

EAST AYRSHIRE COUNCIL

CABINET REPORT – 20TH OCTOBER 2010

CONTAMINATED LAND STRATEGY : REVIEW AND UPDATE

Report by Executive Director of Finance and Corporate Support

1. PURPOSE OF REPORT

- 1.1 To advise Cabinet of the review of the Contaminated Land Strategy and to provide an update on the implementation of the Strategy.

2. BACKGROUND

- 2.1 Part IIA of the Environmental Protection Act 1990 (Contaminated Land) requires that each Local Authority should adopt a Strategy for dealing with contaminated land. East Ayrshire Council formally adopted their Contaminated Land Strategy in October 2001.
- 2.2 In line with Statutory Guidance to periodically review the strategy, two updates were carried out in October 2003 and February 2008 to reflect changes in legislation and guidance.
- 2.3 This review aims to demonstrate how the Council is implementing the strategy and meeting its statutory obligations under Part IIA with particular reference to how contaminated land is managed and the current status of the inspection and prioritisation process.

3. DISCUSSION AND IMPLEMENTATION

- 3.1 A full review of the Strategy has been carried out to reflect current legislation requirements and the Strategy has been substantially rewritten to reflect this.
- 3.2 There are three main stages involved in assessing potentially contaminated sites under Part IIA : site identification, site prioritisation and site specific assessment. The Strategy has been amended to highlight the adoption of specific developments made relative to identification and prioritisation of sites involving the use of GIS data, historical data and specific software applications relative to site prioritisation.
- 3.3 The approach to site specific assessments has been incorporated to reflect the stages of assessment relative to sites identified for investigation.
- 3.4 Initially 2,240 sites were identified through the adopted process of identification and prioritisation relative to potentially contaminated land. It should be noted that the initial screening process reduced the number of sites requiring further investigation to 1,427.

3.5 A total of 831 sites have been inspected, 685 of which do not require further action, 146 are currently being re assessed and the remaining 596 Priority 3 sites will undergo further screening to eliminate low risk sites which do not require further investigation. Information pertaining to progress so far and planned future works is detailed in Appendix 1 of the Strategy.

4. FINANCIAL IMPLICATIONS

4.1 The Council has statutory obligations under Part IIA of the Environmental Protection Act 1990, (Contaminated Land) to investigate and remediate land within its area. These obligations are implemented through the Council's adopted contaminated land strategy and the SKM Enviro contaminated land support service contract which requires the provision of ongoing finance in order to ensure that these statutory obligations are met.

5. LEGAL IMPLICATIONS

5.1 The requirements relative to the provision and adoption of a Contaminated Land Strategy and the practical arrangements for review and assessment are contained in the Environmental Protection Act 1990, Part IIA.

6. COMMUNITY PLANNING/POLICY IMPLICATIONS

6.1 The Contaminated Land Strategy is commensurate with the Community Plan Theme of Improving the Environment.

7. CONCLUSIONS

7.1 A comprehensive review of the Contaminated Land Strategy has been carried out providing information on site identification, prioritisation and assessment together with an updated forward plan and work programme.

7.2 The review has been carried out to reflect changes in legislative requirements and guidance.

7.3 The current status of implementation of the Strategy is outlined in the report and Strategy document.

8. RECOMMENDATIONS

8.1 Cabinet is invited to:-

- (i) Consider approval of the updated and amended Contaminated Land Strategy.
- (ii) Otherwise note the report.

Alex McPhee
Executive Director of Finance and Corporate Support

AMcP/PLT/CJ

20th October 2010

LIST OF BACKGROUND PAPERS

1. East Ayrshire Council Inspection Strategy for the Identification and Remediation of Contaminated Land – February 2008.
2. The Contaminated Land (Scotland) Regulations 2005.
3. Report to Community Services Committee – 20th February 2008.

Any person wishing to inspect the background papers should contact David Mitchell, Head of Legal, Procurement and Regulatory Services on 01563 576161 or by email to David.Mitchell@East-Ayrshire.gov.uk



East Ayrshire
COUNCIL

Inspection Strategy
For the
Identification and Remediation
of
Contaminated Land



Managing Our Industrial Legacy for a Better World Tomorrow

September 2010

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1. Introduction

1.1 This document

East Ayrshire Council is the lead regulator in respect to Part IIA of the Environmental Protection Act otherwise known as the Contaminated Land Regime. The Statutory Guidance requires all Local Authorities to develop and publish by October 2001 a strategic approach to the inspection of land in their area for the purposes of identifying contaminated land and then to keep this under periodic review. This document represents an update under the periodic review.

The Contaminated Land Regime provides a risk based approach to the identification and remediation of land where contamination poses an unacceptable risk to human health or the environment. This document sets out the Councils strategy in meeting with its statutory obligations and includes:

- What the Council is obliged to do;
- How the Council will meet the obligations; and
- What progress the Council has made and what is still required.

1.2 Background

Government policy has acknowledged that land contamination hinders the pursuit of sustainable development. Legislation and drivers have evolved to deal with the industrial legacies, while meeting the sustainable development and management requirements to promote the re-use of vacant, derelict and brownfield land including the commitment to dealing with contaminated land.

The Second National Planning Framework for Scotland (NPF2) recognises that over 10,000 hectares of land across Scotland is classed as vacant and derelict. Some 3,500 hectares (34%) has remained unused for more than 20 years. This land is likely to have been previous industrial land and will have the possibility for contamination to be present. The national strategies are to deal with the historical industrial legacy in the pursuit of more sustainable development.

1.3 East Ayrshire Council Strategy

East Ayrshire Council strategy and policy is in sympathy with the government policies, but with a particular bias in promoting the protection to public health and the community.

The Part IIA inspection process is an underlying component in the Councils key Corporate and Planning strategies.

- Promote economic development through the provision of attractive sites and premises (Core Corporate Strategy);
- Promotion of sustainable development through the re-use of brownfield land (core Corporate Strategy);
- Enhance the image, promote tourism and regenerate local communities (core Corporate Strategy);

- Environmental protection Policy ENV23 of the Alteration to the East Ayrshire Local Plan (to be known as the East Ayrshire Local Plan 2010 on adoption).
- Promotion of the building of residential properties on brownfield land (Policy SD6).

Previously developed land (brownfield land) has the potential to be contaminated depending on the previous use of the land. Determining the previous use and assessing whether contamination is present is a key precursor to ensuring that the Council can meet its strategic Corporate and Planning objectives.

East Ayrshire Council is fully committed to the Part IIA process, not simply as a mechanism of meeting government compliance obligations, but also in underpinning the key corporate and planning strategies and objectives.

2. What is Contaminated Land?

Contaminated Land is often used to describe the wide legacy of land which has been affected by historic industrial use. However, the term does have a specific legal definition and an associated process for assessment, as described in the following text.

2.1 Definition of Contaminated Land

Under Part IIA of the Environmental Protection 1990 Act (as amended by the Water Act 2003), contaminated land is defined as “any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that:

- (a) significant harm is being caused, or there is a significant possibility of significant harm being caused,
- (b) significant pollution of controlled waters is being caused, or there is a significant possibility of significant pollution being caused.

This definition reflects the intended role of the Part IIA regime, which is to enable the identification and remediation of land on which contamination is causing unacceptable risks to humans or the wider environment.

2.2 Process for Determining Contaminated Land

The contaminated land regime is centred on a risk based framework for dealing with land affected by contamination. The initial principle is based on pollutant linkage, where the three key elements are:

Source – a substance which is in, on or under the land and has the potential to cause harm or cause pollution of the water environment;

Receptor – in general terms, something that could be adversely affected by a contaminant (e.g. a person, an ecological system or water body; and

Pathway – a means by which a receptor can be exposed to, or affected by, a contaminant.

