



ENVIRONMENTAL PROTECTION ACT 1990, SECTION 78E(1)

**THE CONTAMINATED LAND (WALES) REGULATIONS 2001
SI 2001 No. 2197 (W.157)**

REMEDIATION NOTICE

To: Company Secretary, Friars Management (UK) Limited, Matrix House, Wick Lane, Christchurch, Dorset. BH23 1HT

This Notice is served on you by **Flintshire County Council** (“the Local Authority”) pursuant to section 78E of the Environmental Protection Act 1990 (“the 1990 Act”) in relation to contaminated land identified by the Local Authority under section 78B of the 1990 Act.

A notice of identification of contaminated land dated 7th June 2002 was given to you by the Local Authority.

The location and extent of the contaminated land to which this Notice relates are set out in Schedule 1.

The Local Authority considers that you are an appropriate person within the meaning of the 1990 Act by reason of having caused or knowingly permitted the substances, or any of the substances, by reason of which the contaminated land to which this Notice relates is contaminated land, to be in, on or under that land.

The things that you are required to do by way of remediation and the period within which you are required to do each of these things are set out in Schedule 2.

The further matters required to be stated in this Notice are set out in Schedules 3 to 7.

Signed.....

Name: Mr AG Fuller

Position: Pollution Control Manager

Date: 1st July 2004

Flintshire County Council
Directorate of Transportation, Planning and the Environment
Third Floor
Phase 4
County Hall
Mold
Flintshire
CH7 6NH

Contact name: Mrs JA Lewis
Environmental Health Technician
Telephone: 01352 703400

[Note to recipient (this note does not form part of the Notice): Part IIA of the Environmental Protection Act 1990, which was inserted by section 57 of the Environment Act 1995, establishes a framework for the identification and remediation of contaminated land. Part IIA came into force in Wales on 1st July 2001. Part IIA contains the structure and main provisions of the regime. The Contaminated Land (Wales) Regulations 2001 (SI 2001 No. 2197 (W.157)) set out detailed provisions on parts of the regime which Part IIA leaves to be specified in secondary legislation, including provisions relating to remediation notices and appeals. DETR Circular 02\2000 has the function of setting out the way in which the regime is expected to work, by providing an explanation of government policy (Annex 1), a description of the regime (Annex 2) and a guide to the English Regulations which are almost identical to those for Wales (Annex 4). Annex 3 of the DETR Circular 02\2000 is replaced in Wales by the National Assembly for Wales (November 2001), "Remediation of Contaminated Land. National Assembly for Wales Guidance to Enforcing Authorities under Part IIA of the Environmental Protection Act 1990". The function of this is to provide the detailed framework for various key elements of the regime. Copies of the Circular can be obtained from The Stationery Office, PO Box 29, Norwich NR3 1GN (www.itsofficial.net). Copies of the National Assembly for Wales guidance can be obtained on the web site www.wales.gov.uk

SCHEDULE 1

Location and Extent of Contaminated Land to which this Notice relates (Regulation 4(1)(b)).

The extent of the contaminated land as identified under section 78B is shown delineated in red on the map attached to Schedule 1 (Ordnance Survey Grid Reference Number SJ28898 68996). The site relates to the following premises:

Communal kerosene oil tank compound located behind 8 and 10 Wirral View, Connahs Quay, Flintshire belonging to Friars Management (UK) Limited, Matrix House, Wick Lane, Christchurch, Dorset. BH23 1HT (as shown in green hatch on the map) (Ordnance Survey Grid Reference Number SJ28900 68995)

