Department of the Environmrnt PPG23
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PLANNING POLICY GUIDANCE:

PLANNING AND POLLUTION CONTROL

Planning Policy Guidance notes set out the Governments policies on different aspects of planning. They must be taken into account by local planning authorities as they prepare their development plans, and may be material to decisions in individual planning applications and appeals.

This PPG gives guidance for the first time on the relevance of pollution controls to the exercise of planning functions. It fulfils a commitment given in the Environment White Paper -"This Common Inheritance". It gives advice on the relationship between authorities' planning responsibilities and the separate statutory responsibilities exercised by local authorities and other pollution control bodies, principally under the Environmental Protection Act 1990 and the Water Resources Act 1991. In particular, it advises that local planning authorities should not seek to duplicate controls which are the statutory responsibility of other bodies (including local authorities in their non-planning functions). It makes clear that close co-ordination among all concerned will be needed to ensure speedy decisions in a complex network of essential regulation. It also provides guidance to planning authorities on the implementation of the EC Waste Framework Directive.

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1 PLANNING AND POLLUTION CONTROLS

Introduction

1.1 This PPG gives advice on the relationship between controls over development under planning law, on the one hand, and under pollution control legislation on the other. It is particularly relevant to industrial development and waste treatment and disposal sites posing a potential for pollution, and the redevelopment of contaminated land. It also provides guidance on development proposals near such sites or land.

1.2 The planning and pollution control systems are separate but complementary in that both are designed to protect the environment from the potential harm caused by development and operations, but with different objectives. In recent years, increasing awareness of environmental priorities has led local planning authorities to take a greater interest in controlling potentially polluting activities. Yet at the same time the effectiveness and scope of environmental protection legislation has expanded rapidly.

1.3 The planning system should not be operated so as to duplicate controls which are the statutory responsibility of other bodies (including local authorities in their non-planning functions). Planning controls, except where they are applied in the context of hazardous substances consents, are not an appropriate means of regulating the detailed characteristics of potentially polluting activities. This advice follows the Court of Appeal's decision in Gateshead MBC v. the Secretary of State for the Environment and Northumbrian Water Group plc about the relationship between controls exercised under the Town and Country Planning Act 1990 and powers available under Part I of the Environmental Protection Act 1990.

1.4 The aim of the PPG is to encourage close consultation and prevent unnecessary duplication and conflict of interest between planning and pollution control authorities; in this way decisions can be based upon adequate information and a proper understanding of the scope and requirements of the two regimes, and costly delays in the decision.

1.5 This introductory chapter is followed by two main parts, offering guidance on:
- the approach to the types of development mentioned above in regional planning guidance and development plans (Chapter 2); and
- the consideration of individual planning decisions where control of pollution may be an issue (Chapter 3).

Chapter 4 is concerned with planning decisions where contaminated land is an issue, and Chapter 5 deals with waste disposal and planning. The annexes provide information on particular aspects of pollution control and on planning matters relevant to this PPG.

1.6 This PPG does not cover several topics on which separate advice has recently been issued, or will shortly be issued:
- noise (to be the subject of a forthcoming PPG);
- litter (Code of Practice on Litter and Refuse available from HMSO (ISBN 0 752363-

1) to be revised later in 1994);
- pollution of the marine environment (except insofar as it relates to land-based developments subject to planning control - see PPG 20 on Coastal Planning);
- hazardous substances controls and the role of the Health and Safety Executive in the planning system (see Circular 11/92); advice on the potential interaction between hazardous substances controls and pollution controls is given in paragraphs 1.38 and 1.39 of this PPG.

Separate advice has been published on environmental assessment and the planning system (Circular 15/88). This PPG does not cover radioactive substances; nevertheless the PPG? s advice on the non-duplication of planning and regulatory functions applies equally well to radioactive waste management. Guidance on the issues raised by the winning and working of minerals, including the depositing and management of mineral waste, and of the interface with pollution control, is given separately in the series of Mineral Planning Guidance notes (MPGs).

1.7 Further advice on the general principles under which the planning system is to operate is in PPGl, in PPG4 on industrial development, and in PPG13 on Transport.

1.8 This PPG does not address the indirect consequences of development, such as pollution that might arise from increases in road traffic stimulated by development.

1.9 Pollution can arise from a variety of sources, including particular industrial activities, refineries, power generation and agriculture, as well as from the construction of the development itself. It can also arise from waste storage, treatment and disposal facilities and is present in contaminated land. Polluting substances can enter air, water or land, or any combination of them.

This PPG is concerned with how the possibility of the release of such polluting substances is to be taken into account in the planning system. It advises that the planning interest must focus on any potential for pollution, but only to the extent that it may affect the current and future uses of land.

Control systems

1.10 The Government attaches great importance to controlling and minimising pollution. The Environment White Paper, 'This Common Inheritance' (1990), made clear the Government's commitment to sustainable development, and stated that the Government will apply policies to:
- prevent pollution at source;
- minimise the risk to human health and the environment;
- encourage the most advanced technical solutions that can be cost-effectively applied; and
- apply a critical a loads approach to pollution, in order to protect the most vulnerable environments.

1.11 The planning system complements these pollution control policies by regulating: - the location of development and the control of operations in order to avoid or minimise adverse effects on the use of land and on the environment; and

- what happens after any development or use of land, so that land (and water resources) are restored to such a condition as to be capable of the agreed after use, once any development or use of land has ceased.

1.12 The Environment White Paper stressed that the Government? s approach to pollution issues is a precautionary one. Where there are significant risks of damage to the environment, pollution controls will take into account the need to prevent or limit harm, even where scientific knowledge is not conclusive. This ? precautionary' principle applies particularly where there are good grounds for judging either that action taken promptly at comparatively low cost may avoid more costly damage later, or that irreversible effects may follow if action is delayed. As the Environment White Paper also made clear, however, action on the environment has to be proportionate to the risks and costs involved, and to the ability of those affected to pay those costs.

The pollution control system

1.13 Pollution controls are administered by a number of organisations and through a variety of mechanisms, including licensing and authorisation procedures which are applied to processes and substances which can have potentially harmful effects on the environment. In the past few years a substantial body of new legislation has extended the scope and effectiveness of pollution controls. The Water Act 1989 (now mainly consolidated into the Water Resources Act 1991 and the Water Industry Act 1991) and Parts I and II of the Environmental Protection Act 1990 (EPA 1990) are the main vehicles. A business or process subject to this legislation cannot operate without a pollution control consent, licence or authorisation where this is required.

1.14 For the purposes of Part I of the EPA 1990, pollution of the environment is: due to the release (into any environmental medium) from any process of substances which are capable of causing harm to man or any other living organisms supported by the environment.

Harm means 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 offence caused to any of his senses or harm to his property. Harm would include, for example, harm caused by offensive smells. Noise, however, would not normally be pollution of the environment as it is not normally caused by the release of potentially harmful substances.

1.15 Full details of these pollution control systems are set out in Annexes 1-4, covering Integrated Pollution Control and controls over air quality, water quality and waste management.

1.16 This Planning Policy Guidance note is drafted on the basis of arrangements in force on 1st June 1994. The Government has announced plans to create a new, independent Environment Agency for England and Wales, which will bring together the responsibilities of Her Majesty's Inspectorate of Pollution (HMIP), the National Rivers Authority (NRA) and the waste regulation functions of local government. The Government intends to establish the Agency as soon as possible and will bring forward the necessary legislation at the earliest opportunity. This will include alternative

provisions to replace the waste disposal plans currently drawn up by waste regulation authorities under section 50 of the EPA 1990. This guidance will be updated if necessary to reflect any such changes to the arrangements for waste management planning.

Integrated Pollution Control

1.17 Substantial new powers to control pollution from a wide range of industrial processes were introduced by Part I of the EPA 1990. Industrial processes with the greatest pollution potential come under Integrated Pollution Control (IPC), regulated by Her Majesty's Inspectorate of Pollution (HMIP), which was established in 1987 as part of the Department of the Environment. IPC came into effect from 1 April 1991 for all new prescribed processes and existing processes undergoing substantial change. Controls over other existing prescribed processes are being phased in over a 5-year period. Operators of these processes - which are prescribed by regulations - must consider the impact on the environment as a whole of all releases, whether to air, land or water, or to any combination of these. Authorisations contain conditions requiring the use of the ? best available techniques not entailing excessive cost' (BATNEEC) to prevent or minimise and render harmless releases of polluting substances; the Chief Inspector of HMIP is publishing guidance on what constitutes BATNEEC for different categories of process.

1.18 Where releases to more than one medium are likely to occur, operators must use BATNEEC to achieve the ? best practicable environmental option' (BPEO) in order to ensure that pollution which may be caused to the environment taken as a whole is minimised. HMIP must also be satisfied that any
prescribed national environmental quality standards or objectives, and requirements stemming from international obligations, are met.

Air quality

1.19 Many industrial processes which are outside the scope of IPC are covered by Local Authority Air Pollution Control (LAAPC), which was also introduced by Part I of the EPA 1990. District councils and port health authorities have responsibility for enforcing LAAPC and the smoke, grit and dust controls of the Clean Air Act 1993. With the exception of the requirement to achieve BPEO, the principles and procedures applicable to IPC generally apply under LAAPC. The Secretary of State has published guidance notes advising on what standards amount to BATNEEC for different sectors of industry, and local authorities are obliged to have regard to these notes. For a list of the published notes, see ? Secretary of State? s Guidance -Revisions/Additions to Existing Processes and General Guidance Notes: No 1", available from HMSO.

1.20 In addition, air quality standards for smoke and sulphur dioxide, lead and nitrogen dioxide have been prescribed in European Community (EC) directives and implementing regulations, and the Government has established an expert panel to advise on the establishment of additional standards. The Government has a number of air quality monitoring networks, which are supplemented by monitoring undertaken by individual local authorities.

Water quality

1.21 The National Rivers Authority (NRA) is responsible for policing and protecting the quality of inland, coastal and underground waters, for conserving and enhancing water resources, and for licensing water abstraction. It controls effluent discharges from processes not falling within HMIP? s control, as well as from water and sewerage companies and all other types of dischargers. From 1994, the Government intends to phase in a general system of statutory water quality objectives, initially in respect of rivers (some objectives are already in force in respect of EC Directives). The NRA must ensure, as far as practicable, that the objectives are achieved. At present, the water quality objectives which underlie the system of controlling the environmental quality of rivers have no formal basis, with the exception of certain EC water quality directives, and the system does not extend to all types of water.

1.22 Sewerage undertakers - the water and sewerage companies - are responsible for regulating discharges of waste effluents from trade premises into the sewerage system through a system of trade effluent consents. Trade effluent consents impose conditions to protect the sewerage system and sewage treatment works from damage, and to ensure that the sewerage undertaker can meet the standards set by the NRA for its own discharges from the sewage treatment works. Discharges containing the most dangerous ('Red List')* substances, or derived from certain prescribed substances, are referred to the Secretary of State to determine appropriate consent conditions. HMIP acts on behalf of the Secretary of State in this matter.

1.23 The Government continues to strengthen measures to improve the water environment. For example, it has introduced regulations to set minimum standards for the construction of silage, slurry and agricultural fuel oil stores (The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991) (S.I. 1991/324). The regulations also enable the NRA to require farmers to improve existing installations where there is a significant risk of pollution. Regulatory action should greatly reduce the number of pollution incidents in the agricultural sector from structural failures. The Government intends to consult on the introduction of similar regulations for industrial fuel oil stores.

Waste management

1.24 An enhanced licensing system for the management of controlled waste came into force on 1 May 1994. Part II of the EPA 1990 as implemented through the Waste Management Licensing Regulations 1994 (S.I 1994/1056) provides more thorough protection of man and the environment; the Regulations implement the EC Waste Framework Directive and impose certain obligations on local planning authorities (see Chapter 5 below). The implementation of the new licensing system is the responsibility of waste regulation authorities. Applicants for licences will have to demonstrate that they have the financial and technical competence to do the job.

1.25 In determining whether pollution has been caused as a result of a release or escape of substances or articles from land on or in which controlled waste has been placed, specific consideration must be given to the quantity or concentration of the substances or articles involved.

1.26 Part II of the EPA 1990 also imposes a new responsibility for pollution control on sites where waste management has ceased. Operators will continue to be responsible for sites, and will not be permitted to surrender their licences until the waste regulation authority is satisfied that the site is unlikely to result in environmental damage or harm to human health. Operators will be responsible for monitoring and cleaning up the site if necessary.

1.27 Waste regulation authorities are non-metropolitan English counties, specific statutory authorities for Greater London, Greater Manchester and Merseyside, and the district councils in other metropolitan areas. In each metropolitan area where there is not a statutory authority, the districts have formed themselves into voluntary groupings for the purposes of carrying out their waste regulation functions. Waste regulation authorities will, among their functions, be responsible for implementing the new licensing system, maintaining registers of waste carriers and brokers, monitoring movements of special waste, and drawing up waste disposal plans for their area.

1.28 The 'duty of care' provisions of the EPA 1990 were brought fully into force on I April 1992 and impose a legal liability on all waste holders for the proper disposal of waste within their care.

Other controls

1.29 In addition, district councils have control over such pollutants as noise, dust and odours which are prejudicial to health or a nuisance under the statutory nuisance provisions of Part III of the EPA 1990.

Access to information

1.30 Access to information is an essential aspect of all the pollution control regimes outlined above. Annex S discusses the public registers on which information about potentially-polluting development may be found.

The planning system

1.31 The planning system controls the development and use of land in the public interest. It has an important role to play in determining the location of development which may give rise to pollution. The potential for pollution affecting the use of land, eg for other development or agriculture, is capable of being a material consideration in deciding whether to grant planning permission. Similar considerations may arise in deciding whether to take enforcement action against existing unauthorised development.

1.32 The planning system should also control other development in proximity to potential sources of pollution. In this way the occupants of the new development can be protected from pollution, and existing potentially polluting industry should not face unreasonable additional constraints.

1.33 The role of the planning system focuses on whether the development itself is an

acceptable use of the land rather than the control of the processes or substances themselves. It also assumes that the pollution control regime will operate effectively. In the case of developments with which this PPG is concerned, the material considerations are likely to include:
- location, taking into account such considerations as the reasons for selecting the chosen site itself;
- impact on amenity;
- the risk and impact of potential pollution from the development insofar as this might have an effect on the use of other land;
- prevention of nuisance;
- impact on the road and other transport networks and on the surrounding environment; and
- need, where relevant, and feasibility of restoring the land to standards sufficient for an appropriate after use.

Planning controls can therefore complement the pollution control regime, and thus help to secure the proper operation and rehabilitation of potentially polluting development.

1.34 The dividing line between planning and pollution controls is not always clear cut. Both seek to protect the environment. Matters which will be relevant to a pollution control authorisation or licence may also be material considerations to be taken into account in planning decisions. The weight to be attached to such matters will depend on the scope of the pollution control system in each particular case.

Planning authorities will need to consult pollution control authorities in order that they can take account of the scope and requirements of the relevant pollution controls. Planning authorities should work on the assumption that the pollution control regimes will be properly applied and enforced. They should not seek to substitute their own judgement on pollution control issues for that of the bodies with the relevant expertise and the statutory responsibility for that control.