Pollutant linkage is the inter-relationship between a particular source and receptor and the pathways between them. All three elements of the linkage must therefore be present for a risk to exist. If one of the elements of the pollutant linkage is absent there can be no risk. This pollutant linkage is used to create the Conceptual Site Model (i.e. a representation of the pollutant linkages)

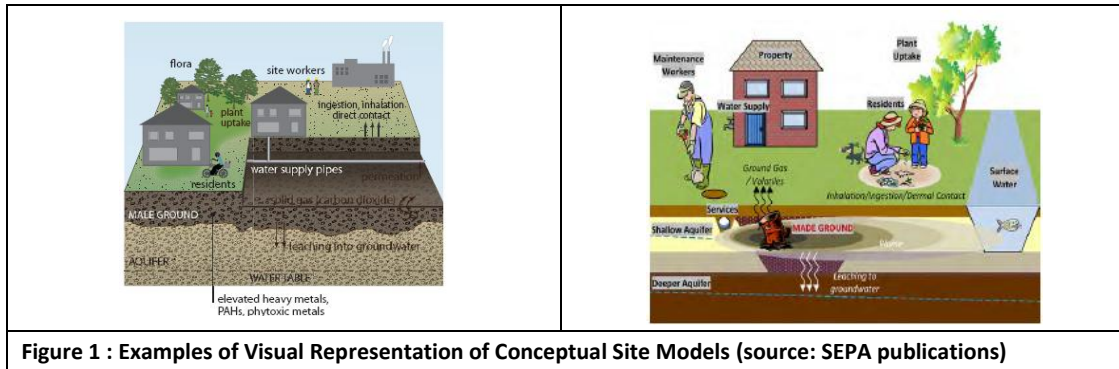


Figure 1 : Examples of Visual Representation of Conceptual Site Models (source: SEPA publications)

In order to determine whether ‘harm’ is occurring and is significant in accordance with the contaminated land definition, a risk assessment process is applied to each of the identified pollutant linkages. The principles of risk assessment are based on a combination of:

- Probability, or frequency, or occurrence of a defined hazard; and
- Magnitude (including seriousness) of the consequences.

The process of risk assessment is normally undertaken in stages (from qualitative to quantitative) to allow focus on the identified linkages that are considered to be of significance.

2.3 Local Context

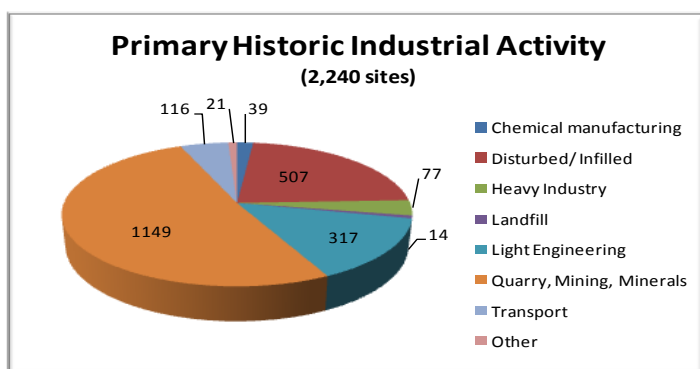
East Ayrshire was particularly well placed in the industrial revolution because of the presence of key raw materials such as coal, ironstone, limestone and clays. The area quickly became a major part of the industrial revolution in Scotland with the creation of many revolutionary industries such as gasworks, tar works, textile mills and iron works.

The subsequent decline in industry, post war, resulted in a significant industrial legacy, which the Council now has an obligation to deal with in meeting its core corporate and planning objectives.

Historical industrial activity has been reviewed using historical maps, local authority records and registers for consented facilities (such as petrol filling stations and landfill facilities).

The review undertaken identified 3,980 industry activities (from 1856 to date), with the potential to be contaminative, at 2,240 locations. The following figure highlights the primary industrial uses at all 2,240 locations identified.

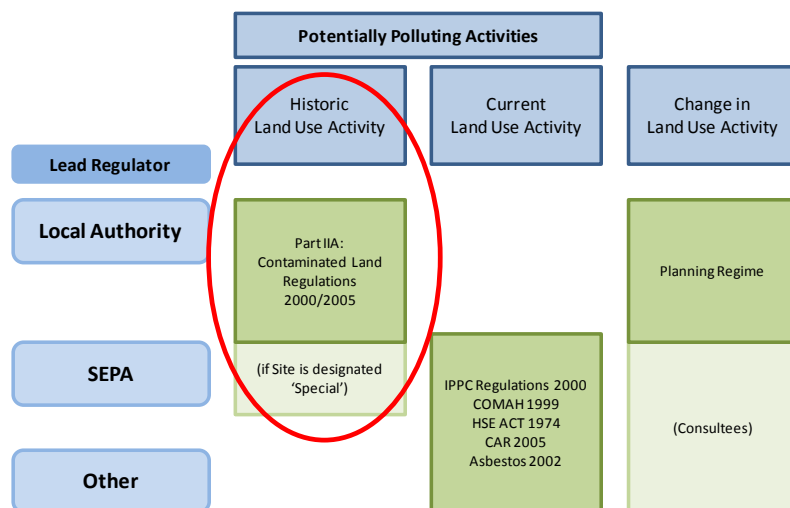
Figure 2: Profile of Historical Industrial Activity in East Ayrshire



3. Regulatory Framework

The overall regulatory framework which directly or indirectly relates to pollution and contaminated land covers historic, current and changes in land use. The following figure provides a simplistic guide of the regulatory framework, where the circle (in red) identifies the particular area covered in this Strategy Document (the other aspects are also described for context).

Figure 3: Generic Representation of Role of Part IIA in dealing with Pollution



3.1 Historical Land Use

The core regulatory obligations are derived from the following parliamentary Acts, Regulations and Guidance.

- The Environmental Protection Act 1990 Part IIA;
- The Environment Act 1995;
- The Contaminated Land (Scotland) Regulations 2000 (amended 2005, 2006);
- Scottish Executive Statutory Guidance (Edition 2, May 2006); and
- Radioactive Contaminated Land (Scotland) Regulations 2007.

The legislation is designed to provide a mechanism to deal with historical contamination, mainly derived from a legacy of the industrial revolution on the basis of current use suitability. The legislation defines Contaminated Land and the roles and responsibilities of the regulators and the powers available to apply regulation.

3.2 Key Legislative Principles

The Local Authority is the lead regulator in relation to land which has the potential to be contaminated from historic land use. However, where a site is designated as a ‘special site’ by the Local Authority (i.e. where there is significant defined impact to controlled waters) then the lead regulation passes to SEPA.

The key principles of the legislation are to:

- take a strategic approach to the identification and remediation of contaminated land;

- deal with land contamination issues in an orderly and controlled fashion, tackling the most pressing and serious problems first;
- maintain a risk-based approach, requiring remedial action only where the contamination poses unacceptable risks to human health or the environment and where such remediation would be considered to be reasonable; and
- provide clarity in the law which would then assist in the development of an efficient market in land that is contaminated and which has been remediated.

The regime is based on the polluter pays principle requiring the enforcing local authority to identify appropriate person who are liable for remediation. The standard of remediation is based on a number of factors including the cost and the seriousness of the harm or pollution that is caused. The appropriate person is usually given the opportunity (unless urgent action is required) to develop a Remediation Statement setting out what they will do and when. Where necessary, remediation can be enforced by the Local Authority through serving a Remediation Notice.

3.3 Roles and Responsibilities

East Ayrshire Council has a responsibility to assess the entire district to identify contaminated land (and to designate 'special sites'). In identifying land with the potential to be contaminated, East Ayrshire and SEPA have the following duties and powers.

East Ayrshire Council	
Duties	Process
Inspect the district to identify contaminated land and to designate special sites	<ul style="list-style-type: none"> ■ Be rational, ordered and effective; ■ Be appropriate to the seriousness of any potential risk; ■ Seek to ensure that the most pressing and serious problems are located first; ■ Ensure that resources are prioritised to investigate areas most likely to identify contaminated land; ■ Identify requirements for the detailed inspection of particular areas of land efficiently.
Ensure remediation of land identified as contaminated	<ul style="list-style-type: none"> ■ Identify appropriate person(s) to bear responsibility for remediation; ■ Decide what remediation is required and ensure that it occurs ■ Determine who should bear what proportion of liability for meeting costs for the works
Maintain public registers	Provision of central accessible database
Powers	
Powers of entry to undertake inspection and remedial works	In addition or in association with existing legislative powers of entry in respect of public benefit or health protection.
Recover the cost of remedial works undertaken	The Council has the power to undertake any remedial works deemed necessary and then recover the costs from the appropriate person.

SEPA	
Duties	Process
Ensure remediation of land designated as a special site	<ul style="list-style-type: none"> ■ Decide what remediation is required and ensure that it occurs ■ Work with the Local Authority in determining responsibilities and liability apportionment.
Maintain public registers for special sites	Provision of central accessible database
Prepare a national report on the state of contaminated land	<ul style="list-style-type: none"> ■ Engage with Local Authorities in determining what progress has been made ■ Providing technical support where required

	<ul style="list-style-type: none"> Engage with range of stakeholders to determine overall progress, issues and any required changes to improve the process
To provide specific guidance to local authorities on contaminated land	SEPA provides an expert system supporting Local Authorities in meeting their obligations particularly in respect to integrating with other key legislation. Local Authorities access these expert systems through local working groups or direct to the regional support contacts.
Powers	
Powers of entry to undertake inspection and remedial works	SEPA have specific powers of entry under various legislation supported where required by other agencies including the police if there is sufficient evidence to suggest there is an issue that is non compliance with legislation, issue to human health or the wider environment or if a major incident is threatened.
Recover the cost of remedial works undertaken	The Council has the power to undertake any remedial works deemed necessary and then recover the costs from the appropriate person. In respect to special sites, SEPA can undertake the work and also recover the costs, working in consultation with the Local Authority.