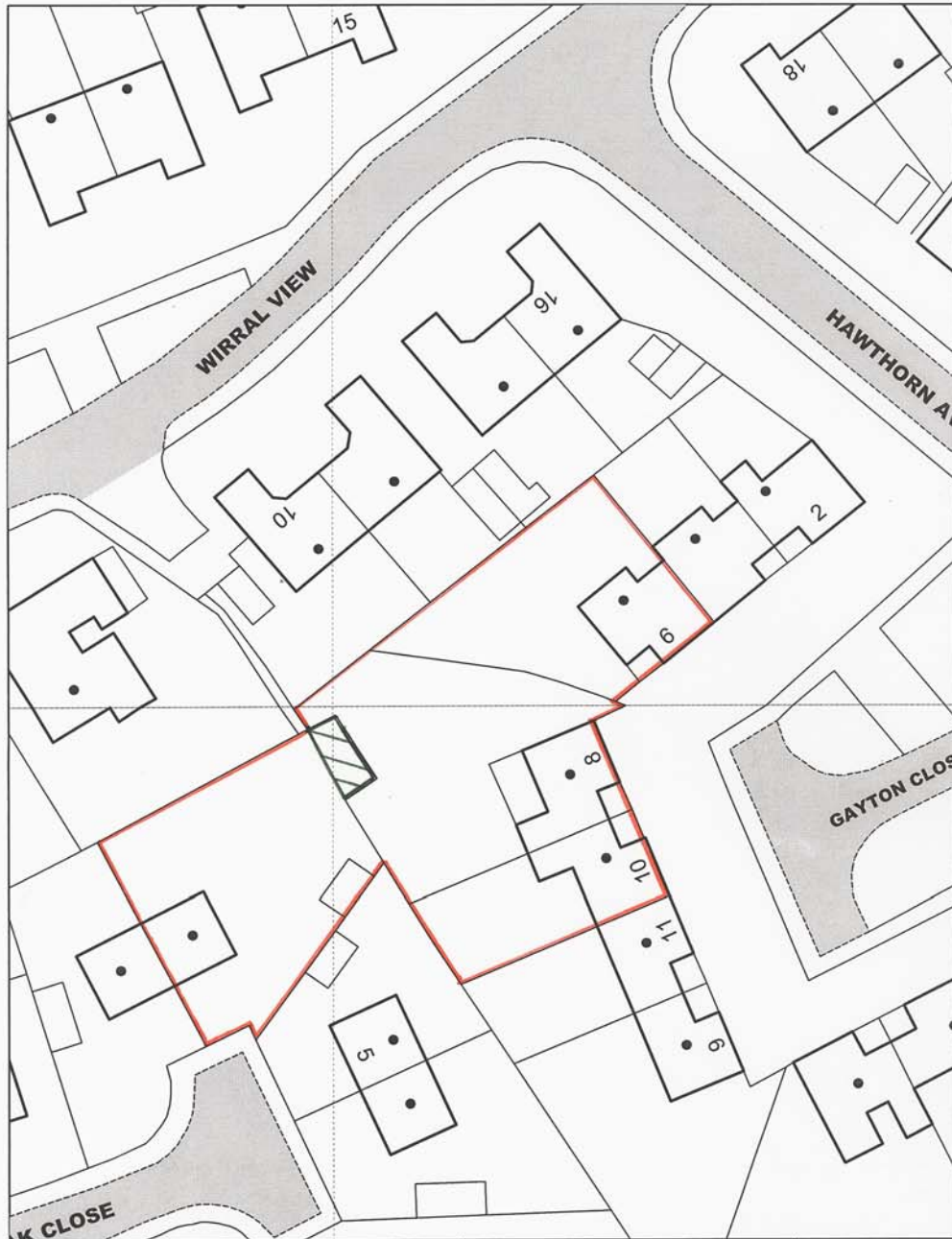
6 Broad Oak Close, Connahs Quay, Flintshire, CH5 4TQ;

6 Gayton Close, Connahs Quay, Flintshire, CH5 4TG;

8 Gayton Close, Connahs Quay, Flintshire, CH5 4TG;

10 Gayton Close, Connahs Quay, Flintshire, CH5 4TG.

The remediation scheme relates to the site delineated in red. The pollutant source as identified in Schedule 3 is shown hatched in green. The pollutant escaped from the communal kerosene tank compound into the surrounding residential properties. The receptor locations identified in Schedule 3 are the gardens of the four residential properties listed above and shown within the boundary marked in red.



Flintshire County Council
 Transportation, Planning
 & the Environment
 County Hall, Mold
 Flintshire, CH7 6NF

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Scale : 1:500 Date : 29 Jun 2004 Time : 04:25:35 PM

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□ CONTAMINATED LAND

▨ OIL TANK

SCHEDULE 2

Remediation Requirements and Periods (Section 78E(1))

The Local Authority acknowledges that the leak which has caused the contamination on site has been found and repaired.

