

A PLANNING ADVICE NOTE, MARCH 2012

DEVELOPMENT ON LAND AFFECTED BY CONTAMINATION

The Dorset and New Forest Contaminated Land Consortium of Local Authorities



**Bournemouth Borough Council
Christchurch Borough Council
East Dorset District Council
New Forest District Council
North Dorset District Council
Purbeck District Council
West Dorset District Council
Weymouth and Portland Borough Council**

Investigating Contamination
Determining pre-application requirements and planning conditions
Consulting on proposals

Prepared by: WPA Consultants Ltd. March 2012

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**The following information is intended for guidance purposes.
All of the decisions pertaining to planning issues will be made by the Local
Planning Authority and specific advice should be sought
from the designated planning officer and the statutory consultees.**

The Dorset Contaminated Land Consortium of Local Authorities

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**Investigating Potentially Contaminated Land – determining pre-application requirements
and planning conditions – consulting on proposals**

Introduction

The planning process has to ensure that any issues related to potential site contamination are addressed prior to or during the development of a site. Government guidance in the UK emphasises that potential contamination is a material planning consideration and that the development phase is the most cost-effective time to deal with problems associated with prior use. Policy advocates the ‘suitable for use’ approach for the proposed development in that the works undertaken on a site with contamination issues, if deemed necessary, should deal with any unacceptable risks to health or the environment (including controlled waters and areas of ecological significance), taking into account the site’s actual or intended use. The onus is quite clearly placed on the developer to disclose all relevant information and provide all necessary supporting information for a planning application.

Previously developed land (brownfield sites) may have been contaminated by a variety of land uses, such as fuel distribution, gas works, industrial sites etc. Such contamination may pose risks to current or future site occupiers, structures on the site and to the environment.

The risks must be identified early in the development process to ensure that appropriate mitigation measures are taken. This should take the form of a “source -pathway – receptor” risk assessment, whereby the sources of the hazard (e.g. heavy metal contamination), the receptor (e.g. public water supply borehole) and the pathway connecting the two (e.g. contaminated groundwater plume) are considered.

In this way the risks posed can be examined and suitable mitigation measures implemented to reduce the risks to an acceptable level. Investigations should be carried out by an appropriate consultant on behalf of the developer either before planning permission has been granted or by direction in a planning condition.

To see the interaction between the processes involved please refer to the flowchart (diagram1) and the headings in the text.

In carrying out its duty the local planning authority (LPA) has to consider whether there is, or might be, a potential contamination hazard on a site, and if so:

- whether a proposed use or development of the site could give rise to unacceptable risks to health or the environment,
- what steps by way of restrictions on the proposed use or other development of the land should be taken to reduce those risks,
- what further information it needs to clarify the issues of potential contamination.

In the preliminary stages there will be a need to research the background of the site possibly from a period when the site was ‘greenfield’. Amongst other sources of information this research may include the study of current and historical maps, aerial photographs, trade directories, environmental information from sources such as the Environment Agency, local authorities and the British Geological Survey. There are now a number of commercial information providers who can assist in this area.

Where it is anticipated that contamination may be present on or near a proposed development area, a desk study report that includes a site conceptual model will be required to characterise the contamination and establish the likely risks posed.

This report will be required either prior to the grant of planning permission or by condition, depending on the likely severity of the contamination and the magnitude of the risks posed, on a site-specific basis. This report must be carried out by an appropriately qualified consultant and recommendations for further investigation, risk assessment and scoping for remediation may ensue depending on the initial findings.

Objectives and Principles of Risk Assessment and Management

The defining of whether land is subject to significant contamination is based in regulatory terms upon the principles of risk assessment.

In this context risk is defined as the combination of:

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

Overall the risk management process is essentially achieved by the following iterative activities:

- Investigation; this is essentially a series of activities that aim to identify hazard sources, pathways and receptors and provides for the development of a conceptual model,
- Assessment; this is essentially a risk assessment procedure and aims to qualify/quantify the risk of any particular receptor being impacted by any particular hazard,
- Remediation; this is essentially a risk reduction exercise and aims to reduce any risk to an acceptable level.