1.35 In some cases, the scope for the planning system in protecting the environment will go wider than that of the pollution control regime. Under the planning system 'Harm' can have a wider meaning than under Parts I and II of the EPA 1990, extending, for example, to unsightly development and loss of amenity in the wider sense.

1.36 In deciding whether to grant planning permission, planning authorities must be satisfied that planning permission can be granted on land-use grounds, and that concerns about potential releases can be left for the pollution control authority to take into account in considering the application for the authorisation or licence. Alternatively, they may conclude that the wider impact of potential releases on the development and use of land is unacceptable in all the circumstances on planning grounds, despite the grant, or potential grant, of a pollution control authorisation or licence.

1.37 Local authorities must operate their various control systems at arms? length in accordance with the respective regulations and guidance. They should not rely on their powers in relation to waste management or air pollution to achieve purposes for which

planning law is the proper mechanism and vice versa.

Hazardous substances consent

1.38 The Planning (Hazardous Substances) Act 1990, which came into force on 1 June 1992, introduced specific planning controls over the storage and use of hazardous substances, additional to controls over development. Hazardous substances consent is required for the presence of a hazardous substance in an amount at or above its controlled quantity. The purpose of these controls is to give hazardous substances authorities (normally district or London borough councils) the opportunity to consider whether the proposed storage or use of a significant quantity of a hazardous substance is appropriate in a particular location, having regard to the risks arising to people in the surrounding area.

1.39 These controls have been designed to minimise, so far as appropriate, the potential overlap with other forms of control. They do not apply to controlled wastes, as defined in section 75(4) of the EPA 1990, or radioactive waste, as defined in section 2 of the Radioactive Substances Act 1993. Storage or use of certain hazardous substances could occur, however, as part of a process prescribed for IPC or LAAPC under Part I of the EPA 1990. (See paragraph 3.14 below).

*See the Trade Effluent (Prescribed Processes and Substances) Regulations 1989 (S.l. 1989/1156 as amended by S.l. 1990/1629), and the Trade Effluent (Prescribed Processes and Substances) Regulations (S.l. 1992/339).

2 REGIONAL PLANNING GUIDANCE AND DEVELOPMENT PLANS

Regional Planning Guidance

2.1 In drawing up development plans, planning authorities must have regard to national planning policy guidance (in PPGs and MPGs) as well as to any regional guidance. They must also comply with any EC requirements - in particular the Framework Directive on Waste (75/442/EEC as amended by 91/156/EEC and 91/692/EEC) - see paragraphs 2.6 to 2.9 below. In setting the broad framework for development in the region, regional guidance may indicate the scale of longer-term demands for land for potentially polluting development, including land for waste management facilities, and any constraints on development arising from the cumulative impact of existing and proposed polluting uses. It should set out guidelines to ensure that structure plans can identify the general locations for, or criteria for the location of, particular industries or facilities that have a regional or national role, (eg large municipal incinerators or specialist waste incinerators or major landfill sites).

Government guidance on waste disposal policy

2.2 The Government's general policy towards waste management is based on a hierarchy of:
- reduction;
- re-use;
- recovery (including material recycling, energy recovery and composting);
- safe disposal.

The appropriate management option in any case will vary according to the waste stream and local considerations, but the Government is clear that a sustainable approach to waste management requires greater emphasis on options at the top of the hierarchy and less reliance on simple disposal without recovery.

2.3 The Government also subscribes to the ? proximity principle? , under which waste should be disposed of (or otherwise managed) close to the point at which it is generated. This creates a more responsible, and hence sustainable, approach to the generation of wastes, and also limits pollution from transport. Where waste cannot be disposed of reasonably close to its source, then priority should be given to the use of rail or water transport where this would reduce the overall environmental impact, and is economically feasible.

2.4 The distances waste should travel under the proximity principle will vary according to the particular circumstances. It should normally be practicable to dispose of general municipal waste in suitable facilities reasonably close to the point of its generation - although care should be taken not to frustrate other planning objectives (eg the regeneration of an area). Transport over longer distances may be justified for other wastes for which specialised facilities are required and where it would not be economic for every region to have one. This may also apply to waste recycling or recovery facilities, although these should increasingly become more locally available in line with the principles set out at paragraph 2.2.

2.5 Even allowing for these considerations, the proximity principle should result in the great majority of waste being disposed of within the region of its generation. Each region should therefore expect to provide sufficient facilities to treat or dispose of all the waste it produces, and development plans should reflect this need. This should not prevent waste from moving across regional boundaries if that represents the best practical environmental option (eg because the transport distance is shorter), nor should it make it acceptable for waste to be transported from one side of the region to the other, when there are adequate facilities nearby - the proximity principle still applies. However, any exception to the principle of regional self-sufficiency (eg for specialised wastes which cannot reasonably be treated locally) can only be justified if the availability of alternative facilities outside the region can be clearly identified.

EC Waste Framework Directive

2.6 Provisions to implement the amended EC Framework Directive on Waste (75/442/EEC as amended by 91/156/EEC and 91/692/EEC) are contained in the Waste Management Licensing Regulations 1994 (S.I.1994/1056). These regulations place certain obligations on plan-making authorities (which include local planning authorities) in drawing up their plans. Guidance on the consequences for planning authorities in drawing up development plans is set out below. More detailed guidance on the way these provisions operate is contained in Annex 1 to DOE Circular 11/94 ? Environmental Protection Act 1990: Part II, Waste Management Licensing, The Framework Directive on Waste'.

2.7 Article 7 of the Directive requires competent authorities to draw up plans relating to:
- the type, quantity and origin of waste to be recovered or disposed of;
- general technical requirements;
- any special arrangements for particular wastes; and suitable disposal sites or installations.

Waste disposal plans drawn up under section 50 of the EPA 1990 implement the first three of these requirements, and partially implement the last in that it requires waste regulation authorities to identify existing disposal sites and those which they expect to be provided. Waste disposal plans do not, however, consider sites or criteria for new facilities, because that is the role of the local planning authority. The Waste Management Licensing Regulations accordingly place a specific duty on planning authorities to include in their development plans policies in respect of suitable waste disposal sites or installations.

2.8 In carrying out this duty, planning authorities must have regard to certain 'relevant objectives' which are set out in the Directive, and defined in paragraph 4 of Part I of Schedule 4 to the Regulations. These are set out in full in Annex 6. Thus, in particular, local planning authorities must ensure that the policies in their development plans for suitable disposal sites or installations have regard specifically to these relevant objectives. Local planning authorities should state clearly in their plan that they have had regard to these objectives.

2.9 The objectives in Article 3 of the Directive deal with the need to minimise waste as far as possible, and to encourage materials recycling and energy recovery. This is in line with the Government's Sustainable Development Strategy (Cm 2426) that planning policies should encourage methods of waste management that have the least overall environmental impact, taking into account the potential for energy or materials recovery. The objectives in Article 4 deal with the need to protect the environment and human health, and should be considered in the context of the impact of potentially polluting developments on the land use and amenity of the area. Finally, the objectives in Article 5 are concerned with establishing an integrated network of disposal installations, which will enable self-sufficiency at both the national and EC level, and disposal by suitable means in accordance with the proximity principle. This will be relevant when considering the location of disposal sites in relation to other facilities and the sources of waste. The proximity principle set out in paragraphs 2.2 to 2.5 above is consistent with these objectives.

Development plans

2.10 Outside the metropolitan areas, development plans comprise the county structure plan and various local plans. In metropolitan areas these elements are combined into unitary development plans (UDPs). In National Parks special arrangements apply. Full guidance on the preparation of plans is set out in PPG12 Development Plans and Regional Planning Guidance.

2.11 In drawing up their development plans planning authorities should consult all those with an interest, including industrial and agricultural interests, so that plans can make realistic provision for the range of industries and facilities likely to be needed. There are statutory requirements for consultation with the NRA, and PPG12 advises on the circumstances in which HMIP and the Health and Safety Executive should be consulted. It will also be appropriate to consult with the relevant department of the local authority and the waste regulation authority on matters concerning air pollution control and waste management respectively.

2.12 Development plans are an important vehicle for promoting environmental protection through integrated land-use planning policies. They can set out policies and proposals to ensure that incompatible uses of land are separated, in order to avoid potential conflict between different types of development. They should make realistic provision for the types of industry or facility which may be detrimental to amenity or conservation interests, or a potential source of pollution. They can set out criteria by which applications for potentially polluting development may be determined. It is important that these criteria should not be drawn up to exclude all provision in plans for potentially polluting development projects (including waste management facilities) or to prohibit all applications to set them up.

2.13 In formulating their policies and proposals, planning authorities should consult pollution control authorities and have regard to the impact such policies and proposals will have on the environment (taking account of the extent to which they will be subject to pollution control). However they should not seek to substitute their own judgment for that of the pollution control authorities through over-prescriptive development plan policies. PPG12 and ? Environmental Appraisal of Development

Plans: A Good Practice Guide' provide advice on the environmental appraisal of plans.

Structure plans

2.14 Structure Plans (including UDP Part Is) must have regard to regional and national guidance provided by the Secretary of State and provide the framework for local plan preparation. They provide a means of balancing the needs of potentially polluting activities with other priorities, such as the improvement of the physical environment, the conservation of the natural environment and amenity, the protection of natural resources and for economic development. Key topics to be covered in such plans (see paragraph 5.9 of PPG 12) include major industrial developments and waste treatment and disposal facilities.

2.15 Structure plans should include strategic land use policies on the location of potentially polluting developments and on the location of sensitive developments in the vicinity of existing polluting development. They should establish appropriate criteria to enable broad areas of search to be identified in local plans. Through locational policies, counties may give priority, where appropriate, to developments where the availability of suitable sites is limited, and where districts need strategic direction; they may also identify constraints on development in particular areas arising from the cumulative impact of existing and future polluting uses of land.

2.16 Structure plans should include strategic waste policies to ensure that detailed waste local plans provide for facilities and arrangements to meet the estimated need over the plan period, as indicated in the waste disposal plan (see paragraphs 2.25 and 2.26). Strategic waste policies should: - show broad areas of search for sites that are appropriate for waste disposal by landfill, having regard to existing provision and future needs, availability of potential void space such as mineral workings, as well as to access, geology, hydrogeology and other relevant factors, and set out overall planning criteria for the acceptability of sites; - take account of the availability of areas for industrial use which may be suitable for waste incineration and other waste management facilities; - have regard to the potential for access to sites by rail and water in order, where economically practicable, to reduce the impact of waste transport on amenity.

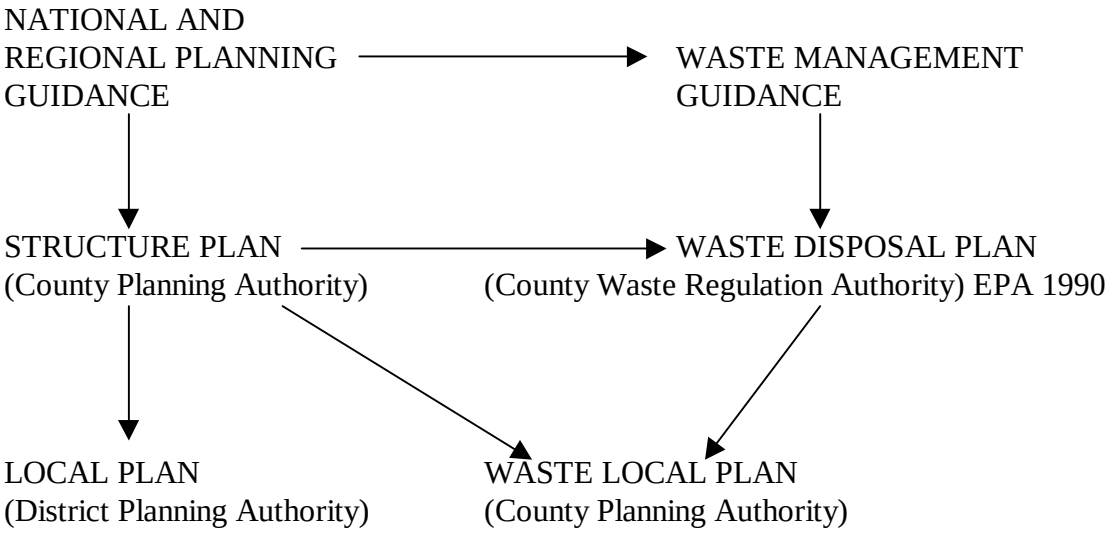
Local plans (except waste local plans)

2.17 Outside metropolitan areas, local plans prepared by districts provide the framework for most development control decisions. They should take account of the policies and proposals in structure plans, but should not include policies on matters that are the subject of waste local plans (see paragraphs 2.20 to 2.24). Within metropolitan areas, UDPs Part IIs should include policies in respect of potentially polluting development (see below) and in respect of waste. Local Plans should include an appropriate combination of site specific policies for potentially polluting development, and criteria against which applications for such development may be determined. They should also include policies for development on, and remediation of, existing contaminated and derelict land.

2.18 The factors which planning authorities should take into account in preparing local

plan policies will include:
- the constraints on development as a result of the need to comply with any statutory environmental quality standards or objectives;
- the need to identify land, or establish criteria, for the location of those types of development which may have the potential to pollute, in a particular industry within the special industrial use classes and power stations;
- the need to separate potentially polluting and other land uses to reduce conflicts, for example by identifying areas around polluting land uses in which other developments should be subject to special consideration;
- the possible impact of potentially polluting development on land use, including the effects on health, the natural environment, or general amenity, resulting from releases to water, land or air, or of noise, dust, vibration, light or heat;
- the environmental consequences, where known, of former land uses, manifested for example by contaminated land;
- completed landfill sites that would be suitable for development or other use (see section 4); the plan may make clear the types of development that would be appropriate and, where possible, the minimum time lapse between the completion of the landfill and the start of different types of development, taking into account the potential for pollution in relation to the types and quantities of waste deposited; the need to secure restoration and pollution controls to standards sufficient to ensure that land is capable of an acceptable after use; the need to protect natural resources and improve the physical environment; and the economic and wider social need for potentially polluting development and the requirement to identify appropriate locations for such developments.

The relationship of guidance and plans concerning waste matters



In metropolitan districts waste policies are contained in the unitary development plan

2.19 Local plan policies (and hence development control decisions) should aim to keep apart housing and other developments sensitive to pollution from polluting or potentially polluting uses, where such uses cannot reasonably coexist. Failure to achieve this separation may lead to pressure for the imposition of higher standards at

considerable expense to the industry, or revocation or refusal to renew the authorisation, and closure of the business.

Waste local plans

2.20 Under the Town and Country Planning Act 1990, county councils and National Park Authorities are required to prepare waste local plans or combined minerals and waste local plans. Metropolitan district and London borough councils should include waste policies in the unitary development plans.

2.21 'Waste policies' are defined in Section 38(1) of the 1990 Act, as modified by paragraph 7(3) of Part I of Schedule 4 to the Waste Management Licencing Regulations 1994. In this context, waste is defined in the EC Framework Directive on Waste and is within the scope of the Directive - see paragraph 2.6 above.

