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# **Contaminated Land Strategy**

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# EXECUTIVE SUMMARY

The UK has a legacy of historic land contamination derived from past industrial activities and waste disposal practices. Land contamination can be hazardous to people, property and the environment. Common contaminants include heavy metals, petroleum hydrocarbons (oils and fuels), polycyclic aromatic hydrocarbons, asbestos and landfill gas.

The contaminated land regime was introduced in 2000 to protect people from harm (such as life threatening diseases, serious injuries and birth defects) caused by exposure to historic land contamination. The regime also protects ecological systems, crops and livestock, property, buildings and controlled waters from harm or pollution. The regime provides a system for dealing with contaminated land, to ensure that unacceptable risks are removed and that the land is suitable for its current use.

City of York Council is responsible for implementing and enforcing the contaminated land regime in the city. Our work helps to create a clean and safe environment for all. We protect residents from exposure to harmful contamination and we encourage the sustainable development of Brownfield sites.

This strategy outlines how we will inspect the city for contaminated land and how we will deal with any land that is found to be contaminated. City of York Council's first contaminated land strategy was published in July 2001 with subsequent updates in 2005, 2010 and 2016. This 2016 version incorporates recent changes in contaminated land guidance and provides an update on progress made to date.

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# 1. INTRODUCTION

## 1.1 The Contaminated Land Regime

The contaminated land regime places a duty on local authorities to inspect their areas and identify land where contamination is causing unacceptable risks to human health or the wider environment. The regime provides a system for dealing with contaminated land, to ensure that unacceptable risks are removed and that the land is suitable for its current use.

Part 2A of the Environmental Protection Act 1990 establishes a legal framework for dealing with contaminated land in England. It was created by Section 57 of the Environment Act 1995 and it came into force in April 2000 with the implementation of the Contaminated Land (England) Regulations 2000. The regulations have subsequently been modified to change various definitions and widened to include land contaminated by radioactivity.

Central government has produced Statutory Guidance, in accordance with Section 78YA of the Environmental Protection Act 1990, to explain how the contaminated land regime should be implemented and to provide procedures for determining whether land is contaminated in the legal sense of the term.

Statutory Guidance is legally binding and must be strictly followed by the council. The current version of the Statutory Guidance was published in April 2012 by the Department for Environment, Food and Rural Affairs (DEFRA) and is entitled '*Environmental Protection Act 1990: Part 2A – Contaminated Land Statutory Guidance*'. Separate guidance specifically for radioactive contaminated land was published in April 2012 by the Department of Energy and Climate Change and is entitled '*Environmental Protection Act 1990: Part IIA – Radioactive Contaminated Land Statutory Guidance*'.

Under the contaminated land regime, the starting point will always be that land is not contaminated unless there is a reason to consider otherwise. Only land where unacceptable risks are clearly identified, after a risk assessment has been undertaken in accordance with this strategy and the Statutory Guidance, will be considered to meet the Part 2A definition of contaminated land.

## 1.2 Definition of Contaminated Land

The legal definition of contaminated land, as defined in Section 78A(2) (as modified) of the Environmental Protection Act 1990, is:

*“Any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that*  
*a) significant harm is being caused or there is a significant possibility of such harm being caused; or*  
*b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.”*

Where “harm” means harm to person (i.e. death; life threatening diseases; other diseases likely to have serious impacts on health; serious injury; birth defects; and impairment of reproductive functions), harm to other living organisms or interference with the ecological systems of which they form part, and harm to property (i.e. damage to crops, livestock or buildings).

## 1.3 Definition of Radioactive Contaminated Land

The legal definition of contaminated land is slightly different if harm is due to radioactivity, as defined in Regulation 5(1) of The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006:

*“Any land which appears to the local authority in whose area the land is situated to be in such a condition, by reason of substances in, on or under the land, that*  
*a) harm is being caused; or*  
*b) there is a significant possibility of harm being caused.”*

“Harm” means lasting exposure to any person resulting from the after effects of a radiological emergency, past practice, or past work activity.

## 1.4 Contaminant Linkages

For land to be determined as contaminated land there needs to be one or more contaminant-pathway-receptor linkages (contaminant linkages) by which a relevant receptor might be affected by the contaminant in question.

**Figure 1.1: Contaminant Linkage**



A **contaminant** is a substance which is in, on or under the land and which has the potential to cause significant harm to a relevant receptor, significant pollution of controlled waters, or harm attributable to radioactivity. Please see Appendix 1 for a list of possible sources of contamination.

A **receptor** is something that could be adversely affected by a contaminant e.g. a person, an organism, an ecosystem, property, or controlled waters. Please see Appendix 3 for a list of the receptors covered by the contaminated land regime.

A **pathway** is a route by which a receptor is or might be affected by a contaminant e.g. the ingestion of vegetables grown in contaminated soil. Please see Appendix 2 for a list of possible pathways.

## 1.5 Other Regulatory Regimes

The contaminated land regime is one of several ways in which contaminated land can be addressed. Other regulatory regimes include:

- The Town and Country Planning Act 1990 (discussed further in Section 1.6 below)
- The Building Regulations 2010
- Environmental Damage (Prevention and Remediation) Regulations 2009
- Environmental Permitting (England and Wales) Regulations 2010

- Part 3 of the Environmental Protection Act 1990 relating to statutory nuisance
- Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009

The Statutory Guidance states that enforcing authorities should only use the contaminated land regime (Part 2A) where no appropriate alternative solution exists. Therefore, Part 2A will not be used where other legislation can be enforced or where contamination has arisen due to a breach of an existing license or permit.

## **1.6 The Planning Regime**

All planning applications have to be considered for potential contamination issues to ensure compliance with the Town and Country Planning Act 1990, the National Planning Policy Framework and associated Planning Practice Guidance, and the council's Local Plan. Contaminated land issues that arise through planning applications will be controlled through the planning regime as opposed to the contaminated land regime, in line with government policy.

The council's development management team consults the public protection team on all planning applications and associated contaminated land reports. We are responsible for reviewing all investigation and remediation work undertaken by developers, to ensure that it is completed to a satisfactory standard.

Through the planning regime, it is the responsibility of the developer to ensure that a site can and will be made suitable for its proposed future use and that there are no unacceptable risks to human health, controlled waters, the environment, or property.

Where a proposed development introduces a vulnerable end use (i.e. residential housing or a school) and/or contamination could be present due to past activities (i.e. an old factory or refuse tip), the developer should always consider potential contamination issues and must submit an appropriate contamination assessment with their planning application.

Planning consent will not be granted if a contamination assessment does not fully assess all possible contamination risks, as we need to be certain that the proposed development is feasible and that any contamination can be suitably mitigated. For further information please refer to the Yorkshire and Humberside Pollution Advisory



Council's technical guidance for developers, landowners and consultants on *'Development on Land Affected by Contamination'*.