The main objectives in a contaminated land investigation are to:

- Systematically determine if there are currently any risks to human health or other targets such as flora, fauna, the water environment, the built environment, and whether, if such risks exist, they are acceptable or unacceptable.
- Determine the consequences of a change of use, development, redevelopment or other works on the site (e.g. potential impacts on the environment, groundwater resources, public health).

- Identify the critical contaminants and associated factors (e.g. pathways) relevant to the site so that any steps necessary to reduce risks to acceptable levels, both currently and in the foreseeable future, can be determined.
- Make judgments on the significance and acceptability of identified risks.
- Help to set priorities for reducing risks.
- Provide a rational and defensible basis for discussing a proposed course of action with third parties.

Risk assessment has four main components:

1. Hazard identification - identifying the hazards by considering the likely pollutant linkages (plausible source/pathway/receptor scenarios) that may be associated with a particular site.
2. Hazard assessment - assessing the degree of hazard associated with a site (e.g. what type, and how much of a hazardous substance could be available to reach a target) through consideration of the plausible source/pathway/receptor scenarios.
3. Risk estimation - estimating the likelihood that an adverse effect will result from exposure to any hazard and the nature of this effect. Risk estimation may focus on human health effects, effects on flora and fauna, the water environment or other targets such as building materials.
4. Risk evaluation - evaluating the significance of estimated risks, taking into account available guidelines and standards, the uncertainties associated with the assessment and the costs and benefits of taking action to mitigate the risks.

Assessing the Risks in the Planning Process

The risks on each site are to be assessed, and controls are triggered only where there is potential for harm to human/environmental receptors or actual or likely pollution of controlled waters. The extent of the risk on any particular land depends upon a number of factors including the following:

- the characteristics of the substances in the land,
- the local profiles concerning geology and hydrogeology,
- the nature and presence of receptors,
- the use of the land, or of adjacent land,
- the nature of the land, in terms of whether pathways may exist or could be created,
- what measures exist, if any, to reduce or limit risks.

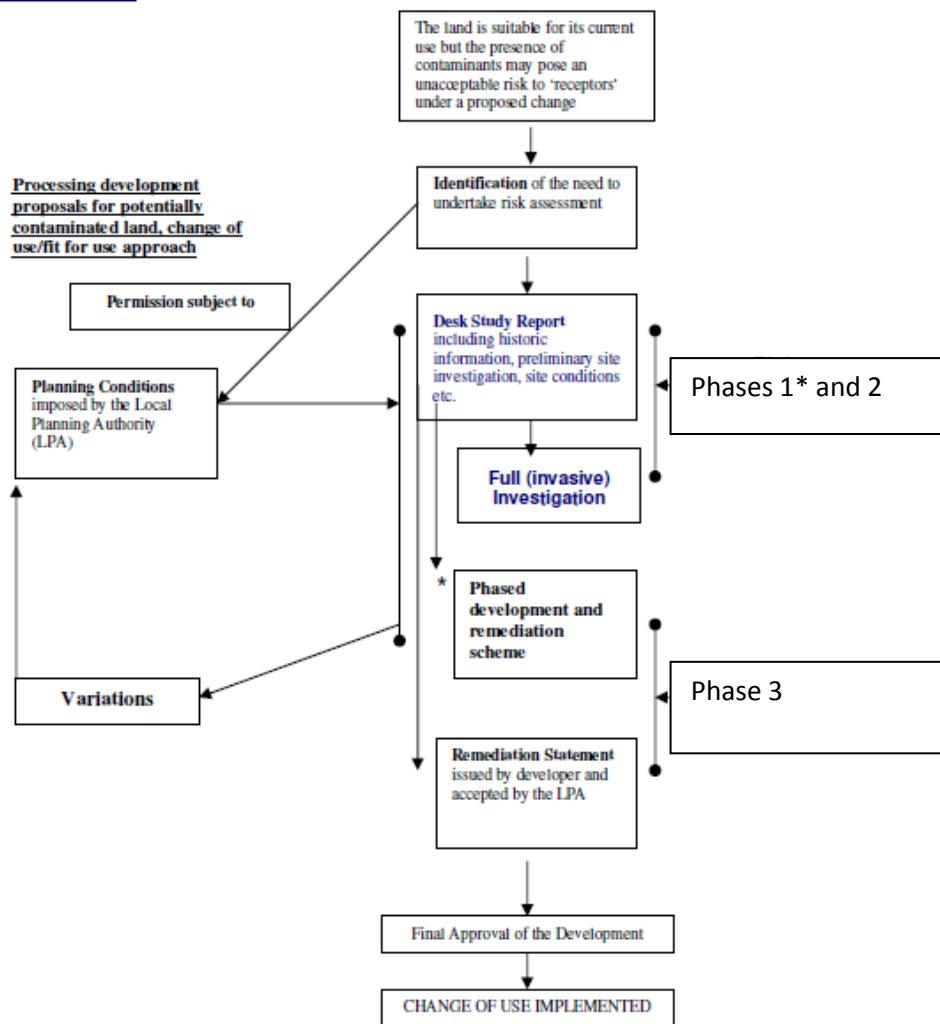
There are a range of approaches used for risk assessment ranging from a simple comparison of contamination values with published reference standards or guidelines to a comprehensive site specific quantitative assessment involving the use of extensive data, including the leaching characteristics of contaminants and toxicity information, and various modelling procedures.