The Local Authority still requires that you implement a remediation scheme that ensures the Contaminated Land described in Schedule 1 is treated such that it reaches a standard where the land is in such a condition that the significant possibility of significant harm being caused is removed. The remediation scheme must involve the use of an in-situ bioremediation treatment (as described later in Schedule 2), with the removal of as limited a quantity of soil as possible to a licensed waste disposal site, only if circumstances require.

The remediation scheme must be undertaken by a professional contractor(s), experienced in dealing with the remediation of contaminated land, particularly in the use of in-situ bioremediation methods. The company employed must have appropriate professional indemnity insurance, public liability insurance, an appropriate quality management system, the use of accredited laboratories and an experience of occupational hygiene issues and health and safety legislation.

Since the issue of the Determination Notice, consultation on new national guidance has been released by the Environment Agency, which relates to the protection of human health from petroleum hydrocarbons. This guidance will form the framework for the Contaminated Land Exposure Assessment (CLEA) methodology to be used to assess the human health risk caused by petroleum hydrocarbons. As a consequence, this guidance has been applied to this contaminated land site in order to reassess the applicable pollutant linkages and the site specific criteria.

The Environment Agency guidance and CLEA model does not relate directly to the health risk to pets. Quantitative methods supported by relevant toxicological information would be required to undertake the risk assessment to the health of pets. However, as this is not readily available and there are cost implications, it is considered that the level of protection provided to human receptors by the CLEA model will also provide a similar degree of protection to pets.

Schedule 3 illustrates all the hypothetical pollutant linkages that might cause significant harm on this contaminated land site. Further soil samples have been taken since the determination notice was served in order to assess the human health risk in a tiered approach, in accordance with the guidance and the CLEA model. The assessment revealed that the pollutant linkages 5, 6, 7 and 8 could potentially cause significant harm to human health at the site and therefore the site is still determined as contaminated land in relation to the new assessment. On the basis that the findings relate to pets as well, pollutant linkages 15 and 16 could cause significant harm to the health of pets at the site.

The remediation scheme is comprised of remediation actions which are referable to pollutant linkages 5, 6, 7, 8, 15 and 16 as identified in Schedule 3 and are therefore known as shared actions. The remediation actions are as follows:

1. Assessment Action as defined by section 78A(7)(a)
 - 1.1 Soil samples must be collected and analysed for speciated total petroleum hydrocarbons (TPH), including aromatic and aliphatic compounds in the ranges between C6-C40 and speciated polycyclic aromatic hydrocarbons (PAH), including naphthalene, in order to:

- determine the exact extent of the contamination plume both laterally and vertically within the boundary of the Contaminated Land site, as defined in Schedule 1;
- determine the exact concentrations of the contamination plume across the Contaminated Land site, as defined in Schedule 1.

The samples must be collected in accordance with the British Standard BS10175:2001, “Investigation of potentially contaminated sites-Code of practice”. The samples must be sent to an UKAS accredited laboratory and the analytical method used shall also be UKAS accredited.

- 1.2 The data obtained as a result of section 1.1 of this assessment action, concerning the extent and concentration of the contamination plume, must be used to establish the technical specifications of the remedial treatment action to be applied to the Contaminated Land site, as defined in Schedule 1. The technical specifications must include:
- the design of the treatment to be applied to the site;
 - the frequency and spatial positioning of the sampling to be undertaken to monitor the concentrations of TPH and PAH (taking account of a services present);
 - the number of weeks required to complete the treatment;
 - the months in which the treatment process works at an optimum rate.
- 1.3 After treatment, it is likely that there will be costs for making good each premises within the Contaminated Land site as defined in Schedule 1. Such costs must be established.
- 1.4 The assessment actions must be completed and a report containing details related to the actions submitted to the Local Authority by 12th August 2004.

2. Remedial Treatment Action

- 2.1 Site specific criteria for kerosene were derived from the tiered human health risk assessment as follows:

| | | |
|-----------------------------------|---|------------|
| TPH | - | 56.1 mg/kg |
| Naphthalene (as indicator of PAH) | - | 25.25mg/kg |

These are considered to be protective of human health at the site with respect to the current residential use and the pollutant linkages shown in Schedule 3. The site specific criteria are also deemed to be protective of the health of pets at the site. The treatment/removal of the soil on the Contaminated Land site defined in Schedule 1 must reduce the TPH and naphthalene concentrations to below the site specific criteria stated, across the whole site. By treating the pollutant in this way, this will ensure that the land will be suitable for use again and the significant possibility of significant harm being caused has been removed. Where the property has been disturbed in some way to undertake the treatment/removal of soil, the property shall be left in the state it was originally found.