If the contamination assessment is acceptable, then planning conditions requiring investigation and remediation of the contamination will be attached to the planning consent as necessary. Please note that planning conditions will not be discharged until we are satisfied that a site has been made safe and is suitable for its proposed use.

The majority of contaminated sites are voluntarily remediated through the planning regime by developers and landowners looking to bring land back into beneficial use. Hundreds of sites in York have already been investigated and remediated through this route and will therefore not require Part 2A action.

## **2. AIMS AND OBJECTIVES**

### **2.1 Aims**

The aims of this strategy are:

- To protect people, ecological systems, buildings, property, crops and livestock from significant harm caused by exposure to historic land contamination.
- To protect controlled waters from significant pollution derived from historic land contamination.
- To meet the statutory obligation placed on the council to produce a written strategy under Part 2A.
- To adopt a strategic approach for dealing with contaminated land.
- To encourage the remediation and redevelopment of Brownfield sites.
- To ensure that remedial action is reasonable, practicable, effective and durable.
- To encourage the voluntary remediation of sites.

### **2.2 Objectives**

The objectives of this strategy are:

- To provide a strategic framework which we will use to identify, inspect and determine contaminated land. Inspections will be carried out in priority order, so the highest risk sites will be inspected first.
- To ensure that development on potentially contaminated land is not permitted unless an appropriate contamination assessment has been submitted and we are satisfied that the proposed development is feasible and that the contamination can be suitably mitigated.

- To ensure that developers undertake sufficient remedial work to make land safe and suitable for its proposed use.
- To deal with sites as a matter of urgency if we suspect that there is an immediate serious risk to human health or the environment.
- To prepare written records of determination and risk summaries for land that is found to be contaminated land (as defined by Part 2A) and written statements for land that is not.
- To maintain a public register of contaminated land.
- To secure the appropriate remediation of sites determined as contaminated land in order to protect public health and the environment.
- To outline the council's procedures regarding powers of entry, liability, cost recovery, special sites and enforcement.
- To inform the public and stakeholders of the council's responsibilities and intentions in relation to contaminated land.

## 3. THE CITY OF YORK

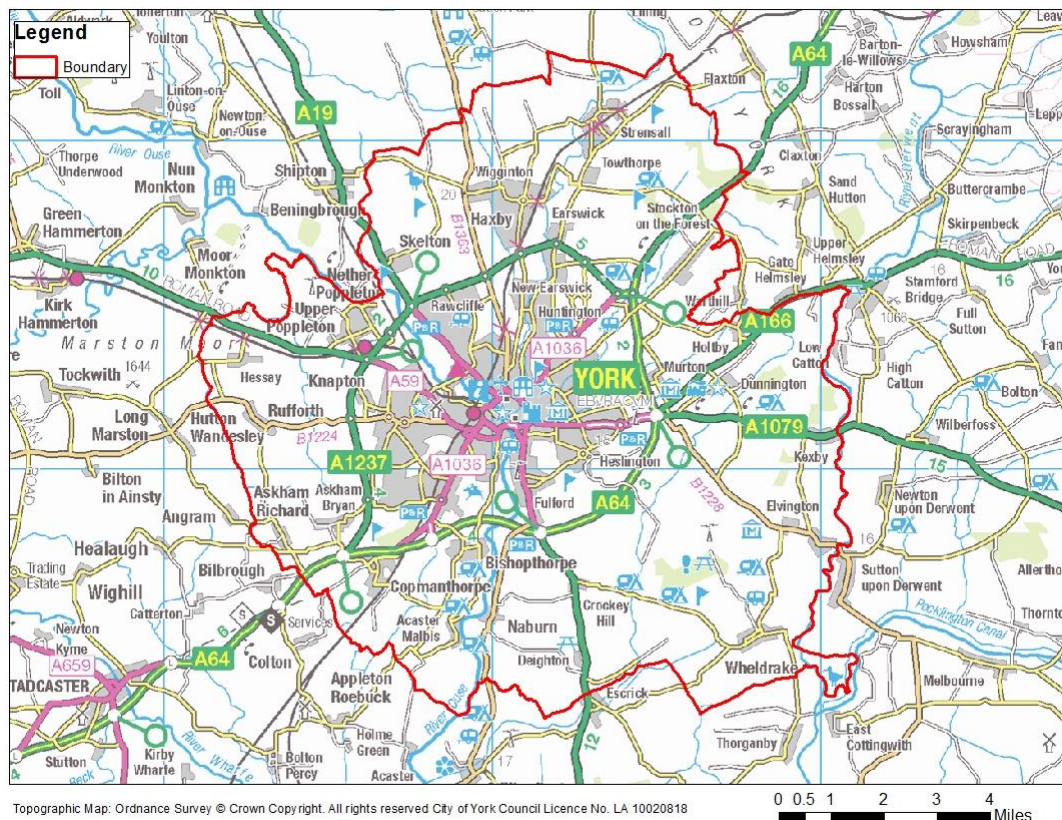
### 3.1 Characteristics of the Area

The City of York lies in the centre of the vale of York, approximately 30 miles north east of Leeds and 50 miles inland from the east coast. The landscape of the area is broadly characterised as flat and low lying agricultural land, which rises slightly towards the east.

York is one of England's most historic cities, with a diverse history that can be traced back nearly 2,000 years. It is characterised by a compact urban area surrounded by several small settlements. The compactness of the main urban area, with York Minster as the focal point, is a key feature of the city.

Figure 3.1 shows the extent of the City of York Council area, which covers an area of approximately 105 square miles (272 square kilometres). In 2013, the population of York was 202,400 residents. The majority of the population resides in the urban area, with the remainder residing in and around the numerous surrounding villages.

**Figure 3.1: Map Showing the City of York Council Boundary**



### **3.2 Past Industrial Activity**

Contamination can arise from a wide variety of processes and activities associated with industry and its development and growth. The industrial history of an area can therefore provide a useful insight into the land which might contain contamination.

The City of York has a long and varied history, evident from the many historical buildings and monuments that remain today. In the middle ages, York was an important port and manufacturing centre for wool, leather and other crafts. By the 17<sup>th</sup> century the textile industry and port activity had declined and by the 18<sup>th</sup> century York contained a diverse range of small crafts such as brewers, bakers, tailors, jewellers, shoe makers, coopers and pipe makers.

The railways came to York in 1839, bringing the industrial age with them. The railway carriage works became a major employer of over 5,000 people. By the late 19<sup>th</sup> century a number of other industries had also become established in the city, such as confectionary, flour milling and the manufacture of optical instruments.

During the 20<sup>th</sup> century confectionary was big business in York with Rowntree's, Terry's and Craven's all manufacturing within the city. Printing, sugar production and the manufacture of railway carriages and optical instruments were also important industries during this period.

Over the last few decades, much of the major manufacturing industry has declined in York. Today, York is home to a diverse and dynamic business base and has economic strengths in science, technology, creative industries and professional and financial services. Tourism also makes an important contribution to York's economy, with approximately 7 million visitors each year.

