

1. Introduction

The new statutory regime for the identification and remediation of contaminated land came into force on 14 July 2000. The regime implements the provisions of Part IIA of the Environmental Protection Act 1990 (EPA) and the Contaminated Land (Scotland) Regulations 2000.

The primary regulatory role in West Lothian rests with West Lothian Council as local authority. The Scottish Environment Protection Agency (SEPA) also has a regulatory role for any land which is designated as a Special Site. These Special Sites will include sites which impact on water courses, including certain SEPA controlled waters, and sites where particular activities, specified in the regulations, for example nuclear and defence activities, have been carried out. It will be necessary, therefore, for local authorities to work closely with SEPA in the running of the regime.

In the first instance, the statutory regime requires the council to produce and publish a written Strategy on how it will inspect its area to identify contaminated land. This written Inspection Strategy was adopted by the council in October 2001. This followed consultation with communities and relevant organisations during the summer of 2001. Copies of this Strategy have been sent to the Scottish Executive and SEPA.

The regime also gives the council, and SEPA in the case of Special Sites, powers to enforce remediation of contaminated land. Before taking enforcement action, however, the council will endeavour to achieve remediation by negotiation. Voluntary remediation, in consultation with the council, is the preferred route. The council will also continue to achieve remediation, as it already does, through the determination of planning applications. Nevertheless, if there are sites which need to be tackled straight away the council has the authority to investigate and deal with them.

It is important to note that the regulations define contaminated land in a very specific way. Only land which is causing or is likely to cause significant harm, or which is polluting or likely to pollute controlled waters, can be classified as contaminated. For significant harm to occur, or to be likely to occur, a pollutant linkage must exist. This means there must be a "pathway" or route by which a pollutant can reach a "receptor". Examples of receptors are, a person, a living organism or a piece of property which could be harmed. These three elements, pollutant, receptor and pathway, together constitute what is termed a "pollutant linkage" – and if there is no "significant" pollutant linkage, land cannot be contaminated land for the purposes of Part IIA. Controlled waters are both a pathway and receptor.

There are also risk assessment methodologies and techniques which have to be applied to determine the level at which substances are harmful. The main concern is essentially over harm to human health, commercial agriculture, protected areas such as Sites of Special Scientific Interest (SSSI's), property and controlled waters.

To inspect its area, the council is required to screen its area for potentially contaminated land, draw together information on specific areas or sites, assess these sites using accepted methodologies and then to deal with the sites in a prioritised way starting with the highest risk sites first. The council's Contaminated Land Inspection Strategy sets out how the council will do this. Consultation with local councillors, communities and other

interested parties is a key element in both the Inspection Strategy and the contaminated land regime.

The council has set up a Contaminated Land Steering Group to oversee the production of its Strategy and to determine how the council will undertake its new responsibilities under the regime. The Group currently comprises of senior officers from Environmental Health, Strategic Planning, Development Control, Property Services, Risk and Insurance and Legal Services. Other service units and disciplines will be invited to participate as required. Within the Group, Strategic Planning and Transportation is taking the lead role and an officer from Strategic Planning has been allocated the task of preparing the Strategy. The council lacks some of the specialist skills required to implement the regime. Consultants will, therefore, be employed when required for detailed site analysis.

The council, will not only be a regulator, but will also likely be affected as the owner of contaminated land.

The Strategy will be prepared within existing revenue budgets, however, there will be additional financial and resource implications for implementation.

This Strategy has been prepared in accordance with the Inspection Strategies Technical Note, DETR, and the subsequent equivalent Scottish guidance. These guidance notes set out how an inspection strategy should be prepared and what it should contain.

Other sources of guidance are the regulations themselves and Planning Advice Note, PAN 33, " Development Of Contaminated Land".

2. Description Of The West Lothian Council Area

Geographical Characteristics

West Lothian is located in the central industrial belt of the Scottish Lowlands, lying immediately to the west of Edinburgh. The population of 155,000 is, along with the local economy, one of the fastest growing in Scotland. The main centre of population is the new town of Livingston (pop. 45,000). The remainder of the population is mainly found in a number of smaller towns and villages scattered throughout the county with concentrations in the M8 corridor particularly in the Broxburn/Calders area (pop. 30,000) and the Bathgate/Blackburn/Whitburn/Armadale area (pop. 45,000).

Despite being one of the smaller local authorities in terms of land area (164 sq miles / 42,504 ha), it remains an area of environmental and economic contrast. To the north of the Bathgate Hills lies the historic county town of Linlithgow (pop. 13,000). Straddling the plain of the River Almond between the Bathgate and Pentland Hills, lies Livingston, designated a New Town in 1962, but now part of the administrative area of West Lothian. To the south-east lie Mid Calder, East Calder and Kirknewton.

The economy of a number of towns and villages in West Lothian was founded on shale and coal mining, steel and associated industries. These include the settlements of Bathgate, Blackburn, Armadale and Whitburn in the west and Broxburn/Uphall and Winchburgh in the east. Further south, along the Breich Valley, lie a number of smaller and more isolated villages, that also largely depended on mining at one time, including Stoneyburn, Fauldhouse and Addiewell.

The countryside provides equal contrast, ranging from high-quality rolling farmland to the north and east of the county, to the higher and more sparsely populated uplands in the west and south, characterised by peat and heather moorlands.

Just as the county has prospered from economic growth at varying periods in its history, it has also suffered cycles of decline. Mining communities suffered from the decline of shale mining from the start of the twentieth century, and from the decline of coal mining from the 1950s. Economic decline was partly arrested during the 1960s with the attraction of major new manufacturing and engineering industries, especially when British Leyland located its truck manufacturing division in Bathgate in 1963, which at its peak employed over 6000 people.

At about the same time, Livingston was designated a New Town, and saw central government investing in infrastructure and land assembly, supported by grant assistance, to provide a focal point for generating jobs and good new housing located in a high quality environment. Livingston was successful in attracting a number of major new industries, including Cameron Iron Works, at the time Europe's largest foundry press, and the earlier high-technology industries such as NEC.

However, West Lothian then suffered from the effects of the worldwide recession of the 1970s and early 1980s, as a result of an over-reliance on those industries that were in national decline. This coincided with the demise of mining in West Lothian. The recession also slowed down the planned growth of Livingston. The British Leyland plant finally closed in 1984.

The decline of the traditional industries has left its mark on the physical environment. Whilst the county's rich industrial heritage is rightly celebrated by the designation of such features as the "Five Sisters" group of shale bings, near West Calder, the combined effect of decline and closures elsewhere scarred the rural and urban landscapes, leaving the remains of ugly mine workings, spoil heaps, derelict and contaminated land and vacant premises.

The severity of the economic and environmental problems that faced West Lothian during the early 1980s prompted joint initiatives, involving the local authorities, central government and the private sector, to identify short and long-term remedial actions. The short-term measures included undertaking environmental schemes to remove spoil heaps and prepare land for development. Longer term actions included enhancing the landscape (notably through the Central Scotland Forest project) and promoting a positive image of West Lothian.