2.22 A significant proportion of waste arises from mineral workings and is returned to former mineral workings. These sites can also provide landfill sites for other wastes. Waste local plans therefore need to take account of minerals local plans. It is open to authorities to prepare combined minerals and waste local plans and in National Parks waste and minerals policies may be included in the park-wide local plan. Specific advice about minerals planning is provided in the Minerals Planning Guidance note series.

The content of waste local plans

2.23 The Town and Country Planning (Development Plan) Regulations 1991 require waste local plans, and other development plans that include waste policies, to have regard to any waste disposal plans for their area. Waste local plans, or waste policies in other development plans, should be in general conformity with the structure plan (outside metropolitan areas) and should have regard to both national and regional planning guidance. They must also have regard to the relevant objectives of the EC Waste Framework Directive. They should include detailed land use policies and proposals that, for different kinds of waste, take account of:
- the need for regions to aim for self-sufficiency in waste management facilities, as outlined in paragraph 2.5 above, and the need to minimise the impact of transport requirements;
- any relevant policies for waste minimisation and recycling in calculating the extent of waste disposal requirements, for example in waste disposal plans, or recycling plans drawn up by Waste Collection Authorities under section 49 of the EPA 1990;
- the land-use and transport requirements of landfill and other waste management facilities;
- opportunities afforded for energy recovery;
- the existence of relevant waste management and pollution control systems;
- the various treatment methods, including recycling, required prior to disposal;
identify:
- existing disposal, storage and treatment sites with spare capacity, and where appropriate, new sites for waste management facilities (eg suitable mineral working voids, or lower quality agricultural land or waste land, which could be used for landfill or land raising); and

- broad areas of search which are likely to contain sufficient sites for the methods of recycling, treatment and disposal required to meet demand in the plan period, as identified in the waste disposal plan, as well as areas which are judged inappropriate for such sites, having regard to environmental, geological, hydrogeological and access constraints; and include criteria:
- against which applications for waste management developments will be considered, eg in terms of land suitability, facilities, access routes, the proximity of other developments, impact on adjoining land use, site restoration, and after-use requirements; and
- by which the environmental acceptability of recycling and other waste management facilities might be improved
- for example, to reduce the levels of noise, litter, vibration and dust, and to improve amenity.

2.24 Planning policies should encourage methods of waste management that have the least overall environmental impact, taking into account the potential for energy or materials recovery. The limitations on the increasing use of land for landfill sites, the stricter environmental requirements imposed on such sites leading to higher costs, and the Government? s commitment to end dumping of sewage sludge at sea by 1998 are likely to increase the demand for incineration as a method of waste reduction and disposal. Incineration with energy recovery now meets high environmental standards and can, at appropriate sites, make an important contribution to beneficial re-use of waste, although allowance needs still to be made for the disposal of ash residues from incineration. The balance between landfill and incineration and indeed other waste management facilities will vary from area to area, and from region to region, depending on circumstances. Guided by regional guidance, the structure plan, the waste disposal plan and the current pattern of waste disposal, the planning authority should consider and set out in the waste local plan the appropriate criteria for the location of each method of treatment or disposal needed for their area and make adequate provision for suitable sites. This should be based upon a consideration of the nature of the waste arising; its physical state; whether it is hazardous or not, taking into account any special needs, such as those related to the handling of clinical or chemical wastes; the need to encourage facilities which recover value from waste; and the availability of suitable sites and facilities.

Waste disposal plans

2.25 Waste disposal plans drawn up under section 50 of the EPA 1990 are primarily concerned with the management aspects of treating and disposing of controlled wastes. Their purpose is to:
(I) set out policies of the waste regulation authority regarding the discharge of its waste regulation functions;
(ii) gather information about the present and future generation of waste in the area, the availability of facilities and likely future needs.

2.26 Amongst other requirements, waste disposal plans therefore need to: establish how much waste is to be produced and of what kind; outline the quantities and types of waste likely to be brought into an area and taken from it; define disposal site operating standards and licensing criteria; lay down priorities for the methods of

disposal or treatment of waste; and as a consequence, set out the likely requirement for waste management facilities. The EPA 1990 also requires waste regulation authorities to have regard to the desirability, where reasonably practicable, of giving priority to recycling waste, when preparing their waste disposal plans. The Waste Management Licensing Regulations 1994 amend the 1990 Act and set out further objectives which waste disposal plans must meet, in order to comply with the requirements of the EC Waste Framework Directive.

2.27 Waste disposal plans under the EPA 1990 do not address land use issues as a development plan does; nor can they be subjected to a local plan inquiry in the same way as development plans are under the Planning Acts.

State of the Environment Reports

2.28 Some local authorities produce non-statutory environmental audits or reports on the state of the environment in their area. These reports can have value in making information on the environment publicly available, and showing where efforts need to be directed. They can help to establish an environmental base-line against which performance in protecting and improving the environment can be measured.

2.29 The Government would wish to see planning authorities, in consultation with industry and other bodies, becoming fully involved in the production of any such reports. These can help authorities to monitor the effectiveness of development plan policies and contribute to their preparation including environmental appraisal of plans as they are prepared and rolled forward. However, such reports should supplement, and not be a substitute for, up-to-date development plan coverage of appropriate environmental matters. Nor should it be necessary for local authorities to carry out their own monitoring where the pollution control agency is already doing so. The aim should be to rely on existing data sources, where these are available.

3 DEVELOPMENT CONTROL CONSIDERATIONS

3.1 **Decisions on planning applications for developments which may give rise to pollution, like all planning decisions, must be made in accordance with the development plan, unless material considerations indicate otherwise.** They must also be made in accordance with relevant EC Directives - in particular the EC Framework Directive on Waste - see paragraph 5.3-5.8 below.

Material Planning Considerations

3.2 Material considerations may include:

- the availability of land for potentially polluting development, taking into account its proximity to other development or land use, which may be affected;

- the sensitivity of the area, in particular as reflected in landscape, agricultural land quality, nature conservation or archaeological designations, if evidence suggests that there is a risk of such features being affected by pollution;

- the loss of amenity which the pollution would cause;

- any particular environmental benefits, such as the regeneration of derelict land, or transport improvements;

- the design of the site and the visual impact of the development, including, for example, the transport mode and the impact on the road network and on the surrounding environment;

- the condition of the site itself, where it is known to be or likely to be contaminated, and any potential remediation;

- the proposed after use of the site, and feasibility of achieving restoration to the required standard where its intended use has limited duration;

- the potential use of mineral workings sites for landfill;

- the hours of operation required by the development where these may have an impact on neighbouring land use;

- the possibility that nuisance might be caused, for example, by the release of smoke, fumes, gases, dust, steam, smell or noise, where not controlled under Part I of the EPA 1990, or, in the case of waste facilities by birds, vermin or overblown litter; and

- transport requirements arising from the need to transport polluting substances or waste, including the scope for transport by rail or water.

Material considerations also include the potential economic and social benefits of the development, such as the provision of a product or service, the generation of secondary trade with local businesses, the recovery of energy from waste and the contribution to energy efficiency, and employment. Local authorities will need to make sure that proper weight is given to these factors in order to maintain an appropriate balance between economic and environmental considerations.

3.3 There may be other considerations to be taken into account to the extent that they have land-use implications. These are likely to be the responsibility of the relevant pollution control authority who will be able to advise on the extent to which they are able to address these considerations through their own mechanisms. These include:

- the possibility of land contamination arising from the proposed development, and protection and remediation measures as appropriate;

- the impact of any discharge of effluent or leachates, which may pose a threat to current and future surface or underground water resources or to adjacent areas;

- the risk of toxic releases, whether on site or on access roads; and

- the waste generated by the development, including that arising from the preparation and construction phases, and proposed arrangements for storage, treatment and disposal.

The weight attached to such considerations will be reduced to the extent that they are capable of being addressed by the pollution control authority in carrying out its statutory responsibilities.

3.4 Representations from the public and other bodies will also need to be taken into account when they address material considerations. But in reaching a planning decision, an authority should not give weight to objections on matters which are properly subject to the pollution control regime and which do not have land-use planning implications. **It should consider passing representations from the public on pollution control issues to the statutory pollution control body concerned.**

Information

3.5 **Planning authorities must have** sufficient **information on which to base their development control decisions.** In many cases an application for a pollution control authorisation or licence will not necessarily be available when a planning application is lodged; indeed, in some cases it may not be clear whether such an authorisation will be needed.

3.6 **Where a waste management licence is sought for a use of land for which planning permission is required, section 36(2) of the** EPA 1990 **requires planning approval to have been obtained* before a waste management licence can be issued,** (although it will be sensible to handle the applications in parallel, where possible). For other developments, there is no prescribed sequence and developers may seek first either a planning permission or a pollution control authorisation, depending

on the circumstances.

3.7 Planning authorities will need sufficient information from the developer, with the advice of pollution control authorities where necessary, to enable a sound planning decision to be made. Annex 8 describes HMIP? s consultative role in the planning system. It will be helpful for the separate planning and pollution control applications to be considered in parallel, where possible, in order to minimise the costs and burdens imposed on business, and any delays associated with negotiating separate applications consecutively.

This PPG recommends that local planning authorities consult HMIP on potentially polluting developments in order to take account of the scope of the relevant controls exercised by the Inspectorate. HMIP welcomes early consultation as a way of minimising the prospects of conflicting requirements being imposed on developers under planning and pollution control regimes and preventing undesirable duplication of pollution controls through the planning system. It also alerts the Inspectorate to the likelihood of an application being made to them for IPC authorisation if they have not already received one.

It is recognised that in many instances an applicant does not have sufficient information to make an application for an IPC authorisation at the same time as his planning application. In such instances, staged applications for IPC authorisation may be appropriate. This will enable HMIP to commence its formal consideration and give an indication of requirements at any early stage.

3.8 It will also be helpful for developers to discuss their proposal with the planning and pollution control authorities in advance of a planning application being submitted. Such discussions should provide an opportunity to consider the principle of the development and to influence its design so that potential problems are removed or reduced. In those discussions, the local planning authority should make clear what information they will require in order to reach a decision. Some of that information may be available through the pollution control authority, for example, where BATNEEC will require approval of design, construction and layout of buildings. Any conditions that are likely to be imposed under pollution controls, such as minimum chimney height, can then be taken into account in the planning application. The planning authority should thus be able to avoid conflicts between the pollution control authorisation and the planning requirements.

3.9 **Information on the impact of individual planning applications on the environment should be provided in the environmental statement, if the proposal falls within the scope of the Environmental Assessment Regulations (see Annex 9).** Where an application falls outside the scope of these Regulations, the planning authority will need to determine what environmental information is required for a proper judgement to be made on the application. If an application is not accompanied by sufficient information on which to reach a decision, the local planning authority may request supplementary information. However, they should not seek more information than is required to make a sound planning decision.

Consultation

3.10 The Town and Country Planning General Development Order 1988(S.I.1988/1813) (GDO) (as amended) requires local planning authorities to consult in considering certain types of application, but there may be other developments on which they will have to consult in order to obtain specialist advice needed to reach a decision, if it is likely that the proposal will involve significant pollution issues. In particular, consideration should normally be given to consulting the relevant pollution control authority in respect of any application for planning permission relating to development similar to those listed below where it is to be sited within a radius of 500 metres (measured from the site boundary) of a process subject to IPC or subject to the Control of Industrial Air Pollution (Registration of Works) Regulations 1989 (S.I. 1989/318), or 250 metres of a process subject to LAAPC, or within 250m of a site used for the deposit of waste at any time within the last 30 years:

- the construction of residential accommodation, or of development which caters for people more vulnerable to pollution, eg old people, children or the infirm;

- any development which will attract people on a regular basis, eg a shopping centre, entertainment complex or offices;

- any development which itself has the potential for pollution and which gives rise to concerns of a possible cumulative impact when taken with the prescribed process; or

- the construction of tall buildings in locations where they could be affected by emissions from neighbouring tall chimneys;

- development involving the provision of open space which will attract people on a regular basis.

3.11 In all cases, local planning authorities should make clear in their consultation letters those issues on which they are seeking guidance. In particular, they should (I) highlight any local land uses or sensitivities which they wish the consultee to consider in deciding on their advice, and (ii) draw attention to the local topography which may affect the impact of any pollution. Efficient procedures for consultation should reduce the risk of delays that may place unnecessary costs on the developer.

3.12 If, through consultation on an application, the pollution control authority informs the planning authority that there are likely to be delays in reaching agreement before a pollution control authorisation or licence can be granted, the planning authority may seek to agree with the applicant to defer consideration of the application until it believes that the potential pollution problems can be overcome. However, the likely pollution control decision should not influence the planning decision. Planning conditions to prevent a **process from operating in the absence of a pollution control consent are unnecessary and inappropriate, as they would be duplicating pollution controls imposed under the pollution control regime.**

3.13 **Where the pollution control authority requires an alteration to an existing or approved development to satisfy new pollution control standards - for example an increase in the height of a factory chimney -a refusal of planning permission for the alteration might lead to the plant? s closure. Close consultation between**

the pollution control authority and the planning authority is therefore needed to ensure an early understanding of any revised requirements necessary in the judgement of the pollution control authority, and the reasons why the alteration to the plant is essential. This will ensure that the development control decision is based on a proper understanding of the application of pollution control procedures and the consequences of a refusal of planning permission. It will also ensure that the pollution control authority appreciates any planning reasons - such as impact on local amenity - that may make it difficult to grant planning permission.

3.14 Where hazardous substances consent is required for substances that are also subject to pollution control, it is important that any requirements imposed by the hazardous substances and pollution control authorities do not conflict. In such cases, the two authorities should consult one another before the grant of any approval or the service of any notice which might give rise to such a conflict.

Need and Alternative Sites

3.15 Applicants do not normally have to prove the need for their proposed development, or discuss the merits of alternative sites. However, a number of judicial decisions have established certain categories of development where a duty to consider the existence of alternative sites may arise*. The nature of such developments and national or regional need may make the availability, or lack of availability, of suitable alternative sites material to the planning decision In the case of an application for a waste facility, special statutory duties apply (set out in the Waste Management Licensing Regulations 1994, see paragraphs 5.3-5.8).

3.16 Environmental statements, which must accompany particular applications (see **Annex 9),** can identify matters that will be relevant to the determination of the application They may - and as a matter of practice normally should - include an outline discussion of the main alternatives studied by the developer and an indication of the reasons for choosing the development proposed, taking account of environmental effects.

Assessment of Risk

3.17 In setting standards for a particular process, pollution control authorities operate under requirements that they should have regard to the particular local environmental circumstances. Standards must be set with the aim of ensuring that there is no danger to human health, harm to the environment or unacceptable statutory nuisance. Higher standards of environmental protection should be set if the local environment is more sensitive, for example, if the releases would affect a designated area or if storage of chemicals would present risks to an aquifer. Provisions exist under pollution control legislation to require account to be taken of improved technology and knowledge about the effects of pollution.

3.18 However, there may be circumstances where a development that is likely to satisfy pollution control requirements may still be considered by the planning authority to present an unacceptable risk in planning terms, because of social, economic or environmental factors incorporated in that risk. In considering the weight to attach to

the risk of a pollution incident, the planning authorities should rely on the advice of the pollution control authorities. The perception of risk should not be material to the consideration of the planning application unless the land-use consequences of such perceptions can be clearly demonstrated. Where such consequences are considered unacceptable and cannot be overcome by appropriate planning conditions, permission may have to be refused. In these circumstances, the planning authority will need to demonstrate the land use planning reasons (not subject to pollution control) which have led them to conclude that the development is unacceptable.