### **3.3 Geology**

The geology of a site can influence whether a contaminant is likely to remain close to the source or migrate. Sandstone and sandy soils, with large grain sizes, are highly permeable and they allow contamination to move through the ground. Whereas mudstone and clayey soils, with small grain sizes, have negligible permeability which prevents the movement of contamination.

The bedrock beneath most of York is Sherwood Sandstone, apart from a small area of Mercia Mudstone in the Strensall area. Much of this is overlain by superficial geological deposits of silt and clay or sand and gravel, principally of glacial origin.

Bands of alluvium deposits are also present along the paths of the River Ouse and River Foss.

### 3.4 Hydrogeology

Water beneath the earth's surface is called groundwater and it can be found within the following types of aquifers:

- **Principal aquifers** are layers of rock or superficial deposits that have high intergranular and/or fracture permeability – meaning that they usually provide a high capacity for water storage. They may support water supplies and/or river base flow on a strategic scale.
- **Secondary aquifers** are layers of rock or superficial deposits that have a wide range of water permeability and water storage capacities. Secondary aquifers are subdivided into three types: Secondary A (which support water supplies at a local scale), Secondary B (which store and yield small amounts of groundwater due to localised features i.e. fissures), and Secondary Undifferentiated (which contain features of categories A and B due to variability within the rock type).
- **Unproductive Strata** are layers of rock or superficial deposits that have low permeability that have negligible significance for water supplies or river base flow.

Within York, the Sherwood Sandstone is designated as a principal aquifer and it supports a large number of water abstractions for domestic, agricultural and industrial uses. Whereas, the Mercia Mudstone is designated as unproductive strata and it does not support any major water abstractions.

The superficial geological deposits within York range from sands and gravels to silts and clays, and are either designated as secondary aquifers or unproductive strata.

Groundwater vulnerability is classified based on the characteristics of the aquifer. Where the Sherwood Sandstone is covered by permeable sand and gravel deposits, the groundwater is vulnerable to pollution by surface activities (including areas of contaminated land). Where the Sherwood Sandstone is covered by a substantial thickness of clay, which has a low permeability, the groundwater will generally be protected against pollution from surface activities.

### 3.5 Hydrology

York has three main surface watercourses, which are the River Ouse, the River Foss, and the River Derwent. The Environment Agency currently classifies the ecological status of all three of these rivers as 'moderate'.

These river systems are used as water supplies and the majority of the abstractions are used for agricultural spray irrigation. There are also a number of licensed abstractions from the River Ouse and the River Derwent for public drinking water supplies.

### 3.6 Ecological Systems

A number of areas of ecological importance are present in York and in the surrounding area, these include 15 Sites of Special Scientific Interest (SSSIs) and a national nature reserve – further details can be found below in Table 3.1.

**Table 3.1: Areas of Ecological Importance in York**

| Designation                                  | Description                                                                                                                                                                                                                 | Designated Sites                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sites of Special Scientific Interest (SSSIs) | Sites of Special Scientific Interest (SSSIs) are areas of special interest by reason of any of its flora, fauna, geological or physiographical features. Designations are made under the Wildlife and Countryside Act 1981. | <ul style="list-style-type: none"><li>- Acaster South Ings</li><li>- Askham Bog</li><li>- Brighton Meadows</li><li>- Church Ings</li><li>- Clifton Ings and Rawcliffe Meadows</li><li>- Derwent Ings</li><li>- Fulford Ings</li><li>- Heslington Tillmire</li><li>- Melbourne and Thornton Ings</li><li>- Naburn Marsh</li><li>- Newton Mask</li><li>- Pocklington Canal</li><li>- River Derwent</li><li>- Skipwith Common</li><li>- Strensall Common</li></ul> |
| Special Areas of Conservation                | Special Areas of Conservation (SACs) are                                                                                                                                                                                    | <ul style="list-style-type: none"><li>- Lower Derwent Valley</li><li>- River Derwent</li></ul>                                                                                                                                                                                                                                                                                                                                                                  |

| Designation                     | Description                                                                                                                                                                                                                       | Designated Sites                                                                                |
|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| (SACs)                          | strictly protected sites designated under the EC Habitats Directive. The habitat types and species covered are those considered to be most in need of conservation at a European level (excluding birds).                         | <ul style="list-style-type: none"> <li>- Skipwith Common</li> <li>- Strensall Common</li> </ul> |
| Special Protection Areas (SPAs) | Special Protection Areas (SPAs) are strictly protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds, and for regularly occurring migratory species. | <ul style="list-style-type: none"> <li>- Lower Derwent Valley</li> </ul>                        |
| National Nature Reserve (NNRs)  | National Nature Reserves (NNRs) contain examples of some of the most important natural and semi-natural terrestrial and coastal ecosystems in Great Britain.                                                                      | <ul style="list-style-type: none"> <li>- Lower Derwent Valley</li> </ul>                        |
| Ramsar                          | Ramsar sites are wetlands of international importance designated under the Ramsar Convention.                                                                                                                                     | <ul style="list-style-type: none"> <li>- Lower Derwent Valley</li> </ul>                        |



### **3.7 Historic Buildings, Monuments & Archaeological Deposits**

York's rich history has provided a complex mosaic of buildings and streets unique in character. It's wealth of historic buildings include: 22 scheduled ancient monuments (including York Minster, the City Walls, Clifford's Tower and St Mary's Abbey), 35 conservation areas and approximately 1,600 listed buildings.

The importance of York is highlighted by the city's status as only one of five historical centres in England designated as an Area of Archaeological Importance. It is Britain's largest, deepest and best preserved urban archaeological site. York's low-lying location and underlying clay mean that archaeological deposits are waterlogged beneath the water table and remain in an excellent state of preservation.

## 4. THE INSPECTION PROCESS

### 4.1 Information Collection

In order to identify potentially contaminated land, it is first necessary to identify past land uses which have the potential to give rise to contamination. It is also necessary to identify relevant receptors, so that contaminant linkages can be assessed in light of the current use of a particular site. The datasets listed in Table 4.1 have been collated for this purpose.