Recent years have seen a general improvement in the fortunes of West Lothian. Studies have shown that West Lothian has experienced economic growth consistently higher than the Scottish average in the 1990s, and Livingston is now established as the centre of 'Silicon Glen'. This economic confidence and stability have been reflected in an upturn in the rate of house building in West Lothian, particularly in areas where private sector interest had previously been stagnant.

Despite these improvements there are a number of planning and environmental concerns that remain, whilst new ones may emerge. Firstly, there are areas in the county that have not benefited as much from recovery, for various reasons. The supportive and pro-active role of joint public and private sector initiatives must continue to target these areas, to spread economic and environmental benefits. Secondly, while much has been done to improve the environment, there are still significant areas of dereliction and degraded landscape in both rural and urban areas that require programmes of rehabilitation and restoration.

Sustainability

West Lothian Council supports the principles of sustainability, agreed through the 1992 United Nations "Earth Summit" in Rio de Janeiro, as manifested in the plan of action for sustainable development known as Agenda 21. In introducing its own Local Agenda 21, the Council is committed to protecting and enhancing the natural and built environment, through its own policies and activities, and by influencing others.

Through its Environmental Agenda (1997), the Council will promote measures that conserve and efficiently use energy; reduce pollution; encourage development which is energy efficient and within the environment's natural capacity; protect the natural environment, green spaces and biodiversity; and conserve the natural, built and archaeological heritage. The Council will achieve these objectives through its own actions and by working in partnership. The Council will:

- promote development which reduces the need to travel;
- encourage a shift away from the use of the car towards less environmentally damaging modes of travel;

- promote and facilitate walking, cycling and the use of public transport;
- encourage resource and energy efficient patterns of development;
- constrain development to within the capacity of the natural environment;

The Strategy will take on board the principles of sustainability by encouraging proposals to re-use or rehabilitate derelict land; and protecting habitats and landscapes, water and property; and of course by protecting the population at large.

The Strategy also fits in with the broad aims of environmental policy in West Lothian. These are to:

- conform to the principles of sustainable development;
- protect and enhance the natural and built heritage of West Lothian;
- enhance the image of West Lothian, in order to attract economic investment and improve the quality of life for its residents;
- improve the level of facilities and services to meet the needs of all the community.

By identifying and remediating sites, the broader aims of economic growth, employment choice and achieving a range of services and facilities to meet community needs, while at the same time protecting and improving the environment for the community, will be met.

Development/Community Plan Context

The four Lothian authorities have now commenced preparation of the Edinburgh and Lothians Structure Plan 2000, which will replace the Lothian Structure Plan 1994 and identify further housing land requirements to serve the period to 2015. It is already known that substantial amounts of new land will be needed, but it will be within that context that the need to bring forward further allocations across West Lothian will be established. This will have implications in later reviewing the West Lothian Local Plan to meet the emerging Structure Plan period to 2015. The existing and forthcoming Structure and Local Plans take into account the need to address the county's legacy of derelict and contaminated sites.

The finalised West Lothian Local Plan makes clear that the partnership approach will be developed between West Lothian Council and:

- a. the community;
- b. national agencies, central government departments, charitable trusts, funding bodies and others to remediate sites and to promote and enhance the natural environment and the built and archaeological heritage;
- c. the development agencies, including Scottish Enterprise Edinburgh and Lothians, Scottish Homes and the housing associations, the housebuilders, and other developers and investors;

- d. neighbouring local authorities, to implement key strategic planning policies;
- e. agencies engaged in promoting regeneration of contaminated land;

to tackle the problem of derelict and contaminated land across the county.

In addition the development plans make clear that the Council will continue to:

- implement its rolling programme of site and factory improvements, property acquisitions, environmental improvements and key regeneration initiatives;
- co-ordinate with other infrastructure providers to ensure timeous provision of facilities to serve development needs, especially with East of Scotland Water;

and that:

the Council will provide guidance to developers and others by:

- including policy statements that guide and assist developers in bringing forward development schemes to remediate contaminated land;
- where appropriate, providing more detailed development control guidance, and outlining criteria that will be applied when the Council determines planning applications.

The Draft Community Plan for West Lothian, "Shaping the Future in West Lothian", sets out a 10 year strategy to improve the quality of life in the county by working in partnership. The vision set out in the Community Plan includes the aims of achieving safe and attractive and healthier and sustainable communities. Specifically, within the "Changing" theme in the Plan the council undertake to:

- maintain and improve the quality of air, land and water
- implement the River Almond Catchment Management Plan to provide a co-ordinated approach to the environmental protection for the county's principal watercourse

The contaminated land regime will have a beneficial impact on many of the Community Plan's theme areas.

Geology, Landforms and Soils

Geology

The geology of West Lothian comprises rocks from the late Devonian and Carboniferous periods formed between 370 and 280 million years ago.

Erosion of mountains uplifted by an earlier collision of continents gave rise to Devonian desert sedimentary rocks, red sandstones and conglomerates (boulder beds). These form the Pentland Hills of East Cairn, West Cairn, Colzium and Craigengar as well as underlying Bawdy Moss.

The bulk of West Lothian is underlain by Carboniferous age sedimentary rocks, molten rock intrusions, lavas and volcanic ash. During the Carboniferous period, a constant battle raged between land and sea. The effect was to generate repeated sequences of rock comprising sandstone, siltstone and mudstone with thick or thin seams of limestone, coal and oil shale. The difference rock types reflect different environments under which they were created.

The Carboniferous rocks occupy broad bands running roughly north-south which gently dip to the west. To the east and south of West Calder and Livingston and forming the Pentland foothills are the older Carboniferous strata, mostly devoid of usable minerals apart from local limestones as around Murieston. The east central area, from the coast through Broxburn, Livingston and West Calder to Cobbinshaw is underlain by strata containing the numerous oil shales which give rise to the former West Lothian oil shale industry. Now all that remains are the large red, mostly flat-topped shale bings. The spine of the area is the Bathgate Hills, made up of hard basalt lavas and ashes, produced during an episode of volcanic eruptions. These were restricted to the north, while tropical seas and coal-forests in the south gave rise to limestone and coal-bearing strata. The west central strip of rocks is a source of silica sand, or fireclay, while the west of the area around Armadale, west Whitburn and Fauldhouse is part of the great Central Coalfield of Scotland.

At many places the Carboniferous sedimentary rocks are cut by intrusions, solidified masses of molten rock of various shapes and sizes. These form many of the dolerite hills throughout the area that stick above the low lying plains, such as Dechmont Law, Cockleroy and Binny Craig. Ancient volcanic vents form other hills such as Tar Hill near Ecclesmachan and the Binns.