3.4 Current Land Use

A current industry or activity that has the potential to cause pollution as a consequence of the operators activities (e.g. landfill, petrol filling station, chemical works) is managed by one or more of the following regulatory regimes most of which will require the operator to apply for a permit which will have strict conditions for preventing or minimising risk from pollution events.

Environmental Liability Directive	The Environmental Liability Directive is in the process of being implemented in Scotland. The ELD provides a framework for defining liability on operators that cause damage to land, habitats, human health and water resources.
Pollution Prevention and Control Regulations 2000	The Pollution Prevention and Control (PPC) regime aims to prevent new pollution from industrial processes (Part A and Part B), including a requirement for protection of land. SEPA are the lead regulator. For Part A processes, site operators are required to prepare a baseline site report documenting the condition of the site prior to receiving a permit to operate. If the site condition is such that areas of land meet the definition of Contaminated Land then submission of a site report may trigger action under Part IIA. It is likely that this legislation will be superseded by the Directive for Industrial Emissions, although the key objectives will essentially remain the same.
Control of Major Hazards Regulations	This is based on the EU SEVESO II Directive and provides a framework for specific industries (mainly the chemical industry but also for industries with large storage of hazardous materials, explosive manufacturing/storage and nuclear sites). The main objective of the regulations is to prevent and mitigate the effects of those major accidents involving dangerous substances to people and the wider environment.
Health & Safety at Work Act	The Health and Safety at Work Act 1974, is the primary piece of legislation covering occupational health and safety in the United Kingdom. The Health and Safety Executive is responsible for enforcing the Act and a number of other Acts and Statutory Instruments relevant to the working environment. Risks relating to exposure to contamination at the workplace are covered in this Act and require the workplace to ensure that the risks are assessed and mitigation measures are applied.
Control of Substances Hazardous to Health Regulations	This deals with the identification, assessment and management of hazardous materials typically within the workplace environment and underpins the Health and Safety at Work Act requirements.
The Water Environment (Controlled Activities) (Scotland) Regulations 2005	<p>The Controlled Activities Regulations (CAR) form part of implementation of the EU Water Framework Directive and license a range of activities affecting the water environment, including water abstractions, discharge consents, impoundments and engineering works. CAR has repealed both the regime provided for in the Control of Pollution Act (COPA) 1974 for point source pollution, as well as the Groundwater Regulations 1988.</p> <p>Existing discharge consents under COPA have automatically transferred to the new regime while applications for existing abstractions have been made to allow them to be transferred over to the CAR system. All new applications after the 1st April 2006 will be subject to a risk assessment and a charging scheme which is proportional to environmental risk. The CAR regime therefore has implications for both assessing contamination sources associated with</p>

3.5 Changes in Land Use

The Planning regime provides the primary mechanism by which East Ayrshire manages the suitability for use aspects relating to contaminated land. The Scottish Government Planning Advice Note (PAN 33) *Development of Contaminated Land* provides advice and guidance to East Ayrshire and developers on dealing with potential contamination.

All land is subject to a lifecycle and a reasonable proportion of land changes use. When this occurs then the land is subject to the requirements of PAN 33 which requires the developer to ensure that any risks associated with contamination are mitigated to a level that is suitable for the intended new use of the land. This is embedded within Policy ENV 23 of the Alteration to the East Ayrshire Local Plan (to be known as the East Ayrshire Local Plan 2010 on adoption), which allows the planners to place conditions on the development process to deal with any risks arising from contamination.

The process of managing planning conditions is undertaken by Planning and Economic Development. Contaminated land conditions are based on recommendations from the contaminated land officer.

East Ayrshire Council, in conjunction with other Local Authorities, has produced a guidance document for Developers on their requirements in relation to PAN 33 (see following link on Council web site) <http://www.east-ayrshire.gov.uk/devser/planandbuild/dpguidance.asp>

4. The Strategy

4.1 Framework Processes

The processes and procedures required to meet the requirements of Part IIA are undertaken by EAC in three stages:

Stage 1: Identification and Initial Prioritisation

Stage 2: Inspection and Re-Prioritisation

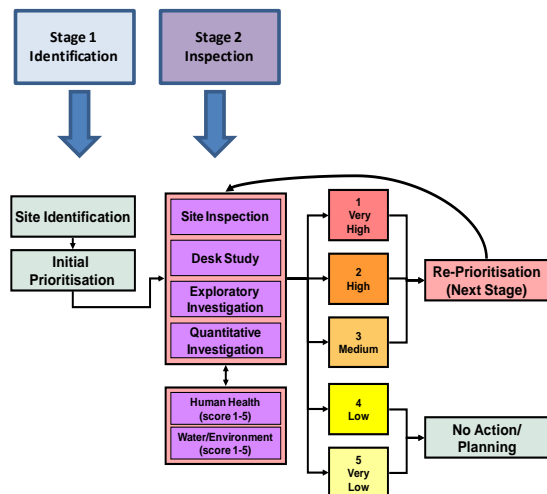
Stage 3: Remediation

The common fundamentals required by the Part IIA guidance for the identification and prioritisation of land which has the potential to be contaminated are:

- To deal with land contamination issues in an orderly and controlled fashion, tackling the most pressing and serious problems first; and
- To maintain a risk-based approach, requiring remedial action only where the contamination poses unacceptable risks to human health or the environment and where such remediation would be considered to be reasonable;

This has been embedded within the Stage 1 and 2 processes of identification, prioritisation and inspection. The following figure shows the process, highlighting the inspection mechanisms and the priority levels. When any site is classed as Priority 4 or 5 then no further action is required in respect under Part IIA and any change of use issues are managed under PAN 33.





Figure 4: Simplified Model of Inspection Process



4.2 Stage 1: Identification & Initial Prioritisation

4.2.1 Identification

Table 1: Key Data Sources of Potential Contaminative Uses

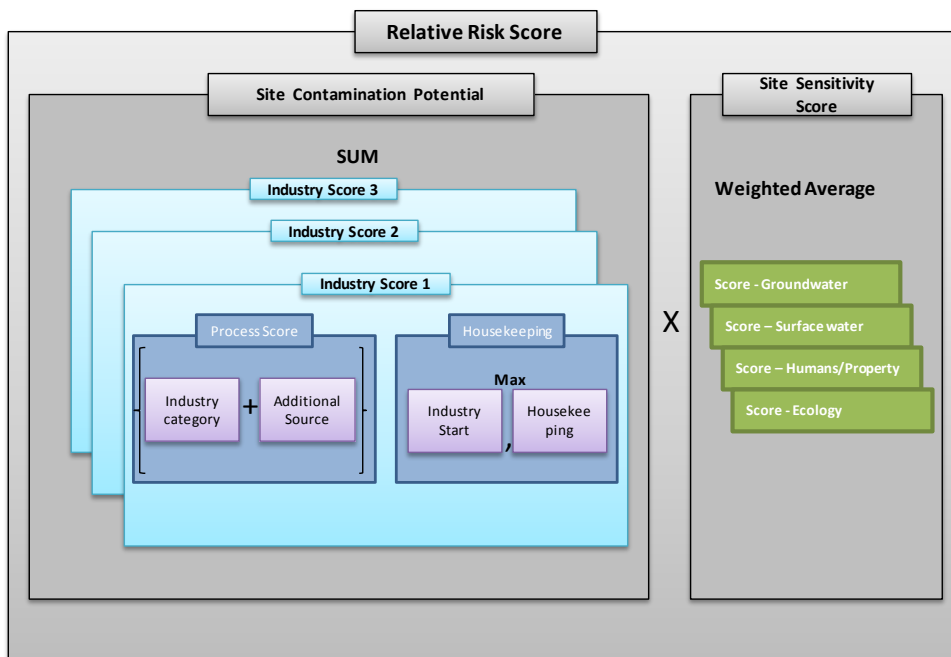
			
Historical Industry	Former Petrol Filling Stations	Closed Waste Management Facilities	Former Licensed Facilities
Digitised sources using all historical maps all scales	Digitised from Trading Standard Records	Digitised from Council and SEPA records	Digitised from Council and SEPA records

Information from the key data sources highlighted has been integrated into a spatial data management system using GIS (GGP and ESRI). Each of the potential sources were then identified by Industry Type (e.g. Gas Works) and classified low, medium or high on the basis of the likelihood of contamination being present.