3.19 It is not the role of the planning authority to undertake detailed risk assessment of releases into the environment. In any assessment of a particular risk, full regard should be given to the responsibility of the relevant pollution control authority or **the** Health and Safety Executive in respect of assessing that risk; planning authorities should not seek to substitute their interpretation of such risk assessment for that of the relevant authority.

Outline Planning Permission

3.20 **An outline planning permission is not usually appropriate for a development where the risk of pollution is significant.** In cases where a pollution control authorisation will be necessary, a full planning application should normally be required, unless all matters relevant to assessing the risk of pollution can be considered at the outline stage. Moreover, where section 36(2) of the EPA 1990 requires that a waste management licence cannot be issued until planning permission has been granted, this should normally be a full planning permission. In other cases where an application for outline planning permission is submitted, planning authorities will need sufficient information on environmental impact to enable them to determine whether or not planning permission should be granted in principle.

3.21 In granting outline permission, authorities should ensure that the development permitted is restricted so it cannot take place in a form which would lead to significantly different environmental effects from those considered at the planning application stage. In cases where the environmental effects, possibility of pollution and public health risk are not of sufficient significance to affect the principle of whether the development should be permitted, planning authorities may attach conditions to the outline planning permission requiring particular environmental matters to be considered in more detail at a later stage. However, once outline permission has been granted, it would be unreasonable to attach conditions to the detailed approvals of environmental matters that have the effect of nullifying the outline permission.

3.22 In the case of applications for developments falling within the scope of the Environmental Assessment Regulations (see **Annex 9),** an environmental assessment (EA) must be carried out and an environmental statement submitted with the application. Where outline planning permission is sought, the statement must be submitted at the outline planning application stage.

Planning Conditions and planning obligations

3.23 The increasing scope and effectiveness of pollution control regulations is reducing the need to use planning conditions or planning obligations to control pollution aspects

of a development that is subject to statutory regulation by a pollution control authority. It is important, therefore, for local planning authorities to understand the scope and purpose of conditions that can now be imposed by pollution control **authorities (see Annexes 1-4).** Lack of confidence in the effectiveness of controls imposed under pollution control legislation is not a legitimate ground for the refusal of planning permission or for the imposition of conditions on a planning permission that merely duplicate such controls.

3.24 Planning authorities should not therefore seek to control through planning measures matters that are the proper concern of the pollution control authority, except where planning interests can be clearly distinguished. For example, a planning condition would not normally be appropriate to control the level of emissions from a proposed development, where they are subject to pollution control; however, a planning condition may need to be imposed to protect amenity or limit the hours of operation of the plant.

3.25 **Planning authorities may use conditions or planning obligations to meet planning goals to protect the environment, where these are relevant to the development proposed,** for example, to:

- require the use of particular transport modes. Conditions and planning obligations may also be used to require the posting of notices requesting lorry drivers either to use or avoid particular routes, and operators may offer to restrict their lorries to particular routes. But a condition or planning obligation should not seek to control the right of passage over a public highway;

- ensure the decontamination of the soil or the removal of chemicals, and, where appropriate, the reinstatement of the land to the standards required for the agreed after use, if the use of land ceases (see **Annex 10);**

- ensure proper restoration and aftercare management of the land on landfill sites (see **Annex 1 l);**

- require particular developments to make provision for recycling facilities, where appropriate.

3.26 In view of the adequate powers available, under Parts I and II of the EPA 1990, Part III and Schedule 10 of the Water Resources Act 1991 and Section 80 of the Control of Pollution Act 1974, conditions should not be imposed to require the provision of information to enable the impact of the development to be monitored, either on-site or in adjacent areas, unless such information is required to ensure that a planning condition can be properly monitored and planning enforcement procedures could be effectively carried out, if required.

3.27 Consultations with the relevant pollution control authority should help to ensure that the conditions are based on valid information, and do not duplicate conditions that could be more appropriately imposed through the pollution control authorisation or licence.

3.28 Further advice on planning conditions can be found in Circular 1/85 and on planning obligations in Circular 16/91.

Special Use Classes Order

3.29 The Town and Country Planning (Use Classes) Order 1987 (S.I.1987/764) (as amended) specifies a number of classes, a change of use within which does not constitute development, and does not therefore require planning permission. Classes B4 to B7 cover a wide range of so-called ? Special Industrial' groups, some of which may generate wastes or releases susceptible to controls under pollution control legislation. **Changes of use within these classes may nevertheless involve a change of process demanding a pollution control authorisation.** These classes are currently under review.

* Section 191(7) of the Town and Country Planning Act also provides that a certificate of lawful existing use shall have effect as if it were a grant of planning permission or the purposes of section 36(2)(a) of the

EPA 1990.

* Greater London Council v SOSE and LDDC (1985) 52 P&CR 158; [19861 JPL 193.

Trusthouse Forte Hotels v SOSE (1986) 53 P&CR 293; [1986] JPL 834; [1986] 2 EGLR 185.

4 CONTAMINATED LAND

4.1 The principle of sustainable development means that, where practicable, brownfield sites, including those affected by contamination, should be recycled into new uses and the pressures thereby reduced for greenfield sites to be converted to urban, industrial or commercial uses. Such recycling can also provide an opportunity to deal with the threats posed by contamination to health or the environment.

4.2 The Government's policy towards tackling the UK's burden of land contamination is that the works, if any, required to be undertaken for any contaminated site should deal with any unacceptable risks to health or the environment, taking into account its actual or intended use. This 'suitable for use' approach does not preclude an owner, occupier or developer from undertaking earlier or more thorough action if he wishes to do so. Nor does it preclude a regulatory body from requiring very thorough remedial works where the circumstances justify it.

4.3 The aims of the 'suitable for use' approach are, where practicable:

- to deal with actual or perceived threats to health, safety or the environment;

- to keep or bring back such land into beneficial use; and so

- to minimise avoidable pressures on greenfield sites.

4.4 **Although contamination is subject to controls under pollution control legislation, it or the potential for it, can be a material planning consideration and should be taken into account at various stages in the planning process, including the preparation of development plans and the determination of planning applications.** In carrying out those duties local planning authorities should consider whether there is, or might be, a contamination hazard on a site, what further information they would need to decide that question, whether a proposed use or development of the site could give rise to unacceptable risks to health or the environment, and if so, what steps by way of restrictions on the proposed use or other development of the land should be taken to reduce those risks. Care should be taken to make sure that planning powers complement, and do not substitute for, pollution control arrangements.

4.5 The best way of minimising any associated risks is to ensure that sites which may be contaminated are identified at the earliest stage of planning. The history of the site or nearby sites is the principal factor in determining whether a site is likely to be contaminated or not.

Sources of contamination and risks

4.6 Very few sites are so badly contaminated that they cannot be reused at all, but the choice of new use may be restricted by contamination as well as by other planning considerations and the consequent financial implications. Each site must be considered on its merits and if necessary treated with caution. Any relevant information on the site

history should be taken into account.

4.7 Examples of contaminated sites, and the typical hazards they may pose, include:

- old gas works which produced town gas, coke, coal, tar, and other chemical by-products;

- land previously used for industrial purposes where a very wide range of hazardous substances may be found;

- completed domestic and industrial landfill sites where combustion and settlement might be readily induced and generation of leachate, and emission of gases, may occur; and

- old sewage works and sewage farms, where the concentration of metals in the soil may be high.

4.8 Contamination may give rise to hazards which put at risk people working on the site, the occupiers and users of the buildings and land, and the buildings and services per se. Contaminants may also escape from the site to cause air and water pollution and pollution of nearby land; the emission of landfill gas may be particularly hazardous. If these hazards are not identified and assessed properly, there may be a direct threat to health, safety or the environment. They may also affect proposals on adjoining land. Should remedial action be needed in an emergency, there may be delays as well as additional costs and difficulties. A balance has to be struck between these risks and liabilities and the need to bring the land into beneficial use.

Action by Planning Authorities

4.9 Planning authorities will need to distinguish between those precautions that can be taken under planning powers and those that are the responsibility of other agencies, including Waste Regulation Authorities, HMIP, the NRA, the Health and Safety Executive, and the local authority? s own powers and duties as an environmental health authority and enforcer of the Building Regulations. See paragraph 1.3 above.

4.10 While it would generally be sensible for planning authorities to be aware, as far as possible, that land allocated for development in the plan is actually capable of development, **the responsibility for providing information on whether it is contaminated rests primarily with the developer**. In any case, it is in the developer's interests to do so since the presence and extent of any contamination will affect the value of the land and the costs of developing the site. **When determining a planning application for land which might be contaminated, the local planning authority will need to consider whether the proposal takes proper account of contamination**.

4.11 Investigations into the site, appropriate to the proposed use and likely impact of development on surrounding land and the environment, may need to be carried out before the application can be decided. In certain circumstances, it may be appropriate to make detailed investigation or specific remedial measures a condition of the

planning permission. Alternatively a reserved matter following outline planning permission should enable cost-effective solutions to be devised, to deal with contamination, so reducing the need for urgent and expensive emergency action at a later date.

4.12 Investigative works on a contaminated land site should be carried out with care, and in consultation with the relevant pollution control authority, to avoid causing contamination (eg drilling investigation boreholes which could result in groundwater being contaminated). The findings of the investigation should enable appropriate treatment and the selection of the most suitable use; the development should then be designed to minimise the risks. The specific precautions needed will depend on the degree of risk and the circumstances of the case.

4.13 Guidance on the need to take into account the environmental consequences of contaminated land in drawing up development plans and in determining planning applications is contained in **Annex 10**.

5 WASTE DISPOSAL

Applications for waste management facilities

5.1 Many of the considerations already described will be relevant to waste developments in the same way that they are to any other types of potentially polluting development. However, planning applications for waste facilities can also give rise to particular considerations which planning authorities may need to take into account. As with other types of development, questions such as transport mode, traffic, access, appearance, restoration, aftercare management and after-use, and effects upon neighbouring land use, including agriculture, and upon the amenity of the locality are matters properly to be considered at the planning stage.

5.2 **Annex** 7 gives guidance on the circumstances under which waste should be treated as either a county or a district matter. It is important that adequate information is available at the planning application stage - in conjunction with an environmental statement where this is required - for a full view to be formed by the planning authority of the impacts which a waste management facility could have. Those making applications should be required to include information on the nature of the waste, the broad technical requirements arising from the type of waste, the amounts of waste that are proposed to be treated or disposed of, the access to the site, and the timescale of operations.

EC Waste Framework Directive

5.3 Paragraphs 2.6 to 2.9 above provide guidance on the obligations which the Waste Management Licensing Regulations 1994 in implementing the amended EC Framework Directive on Waste (75/442/EEC as amended by 91/156/EEC and 91/692/EEC) place on planning authorities in drawing up development plans. The Directive also places obligations on planning authorities in determining planning applications, and carrying out related functions. In particular, planning authorities must implement the objectives set out in Articles 4, 5 and 3 of the Directive. These are set out in **Annex 6.**

5.4 Paragraph 2 of Part I of Schedule 4 to the Regulations accordingly requires planning authorities to discharge specified functions in accordance with these relevant objectives. However, planning authorities are not required to implement any objectives which the appropriate pollution control authority has power to deal with. The Regulations also provide for the pollution control authority to implement all the Directive's requirements in relation to waste management facilities for which planning permission was granted prior to 1 May 1994, or which do not require planning permission (eg because they have a certificate of lawful existing use, or do not involve development.)

5.5 This effectively means that planning decisions taken on or after 1 May 1994 must implement the objective in Article 4 of ensuring that waste is recovered or disposed of without harming the environment, and in particular without endangering human health

or causing a nuisance through noise, or adversely affecting the countryside or places of special interest. These requirements are in line with the guidance in paragraphs 5.9 to 5.18 below. The other requirements of Article 4 should be implemented by the pollution control authority.

5.6 In addition, Article 5(2) of the Directive requires planning authorities to have regard to the objective of establishing an adequate network of waste disposal installations, ensuring that this enables the Community as a whole to become self-sufficient, and Member States to move towards that aim. These objectives are in line with the proximity principle set out in paragraphs 2.2 to 2.5 above.

5.7 Finally, in line with the Directive, the Regulations also require planning authorities to implement their development plans. Section 54A of the Town and Country Planning Act 1990 already places a duty on planning authorities to determine applications in accordance with the development plan unless material considerations indicate otherwise. In determining applications for waste developments under section 54A, authorities must take account of any material considerations, including consistency with the relevant objectives of Articles 4 and 5 of the Directive.

5.8 Further guidance on the interpretation of the Framework Directive, and its implementation through the Waste Management Licensing Regulations 1994, can be found in DOE Circular 11/94 entitled Environmental Protection Act 1990: Part II, Waste Management Licensing, The Framework Directive on Waste.

Landfill applications

5.9 Currently in England and Wales about 85% of controlled wastes are finally disposed of to landfill sites, whether the wastes are landfilled directly untreated, or following incineration, or some other form of treatment. Landfill sites have often been developed in voids of current or former mineral workings, or by deliberate 'land raising' - for example on poorer quality agricultural land or 'wasteland'.

5.10 In considering applications for landfill sites, planning authorities should take account of a range of factors, including agricultural land quality, amenity, the quality of affected habitats, the proposed size of the site, and the scope for environmental improvements, and possible afteruses when completed. Land raising may also provide an appropriate method of disposal, particularly in areas where insufficient landfill opportunities exist, provided it can be designed to blend in with the surrounding landscape, and the impact of disposal operations on the environment are acceptable.

5.11 The special qualities of designated areas, such as National Parks, Areas of Outstanding Natural Beauty and Sites of Special Scientific Interest, may be particularly sensitive to landfill or land raising. Proposals which would significantly harm these qualities will not normally be appropriate.

5.12 In considering applications for landfill or land raising development, planning authorities should take into account the effect of the waste disposal activity on the environment, the proposals for the restoration of the land, and its intended after-use. They will need to consider the suitability of the site, the impact on adjoining land use,

and whether the development would prejudice the long term objective for the land in question, and balance those considerations with the constraints on waste disposal facilities in the region, for example in urban areas, and the need to minimise the impact of the transport of waste. Other factors to be taken into account include the geology and hydrogeology of the site, transport mode, access, landform, landscaping, the nature and duration of the development and the proposed hours of operation.

5.13 Where planning permission is given for landfill (including land raising) sites, local planning authorities may in particular wish to impose conditions or obligations, as appropriate, on matters such as:

- the area to be filled;

- the timescale of operation and any phasing for land use purposes;

- transport mode, access arrangements, and the volume of traffic generated;

- the hours of operation, where these may have an impact on neighbouring land use; the level of noise;

- minimising nuisance from birds, vermin or overblown litter;

- the physical nature of the wastes acceptable or excluded, insofar as this might particularly affect local amenity or neighbouring land use (but not to the level of detail appropriate to the waste disposal licence); removal and preservation of topsoil and subsoil and their replacement at the restoration stage;

- standards for minimum depths of soil materials at restoration;

- a requirement to ensure that the final soil cover material is free of obstructions to cultivation and plant growth (but see paragraph 5.14 below);

- the specification of final contours and allowance for settlement;

- 'aftercare' management of the land for a maximum of 5 years following restoration - covering matters such as drainage, pre-planting cultivation, fertiliser application, sowing or planting and management of vegetation appropriate to the intended after-use (eg agriculture, forestry or amenity use) (see **Annex 11**); and

- the restoration of the site, where development has stopped before completion, or a licence has been revoked.