West Lothian, like all of Scotland, was covered by ice sheets on a number of occasions during the last 2 million years. Each ice sheet flowed from west to east across the area, eroding the bedrock into streamlined west-to-east land forms such as the crag-and-tail of Dechmont Law and Binny Craig. The ice-sheets left an extensive cover of glacial debris or till, blanketing most of the low-lying ground. This deposit is commonly known as boulder clay, the clay being derived mainly from ground down Carboniferous mudstones, and the boulders and pebbles being the rounded remnants of harder rock such as sandstone, limestone, lavas and intrusions. As the last ice sheet melted, glacial meltwater cut channels and laid down hummocky sand and other deposits, as in the strip running through Linlithgow. Peat formed during rainy periods in waterlogged hollows to give mosses such as Blawhorn and Tailend; on high ground blanket peat formed. Lakes formed in hollows left after glaciation and filled with lake clays and silts leaving alluvial flats. Flood plains along rivers and streams consist of alluvial gravel, sand, silt and clays.

Along the coast raised beaches of gravel, sand, silt or clay formed as the sea stood at levels higher than today's.

Landforms

The hills of West Lothian are formed of the harder rock which stick through the cover of glacial deposits. The Pentland Hills consist of hard Devonian sandstones, the Bathgate Hills of basalt lavas, and the many other hills of intrusive dolerite or vent agglomerate. The low ground has a dominant west-to-east grain reflecting the direction of flow of the ice sheets, as it moulded the boulder clay into ridges and drumlins. Hummocky hills are formed by sand and gravel deposits, and the various flat areas are underlain by basin peat, raised beach, lake or river alluvial deposits.

The geology and landform of the area influence topography, soils, drainage and micro-climate which can all influence how contaminants behave in the ground.

Soils

The soils of West Lothian are mainly formed on the glacial deposits. These provide a wide variety of parent soil materials and hence their inherent characteristics. Some soils formed on sand and shale have a tendency, given climatic conditions, to acidify with a consequent effect on the overlying vegetation. The Soil Survey of Scotland classifies the soil of this area as brown forest or acid brown forest soils, with or without the effects of waterlogging. Within these classes there is considerable variability.

Given this variability, it is difficult to generalise about soil properties in West Lothian. There is variety in chemical status, moisture, pH, texture and organic matter content. It is thus more appropriate to summarise soil properties based on habitats as vegetation reflects and affects soil conditions.

Landscapes and Habitats

The range of landscape and natural features in West Lothian is extremely diverse, influenced by both its geology, land form and man.

Scotland's estuaries, peatlands, uplands, ancient woodlands, wetlands, old grasslands and heather moorland are habitats of international significance and are irreplaceable. West Lothian has fine examples of all of these habitats within just 0.5% of the land cover of Scotland. More significantly these are close to the main centres of population of Scotland, with all the accompanying pressures on it, and are linked by a network of other habitats and features to form a wildlife resource of extraordinary variety, from the Firth of Forth through to the Pentlands. There are also habitats unique in Scotland to be found on the oil shale bings.

What is quite exceptional is the diverse range of peatlands that remain here. It is estimated that there are over 40 peatland sites of natural heritage value, but it is not just the extent, quality and distribution of these that makes them important but also their diversity. Five have been notified as Sites of Special Scientific Interest. That apart, bogs

and peatlands are one of the world's rarest and most rapidly diminishing habitats. As a result, international and national protection exists for the most important sites in West Lothian to reflect the European context of these peatlands and the responsibility that this carries for managing this irreplaceable part of our natural heritage.

Of the numerous habitat types that occur throughout West Lothian it has been considered that eight are of particular importance for action. All of these habitat areas may be considered to be receptors under the contaminated land regime.

Oil Shale Bings

There are 139 hectares of oil shale bings in West Lothian (0.4% of the total area).

For nearly 200 years the oil shale reserves of West Lothian were exploited with significant influence on its economy, culture and landscape. The present day legacy of the industry is the red shale bings that occur primarily between Winchburgh and West Calder. The bings dominate the countryside and for some still have an image of dereliction. This is not helped when a number of bings are being worked as a source of cheap fill material. While many of the coal bings of West Lothian have disappeared as a consequence of rehabilitation schemes the legacy of the oil shale industry remains. However, they provide a distinctiveness to the West Lothian landscape and, equally, for some, provide a sense of heritage and history.

The shale is generally inert and colonisation by plants and animals on many bings has created a diverse variety of habitats. The bings are islands in a primarily agricultural landscape and provide a valuable refuge for wildlife. This is illustrated well at the Scottish Wildlife Trust's North Addiewell Nature Reserve and also on the bings at Faucheldean and the Five Sisters at Westwood, all of which are protected from development. Indeed both the Five Sisters and Greendykes Bings are now scheduled as historic monuments.

The habitat variety extends from semi-natural grassland, to heather scrub and pioneering birch woodland. Rare and unusual plants such as club mosses and orchids can be found while the variety of habitats provide a refuge for a wildlife which can be hard pressed in the surrounding area.

Although in general these bings are not considered to be a problem, there will need to be some investigation of them and should any be found to pose a significant hazard sympathetic remediation will be required.

Coastline

West Lothian's short coastline of just 5.5km is part of an extensive estuary area of intertidal flats with shoreland features and habitats. It is an area dominated by natural tidal influences with internationally important populations of wading birds and wildfowl. The area is potentially vulnerable to development and disturbance. Pollution, both coastal and marine in origin is a real threat.

The substrate includes sand, mud, shingle and rocks supporting many invertebrate species, seaweeds, sea grass and algal beds. Small areas of saltmarsh occur on the upper shore. The Forth Estuary has national and European designation status.

3. The Contaminated Land Regime In West Lothian

The Regime and the Council's Values and Aims

West Lothian Council will implement the contaminated land regime within the context of 'best value', its strategic aims and of its values. The council's values are to:

- focus on our customers' needs
- be honest, open and accountable
- provide equality of opportunities
- develop employees
- make best use of our resources
- work in partnership

Contaminated land is the result of historical activities the legacy of which constrains our ability to make the best use of the land resource in the future. In the worst cases, it may threaten health and safety. It inhibits sustainable development and is an obstacle to the Council's strategic aims for its area. Current good practice and regulation should avoid the creation of further contaminated land, but the legacy remains to be tackled.

As per government guidance, the Council will tackle the problems of contaminated land in ways which are reasonable, practicable and equitable. Reasonableness requires avoidance of widespread blight on the use (and value) of property due to inaccurate perceptions as to the seriousness of the contamination or pollution problems. Hence also, the emphasis on remediation rather than contamination as the basis for public information registers. The practicability lies in the recognition that "remediation", or clean-up, need only be to a standard fit for the existing or proposed use of the land in question. This is known as the "suitable for use" or "fit for use" approach. In some cases, a total solution to contamination could be prohibitively expensive, or might only be achieved by exporting the contaminant to another site.