**Table 4.1: Sources of information**

| Dataset                                                                              | Source                                            |
|--------------------------------------------------------------------------------------|---------------------------------------------------|
| Maps (historic & present day)                                                        | Ordnance Survey                                   |
| Past industrial use<br>(1843-1893, 1891-1912, 1904-1943,<br>1945-1970 and 1970-1996) | Landmark Information Group<br>& Trade Directories |
| Closed landfill sites                                                                | Environment Agency<br>& City of York Council      |
| Active landfill sites                                                                | Environment Agency                                |
| Part A1, A2 and B permitted installations                                            | Environment Agency<br>& City of York Council      |
| Geology (solid and superficial)                                                      | British Geological Survey                         |
| Groundwater vulnerability                                                            | Environment Agency                                |
| Source protection zones                                                              | Environment Agency                                |
| Groundwater abstraction points                                                       | Environment Agency                                |
| Watercourses                                                                         | Environment Agency                                |
| Private water supplies                                                               | City of York Council                              |

| Dataset                              | Source               |
|--------------------------------------|----------------------|
| Sites of Special Scientific Interest | Natural England      |
| Special Protection Areas             | Natural England      |
| Ramsar sites                         | Natural England      |
| National Nature Reserves             | Natural England      |
| Special Areas of Conservation        | Natural England      |
| Scheduled ancient monuments          | City of York Council |
| Listed buildings                     | City of York Council |
| Conservation areas                   | City of York Council |
| Council owned land                   | City of York Council |

The council has developed a geographical information system (GIS) and an associated database to store and manage this information, which has enabled potentially contaminated land to be identified.

Any site with a past industrial use or a history of waste disposal (i.e. a closed landfill site) could potentially be contaminated. We have currently identified 3,690 potentially contaminated sites within the city and this list will be updated as new information comes to light. However, it is important to note that only a small proportion of these sites are likely to meet the legal definition of contaminated land.

## 4.2 Prioritisation

Each potentially contaminated site requires a detailed inspection to establish whether any contaminant linkages are present. In accordance with the Statutory Guidance, the council will seek to ensure that the most pressing and serious problems are dealt with first. It is therefore necessary to categorise sites in priority order using a rapid assessment of the potential contaminant linkages.

In line with the council's first contaminated land strategy, published in 2001, we completed the initial prioritisation in-house and incorporated a policy decision to rank closed landfill sites as the highest priority. This decision was based on the number and size of closed landfill sites in York, the limited amount of information available on them, their close proximity to receptors and their frequent use as public open space, and the wide variety of contaminants often found at landfill sites.

Once an initial assessment of the closed landfill sites was complete, a more detailed prioritisation system was needed. In 2008, we purchased a sophisticated GIS based site prioritisation tool (called ConSEPT) from the British Geological Survey. This was used to prioritise all of the 3,690 potentially contaminated sites.

The ConSEPT prioritisation tool is based on the contaminant linkage concept and it scores the different sources, pathways and receptors for a site and its surroundings. The total scores allow potentially contaminated sites to be ranked in priority order. Each site is allocated to one of five priority categories (A to E). Table 4.2 shows how the council has defined these categories and the number of potentially contaminated sites within each category.

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

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

**Table 4.2 – Priority Categories**

| Category | Number of Sites | Description                                                                                                                                                                                                                                                                                                                                            |
|----------|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A</b> | <b>88</b>       | Contaminants certainly or probably present. One or more pathways to identified receptors are likely to exist. There is a high risk of an unacceptable impact on identified receptors. The current use of the site may not be suitable. <b>High priority</b> , with action to inspect the site being required in the short term.                        |
| <b>B</b> | <b>1,563</b>    | The presence of contaminants is likely. One or more pathways to identified receptors are likely to exist. There is a high-medium risk of an unacceptable impact on identified receptors. The current use of the site may not be suitable. <b>High to medium priority</b> , with action to inspect the site being required in the short to medium term. |
| <b>C</b> | <b>465</b>      | Contaminants may be present. One or more pathways to identified receptors are likely to exist. There is a medium-low risk of an unacceptable impact on identified receptors. <b>Medium to low priority</b> , with action to inspect the site being required in the medium to long term.                                                                |
| <b>D</b> | <b>373</b>      | Contaminants may be present. There is a medium-low risk of the existence of pathway(s) to identified receptors. It is unlikely that the contaminants will have a significant effect on identified receptors. <b>Low priority</b> , with action to inspect the site being required in the long term.                                                    |
| <b>E</b> | <b>1,201</b>    | Contaminants may be present. There is a low risk of the existence of pathway(s) to identified receptors. It is highly unlikely that the contaminants will have a significant effect on identified receptors. <b>Very low priority</b> , with action unlikely to be needed whilst site remains in present use or is undisturbed.                        |

### 4.3 Detailed Inspection

The purpose of carrying out a detailed inspection is to gain sufficient information to determine whether or not there is a significant contaminant linkage and whether the site meets the legal definition of contaminated land. We will inspect potentially contaminated sites in priority order, starting with the highest risk sites first.

Please note that a significant number of sites identified as potentially contaminated are likely to be suitable for their current use, or will have already been dealt with through the planning regime.

It is possible that there is some land where council activities (e.g. vehicle maintenance and waste disposal activities) may have caused contamination. Therefore, within each priority category, land that was previously or is currently owned by the council will be inspected first. This approach will be adopted to allow the council to set precedents on the identification and remediation of contaminated sites and to demonstrate its commitment to discharging its responsibilities under Part 2A. It is hoped that this approach will be followed by other land owners and will encourage the voluntary remediation of sites.

The first phase of investigation (Phase 1) is to collect and assess as much information as possible about a particular site from maps and historic records and by undertaking a site walkover survey. If the findings confirm that there is potential for contamination to be present, then further investigation will be required.

The next phase of investigation (Phase 2) is to carry out a site investigation to determine the nature and extent of any contamination on a site. The sampling and analysis of soil, water and/or ground gases may be required to assess the amount and type of contamination present.

A risk assessment will then be carried out inline with current guidance and best practice, to determine whether the level of contamination found at a site could pose an unacceptable risk to human health, controlled waters, ecological systems, crops, livestock, buildings or property.

Contaminant levels will be compared against the Department for the Environment, Food and Rural Affairs (DEFRA) Category 4 Screening Levels (C4SLs), which were published in December 2013. If contaminant levels are lower than the C4SLs, then the site is considered to be low risk and no further assessment or remediation is needed. If contaminant levels are higher than the C4SLs, then further assessment is needed.

## **4.4 Determination of Contaminated Land**

Once a detailed inspection is complete, the council will have identified any significant contaminant linkage(s) and carried out a robust, appropriate, scientific and technical assessment of all the relevant and available evidence. We can then decide whether or not a site meets the legal definition of contaminated land.

A site can only be determined as contaminated land for one (or more) of the following reasons:

- Significant harm is being caused.
- There is a significant possibility that significant harm could be caused.
- Significant pollution of controlled waters is being caused.
- Significant pollution of controlled waters is likely to be caused.
- Harm attributable to radioactivity is being caused.
- There is a significant possibility that harm attributable to radioactivity could be caused.

Making a determination is a complex process and we will always refer to the Statutory Guidance and seek advice from relevant experts. We will consult Public Health England when considering health effects, we will consult the Environment Agency when considering the pollution of controlled waters, we will consult Natural England when considering ecological effects and we will consult English Heritage and the council's Design, Conservation & Sustainable Development team when considering property effects.

All regulatory decisions will refer to the Statutory Guidance's four-category system for classifying land. Category 1 covers sites where the level of risk is clearly unacceptable, whereas Category 4 covers sites where the level of risk posed is acceptably low. Sites will be determined as contaminated land if they fall within Category 1 or 2, whereas sites within Category 3 or 4 will not be determined as contaminated land.