5.14 Planning authorities should seek to ensure, as far as possible, that restoration conditions do not restrict the use of pollution control measures that may be required on landfill sites. These would include measures to limit emissions of methane, an important greenhouse gas, by flaring or by using it as a source of energy. However, consultation with the pollution control authority may be necessary to ensure that such measures do not unnecessarily prevent the effective restoration of the site, for example to agriculture where this is the intended after use.

5.15 Section 39 of the EPA 1990 introduces a new pollution control system for the management of completed landfill sites. Under its terms, the holder of a waste management licence cannot surrender that licence unless the waste regulation authority accepts the surrender. Only when the authority is satisfied that it is unlikely that pollution of the environment or harm to health will arise from the site can it accept the surrender and issue a 'certificate of completion'. This could be many decades after the site has been filled and capped. Before the surrender is accepted, the NRA must also be consulted. As a result of the introduction of these controls, there should be little need for planning conditions to make provision for the monitoring and control of the site by the operator after landfill operations have ceased.

Incinerator applications

5.16 Stringent pollution control standards for new incinerators have been introduced under Part I of EPA 1990 (See **Annexes 1 and 2**). Although the closure of older plants which are unable to meet these standards is expected to lead to a temporary reduction in the number of incinerators over the next few years, the new standards coupled with modern plant and operational practices are likely to increase the public acceptability of waste incinerators. This, together with recognition of the importance of the energy recovery potential of waste incineration in achieving the Government? s targets for renewable energy and for the recovery of value from waste, is likely to increase the role of incineration in the treatment of waste and may lead to a significant demand for new incinerators.

5.17 **Planning authorities will need to take into account visual impact, noise, storage facilities, traffic considerations and transport requirements** (both in relation to waste input and the removal of any residues). The location of incinerators will be a balance between the source of the waste to be incinerated and the place of disposal of the residues, in order to minimise the transport requirements of such developments.

5.18 As with many other industrial developments, the potential impact of emissions on the environment will be the main concern of the pollution control authorities in respect of incinerator proposals. **The impact of these emissions should only be taken into account by planning authorities to the extent that they have land-use implications, and are not controlled by the appropriate pollution control authority.**

Given the new emission standards which incinerators will be required to meet, it is unlikely that planning authorities will find such considerations necessary. Where they are, planning authorities should have regard not only to the impact of individual incinerators but also to the cumulative impact where an incinerator is built in close proximity to other sources of pollution. They should consult HMIP if the incinerator appears to be one that would require an HMIP authorisation under Part I of the EPA 1990, or the local authority? s environmental health department, if it appears to be one requiring local authority authorisation.

5.19 Incinerator plants have an important role to play in the disposal of animal carcasses. In certain circumstances, specific planning permission may not be needed for

incinerators on agricultural land, if these are of limited capacity and ancillary to the agricultural operations.

6 CANCELLATIONS

6.1 The following circulars are cancelled insofar as they relate to England:

69/65 Clean Air - Tall Buildings and Industrial Emissions

43/76 Control of Smells from the Animal Waste Processing Industry

4/82 EC Directive on the Protection of Groundwater

21/87 Development of Contaminated Land

6.2 In addition, the following Circulars should no longer be regarded as containing any material considerations in relation to the operation of the planning system:

55/76 Control of Pollution Act 1974 Pt 1 (Waste on Land) Disposal licences

11/81 Clean Air

25/81 Clean Air Acts 1956 and 1968 Chimney Heights

ANNEX 1
INTEGRATED POLLUTION CONTROL

1. Part I of the EPA 1990 introduced a new and comprehensive system of Integrated Pollution Control (IPC), which came into operation on 1 April 1991 and which is being phased in between 1991 and 1996. It also introduced a parallel system of Local Authority Air Pollution Control (LAAPC), (see Annex 2).

2. IPC replaces parts of the previous pollution control regimes, which derived from the Health and Safety at Work etc Act 1974; the Control of Pollution Act 1974; the Water Resources Act 1991; and the Water Industry Act 1991.

3. IPC imposes high pollution control standards over the range of processes which have the greatest potential to pollute. Operators of these processes must have a prior authorisation from Her Majesty's Inspectorate of Pollution (HMIP) before a plant can operate. IPC also requires operators to consider the total impact of all releases to air, water and land when they seek an authorisation from HMIP. An operator of an existing process can continue to operate his process pending the determination of his application subject to certain conditions.

4. HMIP has power either to grant an authorisation, subject to conditions, or to refuse it. HMIP must refuse it unless it considers that the applicant will be able to carry on the process in compliance with the conditions to be included in the authorisation. These conditions will specify limits for releases, monitoring requirements and operational controls. The Secretary of State has reserve powers to direct HMIP whether or not to grant an authorisation.

5. In granting authorisations, HMIP has a duty to ensure that:
- the operator is using the best available techniques not entailing excessive cost (BATNEEC) to prevent or minimise releases of substances prescribed for any environmental medium, and to render harmless both any prescribed substances which are released and any other substances which might cause harm if released into any environmental medium. In addition, the 1990 Act enables BATNEEC standards to be more stringent than might otherwise be the case if there is a need to safeguard a location which is particularly sensitive;
- where a process is likely to involve releases to more than one medium, the operator must ensure BATNEEC is used to minimise pollution to the environment as a whole, having regard to the best practicable environmental option (BPEO) as regards the substances that may be released; and
- authorisations where necessary include conditions which secure compliance with any direction given by the Secretary of State to implement European Community or international obligations, or any
statutory environmental quality standards or objectives, or other statutory limits, plans or other requirements.

Where any of these requirements give rise to conflict, it is the higher standard that applies. The requirement in the Waste Management Licensing Regulations 1994 that IPC authorisations should implement Article 4 of the EC Waste Framework Directive

in full in certain circumstances (eg where a development is authorised by a certificate of lawful use, where planning permission was granted before 1 May 1994, or where no development is involved), extends the scope of HMIP's powers and duties into areas normally dealt with by planning authorities.

6. The Environmental Protection (Prescribed Processes and Substances) Regulations 1991 (S.I. 1991/472), as amended (by S.I. 1991/836, S.I.1992/614, S.I.1993/1749, S.I.1993/2405, S.I 1994/1271 and S.I 1994/1329), list the processes to be controlled under both IPC and LAAPC. IPC covers a wide range of processes, such as large combustion plant, some other fuel and power processes, iron and steel and smelting processes, non-ferrous metal processes, petrochemical processes, pesticide production, pharmaceutical production, acid and halogen processes, chemical fertiliser production, storage of chemicals in bulk, inorganic chemical processes, and some waste disposal and recycling processes such as incineration. It also covers some mineral processes, although most mineral processes are controlled by LAAPC. The Chief Inspector of HMIP is issuing around 200 process-specific guidance notes, following detailed consultation with industry and other interested bodies, six months in advance of each category of process coming within IPC. IPC processes are being phased into the system between 1991 and 1996.

7. All applications for authorisation, (and for substantial variation of an authorisation) must be advertised locally. In addition HMIP is required to consult with the Health and Safety Executive on all applications and other public bodies (such as the National Rivers Authority) relevant to a particular case. The public, and public bodies, have the opportunity therefore to make representations to HMIP. Key documents relating to each process authorised are available in public registers - these will include applications, authorisations and monitoring data (see Annex 5).

8. IPC authorisations can be varied at any time, to take account of changes to the process, knowledge of improved pollution control techniques or because new information becomes available about the risk from a given pollutant. HMIP are required by the 1990 Act to follow developments in BATNEEC and to review all authorisations they have given at least once in every 4 years. The Chief Inspector's guidance notes will be reviewed similarly.

9. HMIP has a wide range of enforcement powers, including the power to prosecute various offences and to issue a prohibition or revocation notice to close down a process. They also have recourse ultimately to the High Court. Maximum penalties for certain offences under the 1990 Act are ? 20,000 on summary conviction, and an unlimited fine and up to 2 years' imprisonment for conviction on indictment.

10. If HMIP refuses an application for authorisation, the operator has a statutory right of appeal to the Secretary of State under Section 15 of the EPA 1990 (an operator can also appeal under the same section against the conditions attached to an authorisation; refusal of a variation; revocation of an authorisation; and variation, enforcement and prohibition notices). Under Section 22(5), an operator has the right of appeal to the Secretary of State if HMIP refuse applications under Section 22(2) for information to be treated as commercially confidential.

11. A detailed guide to IPC: ? Integrated Pollution Control, A Practical Guide', (ISBN 0-11-752750-5) can be purchased from HMSO Publications Centre, PO Box 276, London, SW8 5DT. Telephone orders 071-873-9090; general enquiries 071-873-0011; fax orders 071-873-8200.

ANNEX 2
AIR QUALITY

1. Air pollution is the subject of a number of different legislative controls. However, there are two significant groups of pollution controls, which are relevant to the planning system:
- prior approval controls over mainly industrial installations (Part I of the EPA 1990 and the Clean Air Act 1993); and
- other controls (industrial, commercial and domestic premises, and vehicles) (including the Clean Air Act 1993 and the statutory nuisance provisions of Part III of the EPA 1990).

The two groups are described below:

Prior approval controls over mainly industrial installations

2. **Part I of the EPA 1990 contains two parallel pollution control systems. Integrated Pollution Control is described in Annex 1. The second system - Local Authority Air Pollution Control (LAAPC) - applies to prescribed processes which can potentially pollute the air, but which are not prescribed for IPC. As these controls are concerned only with air pollution, BPEO does not apply under LAAPC. The basic controls are the same as for IPC**. The main differences between them are that the regulatory authority is the relevant District or Borough Council or, in some cases, Port Health Authority and that the controls are being brought in more quickly than those for IPC. Operators of all LAAPC processes currently in use must have applied for authorisation by 30 September 1992.

3. **LAAPC is a prior approval regime which imposes high pollution control standards on the affected industries**. Local authorities can either grant an authorisation subject to conditions, or refuse it. They are required to set conditions requiring the use of the Best Available Techniques Not Entailing Excessive Cost (BATNEEC) (see Annex 1). Existing as well as new processes must be authorised.

4. A wide range of processes are covered by LAAPC, including glassworks, brickworks, combustion plant, incinerators, concrete batching plant, mineral processes, timber processes, rubber processes, metal manufacturing operations and various former offensive trades. Some 13,000 individual plants have applied for authorisation under LAAPC. The categories of process are listed in SI 1991/472 (as referred to in Annex 1).

5. The Secretary of State has published a series of ? process guidance notes' which advise on what constitutes BATNEEC for different categories of process. Local authorities are statutorily obliged to have regard to this guidance. Local authorities are expected to include conditions (as appropriate) which specify emission limits, monitoring requirements and operational controls (eg over the handling of dusty materials), and to specify chimney and vent heights to ensure that they can adequately disperse any residual emissions.

6. Other matters for which LAAPC and IPC controls are similar include:
- the requirements for making information available to the public;
- the variation of authorisations; the requirement to follow developments in BATNEEC and review authorisations every 4 years;
- the intention to review guidance every 4 years; - enforcement; and
- appeals to the Secretary of State.

7. The Clean Air Act 1993 provides a lower level of control over certain smaller combustion plant not covered by IPC or LAAPC. Under the Act, the operation of a furnace (except a small domestic furnace used for heating or a boiler or an industrial furnace controlled under Part I of the EPA 1990) generally requires approval for its grit and dust arrestment equipment and the height of the chimney serving the furnace.

Other controls (including industrial, commercial and domestic premises, and vehicles)

8. The Clean Air Act 1993 prohibits the emission of dark smoke from industrial and domestic chimneys and from open burning on industrial or trade premises (which include commercially operated agricultural premises). Industrial furnaces not covered by Part I of the EPA 1990 must only be installed if they are capable, so far as is practicable, of being operated continuously without emitting smoke when burning any type of fuel for which the furnace was designed.

9. Part III of the EPA 1990 consolidated and strengthened existing controls over statutory nuisances. The powers allow for action to be taken by local authorities or individuals against a statutory nuisance that exists or is likely to occur or recur. Statutory nuisances include:
a) smoke emissions from any premises and fumes or gases from domestic dwellings (but with the exception of most smoke emissions covered by Part I of the Clean Air Act 1993 and smoke from private dwellings in smoke control areas established under Part III of that Act); and
b) any dust, steam, smell or other effluvia arising on industrial, trade or business premises, which are 'prejudicial to health or a nuisance'. In these types of nuisance, it can be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance. However, where there are smoke emissions, the defence is available only where the smoke is emitted from a chimney; and where there are emissions of fumes or gases, the defence is not available at all. The granting of planning permission is not itself a defence. Summary proceedings for certain types of statutory nuisance cannot be instituted by a local authority under Part III of the EPA 1990 without the Secretary of State? s consent in cases where proceedings could be instituted under Part I of the EPA 1990.

10. Under the Clean Air Act 1993, local authorities have powers to obtain information about air emissions by requiring the occupier of any premises to furnish it. Local authorities also have powers of entry to obtain such information.

11. There are also air quality standards which relate to the quality of the air generally and affect all pollution sources. They are set down by EC Directives and prescribe limit values for concentrations of smoke or suspended particulates, sulphur dioxide, lead

and nitrogen dioxide in ambient air throughout the EC. The relevant directives have been implemented by the Air Quality Standards Regulations 1989 (S.I.1989/317).

ANNEX 3
WATER QUALITY

1. The National Rivers Authority (NRA), established by the Water Act 1989, is an independent statutory body responsible for the conservation and enhancement of water resources, for licensing water abstraction and for the control of water quality and of pollution in relation to 'Controlled waters'. 'CONTROLLED waters' includes the sea up to the three mile limit, estuaries, water contained in underground strata, and most lakes, ponds, reservoirs, rivers and other watercourses. The NRA is under a duty to ensure that as far as practicable any statutory quality objectives, which have been set by the Secretary of State for particular stretches of water, are achieved at all times. They must take into account, where appropriate, the need for such waters to achieve compliance with the standards set by various European Community Directives (some statutory water quality objectives are already in force in respect of EC Directives). Section 85 of the Water Resources Act 1991 creates a number of offences relating to discharging or otherwise causing or permitting the entry of polluting matter or effluent into controlled or other waters. Section 88 of that Act provides a defence where the discharge or entry takes place under a valid discharge consent or other specified authorisation.

2. The NRA carries out its pollution control responsibilities by:
monitoring water quality by taking samples and analysing them at points all over England and Wales and throughout the year;
- considering applications to discharge trade and sewage effluent to waters;
- controlling direct discharges through discharge consents, to which conditions may be attached;
- monitoring existing discharge consents to ensure compliance; and
- prosecuting in cases where an offence has been committed.