Remediation is only to be required to meet whatever standard is suitable for the current use actually being made of the land concerned. The "current use" however extends to all other uses to which the land is likely to be put in practice and also all uses to which it may be put without requiring a new or amended grant of planning permission. "Hard" end uses, such as residential use where vegetables may be grown, and areas where children may play, will be subject to relatively demanding standards, but conversely "soft" end uses, where these factors do not apply, for example car parks, shopping developments, and so on, may be subject to less stringent standards.

Equitability arises from the incorporation of the "polluter pays" principle in assessing and apportioning the legal and financial responsibilities for the actual remediation operations. Under the principle of "polluter pays", persons who caused or knowingly permitted harmful substances to be in, on or under land will be liable. If these persons cannot be found, responsibility passes to the current owners or occupiers.

West Lothian Council will follow the "suitable for use" approach as described in the Statutory Guidance. The objectives of this are to:

- identify and remove unacceptable risks to human health and the environment;

- seek to bring damaged land back in to beneficial use; and
- seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and sustainable.

Land which is contaminated hinders the pursuit of sustainable development by:

- impeding social progress, depriving local people of a clean and healthy environment;
- threatening wider damage to the environment and to wildlife;
- inhibiting the prudent use of land and soil resources, particularly by obstructing the recycling of previously developed land and increasing development pressures on greenfield areas; and
- placing a high burden on individual companies, home and other landowners, and the economy as a whole, in terms of the cost of remediation.

The Council's vision is that West Lothian should become a sustainable community by promotion of a healthy environment, a prosperous economy and an inclusive society. Identifying and remediating contaminated land is therefore an important element in achieving this. The following aims, as set out in the Council's Vision for West Lothian in 2010, in the Draft Community Plan, support both the objective of dealing with the contaminated land problems, and the strategic approach demanded by the legislation. They are to:

- Promote healthier and environmentally sustainable communities
- Make communities safe and attractive
- Improve the quality of life for all
- Develop a knowledge based economy

The preparation and implementation of the Inspection Strategy will involve consultation and partnership. Whilst the Council will have to concentrate limited resources on the areas of potentially greatest risk, the Council's long-term aim will be to move towards identification and treatment of all known contamination that meets the statutory definition. By doing so, it will thereby fulfill the overriding public health and safety goals, enable development and regeneration throughout the county and help towards the improvement of the natural environment.

Promoting re-use of damaged land resources conforms with national sustainable development policies favouring "brownfield" redevelopment.

The Council will seek to ensure that best practice is adopted in dealing with contaminated land, and in particular will ensure that any land owned or sold by the Council is "suitable for use".

The Council's priorities in dealing with contaminated land will be:

- To protect human health
- To protect controlled waters
- To protect designated ecosystems
- To prevent damage to property
- To prevent any further contamination of land
- To encourage voluntary remediation
- To encourage the re-use of brownfield land

Objectives

West Lothian Council will:

1. Adopt a strategic approach to the inspection of their area that complies with the Statutory Guidance document issued by the Scottish Ministers.
2. Prepare and publish a written Inspection Strategy detailing how the regime works and how the Council's area will be inspected. It will identify sites that are suspected to have been contaminated in accordance with the definitions provided in the Environmental Protection Act 1990: Part IIA and the Scottish Executive Circular CL Guidance.
3. Identify receptors (as defined in the Environmental Protection Act 1990: Part IIA and the Scottish Executive Circular on Contaminated Land(CL) Guidance) that are in close proximity to any contaminated sites.
4. Establish if there are any pathways linking the contamination to the receptor(s).
5. Assess each site on an individual basis and if it is found that the contaminant(s) are connected to one or more receptors by one or more pathways, then the site will be identified as Contaminated Land.
6. Take action to achieve remediation if a site is found to be contaminated as defined in the Environmental Protection Act 1990: Part IIA and the Scottish Executive Circular CL Guidance.
7. Ensure that all remediation work will be carried out with respect to appropriate and cost effective means, taking into account the current or intended use of the site and all health and safety requirements.
8. Maintain detailed records of all the information pertaining to any site that requires to be remediated.
9. Designate Special Sites as defined in the Environmental Protection Act 1990: Part IIA and the Scottish Executive Circular CL Guidance, as and when they are identified.
10. Liaise with other organisations and regulatory bodies such as SEPA, through the SEPA/local authority liaison framework, SNH and the Scottish Executive.
11. Provide and maintain a public register of contaminated land notices (such as identification notices, remediation notices, appeals, remediation statements, designation of special sites, etc.).
12. Ensure that known contaminated sites are reassessed in response to any proposals to change the use of that land. Assessment of such sites will be highlighted through the current planning and building control regimes.

13. Seek to recover all reasonable costs incurred from one or more appropriate persons.

14. Routinely review and update the Inspection Strategy and information pertaining to all known sites in its area.

15. Provide information that will enable SEPA to complete its annual report to the Scottish Executive.

Prioritising of Areas for Inspection

In preparing its Inspection Strategy, the Council has to assess and determine methods of prioritising areas for inspection and for the inspection of individual sites. Inspection priorities must reflect the application of principles set out in the statutory guidance and must clearly follow an approach that:

- is rational, ordered and efficient;
- is proportionate to the seriousness of any actual or potential risk;
- ensures that the most pressing and serious problems are located first;
- ensures that resources are concentrated on investigating in the general areas where the authority is most likely to identify contaminated land; and
- ensures that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land.

The Council, in determining its priorities for an initial screening inspection of its area, will take into account the particular circumstances of its area. These circumstances may be influenced by historic industrial and other potentially contaminative land use activities, the county's geographic and demographic mix, and reflect the Council's broader objectives in, for example, the context of economic development, land management, public health and environmental protection. Within the broader context of the screening exercise, the Inspection Strategy will also focus on methods of identifying land that merits more detailed inspection. Such prioritisation must reflect a risk based, site specific assessment. The Council will utilise the methodology contained in the appropriate guidance publications on contaminated land risk assessment to undertake this.

The most serious problems of land contamination in West Lothian are likely to be those resulting from the area's historical role in mining and large scale industrial activity. The legacy of these activities is still visually present in the form of bings and derelict industrial sites. However, all of the county must be screened to determine what areas or sites require further assessment for the presence of contaminated land. This will range from the most obvious areas, such as former quarries and former landfill sites, to towns and settlements, and eventually all the countryside areas. From this general screening exercise areas or sites requiring further investigation will be prioritised. How this first screening and then further prioritisation is implemented is dealt with in the next chapter.

4. The Inspection Strategy

Identification Of Potential Areas and Sites For Inspection

The inspection of the Council's area will be ordered, rational and efficient. To undertake the inspection of its area the Council will in the first instance undertake a desk top study of its area. The starting point for this will be from the description of the Council's area in chapter two. This highlights that the main areas for desk top investigation in the first instance are likely to be the older industrial areas, particularly those close to towns and other receptors.

There are also a number of other sources of information which will also be used. These include historical maps and records, information from SEPA and other organisations, council records and local knowledge. The previous redevelopment and remediation of sites must also be considered. All of the relevant information available will be used to initiate a screening process by which areas, then specific sites, will be prioritised for investigation.