Part 2A was introduced to help to identify and deal with land that poses unacceptable levels of risk. It is not intended to apply to sites with normal levels of contamination (i.e. natural background contamination or contamination caused by low level diffuse pollution / common human activity), so these sites will not be

determined as contaminated land.

## **4.5 Remediation**

If a significant contaminant linkage has been identified, remedial action will be needed to reduce or remove that linkage. This may involve cleaning up the contamination, breaking the pathway, or modifying the receptor. The overall aim of remediation is to remedy harm/pollution and to ensure that risks are reduced to an acceptable level.

We aim to encourage the voluntary remediation of sites through regular interaction and discussions, rather than through a process of naming and shaming individuals or companies. However, if no solution can be reached, then the site will be determined as contaminated land and the polluter or other appropriate person will have a legal responsibility to remediate it. In these cases we will issue a remediation notice to ensure that suitable remediation is undertaken.



## **5. PROCEDURES**

### **5.1 Powers of Entry**

For the purposes of identifying contaminated land, the council has been granted powers of entry under Section 108 of the Environment Act 1995. These powers allow any person authorised in writing by the council to enter premises and inspect the area and any records connected to the site, to determine if significant harm is being caused.

In most circumstances we will write to the occupier to give seven days notice of our intention to enter premise. We may then enter the premises either with the consent of the occupier or under the authority of a warrant issued by a magistrate.

In an emergency we may exercise our powers of entry forthwith to prevent immediate harm to public health or the environment, or pollution of controlled waters.

### **5.2 Record of Determination**

If we determine a site as contaminated land, we shall give notice of that fact to the Environment Agency, the owner of the land, any person who appears to be in occupation of the whole or any part of the land, and each person who appears to be an appropriate person. A written record of determination will be provided to relevant parties and a copy will also be kept on file.

A written record of determination will include:

- A map showing the location, boundaries and area of the land in question.
- A risk summary (including details of the identified contaminant linkages, potential impacts and risks, uncertainties behind the risk assessment and possible remediation options).
- A summary of why we consider that the requirements of relevant sections of the Statutory Guidance have been satisfied

If it is clear, following an inspection, that land does not meet the legal definition of contaminated land, we will issue a written statement to that effect to the owners of

the property and other interested parties. A copy of this statement will also be kept on file, along with the reasons for making the decision.

### **5.3 Public Register**

Part 2A requires the council to maintain a public register containing the following information:

- Remediation notices
- Appeals against remediation notices
- Remediation declarations
- Remediation statements
- Appeals against charging notices
- Designation of Special Sites
- Notifications of claimed remediation
- Convictions for offences under section 78M of the Environmental Protection Act 1990
- Site specific guidance issued by the Environment Agency
- Other environmental controls

The public register can be viewed online on the council's website, or viewed in person by prior arrangement at the council offices. Reasonable charges will be made to cover any photocopying costs.

## **5.4 Special Sites**

For a site to be classified as a Special Site it must meet the criteria outlined in the contaminated land regime, as summarised in Appendix 4.

The regulation of Special Sites falls to the Environment Agency, but it is the council's responsibility to identify and designate these sites before further action can be taken. We will only designate a site as a Special Site after we have had detailed discussions with relevant personnel at the Environment Agency. If we already have information that would allow the classification of a Special Site, arrangements can be made so that the Environment Agency carries out the inspection of the site on our behalf.

Once a site has been designated as a Special Site, regulation and enforcement are passed over to the Environment Agency.

## **5.5 Liability**

It is the intention of Part 2A that the appropriate person, ideally the polluter, pays for the cost of remediation as a result of voluntary or formal action.

For any land determined as contaminated land, the council must establish who should bear responsibility for carrying out the remediation. This will follow the polluter pays principle, where the person who caused or knowingly permitted the contamination will be the appropriate person to cover the cost of remediation. However, if it is not possible to find such a person, the Statutory Guidance states that the cost may fall to the owner or occupier of the land.

Inline with the Statutory Guidance, we will also undertake a number of tests to decide whether an appropriate person should be excluded from liability. Liability can then be apportioned accordingly between the remaining liable parties.

If no appropriate person can be found, or the appropriate person is exempted by one of the relevant statutory provisions, the significant contaminant linkage will become an orphan linkage. In these instances, the council will be responsible for carrying out the remediation at its own cost.

## **5.6 Cost Recovery**

In making any cost recovery decision, the Statutory Guidance recommends that the following general principles should be followed:

- The council should aim for an overall result which is as fair and equitable as possible to all who may have to meet the costs of remediation, including national and local taxpayers.
- The polluter pays principle should be applied with a view that, where possible, the costs of remediating pollution should be borne by the polluter. The council should therefore consider the degree and nature of responsibility of the relevant appropriate person(s) for the creation, or continued existence, of the circumstances which lead to the land in question being identified as contaminated land.

We will seek to recover all reasonable costs. However, we will consider waiving or reducing the recovery of costs to avoid any undue hardship which the recovery may cause to the appropriate person, or to reflect one or more of the specific considerations set out in the Statutory Guidance.

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

## **5.7 Enforcement Policy**

We will carry out our responsibilities under Part 2A in a clear and transparent manner. We will endeavour to promote the voluntary remediation of sites and will only proceed with enforcement action when all other avenues have been exhausted. However should enforcement action be required, for example due to the failure to fulfill the requirements of a remediation notice, action will be taken in accordance with our enforcement policy.

## 6. PROGRESS AND PRIORITIES

### 6.1 Progress

Considerable progress has been made since the publication of the council's first Contaminated Land Strategy back in 2001. We have collated detailed information on possible sources, pathways and receptors and we have prioritised all of the potentially contaminated sites. We are currently working our way through the detailed inspections in priority order.

Of the 88 high priority (Category A) sites identified in York:

- 13 sites have been inspected under Part 2A and 9 of these required Phase 2 investigations,
- 20 sites have already been, or soon will be, investigated through the planning regime (including Heworth Green gas works, York Central and British Sugar),
- 49 sites are currently in use as industrial / commercial premises and no further action is required at present, and
- 6 sites have not yet been inspected.

The nine Phase 2 investigations were carried out at the highest priority and most complex sites – please see Table 6.1 for details. Elevated levels of contamination were detected at all of these sites, but none of the levels were high enough to pose an unacceptable risk to health or the wider environment. Consequently, none of these sites met the Part 2A definition of contaminated land and no further action was warranted.

Phase 2 investigations are expensive (often costing tens of thousands of pounds) and time consuming. All of the Part 2A inspections carried out to date has been funded by central government contaminated land capital grants. Unfortunately, this grants programme was withdrawn in April 2014 and we have had insufficient funds to undertake any investigations since this date.