- 2.2 The Contaminated Land site as defined in Schedule 1 shall be treated with the use of an in-situ bioremediation method. This shall involve the injection into the ground of non-pathogenic bacteria in a suitable medium to enhance the treatment process. The injection points shall be at the positions defined by the technical specification produced in the assessment action (see paragraph 1.2). Soils may only be excavated for disposal if absolutely necessary for example if the concentration of TPH and/or PAH in the soil is too high to be treated with the use of the bioremediation method. If soil must be excavated for disposal it must be disposed of at a

licensed waste disposal site and must be transported by a registered waste carrier in accordance with the Waste Management Licensing Regime.

- 2.3 Soil samples shall be collected in accordance with the frequency and spatial positioning identified in the technical specification produced for the assessment action (see 1.2). The samples must be collected in accordance with the British Standard BS10175:2001, "Investigation of potentially contaminated sites-Code of practice". They shall be analysed for speciated total petroleum hydrocarbons (TPH), including aromatic and aliphatic compounds in the ranges between C6-C40 and speciated polycyclic aromatic hydrocarbons (PAH), including naphthalene, at an UKAS accredited laboratory and the analytical method used shall also be UKAS accredited. The results of this sampling shall be used to validate the treatment undertaken and show that the standard required in paragraph 2.1 has been met.
- 2.4 All results must be submitted to the Local Authority.
- 2.5 The treatment must be completed and all the soil sampling results submitted to the Local Authority by 30th April 2005.

SCHEDULE 3

Particulars of significant harm and particulars of substances including details relating to escaped substances (Regulation 4(1)(e) and (f))

| Pollutant Linkage Identifier | Pollutant | Source Location | Pathway | Receptor | Description of Harm |
|------------------------------|-----------|---------------------------|--|---|---|
| 1 | Kerosene | Kerosene supply pipe line | Inhalation of soil derived dust outdoors | Human beings: residents and visitors to the house | Possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 2 | Kerosene | Kerosene supply pipe line | Inhalation of soil derived dust indoors having been carried in on persons and pets | Human beings: residents and visitors to the house | Possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 3 | Kerosene | Kerosene supply pipe line | Inhalation of vapours outdoors | Human beings: residents and visitors to the house | Possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 4 | Kerosene | Kerosene supply pipe line | Inhalation of vapours indoors, having entered the house via the drainage system or the footings | Human beings: residents and visitors to the house | Possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 5 | Kerosene | Kerosene supply pipe line | Ingestion of soil outdoors due to working or playing in the contaminated soil and children eating it purposely | Human beings: residents and visitors to the house | Significant possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 6 | Kerosene | Kerosene supply pipe line | Ingestion of soil derived dust indoors having been carried in on persons and pets | Human beings: residents and visitors to the house | Significant possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 7 | Kerosene | Kerosene supply pipe line | Ingestion of home-grown vegetables | Human beings: residents and visitors to the house | Significant possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 8 | Kerosene | Kerosene supply pipe line | Ingestion of soil attached to home-grown vegetables | Human beings: residents and visitors to the house | Significant possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |

SCHEDULE 3 (Continued)

| | | | | | |
|----|----------|---------------------------|---|---|---|
| 9 | Kerosene | Kerosene supply pipe line | Dermal contact with soil outdoors due to working or playing in the contaminated soil | Human beings: residents and visitors to the house | Possibility of significant harm due to dermatitis |
| 10 | Kerosene | Kerosene supply pipe line | Dermal contact with soil derived dust indoors having been carried in on persons and pets | Human beings: residents and visitors to the house | Possibility of significant harm due to dermatitis |
| 11 | Kerosene | Kerosene supply pipe line | Inhalation of soil derived dust outdoors | Pets | Possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 12 | Kerosene | Kerosene supply pipe line | Inhalation of soil derived dust indoors having been carried in on persons and pets | Pets | Possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 13 | Kerosene | Kerosene supply pipe line | Inhalation of vapours outdoors | Pets | Possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 14 | Kerosene | Kerosene supply pipe line | Inhalation of vapours indoors, having entered the house via the drainage system or the footings | Pets | Possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 15 | Kerosene | Kerosene supply pipe line | Ingestion of soil outdoors | Pets | Significant possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 16 | Kerosene | Kerosene supply pipe line | Ingestion of soil derived dust indoors having been carried in on persons and pets | Pets | Significant possibility of significant harm due to hepatotoxicity, nephrotoxicity, neurotoxicity, hepatic and hermatological changes and decreased body weight. |
| 17 | Kerosene | Kerosene supply pipe line | Dermal contact with soil outdoors due to walking or digging in contaminated soil | Pets | Dermatitis |
| 18 | Kerosene | Kerosene supply pipe line | Dermal contact with soil derived dust indoors having been carried in on persons and pets | Pets | Possibility of significant harm due to dermatitis |