4.2.2 Initial Prioritisation

A scoring framework based on the 'source-pathway-receptor' risk assessment approach (advocated in the Part IIA guidance) was used to score each potential source. The (Eclipse) model is based on Site Contaminative Potential (Industry class, age and known pollution incidents) and Site Sensitivity (proximity of humans, controlled waters, property and ecological areas). The GIS is used to undertake the detailed spatial calculations.

Figure 5: Illustration of the Prioritisation Scoring Model



4.3 Stage 2: Inspection and Re-Prioritisation

Each site is screened manually to confirm the scoring and requirements for site inspection. Planning application data is also used to determine whether a site has been dealt with under PAN 33 and hence does not require inspection in respect to Part IIA.

4.3.1 Step 1: Site Inspection

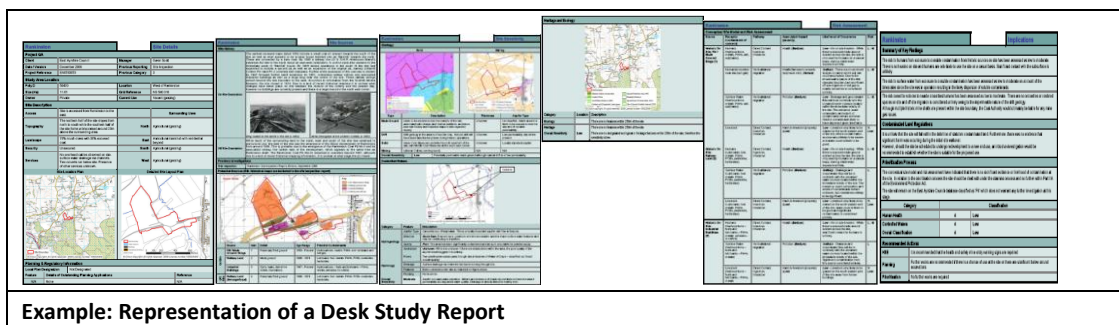
A site visit is undertaken of each site in order of highest prioritised score first. The site visit is undertaken using the key information drawn from the prioritisation process. The objective is to determine if the current profile of the area matches that to which the initial

prioritisation was undertaken. Site inspections are undertaken by trained competent environmental professionals who will examine the area for any typical signs of possible contamination. The sites are then re-rated on the basis of the inspection into Priority 4/5 - *no further action* (unless a change of use and managed through the planning process) or Priority 1/2/3 - *further inspection assessment*, as required.



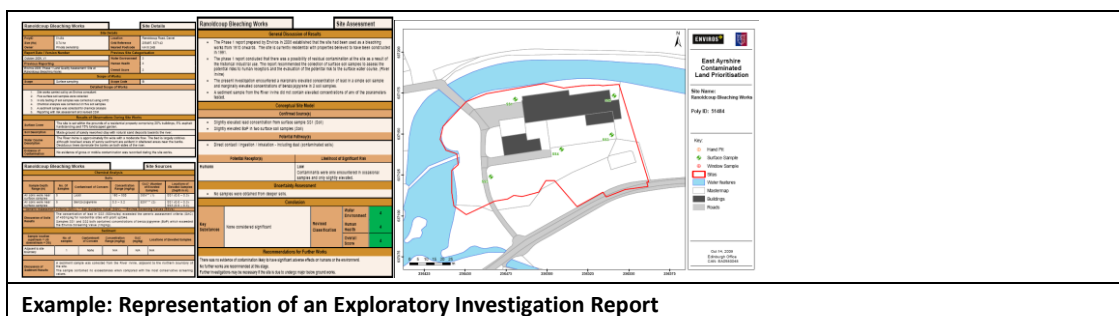
4.3.2 Step 2: Desk Study

A desk study is similar to a Site Inspection but will typically involve the development of a qualitative risk assessment and Conceptual Site Model. The desk study may go into more detail on some key factors such as services, planning, historical site layout and profile of the sensitive receptors. The sites are then re-rated on the basis of the desk study into no further action (unless a change of use and managed through the planning process) or further inspection assessment is required.



4.3.3 Step 3: Exploratory Investigation

An exploratory investigation is a basic examination of the underlying soil and water conditions at a site to verify if source(s) of contamination may be present. Sampling and testing is normally targeted based on the profile highlighted within the desk study. The assessment of risk is undertaken qualitatively and then re-rated *no further action* (unless a change of use and managed through the planning process) or *further inspection assessment is required*.



4.3.4 Step 4: Detailed Site Investigation

Where an Exploratory Investigation indicates that there is a possibility of an unacceptable risk then a detailed site investigation is undertaken with the objective of assessing the risks using more advanced risk assessment techniques. The extent and nature of investigation will vary from site to site but will typically involve obtaining soil and groundwater samples from identified source areas and then assessment to determine if there are any risks that are unacceptable to humans or the wider environment.



4.4 Stage 3: Remediation

The inspection strategy process may identify parcels of land which are within the terms of the definition of 'Contaminated Land' and hence further action is required to manage any risk that may lead to harm to humans or the wider environment.

East Ayrshire Council has a duty to secure remediation. According to the regulations, remediation can be assessment actions (e.g. sampling), remedial treatment actions (e.g. excavation and removal) or monitoring actions (e.g. surface water sampling).

The regulations require East Ayrshire Council to approach sites that fall within the definition of 'contaminated land' as follows:

- Step 1: Establish the 'appropriate person' to bear responsibility for remediation;
- Step 2: Deciding what remediation is required and ensure that it occurs;
- Step 3: Determining who should bear what proportion of the liability for meeting the costs for the work; and
- Step 4: Recording information about regulatory action on a public register.

4.4.1 Step 1: Establish *appropriate person*

The regulations are based on the 'Polluter Pays Principal'.

In respect to the Part IIA regulations, appropriate persons are classed into two groups:

Class A: any person who caused or knowingly permitted a substance to be in or under the land; and

Class B: the owner or occupier of the affected land.

Where a Class A person cannot be identified then the liability for undertaking remediation reverts to a Class B person. There are a number of exclusion tests within the Part IIA process and it is possible that site may be regarded as 'orphan' where a Class A or B person cannot be identified or where the exclusion tests apply. Where the site is an 'orphan' site then East Ayrshire Council has an obligation to undertake the remediation (unless the site is designated as Special where the obligation will rest with SEPA). A Class B person is only liable for risks to human health (and not the water environment).

4.4.2 Step 2: Deciding remediation required

The term *remediation* has a wide meaning under Part IIA, as it includes assessment of condition, undertaking remedial treatment and monitoring the condition. The main aim of the remedial works should be to remove any pollutant linkage, either through reducing or removing the contamination source, breaking the pathway or removing the receptor. The standard of remediation should be such that significant harm to key receptors is no longer occurring.

There are four possible options

- 1) The appropriate person agrees to undertake remediation and issues a **remediation statement**, in consultation with East Ayrshire Council;
- 2) East Ayrshire Council serves a **remediation notice** on the appropriate person(s), where there is no indication provided that the appropriate remediation will be undertaken;
- 3) East Ayrshire Council uses its powers to undertake remediation itself and issues a **remediation statement**; or
- 4) It is unreasonable to require remediation to be undertaken and East Ayrshire Council issues a **remediation declaration** (and if circumstances change then a remediation notice can be subsequently served).

4.4.3 Step 3: Determining liability

The appropriate person identified should bear the liability for the cost of remediation, however, there may be circumstances where there is more than one appropriate person (i.e. a liability group) in these cases liability may be apportioned or shared. Liability should be apportioned to reflect the relative responsibility of each member of the liability group for creating or continuing the risk caused by the significant pollution linkage in question.

4.4.4 Step 4: Recording information

The Act and Regulations specify what information is to be made available in public registers, subject to exclusion on the grounds of national security and commercial confidentiality. The public register information relates primarily to remediation activity and will contain particulars relating to remediation notices, appeals against notices, remediation declarations, remediation statements, designation of special sites and convictions for offences as well as contaminated land notifications.

Public registers will also include information on the location and extent of formally determined contaminated land; the name and address of the person who claims to have undertaken the remediation and, a description of the remediation works undertaken and the timeframe.

4.5 Local Strategic Approach

4.5.1 Local Priorities

The initial prioritisation scores and classifies sites on the basis of previous industrial use and current site sensitivity with weighting given to residential, schools and recreational grounds. The classification places each site into Priority 1 to Priority 5. Inspection work is undertaken in this order.

However, when sites are selected for inspection, any land which is occupied with residential property is scheduled ahead of any other current use on the basis that the Council consider Public Health related issues above that of sustainable regeneration related aspects.