The following are examples of risk assessment methodologies and subject matters currently considered in the context of good practice in the United Kingdom.

- Use of generic assessment criteria for human health (e.g. UK SGVs, LQM CIEH GACs, Atrisk SSVs)
- Use of site specific qualitative risk estimation
- Use of site specific risk evaluation matrix
- Use of human exposure assessment modelling (e.g. Contaminated Land Exposure Assessment Model (CLEA UK), RBCA and BPRisc)
- Use of published water quality standards
- Tiered risk assessment (Groundwater)
- Ecological Risk Assessment

In the planning regime the process of considering contamination has three phases described below and given context in the following flowchart.

Diagram 1 Flowchart



*If the desk study report shows no evidence of actual or potential pollutant linkages, following the submission of the appropriate documentation and with the agreement of the Local Planning Authority, further consideration (other than attention to matters arising during construction) may not be required.

Phase 1 Desk Study Report

The applicant will need to demonstrate in a desk study report a comprehensive search which may include references to:

- historic maps and aerial photographs
- trade directories
- deeds
- planning histories
- environmental data from the authorities and data providers
- other relevant sources (note this is not an exhaustive list)

All relevant maps and drawings should be enclosed along with the full site history including; past land uses, materials used on site, pollution events, impacts from other sites in the

vicinity, the location of existing/former pits, tanks, fuel/ chemical storage and waste disposal facilities.

The desk study report must include an assessment of identifiable risks by an appropriately qualified consultant and must include the initial layout of a site conceptual model of potential pollutant linkages.

This will enable the *Local Planning Authority (LPA)* to determine the need, if any, for a full Phase 2 site investigation. In all submissions on planning applications consideration of the requirements of other regimes and regulatory control should be undertaken from an early stage that includes:

- The Contaminated Land Legislation
- Building Regulations
- Health & Safety
- Statutory Nuisance Legislation
- Waste regulations

In certain circumstances where a desk study is not provided, and where this is agreeable to the Local Planning Authority, planning consent will be granted subject to a condition requiring the subsequent submission of such a report with the possibility of further investigation and provision for remediation.

Phase 2 Full Site Investigation and Report

In circumstances where there is known complexity, or sufficient evidence exists to suspect a significant risk from severe contamination, a full Phase 2 site investigation report with the assessed results from invasive sampling, testing and monitoring on site, should be submitted prior to application. On an outline application a condition could be imposed requiring submission of appropriate reports as a reserved matter dependent upon the circumstances and complexities. An outline of options for remediation and their feasibilities will also be required. Invasive site investigations may be iterative in nature and, therefore, may be referenced as further more detailed actions.