3. **Any potential discharger must make an application to the NRA for consent to discharge (unless otherwise authorised to make the discharge, eg by a waste management licence or by an IPC authorisation under Part I of the EPA 1990)**. Discharge consent from the waterway owner may also be required. The NRA will require an application form to be completed and a fee to be paid. Additional supplementary information may be required.

4. The NRA is required to advertise most applications, by publishing notice of the application in the London Gazette and in a newspaper in the area affected by the discharge. At the same time, copies of the application are sent to every local authority and water undertaker within whose area any proposed discharge is to occur. If the proposed discharge is to coastal or tidal waters, then additional copies of the application are sent to the Secretary of State for the Environment and the Minister of Agriculture, Fisheries and Food.

5. An applicant may apply to the Secretary of State for a certificate exempting the application from the publicity provisions, if it is considered that it would be contrary to the public interest or would unreasonably prejudice a private interest by disclosing information about a trade secret.

6. Objections to the discharge consent application should be sent to the NRA within six weeks of the date of the publication of the first advertisement. The NRA is required to consider any objections or written representations it has received in respect of an application within that period. It must then decide whether to give consent unconditionally, to give consent subject to conditions, or to refuse it. An application is deemed to have been refused if consent is not given within four months from the date of receipt of the application by the NRA, or a longer period agreed between the NRA and the applicant.

7. In granting consent to an application, the NRA generally attaches conditions. There are no set rules on the type of conditions that the NRA may impose, or on the level at which standards may be set. The requirement to achieve statutory quality objectives, which are intended to ensure that water quality is maintained and, where necessary, improved, enables the NRA to derive appropriate standards, individually, for each discharge. The imposition of conditions ensures that any discharge made falls within acceptable guidelines.

8. Conditions will depend on the type and significance of the discharge. In all cases, conditions are likely to specify where the discharge is to be made, and the type of outlet that would carry the discharge. The NRA may impose conditions about the nature, origin, composition, temperature, volume and rate of the discharge, and for the keeping of records. The NRA typically requires provision to be made for taking samples of the discharge, and may ask for the installation of specialist monitoring and telemetry equipment to give early warning of any problems with the discharge.

9. The NRA has wide powers to review discharge consents (though not normally within less than 2 years), and to impose new or tighter conditions where necessary.

10. In cases where the NRA proposes to give its consent to an application and representations or objections have been made, it must serve notice of its proposal to give consent on every person who originally objected to the application. The notice must also state that such persons may, if they wish, request the Secretary of State to 'call-in' the application for his own determination. If no requests are made within twenty one days, the NRA may go ahead and give consent. If requests are made to the Secretary of State, and notice is served on the NRA, then the NRA must not give consent unless informed by the Secretary of State that he declines to ? call-in' the application.

11. Where a decision is taken by the Secretary of State to 'call-in' an application, the Secretary of State may at any time before the application is decided, hold a local inquiry, or give the applicant and the NRA the opportunity of being heard by an appointed person. If requested to do so by the applicant (but not a third party objector) or the NRA, the Secretary of State must hold an inquiry or hearing. The Secretary of State may also 'call-in' any application for his own determination, even if he has not been requested to do so.

12. In deciding whether or not to call in an application, the Secretary of State has regard to the extent to which the proposed discharge is of more than local importance.

Such cases may include those which could have wide effects beyond their immediate locality, which give rise to substantial regional or national controversy, or which conflict with national policies.

13. If the NRA refuses an application for discharge consent, the applicant has the right to appeal to the Secretary of State against the decision. Any appeal must be made within three months of the notification of the refusal by the NRA. An applicant may also appeal against any conditions that the NRA has imposed in granting consent to an application.

14. The Secretary of State may determine the appeal on the basis of written representations, but if he intends to do so, he must give notice to the appellant and the NRA, and either of them may request him not to determine the appeal without further investigation. The Secretary of State must then either hold a local inquiry or give the appellant and the NRA an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State.

15. Businesses proposing to dispose of liquid effluents into the sewerage system need to obtain a trade effluent consent from the appropriate water and sewerage company. Under the Water Industry Act 1991, it is an offence to discharge trade effluent into sewers without such a consent; the companies have powers to impose conditions, and there are provisions for appeals to be made to the Director General for Water Services against decisions by the companies. Applications for trade effluent consents are not advertised, but details of consents granted are available for public inspection via a system of registers required to be maintained by the companies under section 196 of the Water Industry Act 1991 .

16. Separate controls apply in relation to farms (in respect of silage and slurry stores and agricultural fuel oil stores), designed to prevent accidental spillages, rather than to control specific, planned discharges. New installations are required to meet minimum construction standards laid down in the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations 1991 (S.I. 1991/324). The NRA is empowered to require existing installations to be improved where it considers that they represent a significant risk of pollution. The Government is considering making similar regulations in respect of industrial oil stores.

17. **The NRA has an important consultative role in the town and country planning system. The supply of water and sewage disposal are capable of being material considerations in planning applications and appeals, and should also be taken into account in drawing up development plans**.

18. Local planning authorities should consult the NRA in preparing their development plans to ensure that the policies and proposals in those plans are realistic in terms of the likely availability of water supply and sewerage infrastructure. **Where development is likely to take place in areas which are not served by mains sewers, local planning authorities should consider how to ensure that such development will not place an unacceptable burden on amenity**.

19. The NRA must also be consulted on individual planning applications in the

circumstances specified in Article 18 of the Town and Country Planning General Development Order 1988, eg where development would involve works or operations on the bank of a river or where it would involve the deposit of refuse or waste. **Local planning authorities may need to refuse planning permission where they are not satisfied about the adequacy of water or sewerage infrastructure or they may be able to impose conditions to ensure that suitable arrangements are in place. Where development is proposed that would not be connected to the mains sewer infrastructure, the local planning authority may wish to consider the use of conditions and planning obligations to ensure that land-use objectives are met. (See paragraphs 3.23 and 3.28)**.

ANNEX 4
WASTE MANAGEMENT

Introduction

1. The United Kingdom produces approximately 100 million tonnes of waste each year. The majority of this is mining and quarrying waste and agricultural waste. Most of the remainder is controlled waste that is household, commercial and industrial waste.

2. Part II of the EPA 1990 gives responsibility for waste regulation functions to waste regulation authorities (see paragraph 1.24-1.28 of this PPG). In order to co-ordinate their waste regulation activities, these authorities have formed themselves into voluntary regional groupings (see box). Within England, these groupings are the same as the groups which produce advice to the Secretary of State on regional planning guidance.

Waste management licensing under the Environmental Protection Act 1990

3. Controlled waste is managed in accordance with a licensing system under Part II of the EPA 1990. A waste management licence is necessary to authorise the treatment, keeping or disposal of controlled waste in or on specified land or by means of specified mobile plant. Regulations provide extensive exemptions for specified activities. Controlled waste is defined in section 75 of the EPA 1990. This definition is supplemented by the Controlled Waste Regulations 1992 (S.I. 1992/588) as amended by the Waste Management Licensing Regulations 1994 (S.I. 1994/1056).

4. The licensing provisions in Part II of the EPA 1990 came into force on 1 May 1994 (with certain exceptions - see the Environmental Protection Act 1990 (Commencement No.15) Order 1994 (S.I. 1994/1096)). Controlled waste was previously managed under a licensing system under Part I of the Control of Pollution Act 1974 (COPA). In most cases, an existing waste disposal licence under COPA is now treated as a site licence under Part II of the EPA 1990.

5. **Part II of the EPA 1990 gives wide discretion as to the conditions which the licensing authority might consider attaching to a licence.** DoE Waste Management Paper No.4 (available from HMSO: ISBN 0-11- 752727-0) provides separate guidance to authorities on how they should carry out their licensing functions, which they are statutorily bound to heed.

6. If planning permission is required for a site, this must be obtained before the licence is issued. Planning permission is not required if the applicant holds an established use certificate or certificate of lawful existing use. The holder of such a certificate will be treated, for the purpose of considering a licence application, as if he had obtained full planning permission except for the additional ground for rejection (see paragraph 7). Statutory undertakers who have been granted permitted development rights under Part 17 (Class D) of Schedule 2 to the GDO will be treated in the same way.

7. A licence application will be rejected by the licensing authority only where the applicant is not a ? fit and proper person' (which is defined in the Act), or where it is necessary to prevent ? pollution of the environment' or ? harm to human health'. Except where a planning permission was granted on or after I May 1994, the authority has an additional ground for rejection, that is, ? for the purpose of preventing serious detriment to the amenities of the locality.

8. **PART II of the EPA 1990 enables licensing authorities to control licensed activities better**. There are prescribed circumstances in which the licensing authority can suspend, or fully or partially revoke, the licence. Breach of any condition of a licence will be an offence.
Control of sites after cessation of operations

9. **Part II of the EPA 1990 imposes stricter controls on the surrender of site licences**. Only if an authority believes that the condition of the site, so far as that results from waste activities, is unlikely to cause pollution of the environment or harm to human health, can the authority accept the surrender of the licence. And even when an authority proposes to accept a surrender, it must still refer the matter to the National Rivers Authority for their consideration. On acceptance of the surrender, the waste regulation authority will issue a ? certificate of completion' and only then will the licence holder cease to have responsibility for the site under Part II of the EPA 1990.

North West - Cheshire, Cumbria, Lancashire, Greater Manchester, Merseyside.

West Midlands - Hereford & Worcester, Shropshire, Staffordshire, Warwickshire, West Midlands.

South West - Avon, Cornwall, Devon, Dorset, Somerset, Wiltshire, Gloucestershire.

South East - Greater London, Bedfordshire, Berkshire, Buckinghamshire, East Sussex, West Sussex, Surrey, Essex, Hampshire, Isle of Wight, Kent, Oxfordshire, Hertfordshire.

North - Cleveland, Durham, Northumberland, Tyne & Wear

Yorkshire and Humberside - West Yorkshire, South Yorkshire, Humberside, North Yorkshire.

E. Anglia - Cambridgeshire, Norfolk, Suffolk.

E. Midlands - Derbyshire, Leicestershire, Lincolnshire, Nottinghamshire, Northamptonshire.

Duty of care

10. Section 34 of the EPA 1990 also imposes a ? duty of care' on anyone (apart from a householder in relation to his own waste) who has control of, or responsibility for, controlled waste at any stage from its production to its disposal. This duty requires

each person to take all reasonable measures:
- to prevent the illegal management of waste;
- to prevent the escape of controlled waste; and
- to ensure that, on transfer, waste is only transferred to an authorised person and that there is transferred a description of the waste that enables subsequent holders to fulfil their duty in regard to that waste.

When a written description is transferred, a transfer note must also be completed, and these records of the waste transferred must be kept for 2 years (see the Environmental Protection (Duty of Care) Regulations 1991 (S.I. 1991 No.2839)). Failure to comply with the duty of care, or with these record-keeping requirements, is a criminal offence. More details on the 'duty of care' are contained within a Code of Practice issued by the Department of the Environment, Welsh Office and the Scottish Office, available from HMSO (ISBN- 0-752557-X).

Special waste

11. Waste regulation authorities have several responsibilities in respect of the handling of 'special waste' - that is, controlled waste which consists of, or contains, any specified substance which can make the waste dangerous to life, or gives it a flashpoint at or below 21c, together with prescription medicines. **The Control of Pollution (Special Waste) Regulations 1980 (S.I.1980/1709) define what wastes are special and provide for their control**; they require a waste producer to inform the receiving waste regulation authority of any intention to dispose of special waste. Where special waste is to be taken from its producer by a carrier to a disposer there must be a matching transfer of a consignment note, which will give details of the nature of the waste, its quantity, chemical and biological components and other relevant aspects. A landfill site licence holder must maintain a permanent record of where consignments of special waste are deposited and a register of consignment notes must also be kept for a period specified by the waste regulation authority.

Waste disposal plans

12. Section 50 of the EPA 1990 requires waste regulation authorities to draw up waste disposal plans which are concerned with the management aspects of waste disposal (see paragraphs 2.25-2.27 of this PPG).

Other functions

13. Waste regulation authorities have an enforcement role in relation to the illegal tipping of waste under the Control of Pollution (Amendment) Act 1989 and the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Registration Regulations 1991 (S.I. 1991/1624). Under section 67 of the EPA 1990, they also have to draw up annual reports on their activities.

ANNEX 5
REGISTERS

l. Information on pollution matters and any steps to be taken, or that have been taken, to control emissions are available to the public on a number of registers.

Planning registers

2. Section 69 of the Town and Country Planning Act 1990 requires planning authorities to maintain a register of all planning applications and of all planning decisions. The register will include details of any conditions attached to the permission for the control of pollution. The register is maintained at the principal offices of district planning authorities, London boroughs, metropolitan district authorities or county planning authorities, as appropriate.

3. The enforcement and stop notice register, maintained under Section 188 of the 1990 Act, should contain information about any relevant enforcement action taken by the planning authority in relation to a particular site.

The Land Register

4. The Land Register is a register of land ownership which is open to public inspection, usually by postal application. The Land Registry has details of 14 million properties in England and Wales, but estimates that there are a further 7 million properties not yet registered. The register records the location of the registered property, its ownership, beneficial and adverse rights, mortgages and any covenants restricting the use of the land. Further information on the land Register and on public access to it is available in Explanatory Leaflet 15 'The Open Register -A Guide to Information Held by the Land Registry and How to Obtain It', available from HM Land Registry, 32 Lincoln's Inn Fields, London WC2A 3PH.

The Local Land Charges Register

5. Local Land Charges Registers are maintained by district councils for the properties in their area, under the Local Land Charges Act 1975. These registers contain details of charges on the land which will include any planning obligations to prevent or control emissions. Any such charge is binding even if it has not been registered.

Environmental Protection Act 1990 Registers

6. Under Part I of the Environmental Protection Act 1990 (EPA 1990), each district council, London borough and metropolitan district council, is required to hold a public register, which will include all applications for authorisation under Part I of the Act, all authorisations that have been granted and any information the operator is required to supply in order to demonstrate that the process is complying with the authorisation. Further information on this register is available in the DOE/Welsh Office booklet 'The Environmental Protection Act 1990, Part I and You'.

7. Under Part II of the EPA 1990, waste regulation authorities have a duty to maintain

public registers of information relating to licences. The register must contain any details which are prescribed in Regulations which may be issued by the Secretary of State. Under the Act, registers must include information on:
- current licences;
- applications for licences;
- applications for modifications to licences;
- notices issued by the authority relating to the modification, revocation or suspension of licences;
- appeals;
- certificates of completion issued;
- details of when the authority has had to carry out works on a site to prevent pollution or harm to health.

8. Section 143 of the Environmental Protection Act 1990 provided powers for the establishment of statutory registers of land subject to contaminative uses. Following public consultation the Government withdrew its proposals for such registers in the context of the review mentioned in paragraph 3 of
Annex 10.