There are 261 sites that have been identified within Priority 1 to 3. Of these sites 155 no longer require any further work as the risk is considered to be low, 43 sites are currently going through the inspection phases and 63 sites have still to be inspected. All initially classified priority 1 and 2 sites have been or are undergoing inspection. All priority 3 sites are being scheduled for inspection (September 2010) where the 63 sites with residential properties will be undertaken first (2010).

4.5.2 Planning

The local planning process dictates that if a planning application for development is made on or adjacent to any of the 2,240 sites, irrespective of current scoring or classification they will require to be reviewed by the Contaminated Land Officer.

The Contaminated Land Officer reviews the planning application to determine if the development and change of use will impact on the risk. If there is any doubt then a planning condition will require the developer to undertake an investigation of the site. The results of the investigation will determine whether remedial measures are required to ensure the safe development of the site suitable for the proposed end use.

The planning process will use PAN 33 as a framework for the process. All sites processed via the planning system will typically have their classification dropped to Priority 4 or 5. The sites will remain on the Part IIA database systems to manage any future changes of use.

4.5.3 Ad-Hoc Responses

Further information may come to light in respect to contamination encountered within the district that is not on the database system. This may occur from local development, services, regeneration or just simply through local observation.

The Contaminated Land Officer will then have a duty to respond to the new information and place the site through the prioritisation process to determine the priority level for inspection works.

5. Management

5.1 Information Management

5.1.1 Management

All information pertaining to the identification, prioritisation, inspection, and remediation of sites is contained with a database and Geographic Information System (GIS). This is a live database and is managed by the Contaminated Land Officer (and their consultants procured to provide Part IIA support services).

The databases are linked to a large number of datasets held under license to the Council (e.g. Ordnance Survey mapping, Local Gazetteer).

5.1.2 Internal Access

The Part IIA process is a dynamic work in progress. All Council staff have access to the licensed underlying data, but none have access to the database and GIS (except the locations of the 2,240 sites). The Contaminated Land Officer co-ordinates live requests related to any of the 2,240 sites within the district, where the response is proportionate to the request made.

5.1.3 External Access

The Council receive numerous enquiries in respect to contaminated land primarily from the public, developers and lawyers. Responses made are based on required Part IIA obligations and in respect to data that may be publically available. Responses are limited if information is available commercially from the private sector, copyright or licenses prevent issue, national security or if the request is for overtly commercial purpose.

The regulations allow the Council to charge for time in dealing with requests for information. Requests for enquiries are normally processes within 21 working days.

5.1.4 Public Registers

East Ayrshire Council is obliged to maintain Public Registers of key data, namely:

Public Registers

- Contaminated Land Identification Notices
- Contaminated Land Remediation Notices
- Details of Appeals against Remediation Notices
- Remediation Declarations
- Remediation Statements
- Details of Special Site Designations
- Details of relevant convictions

Provision of Information to SEPA

The Council are obliged to provide information to SEPA to aid in the preparation of the State of the Contaminated Land Report (this can be accessed via SEPA web site). The information provided is based only on statistical rather than geographical data (e.g. number of inspections undertaken).

5.2 Communication

5.2.1 Consultees

There are certain circumstances in Part IIA where the Contaminated Land Officer can consult with other organisations for support. The primary consultees include:

Regulatory Consultees	
Scottish Environment Protection Agency	Consultation in relation to the Water Environment, Regulation and Special Sites.
Health Protection Agency	Consultation to support the assessment of impacts to human health from exposure to contamination
Scottish Natural Heritage	Consultation required when designated ecosystems and regulated sites are impacted by contamination.
Historic Scotland	Consultation required when a historic listed monument is impacted by contamination.
Scottish Government	Consultation in respect to vacant and derelict land and also in respect to funding mechanisms.
Health & Safety Executive	Consultation if there is a particular risk from pollution events to the larger public
Food Standards Agency	Consultation in circumstances where contamination has impacted in food safety
Non-Regulatory Consultees	
Local Authorities	Sharing best practice and in respect to sites which are adjacent or on the district boundaries
Community Councils	Consultation when risk communication is required if there is a particular contamination issue that affects a local community
Coal Authority	Consultation if there is contamination that arises from historical mining activity
Land Owners, Occupiers, Community	Consultation and risk communication should entry, inspection or remedial works be required.

5.2.2 Risk Communication

East Ayrshire Council is committed to informing the local residents and community in circumstances where a potential or actual risk to human health is identified. Either in relation to specific sites or for wider risk scenarios the Council undertake to provide generic and site specific advice delivered through guidance notes, informative letters, public/community meetings and/or person to person, as appropriate.

Communication will also be required where access is necessary to undertake Inspection to determine if there is contamination present and whether this presents a risk to humans or the wider environment. The communication will normally take the form of a letter outlining the works that are to be undertaken, the reasons for the work and the process of events.

5.2.3 Best Practice

East Ayrshire Council is committed to continued improvement in seeking the best solutions to dealing with issues arising from land which may be contaminated. This includes local authority liaison groups, continued liaison with SEPA/Scottish Government, continued training and learning and skills transfer through working with consultants.

Glossary

General Terms	Definition
Appropriate person	Defined in section 78A(9) as “any person who is an appropriate person, determined in accordance with section 78F..., to bear responsibility for anything which is to be done by way of remediation in any particular case.”
Brownfield land	Land which has previously been developed. The term may cover vacant or derelict land, land occupied by redundant or unused building and developed land within the settlement boundary where further intensification of use is considered acceptable” as this is the most up-to-date definition and is contained within Scottish Planning Policy (please note SPP 3 no longer exists)
Building	Any structure or erection, and any part of a building including any part below ground, but not including plant or machinery comprised in a building.
Caused or knowingly permitted	Test for establishing responsibility for remediation, under section 78F(2). See paragraphs 9.8 to 9.15 of Annex 2 for a discussion of the interpretation of this term.
Contaminant	A substance which is in, on or under the land and which has the potential to cause harm or to cause pollution of the water environment. Paragraph A.13 Contaminated land defined in section 78A(2) as “any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that - (a) significant harm is being caused or there is a significant possibility of such harm being caused, or; (b) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.” This specific definition applies to sites that in their current use are causing unacceptable harm or pollution.
Contaminated Land (Scotland) Regulations 2000/ 2005	Regulations (SI 2000/178 as amended by SSI 2005/658) made under Part IIA –described in Annex 4. Regulations (SI 2005/658) made under Part IIA – described in Annex 5.
Current use	Any use which is currently being made, or is likely to be made, of the land and which is consistent with any existing planning permission (or is otherwise lawful under town and country planning legislation). This definition is subject to the following qualifications: (a) the current use should be taken to include any temporary use, permitted under town and country planning legislation, to which the land is, or is likely to be, put from time to time; (b) the current use includes future uses or developments which do not require a new, or amended, grant of planning permission; (c) the current use should, nevertheless, be taken to include any likely informal recreational use of the land, whether authorised by the owners or occupiers or not, (for example, children playing on the land); however, in assessing the likelihood of any such informal use, the local authority should give due attention to measures taken to prevent or restrict access to the land; and (d) in the case of agricultural land, however, the current agricultural use should not be taken to extend beyond the growing or rearing of the crops or animals which are habitually grown or reared on the land. Paragraph A.26
Conceptual Site Model	A model to demonstrate the linkages between sources, pathways and receptors as the underlying foundation for risk assessment
Derelict land (and buildings)	Is land that has been so damaged by development, that it is incapable of development for beneficial use without rehabilitation. In addition the land must currently not be used for the purpose for which it is held or a use acceptable in the local plan. Land also qualifies as derelict if it has previous (not remediated suitable for future use) use which could constrain future development (Scottish Vacant and Derelict Land Survey 2007).
Enforcing authority	Defined in section 78A(9) as: (a) in relation to a special site, SEPA; (b) in relation to contaminated land other than a special site, the local authority in whose area the land is situated.
Exclusion	Any determination by the enforcing authority under section 78F(6) (that is, that a person is to be treated as not being an appropriate person). Paragraph D.5(d)
Greenfield land	Land that has never been previously developed or used for an urban use, or is land that has been brought into active or beneficial use for agriculture or forestry i.e. fully restored derelict land (SPP3 Planning for Homes). Some greenfield land may also be affected by contamination.
Harm	Defined in section 78A(4) as: “harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.”
Harm in relation water environment	To the defined in section 78A(4A). It has the same meaning as in section 20(6) of the Water Environment and Water Services (Scotland) Act 2003.