It is suggested that consultants intending to carry out any intrusive site investigation work submit their sampling strategy for approval prior to commencing work. This is in order to avoid disagreements over methodology at a later stage.

If it is known or strongly suspected that the site is contaminated to an extent which would adversely affect the proposed development, or infringe statutory requirements, an investigation of the hazards by the developer's consultants, and proposals for any necessary remedial measures required to deal with the hazards will normally be required before the application can be determined by the local planning authority. Certain aspects of such investigations, such as drilling boreholes, may require separate planning permission or

approval by other statutory authorities. Planning permission may need to include conditions requiring certain remedial measures to be carried out.

A full investigation report should include a summary of the Phase 1 desk study report, the strategy and methodology used for invasive investigation with, a further developed ‘conceptual model of pollutant linkages’, details on the basis for choosing investigation methods, sampling and analytical testing procedures, appropriate background information on geology and hydrology relating to the site, and a detailed risk assessment of potential harm to receptors requiring the implementation of a stated remediation scheme. The study should also detail aspects of the construction process that may have a potential to cause harm to receptors, and measures needed to protect them.

Phase 3. Remediation Scheme (cleaning up, isolating or otherwise managing the contamination)

Where the Local Planning Authority considers a site to be contaminated, development will not be permitted until the Developer’s appointed Environmental Consultants have submitted a remediation scheme acceptable to the Local Planning Authority. As indicated above the phasing of site work may also require certain measures that are to be undertaken before construction commences.

The remediation package needs to detail sufficient practicable and effective measures to ensure the remediation of the site so as not to lead to, or allow the continuance of:

- the exposure of the occupiers / users of the development and neighbouring land to unacceptable risks from land contamination,
- the pollution of any water course, water body, or groundwater,
- the contamination of adjoining land,
- the release of pollution to air,
- damage to the structural integrity of any building on or adjoining the site.

Phase 3. The Validation Report, (Verifying the actions of the Remediation Scheme)

On completion of all the works detailed in the agreed remediation scheme, a **Validation Report** must then be completed by the Environmental Consultants responsible for the works providing adequate evidence that they have supervised and verified all the agreed remediation actions. This document is to be submitted to the Local Planning for approval.

Until the Local Planning Authority is in receipt of a **Validation Report** and it is satisfied with the content, and standard of work completed, the remediation of the site will be considered by the Local Planning Authority to be incomplete.

If the Local Planning Authority accepts the **Validation Report**, it will on request issue

confirmation that those actions agreed in the remediation scheme have been completed to the Local Planning Authority's satisfaction. Under no circumstances will the LPA issue a statement that the site is no longer free from contamination. The landowner, developers and future occupiers, therefore, will not be released from any liabilities in respect to contaminated land and its regulation.

Environmental Statements

Where contaminated land issues arise on major developments, or developments with significant potential environmental impacts it may be necessary to prepare an Environmental Statement under the Environmental Impact Assessment Regulations 1999 or an Appropriate Assessment undertaken under Article 6 of the Habitats Directive. In these cases it will be appropriate to include issues arising from contaminated land investigation within the documentation to enable all issues to be dealt with consistently and appropriately. This reporting route must include all information that would otherwise have been required in the consideration of land quality.

Consultations

Even before an application is made, informal discussions between a potential developer and the local planning authority can be very helpful. If the local planning authority has reason to believe that there is a possibility that the land might be contaminated, it can be brought to the attention of the developer at this stage, and the implications explained. Other statutory bodies should also be consulted to establish their requirements. The applicant can then design his project to include proposals for site investigation so as to take full account of the likely requirements of the planning authority or other statutory body.

On a planning application, which involves contaminated land issues, in addition to internal consultations with the District Environmental Health Officer, the LPA may consult with, or request the developer to consult with, appropriate consultees including:

- The Environment Agency
- Natural England
- The County Council

The LPA will endeavour to seek and ensure appropriate remediation, apply appropriate conditions on any planning consent, and it advises the applicant that decisions are based upon the information submitted.