The council already has information on sites which may be contaminated and these sites will of course be placed on the first list for investigation and will be screened using the risk assessment methodology for prioritisation for detailed investigation or action.

As new information comes to light the priorities will change on an ongoing basis, however, in order to start the initial screening process the priorities will be as follows:

1. Former mining, quarrying, and large scale industrial activity areas either in or close to settlements, ecological receptors and vulnerable controlled waters. This will include landfill sites and other sites that are known to have problems.
2. Remaining areas in settlements
3. The rural areas and the coastline

It is important to note at the outset that the Contaminated Land Inspection Strategy is an on-going, re-iterative process and will be regularly reviewed. The object of the exercise is to identify sites which must be remediated. The worst sites in West Lothian are most likely already known to the Council, but there may be others. Therefore, the whole of the Council's area must be looked at. Potential sources of contamination and receptors will be mapped. Once mapped they will be considered for any linkages via potential pathways. A standard risk assessment methodology will be used to assess this.

Receptors

Potential receptors that must be considered are as follows:

People

The protection of public health is a key objective of the Strategy. Sites that are causing or likely to cause significant harm to humans will be investigated with priority.

Significant harm to people is regarded as death, disease, injury, genetic mutation, birth defects or the impairment of the reproductive system due to the toxicological properties of a pollutant.

The significant possibility of significant harm arises from the intake of a contaminant, by ingestion or inhalation, or other direct bodily contact with a contaminant or the risk of explosion or fire.

The places where people are most likely to come into contact with contaminants are within homes and gardens, the workplace, schools, recreational areas and allotments. The risk assessment procedure for site investigation involves determining the proximity of sites to such locations with those in closest proximity given high priority for further investigation.

Ecological Systems and Organisms in Protected Locations

West Lothian Council will consult with SNH in order to identify receptors that would fall within this category. SSSI's and other likely sensitive ecological areas are listed in the appendix.

Buildings

Significant harm to property in the form of buildings is regarded as structural failure, substantial damage or substantial interference with any right of occupation. In the case of Ancient Monuments, substantial damage is regarded as occurring when the damage significantly impairs the reason for which the monument was scheduled.

Property

Property in the form of crops, produce grown domestically or on allotments, livestock, other owned or domesticated animals, wild animals which are the subject of shooting or fishing rights are identified forms of receptor.

Controlled Waters

Controlled waters are defined in the Control of Pollution Act 1974 (as amended) and encompass all rivers and their tributaries, ponds, lakes, reservoirs, groundwaters, territorial and coastal waters.

Aquifers

Groundwater is contained within underground strata known as aquifers. Abstractions from these aquifers provide water for potable water supplies as well as industrial, commercial and agricultural uses. Groundwater is usually of high quality and requires little treatment prior to use and in parts of Britain provides over a third of water used for public supply.

In Scotland aquifers are sub-divided into highly permeable, moderately permeable and weakly permeable aquifers. These permeability classes are used to classify the different strata on the groundwater vulnerability maps that have been produced for areas of Scotland. The quality of some groundwaters in West Lothian has been historically affected by mining activities, particularly coal, fireclay, ironstone and oil shale. Advice will be sought from the water authority with respect to any public water supplies in the area.

Private Water Supplies

This information is being collated and will be added in at the review.

Sources of Contamination

Data Sources

Information concerning potentially contaminated land can be obtained from many different sources, the most important of which are shown below:

- Internally held data within the council such as planning documents and public registers.
- Data from regulatory bodies including SEPA, Scottish Executive Environment and Rural Affairs Department, Scottish Natural Heritage and West Lothian Council.
- County Series and early edition Ordnance Survey maps.
- Trade Directories.
- Aerial and satellite photography.
- Local knowledge of council staff and members of the public.
- The owners of large estates, utility companies, etc.
- Department of the Environment Industry Profiles

Known Information on Contamination

The following categories represent the types of land likely to contain contaminants within the West Lothian area:

- Former landfill sites
- Land containing derelict petrol tanks
- Past and present industrial and commercial sites
- Sewage and Water Treatment Works
- Petrol Filling Stations
- Scrap Yards
- Land associated with coal and shale workings
- Gasworks
- Engineering Works
- Railway land

It should be noted that this list is not exhaustive and other categories of land may be added in following implementation of the strategy.

Using information sources, as outlined above, any potentially contaminated land areas will be identified and a database of sites for assessment will be created. This database will be linked to a computer mapping system and a primary risk assessment will be undertaken based on the information available. This database will be for internal council use only at the preliminary investigation stage. The identified land areas will be circulated to Development Control and Policy Planners, Environmental Health Officers, Property Management and Economic Development, etc, for comment and further information. In effect the information gathered from this process will form the basis of our 'desk top study'. Using this information the sites will be prioritised for further assessment, with the potentially worst sites being assessed first, for example, those where public health may be at risk.

Site Prioritisation

The approach used to prioritise potentially contaminated land sites will follow the procedure outlined in the Department of the Environment's report, "CLR 6: Prioritisation and Categorisation Procedure for sites that may be contaminated".

The procedure has two main parts. Part I involves a "desk-top" preliminary prioritisation of sites based upon an assessment of the proximity of receptors. The targets are assessed under three headings, development (humans, plants and the built environment); surface water; and groundwater. Each site is assigned to group A, B or C determining the priority for assessment under Part II of the procedure.

In Part II, the prioritisation is refined into four specific categories based upon detailed information about the hazards likely to be present, the pathways and targets.

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

Unfortunately CLR 6 does not consider all the receptors identified under the statutory legislation. Notably, no assessment is made of sites that are located close to ecological receptors and property in the form of buildings and livestock.

In order to take account of these receptors, the Council will use the criteria specified in the CLR 6 appendices to assess risk to these receptors. Where the criteria are met, the sites will be placed in Priority Category 1 or Priority Category 2 as appropriate

Category 1 or 2 Sites

Sites falling within Category 1 or 2 will need further assessment in order to determine whether they meet the definition of contaminated land. Placing a site within Category 1 or 2 does not automatically imply that a risk has been identified. In many cases, the category is likely to have been derived because of a lack of available information concerning the site. Consequently, further prioritisation may prove necessary for Category 1 and 2 sites and it is proposed that the following procedure will be adopted:-

Criteria

Tranche

Category derived because of known information
2A 1A or

Category derived due to lack of data affecting occupied development
2B 1B or

Category derived due to lack of data affecting groundwater
2C 1C or

Category derived due to lack of data affecting surface water
2D 1D or

Category derived due to lack of data affecting unoccupied land
2E 1E or

Where information is lacking for more than one assessment criteria, the site will be placed in the highest tranche indicated by the assessment.