Part IIA	Part IIA of the Environmental Protection Act 1990.
Pathway	One or more routes or means by, or through, which a receptor: (a) is being exposed to, or affected by, a contaminant, or (b) could be so exposed or affected.
Pollutant	Is a waste material that pollutes water or soil the severity of which depends on nature, concentration and persistence.
Pollutant Linkage	Relationship established between a source, pathway and receptor. If there is no pollutant linkage then there is no risk.
Possibility of significant harm	A measure of the probability, or frequency, of the occurrence of circumstances which would lead to significant harm being caused.
Receptor	Either: (a) a living organism, a group of living organisms, an ecological system or a piece of property which: (i) is in a category listed in Table A in Chapter A as a type of receptor, and (ii) is being, or could be, harmed, by a contaminant; or (b) the water environment which is being, or could be, polluted by a contaminant.
Register	The public register maintained by the enforcing authority under section 78R of particulars relating to contaminated land.
Risk Assessment	An assessment combining the principles of : ■ The Probability, or frequency, or occurrence of a defined hazard; and ■ Magnitude (including seriousness) of the consequences. Qualitative risk assessment defines risk generically into High, Medium and Low while Quantitative Risk Assessment is based on defining the risk numerically.
Significant harm	Defined in section 78A(5). It means any harm which is determined to be significant in accordance with the statutory guidance in Chapter A (ie it meets one of the descriptions of types of harm in the second column of Table A of that chapter).
Significant possibility	Of a possibility of significant harm being caused which, by virtue of section significant harm (SPOSH) 78A(5), is determined to be significant in accordance with the statutory guidance in Chapter A.
Special Site	“Special sites” are a subset of determined “contaminated land” sites which meet one of the descriptions in the Contaminated Land (Scotland) Regulations 2000 (as amended); Special sites do not necessarily represent the most heavily contaminated land but reflect where SEPA, the enforcing authority for such sites, are considered better placed to secure the remediation.
Specific Terms	
Site Inspection	A basic assessment of a site which involves a site visit
Desk Study	As Site Inspection, but more detailed analysis of sources, receptors and pathways with inclusion of a conceptual Site Model and Qualitative Risk Assessment.
Preliminary Investigation	An initial intrusive investigation to determine and confirm presence of sources, pathways or receptors.
Detailed Investigation	A detailed intrusive investigation of the sources pathways ad receptors at a site with Conceptual Site Model and qualitative, semi-quantitative and quantitative risk assessment as required
Remediation	Risk management actions at a site to minimise or mitigate risk resulting from contamination.

Appendices

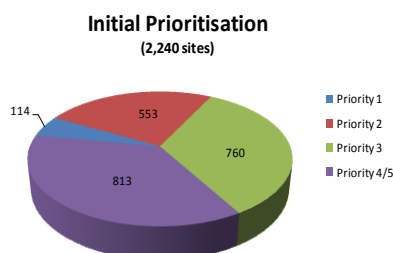
- Appendix 1: Current Status**
- Appendix 2: Information Sources**
- Appendix 3: Priority Definitions**
- Appendix 4: Local Authority Contacts**

Appendix 1: Current Status

A1.1 Initial Prioritisation

The initial prioritisation process identified 2,240 historical industrial sites in the district where there is a potential for contamination. The risk based process prioritised all of these sites into 5 categories. Priority 1 (very high risk), Priority 2 (high risk) and priority 3 (medium risk) are all categories where further inspection is required. Priority 4 (low) and Priority 5 (very low) are categories that do not require inspection.

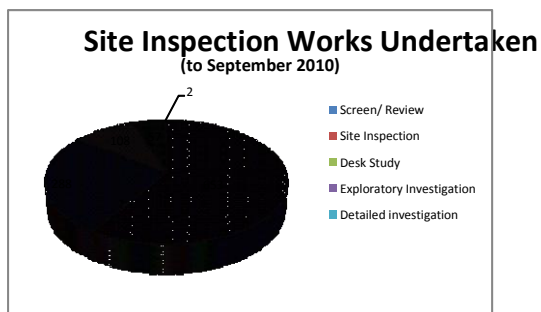
Figure A1: Initial Prioritisation



A1.2 Inspection Works Undertaken

Screening, site inspection, desk studies, exploratory investigations, detailed investigations are all tools of the overall Inspection process. The inspection programme has been operating from 2003 after completion of the Initial Prioritisation process. The following Inspection Works have been completed to date (September 2010).

Figure A2 : Inspection Works Completed (September 2010)



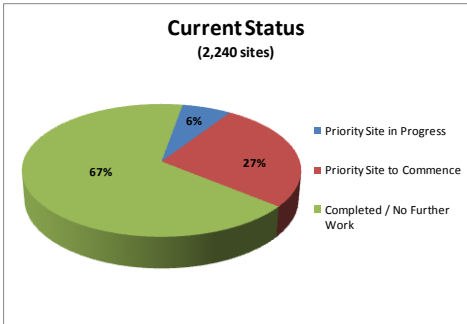
1,108 Inspection Works have been completed on 831¹ sites primarily linked to Priority 1, 2 and 3. Of the 831 sites, 685 have been re-prioritised to No Further Action. All (initially prioritised) Priority 1 and 2 sites have been inspected, with 94 sites still in the Inspection process.

A1.3 Inspection Status

In Total 1,498 sites have been completed or there is No Further Action, 146 sites are still being inspected and 596 sites have still to commence some form of inspection (all of which were initially Priority 3).

Figure A3 Current Status (September 2010)

¹ Some sites have been inspected and then re-inspected as part of this process



The Inspection process has also focussed on sensitive current uses (see Fig A6 for profile of current uses for the 2,240 former industrial sites) such as sites that are currently used for residential.

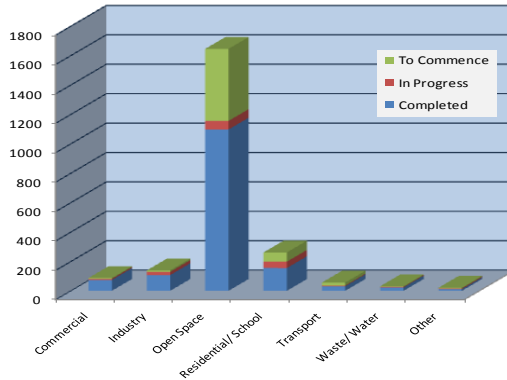
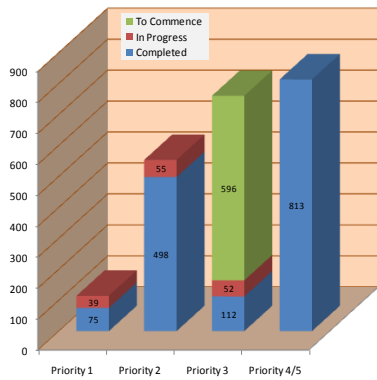
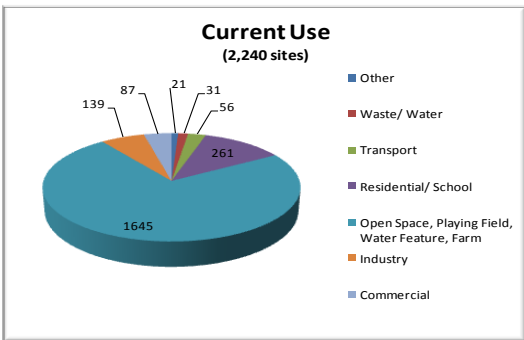


Figure A4 : Current Status by Initial Priority level

Figure A5: Current Status based on Current Use Class

Figure A6: Profile of Current Use



A1.4 Contaminated Land Status

The following highlights the Contaminated Land Status of East Ayrshire in respect to the public registers required under Part IIA.

Public Register Requirement	East Ayrshire Council (2010)	Scotland Total (2009)
Land Designated as Contaminated Land	0	13
Land Designated as Special Site	0	3
Remediation Notices	0	0
Remediation Declarations	0	6
Remediation Statement	0	5

Convictions	0	Not Reported
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This shows that no land has been designated. The Council promotes action through the planning system, voluntary remediation and working in partnership to achieve regulatory and corporate aims.

A1.4.1 Comparison

The SEPA publication 'dealing with land contamination in Scotland (A Review of progress 2000 – 2008)' provides a summary account of the progress made in managing Part IIA regulatory processes in Scotland. The following table highlights some key comparisons:

Category	East Ayrshire Council (2010)	Scotland Total (2008)	Average by LA	Comment
Number of Sites Inspected	831	13,396	418	EAC have inspected double that of the LA average.
Number of Sites still requiring Inspection	596	40,204	1,256	EAC have half the number of sites of the LA average that still require an inspection
Staffing (FTE)	1	79.6	2.5	EAC have 40% of the average LA staff dealing with Contaminated Land

Note: Minimal inspections were undertaken by EAC during 2009 so the data is still suitable for reasonable comparison.