A planning decision without conditions for remediation does not mean that the land is free from contamination. The responsibility for safe development and secure occupancy of the site rests with the developer.

Planning Conditions (their use and an example of likely content)

In summary (and as outlined in diagram 1) planning conditions associated with land contamination follow a path: from desk study assessment of past activities to onsite invasive investigation if required, and through to remediation steps if found to be necessary.

In matters with significant complexity and/or potential for the presence of extreme hazard the LPA may require extensive assessment. This may include discussion on the feasibility of remediation options for consideration prior to application.

Generally where the site history indicates that there is potential for the site or neighbouring environs to have been subject to contaminating land uses, planning permission is only likely to be granted subject to conditions.

There follows a summary of content likely to appear in a contaminated land planning condition:

Prior to the commencement of any works pursuant to this permission the developer shall submit for the written approval of the Local Planning Authority:

- 1. A Phase 1 'desk study' report documenting the site history and character with an initial conceptual model of potential pollutant linkages.*
- 2. A Phase 2 'site investigation report' documenting the proven ground conditions of the site, and incorporating a 'developed conceptual model' of the potential pollutant linkages with an assessment of the risks from contamination.*
- 3. A detailed 'Remediation Scheme' with measures in detail to be taken to manage risk from contamination during construction and when the site is developed.*

Prior to occupation and the change of use pursuant to this permission the developer shall submit for the written approval of the Local Planning Authority:

- 4. A Validation Report providing evidence that verifies the agreed remediation scheme has been undertaken to agreed standards.*

Any variation to the scheme must be agreed in writing with the LPA in advance of works being undertaken.

The developer must cease work on the site and draw to the attention of the District Environmental Health Officer the presence of significant previously unreported contamination found during the development work. In such circumstances the written approval of the LPA must be given before work can recommence.

Carrying out a site investigation (Timing and special considerations)

As the outcome and processes involved with an investigation can have significant material cost and time implications, it is important that applicants realise that investigation works must be undertaken at the earliest opportunity.

It is beneficial to all parties for the applicant (or their agents) to consult on a regular basis with the Local Planning Authority and the consultees. The provision of a schedule and programme of works can be of benefit. This is especially important where the generation or migration of ground gases is identified.

It is advisable that the developer has a contingency plan in the event that the construction phase reveals any unexpected contamination. Any suspected contamination must be immediately reported to the Local Planning Authority.

Further guidance on site investigation can be obtained from the documents listed in appendix 1. Also provided in the appendices is a list of industries and activities appearing in a series of booklets published by the DOE in 1995 illustrating expected contamination profiles for some of the prior contaminating land uses that can be encountered.

Checking the reports and adherence to procedures

The Environment Agency published three documents in March 2010 to assist consultants establish the scope of investigations, risk assessment and remediation requirements. These include checklists that can be used in the assessment of reports and the checking of processes toward ensuring land is suitable for use in the context of the planning regime. The documents are listed below. It should be noted that their guidance has an emphasis toward water as a receptor. Local Authorities will require additional emphasis on risk assessment and risk management associated with human health and the Environment at large to which similar principles will apply but where assessment is made using different criteria and methodologies. It is essential to consider all potential pollutant linkages and to engage with both the local authority's contaminated land adviser and the Environment Agency (where there is a potential risk to water quality) at the earliest opportunity.

GPLC1-Guiding Principles for land contamination

GPLC2 – FAQs, technical information, detailed advice and references

GPLC3 – Reporting checklists

Appendix 1

Examples of Good Practice Technical Guidance Documents currently in use:

A) Environment Agency (EA) Guidance:

The EA are continuing to produce a wide range of technical guidance covering all aspects of contaminated land investigation, assessment, remediation and development. Such guidance includes:

1. CLEA 1.04/6 documentation (Science Reports, TOX and SGV reports).
 - Science Report – SC050021/SR7: Compilation of Data for Priority Organic Pollutants for Derivation of Soil Guideline Values, Environment Agency.
 - Science Report – SC050021/SR4: CLEA Software (Version 1.04) Handbook, Environment Agency
 - Science Report – SC050021/SR3: Updated Technical Background to the CLEA Model, Environment Agency
 - Science Report - SC050021/SR1: Using Soil Guideline Values, Environment Agency
 - DEFRA and the EA Toxicological Reports (check website)
 - DEFRA and the EA Soil Guideline Values (check website)
 - DEFRA and EA Supplementary Information for the Derivation of Soil Guideline Values (check website)
 - Additional Generic Assessment Criteria and toxicological data have been prepared by third party bodies such as the EIC, LQM/CIEH and WS Atkins Atrisk. These are not specifically endorsed by the Dorset and New Forest Contaminated Land Consortium however they contain information useful to developers and their consultants.
2. Contaminated Land Research Report CLR 11, Environment Agency (2004). Model Procedures for the Management of Contaminated Land: Risk Assessment Procedure.
3. GPLC1 – Guiding principles for land contamination, Environment Agency.
4. Research and Development Technical Reports P5-066/TR and P5/065/TR relating to Technical Aspects of site investigation and Procedures for soil sampling strategies.
5. Research and Development Publication 20 – Method for the Derivation of Remedial Targets for Soil and Groundwater to Protect Water Resources.
6. Environment Agency technical advice to third parties on pollution of controlled waters for Part IIA of the EPA1990 (also relevant to planning), maybe updated to consider the testing of significance.
7. R&D Publication 66 – Guidance for the Safe Development of Housing on Land Affected by Contamination.
8. Review of Waste Management Papers (such as 26B and 27, etc.).
9. Groundwater Vulnerability Maps, etc.

10. Other guidance on development of conceptual models, use of risk assessment models, reinstatement of boreholes, etc.
11. PPG27: Installation, Decommissioning and Removal of Underground Storage Tanks, Environment Agency
12. The UK Approach for Evaluating Human Health Risks from Petroleum Hydrocarbons in soils, 2005 Science Report P5-080/TR3
13. Laboratory Analysis Test methods in accordance to MCERTS (accredited and reported results must indicate the methods used with an estimate of bias and precision).
14. Communicating Understanding of 'Contaminated Land Risks' – P5-17
15. Guidance on Monitoring of Landfill Leachate, Groundwater and Surface Water, Environment Agency
16. GP3: Groundwater protection: policy and practice, Documents 1 to 4, Environment Agency

The EA also provide site specific guidance on groundwater, surface waters, extractions, discharges, industrial authorisations, waste management licenses, etc.

B) Department for Environment, Food and Rural Affairs (DEFRA):

Guidance production has been devolved to the EA, that previously produced by DEFRA includes:

1. CLR Publications 1-6, and 8 covering issues such as the assessment of the impact of contaminated land on groundwater, preliminary site inspections, research on industrial sites, sampling strategies, information systems and prioritisation. Of particular note:
 - No. 1 A framework for assessing the impact of contaminated land on groundwater and surface water
 - No.2 Guidance on preliminary site inspection of Contaminated Land
 - No.3 Documentary Research on Industrial Sites
 - No.4 Sampling Strategies for Contaminated Land
 - No.8 Potential Contaminants for the Assessment of Land
2. Various Waste Management Papers
 - Department of the Environment (1993). Waste Management Paper No 26A, Landfill Completion, *A technical memorandum providing guidance on assessing the completion of licensed landfill sites*. HMSO, 47pp, ISBN 0-11-752807-2
 - Department of the Environment (1991). Waste Management Paper No 27, Landfill Gas, *A technical memorandum providing guidance on the monitoring and control of landfill gas*. HMSO, 82pp, ISBN 0-11-752488-3

Interdepartmental Committee on the Redevelopment of Contaminated Land documentation (while most values once commonly used from ICRL documentation are now withdrawn, this documentation contains useful information on various landuses).