Category 3 and 4 Sites

Sites that fall within Categories 3 and 4 will not be considered as contaminated nor require further investigation by the council. However their status may alter in the light of changing circumstance, e.g. a proposed change of use. Accordingly, data pertaining to sites falling within Categories 1, 2, 3 and 4 will be maintained by the council.

Method of Preliminary Site Inspection

Guidance on the preliminary inspection of suspected contaminated land sites has been provided by the DETR. Initial site inspections should be undertaken by an appropriately qualified officer for Category 1 and 2 sites. The officer will complete an assessment using the checklist provided within the above guidance to record details of the following key indicators:-

- Evidence of past industrial use
- Odours
- Coloured or oily deposits on the soil surface
- Condition of water bodies or water courses
- Obvious discontinuities, in terms of vegetation, topography, soil type within the site or between the site and its surroundings
- Presence of bare or poorly vegetated patches of ground
- Uncharacteristic soil assemblage for location, climate, soil type and period of colonisation
- Lack of species diversity
- Visible signs of stress or discoloration
- Poor root and nodule development
- Presence of indicator species, particularly plants and aquatic macroinvertebrates
- Litter built up on soil surface
- Absence of wormcasts
- Poor soil structure

Soil samples will be taken for laboratory analysis where this is considered necessary.

The data gathered will be used to complete a Summary Assessment Sheet and review the initial desktop study.

If the review indicates that a Priority Category 1 or 2 site is unlikely to be significantly contaminated, the site will be placed in Priority Category 3 or 4 as appropriate.

Alternatively, if the site investigation data confirms that there are problems on site that could well be attributable to contamination, or, information on the status of the site is insufficient, the council will commission a consultant to produce a detailed site report. The findings of the subsequent report will be used to help make a determination as to whether the land is statutorily contaminated.

Liaison with SEPA

At this point detailed exchange of information and liaison with SEPA will be required to further refine assessment of the sites. Liaison/information exchange with SEPA will be ongoing throughout this period in accordance with the SEPA/local authority liaison framework. The Steering Group will direct the process for the council through their regular meetings.

Intrusive/Technical Site Investigation

It may be that the council already has enough technical information to declare the worst sites as contaminated under the definition in the legislation. It is likely, however, that further technical site investigation will be required to assess a number of sites. When appropriate the council will appoint suitably qualified contractors to undertake detailed site investigations.

During site visits, regard shall be had to Health and Safety regulations and guidance. Guidance is contained within Health and Safety Executive's publication "HS(G)66, Protection of Workers and the General Public During the Development of Contaminated Land (1999) (HMSO)".

It is important to note again that the regulations define contaminated land in a very specific way. Only land which is causing or is likely to cause significant harm can be classified as contaminated. To show that significant harm has occurred, or is likely to occur, a pollutant linkage must exist. This means there must be a "pathway" or route by which a pollutant can reach a "receptor", for example a living organism or property which could be harmed. There are also risk assessment techniques which have to be applied to the site to determine if substances are present at a harmful level and therefore would be considered to be pollutants. Only if these criteria are met will the site be classified as contaminated.

Following the assessment period, a database of sites known to be contaminated and a database of sites which require detailed site investigation will be created.

Immediate Action

Negotiation will be entered into with the owners of the sites requiring immediate attention with a view to preparing an individual Strategy for each of these sites. If a site is considered to be a Special Site then the council will consult with SEPA. Where appropriate the Council will use it's powers to inspect land and to enforce any immediate remediation action required.

Longer Term Strategy

In the longer term, analysis of sites suspected of being contaminated will be undertaken on a rolling programme, with the potentially worst cases taking priority. Remediation will also continue to be achieved, as it currently is, through the determination of planning applications.

The Strategy will be taken forward using the iterative process of drawing together information on sites, assessing these sites using robust and site appropriate methodologies and then dealing with the sites in a prioritised way starting with the highest risk first.

Timescales

Although difficult to determine timescales at this point, a guide has been produced below.

Contaminated land issues outwith the inspection programme will undoubtedly compete for the available resources. This will include contaminated land issues arising during the planning process, dealing with complaints / requests for information and investigating Council sites for sale / development. It should be noted, therefore, that the timescales will require to be reviewed periodically to take into account the amount of associated reactive work and new information as it becomes available.

The initial target for the inspection programme will be to screen West Lothian to determine a "high risk" list of sites. In particular, attention will be given to former mining and major industrial areas, and major towns as listed above. Within this list, priority will be assigned to sites according to their risk rating score determined by the risk assessment methodology. This first area, screening looking at high-risk sites, particularly in former mining and industrial areas in or close to towns, is anticipated to be completed by October 2003, with the review of sites in the next risk category (main settlements other than high risk sites) completed by October 2006. Thereafter, rural areas will be given consideration, with a view to having completed this by October 2009.

Council Owned Sites

West Lothian Council has a large estate portfolio which will need to be considered as part of the strategic investigation of all land within its area.

It is important to establish which of the sites in the Council's ownership may contain pollutants because of their current or previous use. These sites will be added to the list of potentially contaminated sites in the same manner as other sites and will be investigated in accordance with the procedures.

5. Procedures

Structure of the Legislation

The provisions of the new regime are to be found in a mix of primary and secondary legislation and Ministerial guidance. In addition the Contaminated Land (Scotland) Regulations 2000 prescribe the following:

- which sites should be designated as “special sites”;
- the form and content of remediation notices, and the procedure for their service;
- the rules relating to compensation where an appropriate person must enter on to a third party’s land in order to carry out remediation;
- the grounds of appeal against a remediation notice, and the procedures for appealing to the Sheriff and to the Scottish Ministers;
- modification and suspension of remediation notices; and
- the content of remediation registers.

Circular 1/2000 issued by the Scottish Executive Rural Affairs Department also provides mandatory “guidance” on:

- what is to be regarded as “contaminated land” – s.78A(2);
- what “harm” is significant, whether the possibility of causing significant harm is “significant”, and whether pollution of controlled waters is being, or is likely to be, caused – s.78A(5);
- the inspection by local authorities of their land for contamination – s.78B(2);
- the allocation and apportionment of liability among two or more “appropriate persons” – ss.78F(6), (7).

The Definition of Contamination Land

Land is regarded as “contaminated” if it appears to be in such a condition, by reason of substances in, on or under the land, that:

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

“Harm” is broadly defined as harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.

If any water pollution at all is caused by what is in or on it, then that land is liable to be designated as contaminated.

The Guidance requires that, as a pre-condition of contamination being regarded as significant in any circumstances, there must be all of (1) a pollutant, (2) a receptor (or target) that may be harmed by it, for example an ecological system or an aquifer, used for drinking water, that is liable to be harmed by that pollutant, and also (3) one or more pathways capable of exposing that receptor to that pollutant. These three elements, pollutant, receptor and pathway, together constitute what is termed a “pollutant linkage”

– and if there is no “significant” pollutant linkage, land cannot be contaminated land for the purposes of Part IIA.