In addition to the above, hundreds of sites in York have been investigated and remediated through the planning regime. As discussed in Section 1.6, contaminated land is a material planning consideration, so the council's development management team consults the public protection team on all planning applications and associated contaminated land reports. We are responsible for reviewing all investigation and remediation work undertaken by developers, to ensure that it is completed to a satisfactory standard and that the site is suitable for its proposed use. Please note that no additional Part 2A action will be required at these sites.

**Table 6.1 – List of Detailed Inspections**

| Date    | Site Name & Address                                                                                                                                                             | Past Industrial Use                                                                                             | Determined as Contaminated Land? |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------|
| 2004-07 | Water End                                                                                                                                                                       | Closed landfill site                                                                                            | No                               |
| 2006-07 | Fulford Cross <ul style="list-style-type: none"> <li>• Walled gardens</li> <li>• Allotments</li> <li>• York Steiner School</li> <li>• Danesgate Pupil Support Centre</li> </ul> | None<br><i>(contamination was found by contractors, so it was investigated as an urgent case under Part 2A)</i> | No                               |
| 2006-08 | Nun Ings, Butcher Terrace                                                                                                                                                       | Closed landfill site                                                                                            | No                               |
| 2006-08 | King George's Field, Huntington Road                                                                                                                                            | Closed landfill site                                                                                            | No                               |
| 2006-08 | Fifth Avenue                                                                                                                                                                    | Closed landfill site                                                                                            | No                               |
| 2007-09 | Fulford Cross <ul style="list-style-type: none"> <li>• Public open space</li> <li>• Danesmead Community Orchard</li> </ul>                                                      | Closed landfill site                                                                                            | No                               |
| 2009-11 | Chapman's Pond, Moor Lane, Dringhouses                                                                                                                                          | Closed landfill site                                                                                            | No                               |
| 2009-11 | Land behind Westfield School, Askham Lane                                                                                                                                       | Closed landfill site                                                                                            | No                               |
| 2012-14 | Foxwood Lane                                                                                                                                                                    | Closed landfill site                                                                                            | No                               |

## **6.2 Timescale**

Progress in carrying out detailed inspections is reliant upon resources and service priorities. No budget is available at present, so it is not possible to set an accurate timescale for the implementation of this strategy.

## **6.3 Priorities**

Our current priorities are to:

- Carryout detailed inspections of potentially contaminated sites in priority order as resources and service priorities allow. However, no budget is available at present for this.
- Assess planning applications and associated contaminated land reports to ensure that land is investigated and remediated appropriately by developers, so it does not pose a risk to health or the environment.
- Deal with urgent cases as and when they arise.

## 7. STRATEGY CONSULTATION AND REVIEW

### 7.1 Strategy Consultation

In preparing this strategy a number of statutory bodies, adjoining local authorities, internal council departments and other relevant organisations have been consulted. Please see below for a list of the consultees:

- Development Management, City of York Council
- Design, Conservation & Sustainable Development, City of York Council
- Public Health, City of York Council
- Department for Environment, Food & Rural Affairs (DEFRA)
- Environment Agency (Yorkshire and North East Region)
- Natural England (Yorkshire and North Lincolnshire Region)
- English Heritage (Yorkshire Region)
- Environmental Hazards and Emergencies Department, Public Health England
- Public Protection Team, East Riding of Yorkshire Council
- Environmental Health, Hambleton District Council
- Environmental Protection, Harrogate Borough Council
- Environmental Health, Ryedale District Council
- Environmental Health, Selby District Council

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



## **7.2 Strategy Review**

As recommended in the Statutory Guidance, this strategy will be reviewed at least every five years to ensure that it remains up to date and relevant.

## 8. ACCESS TO INFORMATION

### 8.1 Viewing the Contaminated Land Strategy

This contaminated land strategy is available to download free of charge from the council's website. A paper version is also held at the Eco Depot, Hazel Court and can be viewed during normal office hours.

### 8.2 Viewing the Public Register

The contaminated land public register can be viewed on the council's website. A paper version is also held at the Eco Depot, Hazel Court and can be viewed during normal office hours.

### 8.3 Enquiries

Requests for information and enquiries regarding contaminated land can be made by telephone, email or in writing. We aim to respond to all requests within 3 working days.

Please note that there may be a charge to cover our costs to reply to some kinds of query, but you will always be advised in advance if there is a charge.

Please note that circumstances may arise where specific information cannot be released due to commercial confidentiality, an ongoing investigation, or where legal action is required to enforce a remediation notice.

**Enquiries should be directed to:**

Public Protection  
City of York Council  
Eco Depot, Hazel Court  
James Street  
York  
YO10 3DS

Tel: 01904 551525

Email: [public.protection@york.gov.uk](mailto:public.protection@york.gov.uk)

## REFERENCES

Department for Communities and Local Government (2012). **National Planning Policy Framework**. DCLG, London.

Department for Environment, Food and Rural Affairs (2012). **Environmental Protection Act 1990: Part 2A Contaminated Land – Contaminated Land Statutory Guidance**. The Stationery Office, London.

Department of Energy and Climate Change (2012). **Environmental Protection Act 1990: Part 2A Contaminated Land – Radioactive Contaminated Land Statutory Guidance**. The Stationery Office, London.

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

**Environmental Permitting (England and Wales) Regulations 2010**. Statutory Instrument (SI 2010/676).

**Environmental Protection Act 1990, Part 2A**: inserted by the Environment Act 1995, Section 57. See Environment Act 1995 for text for Part 2A.

**The Contaminated Land (England) (Amendment) Regulations 2012**. Statutory Instrument (SI 2012/263).

**The Contaminated Land (England) Regulations 2006**. Statutory Instrument (SI 2006/1380).

**The Environmental Damage (Prevention and Remediation) Regulations 2009**. Statutory Instrument (SI 2009/153).

**Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009**. Statutory Instrument (SI 2009/3104).

Yorkshire and Humberside Pollution Advisory Council (2016). **Development on Land Affected by Contamination: Technical Guidance for Developers, Landowners and Consultants**. Version 7.2. YAHPAC, UK (available to download from [https://www.york.gov.uk/downloads/file/3803/yahpac\\_planning\\_guidance\\_version\\_72pdf](https://www.york.gov.uk/downloads/file/3803/yahpac_planning_guidance_version_72pdf)).

# GLOSSARY

This strategy uses a number of terms which are defined in Part 2A or in the Statutory Guidance. The meanings of the most important of these terms are detailed below, and where appropriate, a reference to the relevant section of Part 2A has been included.