3. Legislation (i.e. Town & Country Planning Act's and Part IIA of the Environmental Protection Act 1990, The Environment Act 1995, The Contaminated Land (England) Regulations (2000), Water Resources Act 1991, etc.
4. Statutory Guidance , previous and updates 2012
5. PPS23 Annex 2: Development on Land Affected by Contamination, subject to review and replacement 2012
6. Industry profiles, from original DOE publications

C) British Standards:

Various British Standards have been produced for investigation, analysis and reporting including:

1. BS 10175:2011 Investigation of potentially contaminated sites – Code of practice.
2. BS 5930:2001 and A2:2010 Code of practice for site investigation
3. BS8485:2007 Code of practice for the characterization and remediation from ground gas in affected developments.
4. ISO standards for analysis and sampling(such as 13530, 10381 series 1-4, 14507, 1689, etc
5. BS 5925: 2001 Code of practice for Ventilation Principles and Designing for Natural Ventilation

D) Construction Industry Research and Information Association:

Various industry best practice guidance including:

1. Volumes I-XII relating to site investigation and remediation.
2. Reports 130-131 and 149-152 relating to landfill gas issues.
3. C682 The VOCs Handbook. Investigating, assessing and managing risks from inhalation of Volatile Organic Compounds (VOCs) at land affected by contamination. CIRIA
4. C665 Assessing the risks posed by hazardous ground gases to buildings, CIRIA
5. SP124 Barriers Liners and Cover Systems

E) Building Research Establishment:

1. BRE Report BRE291 – Bibliography of Case Studies on Contaminated land: investigation, remediation and redevelopment
2. BRE Report BRE255 – Performance of Building Materials on in Contaminated Land

3. BRE Information Paper – IP2/87
4. BRE Report BRE212 – Construction of New Buildings on Gas Contaminated Land
5. BRE Report BRE 414 – Protection measures for Housing on Gas Contaminated Land
6. BRE Report BRE 465 – Cover Systems for Land Regeneration (not fully endorsed by the consortium)

F) Health and Safety Executive:

Various publications relating to health and safety and contaminated land.

G) British Geological Survey:

Various publications, in particular geological mapping, mapping of background contaminants and associated regional memoirs and other information.

H) Private/Foreign Guidance:

There is a great deal of privately written and produced literature, both UK and foreign based, as well as much foreign public guidance/legislation that may be relevant to the UK situation.

1. Guidance on Evaluation of Development Proposals on Sites where Methane and Carbon Dioxide are present, NHBC
2. Local Authority Guide to Ground Gas, CIEH, September 2008
3. Guidance on Comparing Soil Contamination Data with a Critical Concentration, CLAIRE/CIEH, May 2008

Note of Caution : -

UK best practice and guidance is continually under development. The authors will not be held responsible for the current appropriateness of guidance or the degree to which this list may be considered exhaustive. If you have any questions or concerns regarding how you provide information on the site history, or investigation and remediation works please contact the department and address given in **appendix 3** for the district or borough concerned.

Appendix 2

Local Authority Contact Details:

Organisation:	Bournemouth Borough Council
Address:	Bournemouth Borough Council
Town:	Town Hall, Bournemouth
County:	Dorset
Telephone Number:	(01202) 451451
Organisation:	Christchurch Borough Council
Address:	Council Offices
Town:	Christchurch
County:	Dorset
Telephone Number:	(01202) 495045
Organisation:	East Dorset District Council
Address:	Council Offices
Town:	Furzehill, Wimborne
County:	Dorset
Telephone Number:	(01202) 886201 ext. 2321
Organisation:	New Forest District Council
Address:	Appletree Court
Town:	Lyndhurst
County:	Hants
Telephone Number:	(023) 80285000
Organisation:	North Dorset District Council
Address:	Nordon
Town:	Salisbury Road
County:	Blandford Forum
Telephone Number:	Dorset
Fax Number	(01258) 484311 (01258) 484298
Organisation:	Purbeck District Council
Town:	Wareham
County:	Dorset
Telephone Number:	(01929) 557267
Fax Number	(01929) 552688
Organisation:	West Dorset District Council
Town:	Dorchester
County:	Dorset
Telephone Number:	(01305) 251010
Fax Number	(01305) 252485
Organisation:	Weymouth and Portland Borough Council
Town:	Weymouth
County:	Dorset
Telephone Number:	(01305) 760044