The main concern is essentially over harm to human health or to commercial agriculture or silviculture; purely environmental harm is only relevant if it occurs in a Site of Special Scientific Interest or other protected area.

Special Sites

Sites of a description covered by Regulations 2 and 3 and Schedule 1 of the Contaminated Land (Scotland) Regulations 2000 are to be classed as “special sites”. These are essentially sites where the contamination present will or may cause serious harm or serious pollution of controlled waters, or where it is otherwise desirable to call on SEPA’s expertise to deal with it.

Responsibility for dealing with the contamination on special sites passes to SEPA. The designation is by the Council subject to SEPA not having disagreed with the decision within 21 days. SEPA can also propose that a site should be designated. Contaminated land may also become a special site at any time after a remediation notice has been served.

The council and SEPA and will regularly liaise on contaminated land matters and have set up procedures to consult and exchange information through through the SEPA/local authority liaison framework.

Local authorities’ duties to inspect their land and to serve remediation notices

The Council must inspect the land in its area for the presence of contamination and where it identifies any the Council or SEPA, in the case of a special site, are under a further duty to serve a “remediation notice” on the “appropriate person”, specifying both what action is to be taken by way of remediation and when it must be done.

The Council must have evidence of the actual presence of pollutant before it can take action.

If contamination is discovered the first step by the Council is to serve a notice (“78B notice”) on all appropriate persons and also on the owner, the occupier(s) and SEPA. Except in cases of emergency, a remediation notice may not be served on anyone until at least three months after that person received the 78B notice. The Council will endeavour to consult with the person(s) it intends to serve the remediation notice on, as well as the owner and occupier(s) of the land, to determine what remediation is appropriate.

Exceptions from duty to serve remediation notice

If a potentially liable person agrees to clean up the land voluntarily to an appropriate standard, or is already doing so, then the Council will not serve a remediation notice on that person for so long as it remains satisfied he is taking suitable steps to achieve an adequate clean up. Voluntary action, in consultation with the Council is the preferred

route. A remediation notice will only be served where co-operation is not forthcoming, or where a notice is needed to allocate remedial work or to apportion liabilities between two or more appropriate persons.

Work can be carried out without a remediation notice where:

there is imminent danger of serious harm or serious pollution of controlled waters;

a person has failed to comply with requirements of a remediation notice;

the authority has decided that it will not seek to recover its costs, or will look for only a portion of its costs, from the appropriate persons; and

no person has been found, after reasonable enquiry, who is an appropriate person in relation to any particular aspect of the contamination

Two or more appropriate persons

Where two (or more) people are each appropriate persons, either (i) because they have been responsible for different substances on a site or (ii) because they have been responsible at different times for contaminating the site with the same substance, then the remediation notice served on each will specify, in the first case, what each must do in relation to the different substances, and, in the second case, what proportion of the remediation costs each must bear. The Guidance prescribes in Annex 3, Chapter D, how these proportions are to be calculated (see below).

Who is Liable? – The “Appropriate Person”

The “appropriate person” is defined in the legislation as:-

“any person, or any of the persons, who caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land in question is such land to be in, on or under that land”.

However, if no such person can be found then the owner or occupier for the time being of the contaminated land in question may be an appropriate person. In some cases they may be excluded from certain types of liability.

Allocation and Apportionment of Liability to Remediate

Where there are two or more people within the definition of “appropriate person”, the enforcing authority must determine, in accordance with the Guidance, who is not to be treated as an appropriate person. Thus all appropriate persons are to be held liable for remediation.

Recovery of Costs of Remediation

Normally, if a liable party fails to respond suitably to a remediation notice, then the Council may do the necessary work and recover the costs it has incurred from him. However, where a liable party would suffer “hardship” if made to bear the full costs of

remediation, then, provided the criteria in the Guidance are satisfied, the Council may do the work itself. If it does this, it has no right to recover additional costs from any other liable party beyond what they would have had to bear anyway. The Council must bear the cost.

Charges on land for enforcing authority's remediation costs

Where a remediation notice has not been complied with, the Council may do the work itself. Its costs, with accrued interest, are not only recoverable from the relevant appropriate person, but may be made the subject of a charge on the land.

Appeals and Enforcement

A person served with a remediation notice may appeal against it on any of 19 grounds listed in Regulation 7 of the Contaminated Land (Scotland) Regulations 2000. Any appeal must be duly lodged within 21 days (including the day of service) of receiving the notice appealed against. Provided it has been duly made, the notice is suspended until final determination or abandonment of the appeal. Appeals against remediation notices served by local authorities are normally to be made to the sheriff by way of summary application. However, in the case of special sites, where the notice was adopted by SEPA, appeals are to be made to the Scottish Ministers, who may cause the appeal to proceed in the form of a hearing, in public or in private, or to be dealt with in a public inquiry. No further appeal is available from the decision of the Scottish Ministers, though judicial review of the decision may of course be applied for in appropriate cases.

Non-compliance with remediation notices may lead to substantial fines – in the case of industrial, trade or business premises these may be up to £20,000, with possible further daily fines of up to £2,000 for so long as the non-compliance continues (£5,000 and £500, respectively, in relation to other premises). Non-compliance with enforcement notices, on the other hand, leads to penalties of up to £20,000 and/or three months' imprisonment on summary conviction and an unlimited fine and up to two years' imprisonment on conviction on indictment.

Liaison and Communication Procedures

Communication with Stakeholders

The Council recognises that land which may be contaminated is not just of relevance to the person who owns it. The use and condition of land will have an impact on the wider community especially if the contamination poses a risk to human health. Therefore, it is essential that those who may be affected be:

- informed of any risk posed to their health;
- consulted on proposed actions in relation to contaminated land;
- kept informed of decisions taken.

The council's Strategic Planning unit will take a lead role in providing information and consulting the public although other agencies may also be involved.

Conversely, it is also important to prevent needless anxiety and planning blight. A

delicate balance must therefore be achieved concerning when and to whom information is given. The vast majority of sites where contamination is suspected are unlikely to pose any threat to public health or risk to other receptors. However, in order to ensure that this is so, each site will need to be investigated by the Council and assessed. The initial investigations will therefore be conducted as discreetly as circumstances permit with information on site findings shared only between the Council, SEPA (if appropriate) and the owner/occupier of the site.

The information will remain confidential if and until a significant pollutant linkage is established. The only exception will be where redevelopment of the site is proposed and the Council determines that the information should be supplied to the potential purchaser or developer in the interests of achieving the Council's sustainable development objectives.

Where the site investigation confirms that the land is statutorily contaminated, the Council will consult and advise the individuals or organisations who may be affected.

Generally, the Council's approach to its regulatory duties will be, in the first instance, to seek voluntary remediation action by the liable parties or, where appropriate, remediation and redevelopment of the site through the statutory development planning system.

If the voluntary approach fails the Council then have the power to invoke further formal procedures. The formal identification of the liable parties will be approved using standard council procedures and will involve the issue of a Contaminated Land Remediation Notice. If the liable parties do not undertake the necessary remediation works within the required period then the Council will have the power, where it is deemed necessary, to undertake the remediation works and to take measures to recover any costs from the liable parties.