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Appropriate Person</b>  | <p>Defined in Section 78A(9) as:</p> <p><i>‘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.’</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Contaminant</b>         | <p>A substance which is in, on or under the land and has the potential to cause significant harm or significant pollution of controlled waters.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Contaminant Linkage</b> | <p>The relationship between a contaminant, a pathway and a receptor.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Contaminated Land</b>   | <p>Defined in Section 78A(2) (as modified) as:</p> <p><i>‘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;</i></p> <ul style="list-style-type: none"> <li><i>a) significant harm is being caused or there is a significant possibility of such harm being caused; or</i></li> <li><i>b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.’</i></li> </ul> <p>OR with respect to radioactive contamination it is defined as:</p> <p><i>‘Any land which appears to the local authority in whose area the land is situated to be in such a</i></p> |

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | <p><i>condition, by reason of substances in, on or under the land, that;</i></p> <p><i>a) harm is being caused; or</i></p> <p><i>b) there is a significant possibility of harm being caused.'</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Controlled Waters</b>   | Has the same meaning as in Part III of the Water Resources Act 1991, and includes relevant territorial waters, coastal waters, inland freshwaters and ground waters. Except that ground waters does not include waters contained in underground strata but above the saturation zone.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Ecological Systems</b>  | <p>Only the following ecological systems can be considered for the purposes of Part 2A:</p> <ul style="list-style-type: none"> <li>• A site of special scientific interest</li> <li>• A national nature reserve</li> <li>• A marine nature reserve</li> <li>• An area of special protection for birds</li> <li>• A "European site" within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010</li> <li>• Any habitat or site afforded policy protection on nature conservation (i.e. candidate Special Areas of Conservation, potential Special Protection Areas and listed Ramsar sites); or</li> <li>• Any nature reserve established under section 21 of the National Parks and Access to the Countryside Act 1949.</li> </ul> |
| <b>Enforcing Authority</b> | Special sites will be enforced by the Environment Agency and all other contaminated land sites will be enforced by the local authority in whose area the land is situated.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Geology</b>             | The study of the structure of rocks, minerals and soils in specific geographical areas.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Harm</b>           | <p>Defined in Section 78A(4) as:</p> <p><i>'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.'</i></p> <p>OR with respect to radioactive contamination is defined as:</p> <p><i>'Lasting exposure to any person being resulting from the after effects of a radiological emergency, past practice or past work activity.'</i></p> |
| <b>Hydrogeology</b>   | The study of the occurrence, distribution, movement and properties of water through rock beneath the ground.                                                                                                                                                                                                                                                                                                                                             |
| <b>Hydrology</b>      | The study of the occurrence, distribution, movement and properties of surface water.                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Orphan Linkage</b> | A significant contaminant linkage where no appropriate person can be found, or where those who would otherwise be liable are exempted by one of the relevant statutory provisions. In these instances the enforcing authority has the power to carry out the remediation action itself, at its own cost.                                                                                                                                                 |
| <b>Part 2A</b>        | Part 2A of the Environmental Protection Act 1990.                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Pathway</b>        | A route by which a receptor is being / could be exposed to, or affected by, a contaminant.                                                                                                                                                                                                                                                                                                                                                               |
| <b>Prioritisation</b> | The process of scoring sites based on the potential contaminants, pathways and receptors. This creates a prioritised list of potentially contaminated sites, which can then be inspected in priority order.                                                                                                                                                                                                                                              |
| <b>Property</b>       | <p>Only the following property can be considered for the purposes of Part 2A:</p> <p>a) Property in the form of:</p> <p>i) crops, including timber;</p>                                                                                                                                                                                                                                                                                                  |

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                              | <ul style="list-style-type: none"> <li>ii) produce grown domestically, or on allotments, for consumption;</li> <li>iii) livestock;</li> <li>iv) other owned or domesticated animals;</li> <li>v) wild animals which are the subject of shooting or fishing rights.</li> </ul> <p>b) Property in the form of buildings. For this purpose, 'building' means any structure or erection, and any part of a building including any part below ground level, but does not include plant or machinery comprised in a building, or buried services such as sewers, water pipes or electricity cables.</p> |
| <b>Public Register</b>       | Register maintained by the council of particulars relating to contaminated land.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Receptor</b>              | Something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters.                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Remediation</b>           | Removing identified significant contaminant linkages, or permanently disrupting them, to ensure that they are no longer significant and that risks are reduced to an acceptable level. Remediation may involve a range of treatment, assessment and monitoring actions to secure the overall cleanup of the land.                                                                                                                                                                                                                                                                                 |
| <b>Remediation Notice</b>    | 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.                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Remediation Statement</b> | In any case where the enforcing authority is precluded from serving a remediation notice, the responsible person shall prepare and publish a remediation statement. The document will detail what remediation actions are being / have been /                                                                                                                                                                                                                                                                                                                                                     |

|                                                   |                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                   | are expected to be done, appropriate timescales and the name and address of the responsible person.                                                                                                                                                                                                                                                                                 |
| <b>Risk</b>                                       | A combination of the probability / frequency of occurrence of a defined hazard and the magnitude (including the seriousness) of the consequences.                                                                                                                                                                                                                                   |
| <b>Significant Harm to Human Health</b>           | The following health effects should always be considered to constitute significant harm to human health: death, life threatening diseases (e.g. cancers), other diseases likely to have serious impacts on health, serious injury, birth defects, and impairment of reproductive functions.                                                                                         |
| <b>Significant Pollution of Controlled Waters</b> | The entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter.                                                                                                                                                                                                                                                                           |
| <b>Significant Possibility</b>                    | The decision on whether the possibility of significant harm / pollution being caused is significant is a regulatory decision to be taken by the relevant enforcing authority. Decisions will be made inline with the Statutory Guidance.                                                                                                                                            |
| <b>Special Site</b>                               | <p>Defined by Section 78A(3) as:</p> <p><i>‘Any contaminated land –</i></p> <p><i>a) which has been designated as such a site by virtue of section 78C(7) or 78D(6)...;</i></p> <p><i>and</i></p> <p><i>b) whose designation as such has not been terminated by the appropriate Agency under section 78Q(4)...’</i></p> <p>See Appendix 4 of this document for further details.</p> |
| <b>Substance</b>                                  | <p>Defined in Section 78A(9) as:</p> <p><i>‘Any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.’</i></p>                                                                                                                                                                                                                        |



|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>OR with respect to radioactive contamination is defined as:</p> <p><i>'Whether in solid or liquid form or in the form of a gas or vapour, any substance which contains radionuclides which have resulted from the after-effects of a radiological emergency or which are or have been processed as part of a past practice or past work activity, but shall not include radon gas or the following radionuclides: Po-218, Pb-214, At-218, Bi-214, Rn-218, Po-214 and Tl-210.'</i></p> |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

# APPENDIX 1: CONTAMINANT SOURCES

The following historic activities are known to produce contamination and could therefore give rise to land contamination. Please note that this list is for guidance only and is not exhaustive.

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

- Landfill, storage & incineration of waste
- Sewage works, farms, stables & kennels
- Abattoirs, animal waste processing & burial of diseased livestock
- Scrap yards
- Dry cleaning premises
- All types of laboratories
- Burial sites and graveyards
- Agriculture – specifically the excessive use or spills of pesticides, herbicides, fungicides, sewage sludge & farm waste disposal

## APPENDIX 2: PATHWAYS

The following pathways may create linkages between contaminants in the ground and relevant receptors. Please note that this list is for guidance only and is not exhaustive.

