded;
- (c) the official receiver acting as a receiver or manager;

- (d) a person acting as a special manager under section 177 or 370 of the Insolvency Act 1986;.....
- (e) a person acting as a receiver or receiver and manager under or by virtue of any enactment, or by virtue of his appointment as such by an order of a court or by any other instrument.”

**Pollutant:** a contaminant which forms part of a pollutant linkage. Paragraph A.17

**Pollutant linkage:** the relationship between a contaminant, a pathway and a receptor. Paragraph A.17

**Pollution of controlled waters:** defined in section 78A(9) as:

“the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter.”

**Possibility of significant harm:** a measure of the probability, or frequency, of the occurrence of circumstances which would lead to significant harm being caused. Paragraph A.27

**Receptor:** either:

- (a) a living organism, a group of living organisms, an ecological system or a piece of property which:
  - (i) is in a category listed in Table A in Chapter A as a type of receptor, and
  - (ii) is being, or could be, harmed, by a contaminant; or
- (b) controlled waters which are being, or could be, polluted by a contaminant. Paragraph A.13

**Register:** the public register maintained by the enforcing authority under section 78R of particulars relating to contaminated land.

**Related companies:** are those are, or were at the “relevant date”, members of a group of companies consisting of a “holding company” and its “subsidiaries”. The “relevant date” is that on which the enforcing authority first served on anyone a notice under section 78B(3) identifying the land as contaminated land, and the terms “holding company” and “subsidiaries” have the same meaning as in section 736 of the Companies Act 1985. Paragraph D.46

**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) Part IIA, in that the use of the information is consistent with providing a level of protection of risk in line with the qualitative appropriate to the determination of whether any land is contaminated land for the purposes of criteria set out in Tables A and B of Chapter A. Paragraph A.31

**Relevant land or waters:** the contaminated land in question, any controlled waters affected by that land and any land adjoining or adjacent to the contaminated land on which remediation might be required as a consequence of the contaminated land being such land. Paragraph C.8(d)

**Remedial treatment action:** a remediation action falling within the definition in section 78A(7)(b), that is 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:

- (a) 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
- (b) of restoring the land or waters to their former state. Paragraph C.8(f)

**Remediation:** defined in section 78A(7) as:

- “(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;
  - (iii) of restoring the land or waters to their former state; or
- (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.”

**Remedial action:** any individual thing which is being, or is to be, done by way of remediation. Paragraph C.8(a)

**Remediation declaration:** defined in section 78H(6). It is a document prepared and published by the enforcing authority recording remediation actions which it would have specified in a remediation notice, but which it is precluded from specifying by virtue of sections 78E(4) or (5), the reasons why it would have specified those actions and the grounds on which it is satisfied that it is precluded from specifying them in a notice.

**Remediation notice:** defined in section 78E(1) as a notice specifying what an appropriate person is to do by way of remediation and the periods within which he is required to do each of the things so specified.

**Remediation package:** the full set or sequence of remediation actions, within a remediation scheme, which are referable to a particular significant pollutant linkage. Paragraph C.8(b)

**Remediation scheme:** the complete set or sequence of remediation actions (referable to one or more significant pollutant linkages) to be carried out with respect to the relevant land or waters. Paragraph C.8(c)

**Remediation statement:** defined in section 78H(7). It is a statement prepared and published by the responsible person detailing the remediation actions which are being, have been, or are expected to be, done as well as the periods within which these things are being done.

**Risk:** the combination of:

- (a) the probability, or frequency, of occurrence of a defined hazard (for example, exposure to a property of a substance with the potential to cause harm); and
- (b) the magnitude (including the seriousness) of the consequences. Paragraph A.9

**Shared action:** a remediation action which is referable to the significant pollutant in more than one significant pollutant linkage. Paragraph D.21(b)

**Single-linkage action:** a remediation action which is referable solely to the significant pollutant in a single significant pollutant linkage. Paragraph D.21(a)

**Significant harm:** defined in section 78A(5). It means any harm which is determined to be significant in accordance with the statutory guidance in Chapter A (that is, it meets one of the descriptions of types of harm in the second column of Table A of that chapter).

**Significant pollutant:** a pollutant which forms part of a significant pollutant linkage. Paragraph A.20

**Significant pollutant linkage:** a pollutant linkage which forms the basis for a determination that a piece of land is contaminated land. Paragraph A.20

**Significant possibility of significant harm:** a possibility of significant harm being caused which, by virtue of section 78A(5), is determined to be significant in accordance with the statutory guidance in Chapter A.

**Sold with Information:** an exclusion test for Class A persons set out in Part 5 of Chapter D. Paragraph D.57 to D.61

**Special site:** defined by section 78A(3) as:

“any contaminated land:

- “(a) which as been designated as such a site by virtue of section 78C(7) or 78D(6).....; and
- (b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4)...”.

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: defined in section 78A(9) as: “any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.”





**Rochford District Council**  
Council Offices South Street  
Rochford Essex SS4 1BW  
Phone: 01702 546366  
customerservices@rochford.gov.uk  
Website: www.rochford.gov.uk



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