Arrangements, including time scales and standard letters, for site specific consultation and liaison are currently the subject of discussion with SEPA and the COSLA Contaminated Land Working Groups. It is the intention of the Council to adopt the standard arrangements and procedures which are agreed following these discussions and to keep these arrangements under review.

Public Registers

The Council will maintain registers containing details of actions taken in respect of contaminated land, including initial contaminated land designation notices, remediation notices served, remediation declarations, remediation statements, the designation of special sites, appeals and several other matters as set out in Schedule 3 to the Contaminated Land (Scotland) Regulations. The registers will also include notifications given to the Council by third parties stating what has been done by way of remediation. The Council cannot, however, give any guarantee that these particulars are correct although the council will require any reports to be under the auspices of an appropriately qualified consultant or contractor.

Once an entry is made on a register, there is no provision for subsequently removing it. There will always be a permanent record of a contaminated site dealt with under the

regime, even though it may have been comprehensively remediated.

Registers will be available at all reasonable times for free inspection by the public.

Complaints, Service Requests and Voluntary Information Provision

It is anticipated that, from time to time, the Council will receive complaints or service requests and voluntarily supplied information from individuals or organisations concerned about the state of land or property. Such reports may cause potentially contaminated sites to enter the inspection programme earlier than they ordinarily would have. Where an anonymous complaint or service request or information is received, the Council's general policy will be adhered to, in that there will be no obligation to undertake investigations based on anonymously supplied information. However, this does not preclude investigations being carried out should the experience of the officer deem this to be advisable.

Complaints and Service Requests

Complaints will be logged and complainants contacted by a council officer following the council's standard complaints procedure. Every effort will be made to resolve complaints quickly and efficiently, and to keep the complainant informed of progress. However, provision of information will be subject to relevant legislation, including for example, the Data Protection Act 1988, the Environmental Information Regulations 1992 and the access to information provisions in the Local Government (Scotland) Act 1973.

Voluntary Information Provision

Information provided on a voluntarily basis will not be treated as a complaint or service request and therefore it will not be subject to the Council's procedures for such. The information will be recorded, and may be acted upon at the discretion of the Council. Although not obliged to, the Council may keep the information provider advised of progress if so requested by the supplier, again within the boundaries of relevant legislation.

Confidentiality

All complainants / information providers will be requested to supply their names and contact details, which will remain confidential. However, in the circumstances where a remediation notice is appealed in a court of law and an adverse effect on the complainant's health was a reason for the original contaminated land designation, such information might require to be made public.

Trans-Boundary Pollutant Linkages

It is possible that a pollutant linkage may exist across the boundary of West Lothian. Where this situation arises, the Council will work with the neighbouring authority to agree a mutually acceptable method of assessing and, if necessary, remediating the site.

If West Lothian Council suspects that a trans-boundary pollutant linkage may exist then it will notify the appropriate neighbouring authorities within 10 working days. If the council considers that urgent action may be required then this notification should take place without undue delay.

West Lothian Council will contact other authorities with the aim of agreeing an action plan identifying each authority's role in determining the status of the land and associated issues.

Development Control and Forward Planning

The 'suitable for use' approach means that most of the sites identified as containing contaminants will not require remediation until such time as a change in the use of the land occurs. For instance, an industrial site contaminated with lead may pose no threat in its current use. However, if a developer proposes to change the use of the land to residential then the introduction of gardens may pose a risk to health by providing a pathway for people to be exposed to the lead.

The planning regime will therefore play an extremely important role in the way in which the Council will deal with potentially contaminated land. Developers will need to satisfy the Council that the risk posed by contaminants has been adequately assessed. They will also have to ensure that the land is made suitable for the proposed new use in accordance with recognised standards.

Development Control already consults Environmental Health on the environmental implications of proposed development. Until the introduction of the contaminated land regime however, the location of potentially contaminated sites has not been comprehensively assessed. Procedures will therefore be implemented to ensure that the development control system takes account of the requirements of and information arising from the contaminated land regime and vice versa. Planning Advice Note 33, "Development of Contaminated Land" gives detailed guidance on the role of the planning system in addressing the problem of contaminated land.

Public consultation

Transparency and clarity will be key elements of the contaminated land regime. It therefore follows that the development of the Strategy will involve full public consultation. A draft consultation Strategy will be made available for public inspection and comment at local libraries and Council Information Service offices during July and August, 2001. Copies of the draft will also be made available to Community Councils for their comment. Any comments will be considered and where appropriate will be incorporated in the finalised Strategy. The Strategy will then be approved by the council in October and subsequently published.

Current Site Priorities

In terms of specific sites, the council is already addressing the most problematic large sites at Albyn and Candleworks in Broxburn, at Polkemmet, at Riddochhill near Bathgate, and at Whitrigg, East Whitburn. The prioritisation of such sites and the overseeing of their investigation will need to be determined on an ongoing basis by the Council's Contaminated Land Steering Group.

Funding and Resources

The identity of the council's main partners and co-funders will become clearer over the next few months. The Scottish Executive have already provided capital funding for the period from April 2000 to March 2002 and further funding may be available depending on the Council's implementation of the regime. SEE&L are a potential source of funding. There are also a number of non profit making research institutes who could be potential partners and this possibility will be investigated further.

6. Reporting, Measuring and Reviewing

This Strategy document will be reviewed regularly. Initially this will be annually and then in due course every two years. Following its production there will be an on-going monitoring process resulting in a report of progress, at the next review, on the overall inspection of the council's area and on the identification of specific areas and sites and their remediation. Performance indicators will be developed to demonstrate the council's progress in the implementation of the regime. This will include detailing of specific actions that are being taken, and targets. A report will also be made to SEPA for the State of Contaminated Land Report.

Review

Review involves re-examining the Strategy objectives. This Strategy is not final and may change over time. This may occur for a number of reasons. Changes in government guidance and legislation may lead to new priorities, as might changes at the local level. The Strategy will evolve accordingly.

Triggers for Review

The status of a site that contains contamination may alter with changes in circumstances. Some of the most likely circumstances which may affect the land's status are:

- Proposed changes in the use of surrounding land
- Unplanned changes in the use of the land (e.g. persistent, unauthorised use by children)
- Unplanned events, e.g. localised flooding, landslides, accidents, fires, and spillages where consequences cannot be addressed through other relevant environmental protection legislation
- Reports of localised health effects which appear to relate to a particular area of land
- Verifiable reports of unusual or abnormal site conditions received from businesses, members of the public or voluntary organisations
- Responding to information from other statutory bodies
- Responding to information from owners or occupiers of land, and other relevant interested parties
- Annual review of information
- Receipt of anonymous information

Where changes in circumstances occur, the risk assessment process for the particular site will be reviewed to determine an appropriate level of response.