Water Resources Act 1991 Registers

9. Under Section 190 of the Water Resources Act 1991, the National Rivers Authority (NRA) is required to maintain public registers of water pollution control information. The registers are available for public inspection at the regional offices of the NRA. Under the Act, the registers are required (unless, in a given case, a certificate relating to the protection of the public interest or a trade secret is issued by the Secretary of State) to include information on the following:
- applications made for discharge consents;
- full details of discharge consents granted by the NRA;
- results of samples taken by (or for) the NRA, whether of effluents or of water courses, and steps (if any) taken by the NRA in consequence of such samples; and
- details of water quality objectives set, or proposed to be set, by the Secretary of State.

Water Industry Act 1991 Registers

10. Under Section 196 of the Water Industry Act 1991, sewerage undertakers (ie the water and sewerage companies) are required to maintain public registers containing copies of all consents granted for the discharge of trade effluent into the sewerage system.

Register of waste carriers, brokers and dealers

11. The Control of Pollution (Amendment) Act 1989 requires most carriers of controlled waste to be registered. In accordance with regulations made by the Secretary of State, each carrier is required to pay a charge to register with the waste regulation authority. The carrier is then entitled to transport waste for a period of 3 years, at which time a renewal application will be required.

12. Regulation 20 of the Waste Management Licensing Regulations 1994 requires most brokers or dealers of controlled waste to be registered with the waste regulation authority. Schedule 5 to those Regulations contains detailed provisions, modelled on the system of waste carrier registration (see paragraph 11 above), regarding the registration of brokers and dealers .

13. Provision is also made by paragraph 12 of Part I of Schedule 4 to the Waste Management Licensing Regulations 1994 for a register to be kept by waste regulation authorities of those waste collectors, transporters, brokers and dealers who are exempt from the registration systems outlined in paragraphs 11 and 12 above. This is a simplified system of registration designed to ensure that the requirements of Article 12 of the EC Waste Framework Directive (75/442/EEC as amended by 91/156/EEC and 91/692/EEC) are fully met. Further (transitional) provision is made for the registration of waste brokers and dealers by regulation 20 of the Transfrontier Shipment of Waste Regulations 1994 (S.I. 1994/1137).

Register of exemptions from waste management licensing

14. In accordance with Article 11(2) of the EC Waste Framework Directive, regulation 18 of the Waste Management Licensing Regulations 1994 makes provision for the registration of establishments and undertakings carrying on an activity which has been exempted from waste management licensing by virtue of regulation 17 of, and Schedule 3 to, those Regulations. In the case of certain exempt activities, the regulation provides for the register to be kept by a body other than the waste regulation authority.

ANNEX 6
THE EC WASTE FRAMEWORK DIRECTIVE

Objectives of The Directive

1. Articles 3, 4, and 5 of the Framework Directive on Waste (75/442/EEC as amended by 91/156/EEC and by 91/692/EEC) set out a number of objectives which must be implemented either through a system of permits for the disposal and recovery of waste under Articles 9 and 10, and/or through the waste management plans required under Article 7. In addition, the system of permits under Articles 9 and 10 must implement the Article 7 plans themselves. These provisions are implemented by the Waste Management Licensing Regulations 1994, and the objectives are defined as 'relevant objectives' in paragraph 4 of Part I of Schedule 4.

2. In order to ensure proper implementation of the Directive, it is necessary to ensure that all the control regimes by which competent authorities regulate the disposal and recovery of waste (these regimes, which include the planning system, can be identified from Table 5 in paragraph 3 of Part I of Schedule 4 to the 1994 Regulations) are adapted as appropriate so as to implement the relevant objectives. However, not all of the objectives of the Directive have to be implemented through all the control regimes. The following table sets out which planning functions must achieve which objective .

Article 4

3. **The key objective which underlies the whole Directive is Article 4, and this has been transposed into the Regulations as paragraph 4(1)(a) of Part I of Schedule 4**. This makes it a relevant objective to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular without:-
a. risk to water, air, soil, plants or animals; or
b. causing nuisance through noise or odours; or
c. adversely affecting the countryside or places of special interest.

4. It is difficult to implement this objective literally since authorities cannot be absolutely sure that the processes or methods used could not in any circumstances harm the environment, as defined. However, the preamble to the Directive makes it clear that one of its objectives is to make provision for the safe disposal and recovery of waste, and Article 5 actually encourages the provision of facilities to establish an integrated network.

5. The European Court of Justice has recently ruled on the interpretation of Article 4 of the original Directive (75/442/EEC) in an Italian case - the Lombardia case.* The judgement states that Article 4 'indicates a programme to be followed and sets out the objectives which Member States must observe in their performance of the more specific obligations imposed on them by Articles 5-ll of the [unamended 1975] Directive concerning planning, supervision, and monitoring of waste disposal operations.'

6. There is no reason why this judgement should not apply equally well to Article 4 of the amended Directive. Paragraph 2(1) of Part I of Schedule 4 to the Regulations accordingly requires the competent authorities to discharge their specified functions with the objectives set out in Article 4, as well as with the other objectives of the Directive (see below).

Article 5

7. Article 5 of the Directive has been transposed into the Regulations as the relevant objectives contained in paragraph 4(2) of Part I of Schedule 4, and these apply only to the disposal of waste. The objectives are:
a. establishing an integrated and adequate network of waste disposal installations, taking account of the best available technology, not involving excessive costs; and
b. ensuring that the network referred to at subparagraph (a) above enables:-
I) the European Community as a whole to become self-sufficient in waste disposal, and the Member States individually to move towards that aim, taking into account geographical circumstances or the need for specialised installations for certain types of waste; and
ii) waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

8. These objectives are clearly concerned with the need for waste disposal facilities and their location. In the case of new developments after the commencement of the Regulations on 1 May 1994, they will normally be for the planning authority to implement, both through their development plans, and directly in determining planning applications.

9. As with Article 4, these are objectives, not absolute requirements. There is no definition of what constitutes an 'integrated and adequate network of disposal installations', and authorities will need to consider in each case whether there are already adequate facilities within a reasonable distance. In this context, what is a reasonable distance will depend on the type of waste concerned, the quantity arising in the area, and the particular geographical circumstances. Although these issues need to be considered in determining applications for individual developments, this will be considered simplified if the issues have already been addressed in the development plan.

Article 3

10. Article 3 of the Directive is transposed into the Regulations as the relevant objectives in paragraph 4(3) of Part I Schedule 4, which are required to be implemented only through the plan-making provisions. They do not therefore have to be taken into account directly in considering permits under Article 9 or 10 of the Directive, although to the extent that these objectives are reflected in the various waste plans drawn up to implement Article 7, they will be taken into account inasmuch as the permits implement those plans.

11. The relevant objectives are:

a) encouraging the prevention or reduction of waste production and its harmfulness, in particular by:-
I) the development of clean technologies more sparing in their use of natural resources;
ii) the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount of harmfulness of waste and pollution hazards; and
iii) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery; and
b) encouraging:-
I) the recovery of waste by means of recycling, reuse or reclamation or any other process with a view to extracting secondary raw materials; and
ii) the use of waste as a source of energy.

12 It will normally be for waste regulation authorities to implement Article 3 through their waste disposal plans under section 50 of the EPA 1990. However, planning authorities should ensure that their development plans are at least not inconsistent with these objectives. The underlying principle of the objectives is already contained in the existing requirement under section 50(4) of the EPA 1990 to 'have regard to the desirability, where reasonably practicable, of giving priority to recycling waste' and the requirement in section 50(7) to consider 'what arrangements can reasonably be expected to be made for recycling waste'. The objectives in Article 3 go further and require authorities to encourage a wider range of waste management options with the ultimate aim of minimising the amount of waste going to final disposal. This reflects the hierarchy of waste management options defined in the Government's Sustainable Development Strategy.

Directive objective	Relevant objective in Paragraph 4 of Schedule 4	Implementing Control regime
Article 3	Paragraph 4(3)	Development plans.
Article 4	Paragraph 4(1)(a)	Development plans. Planning permissions for waste disposal & recovery developments.
Article 5	Paragraph 4 (2)	Development plans. Planning permissions for waste disposal developments.
Article 7	Paragraph 4(1)(b)	Planning permissions for waste disposal recovery developments.

*Comitato di Coordinamento per la Difesa della Cava v Regione Lombardia (case C-236/92), 23 February 1992

ANNEX 7
COUNTY MATTERS AND PLANNING APPLICATIONS

1. As a result of the changes to the legislation relating to the receipt and determination of planning applications made by section 19 of the Planning and Compensation Act 1 99 1, and the subsequent amendments to the Town and Country Planning General Development Order 1988 (S.I. 1988/1813) (as amended), applications for planning permission which are'? county matters' must now be submitted direct to the county planning authority rather than to the district planning authority. It is therefore important that both the applicant and the authority know which applications are 'county matters' and which are not.

2. Schedule 1 to the Town and Country Planning Act 1990 sets out the distribution of functions between local planning authorities. Paragraph 1 of Schedule 1 defines those matters which are 'county matters'. Specified categories of minerals development are also defined as 'county matters'.

3. The Town and Country Planning (Prescription of County Matters) Regulations 1980 (S.I. 1980/2010), which continue to have effect for the purposes of paragraph 1(1)(j) of Schedule 1 to the 1990 Act by virtue of section 2 of the Planning (Consequential Provisions) Act 1990, prescribe the following classes of operations and uses of land as 'county matters':
(a) the use of land or the carrying out of operations in or on land for the deposit of refuse or waste materials;
(b) the erection of any building, plant or machinery designed to be used wholly or mainly for purposes of treating, storing, processing or disposing of refuse or waste materials.

4. The terms 'refuse' and 'waste materials' are not defined in the 1980 Regulations or in the 1990 Act neither is 'deposit'. Paragraph 11 of Part I of Schedule 4 to the Waste Management Licensing Regulations 1994 does, however, provide that in the Town and Country Planning Act 1990 references to 'waste' are to be taken as including 'Directive waste' (as defined in regulation 1(3) of those Regulations) but, subject to that provision, these terms will be construed by a court according to their ordinary and natural meanings. In the light of the growing importance of waste disposal, and the management, processing and recycling of waste materials, the following guidance is given on what constitutes a county or a district matter. However, the interpretation of the 1980 Regulations is a matter for the courts.

5. The Department's view is that the primary use or uses of the land involved will have to be identified in order to determine whether a proposed development is a county or a district matter.

6. Applications for the use of land or for the carrying out of operations for treating, storing, processing or disposing of refuse or waste materials, as opposed to those for the erection of a building, plant or machinery for such purposes, will be district matters if they do not end with the depositing of refuse or waste materials.

7. The Department's view is that all of the following items will be ? county matters' if

they involve the use of land or the carrying out of operations in or on land for the deposit of refuse or waste materials, or if the application concerns the erection of any building, plant or machinery designed to be used wholly or mainly for treating, storing, processing or disposing of refuse or waste materials:
- scrap yards;
- clinical and other types of waste incinerator;
- landfill and land raising sites;
- waste storage facilities;
- sewage treatment plants;
- dredging tips;
- recycling and waste reception centres;
- waste processing and composting plants; and
- concrete crushing and blacktop reprocessing facilities.

This list is for general guidance only and it is not intended to be exhaustive.

8. However, an application for planning permission for a material change of use of an existing building to a building to be used wholly or mainly for purposes of treating, storing, processing or disposing of refuse or waste materials will be a district matter if the use does not include the deposit of refuse or waste materials.

ANNEX 8
LIAISON BETWEEN PLANNING AUTHORITIES AND HMIP IN THE PLANNING PROCESS

1. HMIP is committed to working closely with local planning authorities to ensure that the interface between planning and pollution control works effectively.

Consultation over Developments Subject to Regulation by HMIP

2. This PPG recommends (paragraph 3.7) that local planning authorities consult HMIP on potentially polluting developments in order to be able to take account of the scope of the relevant controls exercised by the Inspectorate. HMIP welcomes early consultation as a way of minimising the prospects of conflicting requirements being imposed on developers under planning and pollution control regimes and preventing undesirable duplication of pollution controls through the planning system. It also alerts the Inspectorate to the likelihood of an application being made to them for IPC authorisation if they have not already received one.

3. There is no formal link between the requirement for planning permission and for an IPC authorisation. Applications under each system may be made, considered and determined independently of each other. However, it is recommended that applications for planning permission and IPC authorisation are submitted in parallel wherever possible. This will help minimise delays and enable conditions that are likely to be imposed under pollution controls, such as minimum chimney height, to be taken into account in the planning decision.

4. It should be pointed out, however, that if a long period of time elapses between issuing an authorisation and the start up of operations, the Inspectorate may need to vary the authorisation to ensure that prevailing standards apply. The Inspectorate has a duty to follow developments in pollution control techniques and to revise requirements to ensure the use of newly available techniques which represent best available techniques not entailing excessive cost and the best practicable environmental option. HMIP also has a legal duty to review all authorisations at least every four years.

5. When consulted, the kind of information to be provided by HMIP will normally include the following:

General information

- an explanation of HMIP? s role in the regulation of environmental pollution;
- a description of how HMIP discharges its role in cases of the relevant type of process; and
- copies of any HMIP Guidance Notes relevant to the specific case.

Process Specific Information

- comment on the proposed process, for example, whether it is likely to comply with the statutory requirement in an authorisation granted under Integrated Pollution

Control (IPC) to use the ? best available techniques not entailing excessive cost' (BATNEEC) to prevent or minimise and render harmless releases of polluting substances;
- relevant data and comments on releases from the proposed process;
- comment on whether or not an IPC authorisation is likely to be forthcoming (provided that sufficient information is available) or has already been granted;
- other relevant information about processes in the area registered under the Alkali, &c, Works Regulation Act 1906 or authorised under IPC; and
- other relevant information on the local environment which HMIP is able to give.

6. **In cases where HMIP are consulted on a planning application but have neither received nor commenced discussions on an application for IPC authorisation, they will contact the developer and seek to initiate pre-application discussions**. Where an applicant does not have sufficient information to make a full application for an IPC authorisation at the same time as his planning application, a staged application for IPC authorisation may be appropriate. The first stage should include, for example, the reasoning behind process selection. This should enable HMIP to give an indication of requirements at any early stage. Without such information it may only be possible to give general information and not the process-specific information mentioned in paragraph 5.

Environmental Assessments

7. **The extent of HMIP? S statutory involvement in the planning process is limited to environmental assessments**. The Inspectorate is a statutory consultee under the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (SI 1988/1199) (as amended) for planning applications relating to specific types of developments (defined in Regulation 8(6)).
8. In addition, on being notified by a local planning authority of the name and address of any person proposing to make a Schedule 1 or Schedule 2 application for a development for which HMIP would be a statutory consultee under the Regulations, the Inspectorate is required to make available any information in its possession which it or the developer considers relevant to the preparation of an environmental statement. The list in paragraph 5 above gives an indication of the information HMIP might be in a position to provide.

Planning Appeals and Inquiries

9. From time to time, HMIP is called on to assist in planning cases involving a public inquiry, as an expert on pollution control. Depending on the type of development being proposed, HMIP will normally provide a written submission to an inquiry, and will attend where necessary.

10. The information supplied in a written submission and presented at an inquiry would normally consist of that outlined in paragraph 5 above.