A1.5 Future Actions

A1.5.1 Current Inspection Programme

There are 146 sites currently classed as Priority 2 (6 sites) and 3 (140 sites) which are current within the inspection process (those which were originally classed as Priority 1 and 2). The current programme is as follows:

Current Priority 2 Sites

Further intrusive/ detailed investigation is required on 5 sites (2 sites are residential) and remediation is required on 1 site (residential). Pre-contract works are in progress to allow remediation to be completed.

Current Priority 3 Sites

There are 31 residential sites for which further site inspection works are required and a further 109 non residential sites, which will take second priority. Many of the sites are currently in the process of having work undertaken but have not yet been completed or reported. It is estimated that 50 reviews, 4 desk studies, 10 exploratory investigations and 10 detailed investigations and 2 remedial works will be required within 2010 and 2012.

Sites still to be commenced

There are 596 (Initial Priority 3) sites that require some form of inspection.

Inspection Type	2010	2011	2012	2013
Site Screening	596	0	0	0
Site Inspection	102 (residential)	100	100	0
Desk Study	0	5	10	10
Preliminary Investigation		10	20	20
Detailed			5	5

<i>Investigation</i>				
<i>Remediation</i>				2

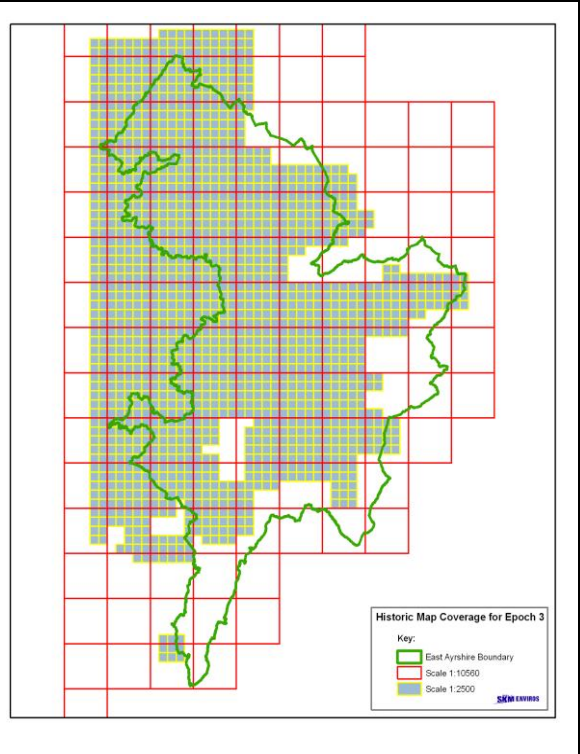
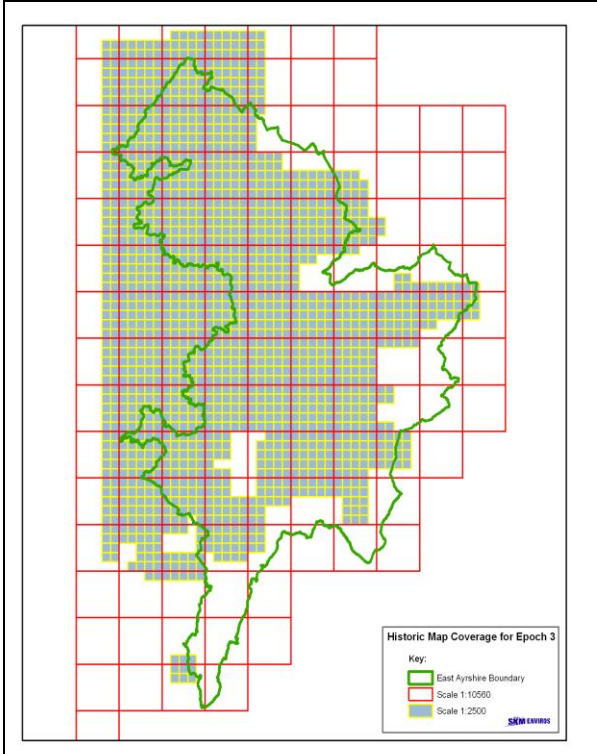
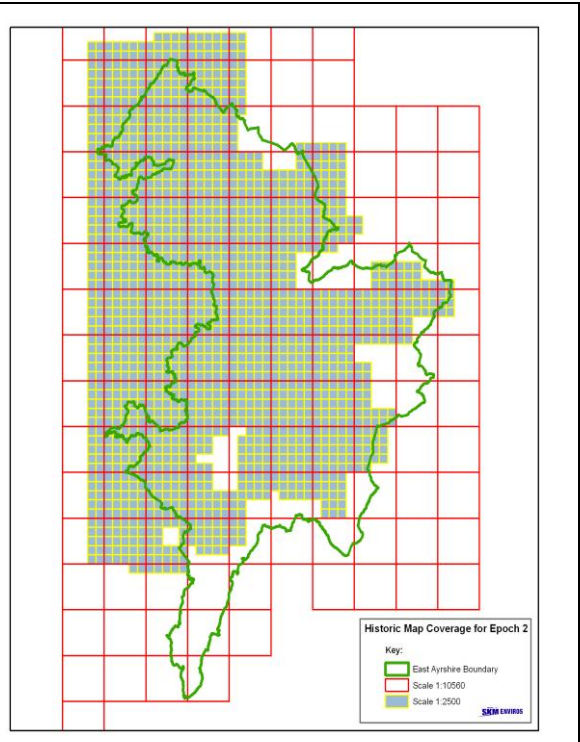
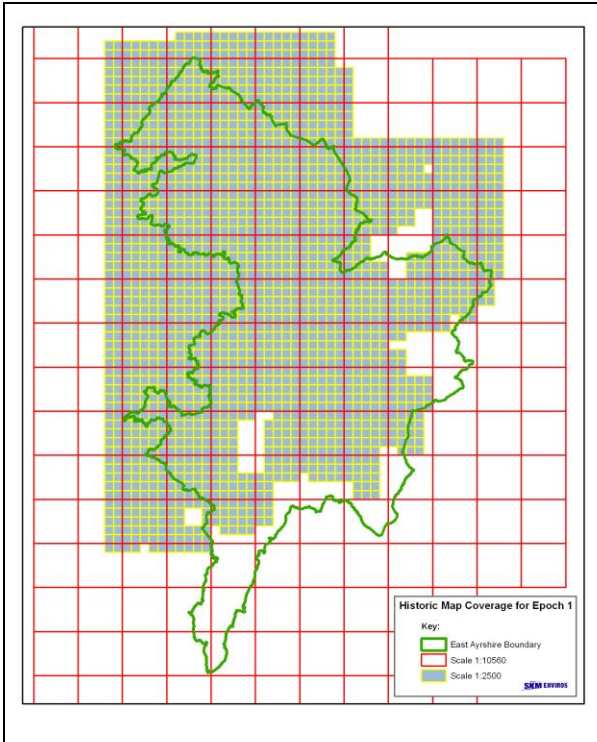
Italics: Estimated based on existing experience