- Ingestion of soil and dust
- Ingestion of vegetables & soil attached to vegetables
- Inhalation of indoor & outdoor dust
- Inhalation of indoor & outdoor vapours
- Dermal contact with soils and dusts
- Risk of fire / explosion
- Migration of soluble or mobile contaminants into groundwater
- Migration of soluble or mobile contaminants into surface water bodies
- Surface run-off into surface water bodies
- Permeation through water pipes
- Impact on areas of ecological importance
- Impact on crops or domestically grown produce
- Impact on livestock and wild animals subject to shooting / fishing rights
- Impact on buildings and / or foundations

## APPENDIX 3: RECEPTORS

The following receptors are covered by Part 2A. Please refer to the Statutory Guidance for further details and information on what constitutes significant harm to each receptor.

- Human beings
- Any ecological system, or living organism forming part of such system, within a location which is:
  - i) A site of special scientific interest
  - ii) A national nature reserve
  - iii) A marine nature reserve
  - iv) An area of special protection for birds
  - v) Any European site within the meaning of regulation 10 of the Conservation Regulations 1994 e.g. special areas of conservation and special protection areas.
  - vi) Any candidate special areas of conservation or special protection areas
  - vii) Any habitat afforded protection under paragraph 6 of planning policy statement 9 (PPS9) e.g. RAMSAR sites
  - viii) Any nature reserve under section 21 of the National Parks and Access to the Countryside Act 1949
- Property in the form of;
  - i) Crops, including timber
  - ii) Produce grown domestically, or on allotments for consumption
  - iii) Livestock
  - iv) Other owned or domesticated animals
  - v) Wild animals which are the subject of shooting or fishing rights
- Property in the form of buildings. For this purpose “building” means any structure or erection, and any part of a building including any part below ground level, does not include plant/machinery within a building.
- Controlled waters, as defined by the Water Resources Act 1991. Including relevant territorial waters, coastal waters, inland freshwaters and ground waters. For the purposes of Part 2A, ground waters does not include waters contained in underground strata but above the saturation zone.

## APPENDIX 4: SPECIAL SITES

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

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

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

- iv) *the service authority of a visiting force, being land used for naval, military or air force purposes;*
- h) *land on which the manufacture, production or disposal of -*
  - i) *chemical weapons,*
  - ii) *any biological agent or toxin which falls within section 1(1)(a) of the Biological Weapons Act 1974 (restriction on development of biological agents and toxins), or*
  - iii) *any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act (restriction on development of biological weapons) has been carried on at any time;*
- i) *land comprising premises which are or were designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991 (arrangements for development etc of nuclear devices);*
- j) *land to which section 30 of the Armed Forces Act 1996 (land held for the benefit of Greenwich hospital) applies;*
- k) *land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land; and*
- l) *land which -*
  - i) *is adjoining or adjacent to land of a description specified in any of sub-paragraphs (b) to (k); and*
  - ii) *is contaminated land by virtue of substances which appear to have escaped from land of such a description.'*

## **APPENDIX 5: ENFORCEMENT POLICY**



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**Environmental Health, Trading Standards, Licensing, Public Protection  
and Street Environment and Enforcement Services**

**Enforcement Policy**

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

All enforcement activity undertaken under this policy will have regard to the Human Rights Act 1998 and the European Convention of the Protection of Human Rights and Fundamental Freedoms.

## **1.0 Introduction**

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

We will ensure legal compliance by:

- Helping and encouraging businesses and individuals to understand and comply with the law.

- Responding proportionately to breaches of the law.

We want to achieve the following outcomes:

- Support economic growth, especially in small businesses, by ensuring a fair, responsible and competitive trading environment
- Protect the environment for future generations including tackling the threats and impacts of climate change
- Improve quality of life and wellbeing by ensuring clean and safe neighbourhoods
- Help people to live healthier lives by preventing ill health and harm, and promoting public health
- Ensure a safe, healthy and sustainable food chain for the benefits of consumers and the rural economy.

## **2.0 Economic Progress**

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

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

## **3.0 Risk Assessment**

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

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

- management competence of the business; and
- willingness to comply.

#### **4.0 Advice and Guidance**

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

In doing this we will ensure that:

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

#### **5.0 Inspections and Other Visits**

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

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

## **6.0 Information Requirements**

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

## **7.0 Compliance and Enforcement Actions**

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

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

Formal enforcement action will only be considered and taken in the first instance in cases involving unfair commercial practices against consumers or businesses, commercial fraud, sales of age restricted products, supply of counterfeit goods, intellectual property crime, occupational health and safety, public safety, risk to public health (including food safety), statutory nuisances, animal health and welfare, the compositions and safety or animal feeding stuffs, damage to the environment, overloaded goods vehicles, dog fouling, trading standard offences committed by doorstep sellers, breaches of licence conditions, operation of unlicensed taxis, unauthorised street trading activities and charitable collections, or in any other case in which a head of service considers formal enforcement action is necessary.

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

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

- Aiming to change the behaviour of the offender
- Aiming to eliminate any financial gain or benefit for non-compliance

- Being responsive and considering what is appropriate for the particular offender and issue involved, including punishment and the public stigma that may be associated with criminal convictions
- Being proportionate to the nature of the offence and harm caused
- Aiming to restore the harm caused by non-compliance
- Aiming to deter future non-compliance.

Before formal enforcement action is taken:

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

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

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

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

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

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

In investigations that may result in a prosecution for an acquisitive crime i.e. the acquiring of assets (including money) from offences such as fraud or intellectual property crime, we will undertake a financial investigation into the circumstances of the case. This may result in an investigation into money laundering and confiscation action being taken through the courts.

## **8.0 Accountability**

We will be accountable for the efficiency and effectiveness of our activities, whilst giving opportunities for feedback on our service.

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

service users, and explains how to make a complaint and the timescales involved. A copy of the complaints procedure can be obtained from 9 St Leonard's Place, York, by telephoning 01904 551550 or via our website at [www.york.gov.uk](http://www.york.gov.uk)

## **9.0 Application of our enforcement policy**

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

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

## **10.0 Review**

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

If you have any comments please contact the head of public protection by calling 01904 551550 or by writing to 9 St Leonard's Place, York, YO1 7ET or email to [trading.standards@york.gov.uk](mailto:trading.standards@york.gov.uk)

**This information can be provided in your own language.**

**我們也用您們的語言提供這個信息 (Cantonese)**

**এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)**

**Ta informacja może być dostarczona w twoim  
własnym języku. (Polish)**

**Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)**

**یہ معلومات آپ کی اپنی زبان (بولی) میں بھی مہیا کی جاسکتی ہیں۔ (Urdu)**

** (01904) 551550**