Structure, Unitary, Local and Other Plans

11. Under PPG 12, Planning Authorities are advised to consult HMIP on development

plans. HMIP welcomes the opportunity presented by the preparation of these plans for involvement in strategic planning decisions. The Inspectorate will endeavour to indicate areas where there is a risk of harm to the environment or to human health and where potentially polluting developments might therefore need to be restricted or avoided. HMIP might also comment on the implications for pollution control requirements on existing industry of any proposals to locate sensitive developments, such as housing or a hospital nearby.

ANNEX 9
ENVIRONMENTAL ASSESSMENT

1. For certain projects, the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 (S.I.1988/1199) (as amended) require an environmental assessment (EA) to be carried out before planning permission may be granted. The Regulations set out lists of projects in two Schedules:
(I) for those in Schedule 1, such as integrated chemical installations, installations for the final disposal of radioactive waste, and installations for the incineration or chemical treatment of special waste, an EA is required in every case;
(ii) for those in Schedule 2, such as minerals extraction, installations for the disposal or incineration of non-hazardous controlled waste and waste water treatment plants, EA is required if the particular development proposed is likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

2. Where EA is required, the applicant has to prepare and submit an environmental statement with the planning application. This must include the 'specified information' set out in Schedule 3 to the Regulations and may include certain further information by way of explanation or amplification. A non-technical summary must always be included. The information included in the environmental statement is likely to be similar in many cases to that which may be provided in support of an application for pollution control authorisation.

3. **The aim of an environmental statement will be to provide a full and systematic account of a development's likely effects on the environment, including those which are subject to pollution controls, and the measures envisaged to avoid, reduce or remedy significant adverse effects**.

The preparation of an environmental statement is therefore bound to require the applicant to work out the proposals in some detail, so that, for instance, the effects of a probable discharge can be properly assessed. Procedures set out in the Regulations ensure that statutory consultees, such as HMIP, the NRA and English Nature, have the opportunity to consider the applicant's submitted environmental statement and to make representations on it to the planning authority. The environmental statement must also be made available for inspection and purchase by the public.

4. Where the application falls within the scope of the Regulations, planning permission may not be granted unless the information contained in the environmental statement has been taken into consideration, together with any representations made by a statutory consultee or any other person. The information provided in this manner will enable the local planning authority to determine whether planning permission should be granted in the light of any likely adverse environmental effects. It will also enable the planning authority to determine whether conditions should be imposed requiring the applicant to take steps to reduce any such effects.

However the local planning authority should restrict the imposition of any conditions to matters which are properly their responsibility and do not fall within the remit of the pollution control authority.

ANNEX 10
CONTAMINATED LAND

Introduction

1. The quality of land is intimately bound up with its past and present uses. Whilst most land in England and Wales is not damaged, there is, nonetheless, a legacy of contaminated and degraded land which, whether in urban or rural areas, presents special problems.

2. Where practicable (see paragraphs 1.12 and 1.33), land which is already contaminated should be brought to a standard where it is suitable for its actual or intended use. That should enable land to be kept or brought back into beneficial use and should help to minimise avoidable pressures on green field sites.

3. In March 1993 the Government announced a review of the powers and duties of public authorities to deal with the identification, assessment and appropriate treatment of contaminated land. The review took as its starting point the implementation of the 'suitable for use' approach to contaminated land.

Development plans and policies

4. In preparing their development plans, planning authorities need to take into account the possible effects on health and the environment of contaminated land. Development plans provide an opportunity to set out policies for the reclamation and possible use of contaminated land. (See PPG12 para 6.18)

5. Local plans and Part II of Unitary Development Plans should include detailed criteria which will be applied in determining planning applications for development on land which is known to be, or may be, contaminated. They may also set out any site-specific proposals for land use, where contamination is known or the site history suggests a risk of contamination, so that they may be readily identifiable to landowners and prospective purchasers or developers.

Determining planning applications

6. Even before an application is made, informal discussions between a potential developer and the local planning authority can be very helpful. If the local planning authority has reason to believe that there is a possibility that the land might be contaminated, it can be brought to the attention of the developer at this stage, and the implications explained. Other statutory bodies should also be consulted to establish their requirements. The applicant can then design his scheme including proposals for site investigation so as to take full account of the likely requirements of the planning authority or other statutory body. Applications need not be delayed pending a detailed investigation by the developer to establish the nature and extent of the contamination.

7. In districts which contain a significant number of possibly contaminated sites, the

local planning authority should find it useful to include a question on contamination on their standard application form and a note to applicants on the subject. If an application is received without prior discussion and the authority suspects that the site may be contaminated, it would be of benefit to all parties concerned for the authority to advise the applicant that the land may be contaminated and of the factors which will be taken into account in determining the application. The applicant may then wish to consider whether or not to proceed.

8. However if it is known or strongly suspected that the site is contaminated to an extent which would adversely affect the proposed development or infringe statutory requirements, an investigation of the hazards by the developer and proposals for any necessary remedial measures required to deal with the hazards will normally be required before the application can be determined by the local planning authority. Certain aspects of such investigations, such as drilling boreholes, may require separate planning permission or approval by other statutory authorities. Planning permission may need to include conditions, for example requiring certain remedial measures to be carried out.

9. In other cases, particularly where there is only a suspicion that the site might be contaminated, or where the evidence suggests that there may be only slight contamination, planning permission may be granted but conditions should be attached to make it clear that development will not be permitted to start until a site investigation and assessment has been carried out and that the development itself will need to incorporate all the measures shown in the assessment to be necessary.

10. If the information provided by the applicant is insufficient to enable the authority to determine the application, the authority may request further information. Should the degree of contamination be such that remedial action is required to safeguard future users or occupiers of the site or neighbouring land, or protect any buildings or services from the hazards, then planning permission may be granted subject to conditions specifying the measures to be carried out.

11. Conditions might also be imposed that require the developer to draw to the attention of the planning authority the presence of significant unsuspected contamination encountered during redevelopment.

12. **The assessment of the significance of the contamination and of the associated risks requires careful professional judgement**. It is therefore recommended that the local planning authority should obtain advice from relevant experts in other local authority departments or outside consultants, and consult with the pollution control authorities when considering applications to develop contaminated or potentially contaminated sites.

13. Local planning authorities should be aware that health and safety at work legislation requires those in control of work on a contaminated site to safeguard the health and safety of workers and of members of the public who may be affected. The Health and Safety Executive enforce the legislation and have published guidelines 'Protection of Workers and the General Public During the Development of Contaminated Land' (Guidance Note HS (G) 66 - HMSO 1991, ISBN 0 -11-885657-

X).

14. Where planning permission is granted for a site on which the presence of contamination is known or suspected, a separate notice should be issued to the applicant stating that the responsibility for safe development and secure occupancy of the site rests with the developer. It should also warn the applicant that the local planning authority has determined the application on the basis of the information available to it, but this does not mean that the land is free from contamination.
15. If an appeal is made against a refusal of planning permission and contamination appears as a reason for refusal, the Secretary of State will consider the need to appoint a technical assessor to assist the Inspector in determining the appeal.

16. **Where it is proposed to build on a contaminated site, particular attention should be paid to the requirements of the Building Regulations 1991 (S.I.1991/2768), where they apply**. If new information comes to light in the course of the development which indicates that the risks from contamination are substantially greater than were previously assessed, the local authority may issue an enforcement notice, where the risk is in breach of planning control, or consider the use of powers which cover premises in such a state as to be prejudicial to health or a nuisance.

17. English Partnerships (the Urban Regeneration Agency) can provide financial support for the regeneration of areas of need in England through the reclamation and development of land, and this can include the treatment of contaminated land. From 1 April 1994 English Partnerships has taken over the administration of Derelict Land Grant (as well as City Grant and the English Estates programme) but will in due course replace these with its own financial support regime. The emphasis will be on a strategic approach to the regeneration of whole areas rather than support for isolated ad hoc projects. Further advice can be provided by the London or (when established) Regional Offices of English Partnerships.

ANNEX 11
RESTORATION, AFTERCARE AND AFTER-USE OF LANDFILL SITES FOR AGRICULTURAL, AMENITY OR FORESTRY USE

Introduction

1. **Where it is intended that the after-use of a landfill site should be agriculture, amenity or forestry, the planning permission for the site should provide for the restoration of the landform and growing medium (normally soil) to an appropriate standard, as specified in the planning permission, for the establishment of vegetation cover and the satisfactory aftercare of the land**. Amenity after-use may include open grassland for informal recreation, basic preparation for more formal sports or leisure facilities, amenity woodland, landscaping and nature conservation. Any other after-uses, such as built development, would require a separate planning permission.

2. Requirements to achieve an acceptable after-use should normally be part of the planning permission for the landfill site, taking into account the likely requirements of the waste disposal or site licence, and the duty of care (see Annex 4). Given that a site has appropriate final landform, there are two types of planning condition necessary to achieve proper after-use:
- a restoration condition
- an aftercare condition.

3. A restoration condition is a requirement to restore the site by the use of subsoil, topsoil or soil-making material. This must precede the implementation of any aftercare condition.

4. **An aftercare condition can only be imposed if there is also a restoration condition**. Such a condition requires any necessary steps to be taken to bring land to the required standard for the use specified in that condition (ie use for agriculture, amenity or forestry). The steps may include planting, cultivating, fertilising, watering, draining or otherwise treating the land. The maximum aftercare period is 5 years from completion of the restoration condition on a site, or on the relevant part where there is phased restoration. This maximum aftercare period can be varied by the Secretary of State by regulations and can therefore be reviewed in the light of experience.

5. The Planning and Compensation Act 1991 gave powers to local planning authorities to impose aftercare conditions on planning permissions, revocation orders and discontinuance orders in respect of development involving the depositing of any types of refuse or waste materials. This applies to landfill sites. Advice on the imposition of aftercare conditions in respect of mineral workings is given in Minerals Planning Guidance (MPG) 7, ? The Reclamation of Mineral Workings', and may to some extent be helpful for the reclamation of landfill sites.

Choices of after-use

6. **Planning conditions for the reclamation of a proposed landfill site should be**

drawn up with a particular after-use in mind, although for a long-duration site there may need to be provision to review the objectives in the light of changing policies and techniques, and of operational experience. The choice of after-use may be influenced by a number of factors, including:
- the present characteristics of the site;
- the wishes of the landowner and requirements of any leases or covenants;
- planning policies for the area;
- the nature and scale of the landfill proposals, including proposed systems for gas and leachate control and capping;
- statutory advice from the Ministry of Agriculture, Fisheries and Food (MAFF) or the Forestry Authority;
- advice from the relevant pollution control authority.

7. Planning conditions may require landfill sites to be restored to agriculture. High standards of restoration which support productive grassland, agriculture or arable cropping are feasible. However, these require careful planning from the outset, involving considerations of after-use, reclamation and gas control requirements. Unless requirements are compatible and sufficiently comprehensive there is a serious risk that restoration may merely provide a ? green cover', which is incapable of supporting viable agriculture and which in the longer term may lead to an appearance of neglect and dereliction.

8. **Use of appropriate planning conditions are important in ensuring that, so far as reasonably practicable, the proposed after-use can be achieved**. Consultation with the Waste Regulation Authority is needed to ensure that site practices and the design of the pollution control system are compatible with reclamation requirements. However, where modern agriculture reclamation standards cannot be achieved at reasonable expense, planning authorities may consider whether the proposed after use is still appropriate, or whether an alternative use should be specified or whether planning permission should be refused.

9. Current DOE advice in Waste Management Paper (WMP) 26 ? Landfilling Wastes' advises against treeplanting on landfills because of fears of poor tree survival and growth and the need to ensure that impermeable barriers (eg. capping) are not compromised. This Waste Management Paper is likely to be revised and current research indicates that there are possible measures which can enable successful tree planting on some sites - for either amenity or forestry purposes. Further advice can be found in the report of the Forestry Authority, ? THE Potential for Woodland Establishment on Landfill Sites', HMSO 1993.

10. A recent report 'Amenity Reclamation of Mineral Workings', published by HMSO, includes some advice on the reclamation of landfill sites. It concludes that landfill sites can be used for a wide range of land-based amenity uses from formal sports to nature conservation, so long as:
- all problems associated with the generation of landfill gases have been adequately dealt with;
- soil (or soil-making materials) of adequate depth has been provided over the fill;
- allowances have been made for settlement; and
- water quality is assured.

Planning applications and consultations

11. Before a formal application for planning permission is made, discussions between an applicant for a potential landfill site and the relevant planning authority can be very helpful. Other bodies such as the Waste Regulation Authority, the National Rivers Authority, and in some cases MAFF or the Forestry Authority may also be consulted at this stage. The applicant can then draw up proposals and undertake any necessary site assessments with a view to a chosen after-use, taking into account the likely requirements of the planning authority and other bodies.

12. **The planning application should be accompanied by clear proposals and plans for restoration and aftercare in preparation for the intended after-use**. Both WMP26 and MPG7 give further general advice, but also stress that proposals and conditions should be drawn up to suit the particular requirements of an individual site.

13. Where land is to be returned to agricultural use following planning permission for use as a landfill site, irrespective of the size of the site or the land quality, MAFF must be consulted on aftercare conditions (see Annex A to PPG 7). Similarly, if it is considered that forestry is the most suitable after-use, the Forestry Authority must be consulted. Each of these organisations has a statutory duty to advise local planning authorities on whether a particular after-use is suitable, before planning permission can be granted and before an aftercare condition for agriculture or forestry can be imposed.

14. The statutory requirements for consulting MAFF or the Forestry Authority do not apply to restoration conditions. However, it is clear that the achievement of good standards in the aftercare period must in part depend on appropriate (and enforced) planning conditions covering, for example, the stripping and movements of soils and their restoration upon completion of the landfill or the relevant phase of the landfill. **MAFF and the Forestry Authority can therefore usefully comment or advise on restoration conditions**.

15. There is no statutory consultee for the broad range of 'amenity' after-uses. However advice on particular proposals can usefully be sought from the Countryside Commission, English Nature, the Forestry Authority or the Regional Councils for Sport and

Recreation, as appropriate.

16. Conditions on aftercare can only be used to bring the land to a 'required standard' which is defined in general terms according to the intended after-use. In respect of sites where an agricultural after-use is proposed, one of two alternative standards may be applied. Where it is necessary to restore a site as far as practicable to the physical characteristics of the land when last used for agriculture, then MAFF must provide a statement of physical characteristics on the land before planning permission can be granted, if it is proposed to return the site as nearly as possible to those characteristics. Such surveys may be most appropriate if the proposal affects high quality land in current agricultural use, in which case the required standard is defined in paragraph

3(1) of Schedule 5 to the Town and Country Planning Act 1990. In other cases, and for other after-uses, the appropriate required standard will be that the land is ? reasonably fit for that use'. Where this standard is applied, a statement of physical characteristics will not be provided by MAFF. 'Fitness for use' may also include landscape features, as specified in the restoration and aftercare conditions.

17. The controls on the surrender of site licences I under the EPA 1990 (see Annex 4), mean it is likely that pollution controls over a particular landfill site will remain in force long after the restoration and aftercare required under the planning permission will have been completed and the after-use of the site commenced. In such circumstances, if the pollution control monitoring and remedial activities affect such land, there may need to be provision to remedy any damage, either through amendments to the pollution control licence, which will still be in force, or, in the case of a new planning permission, through a planning obligation or other agreement.