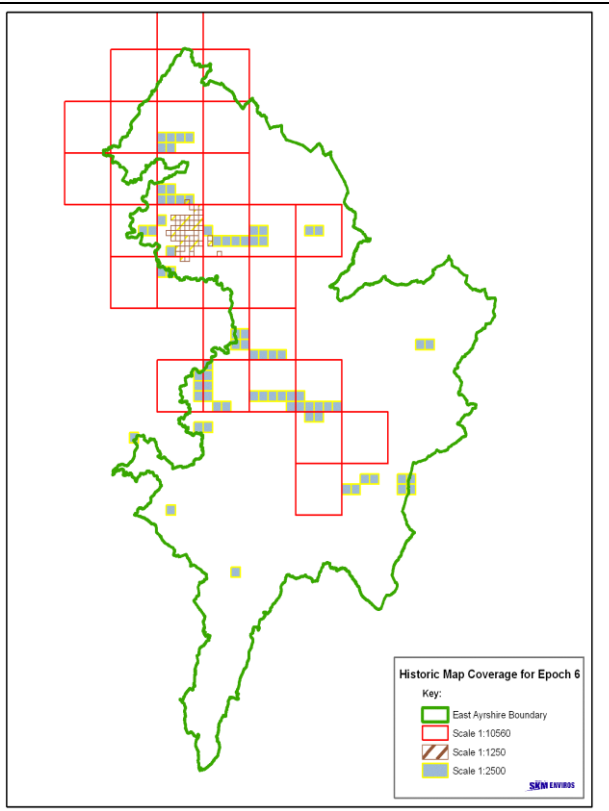
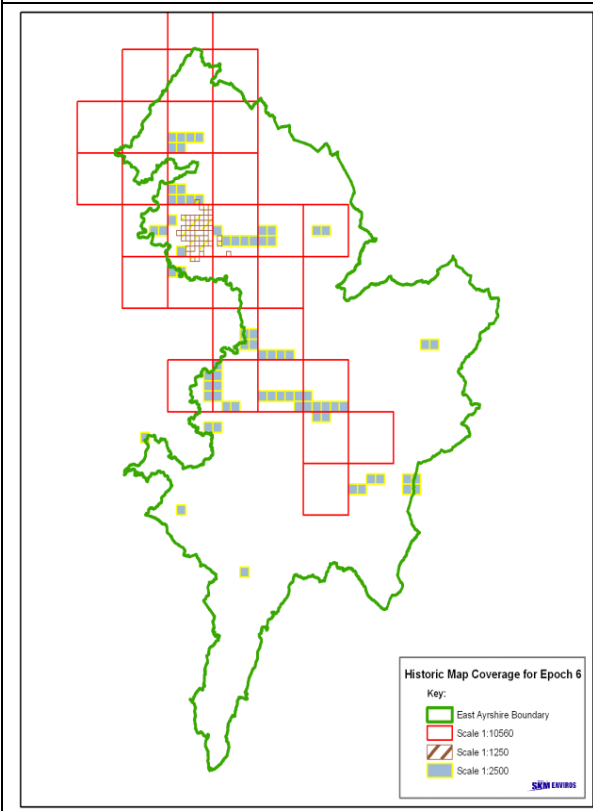
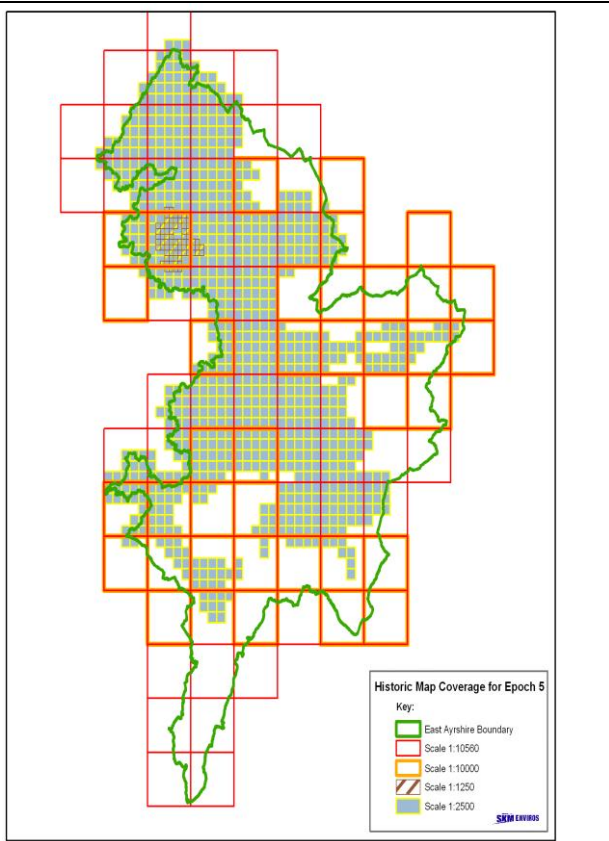
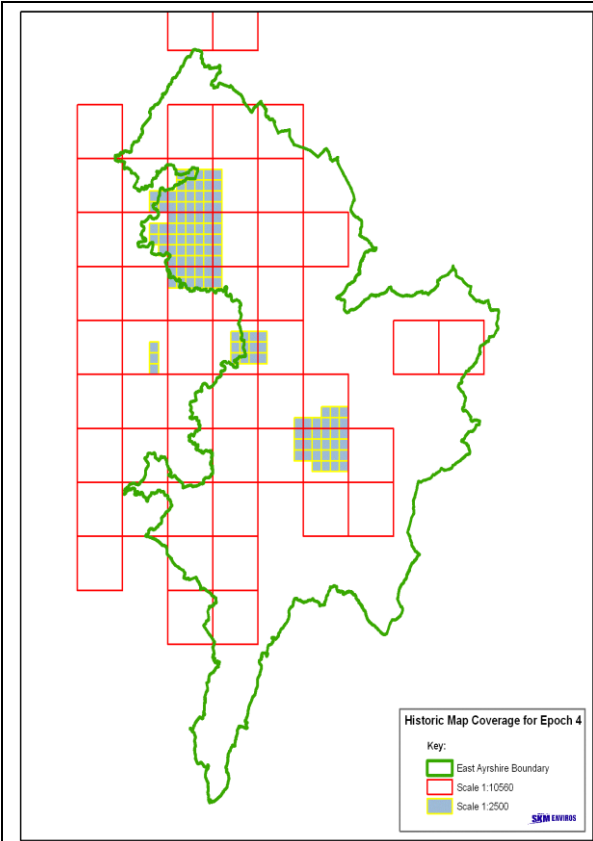
It is estimated that on the basis of current operational rates that all sites will have had some form of inspection by 2013. At this point the requirement will be to manage changes of use through the Planning (PAN 33 process).

Appendix 2: Information Sources

Key Information Sources

Supplier	Data	Use
Ordnance Survey Mapping	Mastermap, Address Point, 1:10,000, 1:25,000 and 1:50,000 mapping	Base Information, current use analysis, locating water features
Local Authority	Local Gazetteer, Planning Application Data, Local Plan Data, Vacant & derelict land survey	Current Use, Planning, identifying development areas, locating designated or protected sites
Landmark Information Group	Historical Maps: Digital Maps all available scales and epochs, HLUd data	Identification of sources
Hydrogeological Maps	Groundwater vulnerability maps	Assessment of groundwater vulnerability
Macaulay Land Use Research Institute	Soil Quality Land Use Maps	Identification of sensitive agriculture areas
Local Authority	Environmental Service Records : Local consents, authorisations	Identification of historical sources
SEPA	River quality, Flooding, PPC facilities, Waste management licenses, Radioactive Substances Registers	Determination of water sensitivity, location of sources
BGS	Geological maps: solid, drift, hazard, remote sensing data	Determination of pathways
Aerial Imagery	Aerial Images across district	Visualisation, confirmation of land use, identification of affected areas
Coal Authority	Coal Mine entries, underlying workings	Identification of source and pathways
Scottish Natural Heritage	Protected areas, habitats and species	Determining sensitive receptors
Historic Scotland	Protected historic areas, buildings and monument	Determining sensitive receptors
Council Trading Standards	Licensed Fuel storage areas, details of accidents and spills	Determining potential sources





Appendix 3: Priority Definitions

Priority Definitions

<p>Priority 1 (Very High Risk)</p>	<p>The presence of contamination on the site is known or considered to be highly likely and there are sensitive receptor(s) present. Assessment of the site shows that there is a high likelihood that there is a pathway present that has the potential in the short term to cause significant harm or significant pollution of the water environment but further data collection is required to confirm this.</p>
<p>Priority 2 (High Risk)</p>	<p>The presence of contamination on the site is considered likely and there are sensitive receptor(s) present. Assessment of the site shows that there is likely to be a pathway present that has the potential to cause significant harm or significant pollution of the water environment but further data collection is required to confirm this</p>
<p>Priority 3 (Medium Risk)</p>	<p>The presence of contamination on the site has not been confirmed but is considered possible and there are sensitive receptor(s) present. Assessment of the site shows that it is possible that there is a pathway present that has a potential to cause significant harm or significant pollution of the water environment but further data collection is required to confirm this.</p>
<p>Priority 4 (Low Risk)</p>	<p>There is less certainty that a contamination source, pathway and receptor are in place. Assessment of the site shows that there is a low likelihood that a pathway present that has the potential to cause harm or significant pollution to the water environment.</p> <p>No Inspection Works Required. Dealt with under PAN 33 where there is a development or a change in site use.</p>
<p>Priority 5 (Very Low Risk)</p>	<p>There are no source-pathway-receptor linkages identified. Assessment of the site shows that is unlikely that there is a pathway present that has the potential to cause significant harm or significant pollution to the water environment.</p> <p>No Inspection Works Required. Dealt with under PAN 33 where there is a development or a change in site use.</p>

Appendix 5: Local Authority Contacts

East Ayrshire Council

Council Headquarters
London Road
Kilmarnock
KA3 7BO
Tel: 01563 576000

Web Site: www.east-ayrshire.gov.uk

Environmental Health

Contaminated Land Officer
Environmental Health
Western Road
Kilmarnock
KA3 1LL

Tel: 01563 554016
e-mail address Chris.Johnson@east-ayrshire.gov.uk

Planning and Economic Development

6 Croft Street
Kilmarnock
KA11 JB
Tel: 01563 576790