SCHEDULE 3 (continued)

The pollutant in the significant pollutant linkage reference as pollutant linkage identifiers 1 to 18 in the table above is considered to have escaped from other land. The location of this land is the Communal kerosene oil tank compound located behind 8 and 10 Wirral View, Connahs Quay, Flintshire belonging to Friars Management (UK) Limited, Matrix House, Wick Lane, Christchurch, Dorset. BH23 1HT (Ordnance Survey Grid Reference Number SJ28900 68995). This land is shown in green hatch on the map in Schedule 1.

SCHEDULE 4

Reasons for Flintshire County Council's Decision on Remediation Requirements (Regulation 4(1)(g))

Two main options appeared to Flintshire County Council to be available to remediate the contaminated land site as defined in Schedule 1; excavate and dispose of all the contaminated soil off site or use an in-situ bioremediation method.

The in-situ bioremediation method, using the application of non-pathogenic bacteria in a suitable medium to enhance the treatment process, is deemed to be the best practicable technique for this contaminated land site for the following reasons.

1. Reasonableness of remediation (Chapter 3, Part E, Statutory Guidance)

Cost of Remediation

- 1.1.1 The cost of the in-situ bioremediation method is estimated to be about £30000 to £35000. This includes the cost of the assessment actions and the remediation actions. Currently the cost of excavation and disposal is comparable with the in-situ bioremediation method. However, it is envisaged that the cost of excavation and disposal will rise significantly following the implementation of the Landfill Directive on 16th July 2004. The value of the householders' properties in their current state is depleted.
- 1.1.2 By using the bioremediation method there will be no relevant disruption costs as there will be no further depreciation in the land value and the residents will still be able to use their gardens to the same degree that they are able to currently. There should be no loss or damage to the properties which cannot be made good after the treatment.

Seriousness of harm

- 1.2.1 It has not been scientifically proven that significant harm has already been caused. If the contamination is left on site left untreated, it will continue to degrade naturally but will take a number of years to degrade to a level which may not cause harm. Therefore, the residents and pets at the contaminated land site will be left exposed to the effects of the contaminants via the different pathways identified in Schedule 3, over this period of time and there is a significant possibility of significant harm, as described in Schedule 3.

Adult human beings are being exposed each time they undertake work in the gardens and children when they play in the gardens. Both are being exposed on a constant basis to contaminated dust carried inside the houses from the gardens. The householders who eat their own home-grown vegetables will also be exposed to the contaminants which are attached to the outside of the vegetables and have been absorbed by the vegetables.

There is a significant possibility of significant harm to pets as they are also exposed to the contaminants in the same manner as human beings when they are in the gardens or indoors. They may be exposed to a greater extent than human beings as their paws are constantly exposed to the contamination when in the gardens or walking over dusty surfaces indoors. However, the ingestion of home grown vegetables is not thought to be a pathway applicable to them.

The extent of exposure to both human beings and pets cannot be quantified precisely as every household's habits differ. Young children may play in the garden everyday when the weather permits while adults may only work in the garden once a week for example.

- 1.2.2 Currently, the residential property owners as defined in Schedule 6, are unable to use their own gardens freely as they should be able to as owners of the land, due to the significant possibility of significant harm being caused either to humans or pets as defined in Schedule 3.

Humans and their pets could suffer from the types of harm described in Schedule 3.

- 1.2.3 The receptors have not been damaged by other means. There are no other environmental risks prevailing in the locality of the site defined in Schedule 1.

2.0 Practicability, effectiveness and durability of remediation (Chapter 3, Part E, Statutory Guidance)

Practicability

- 2.1.1 In-situ bioremediation is known to have been available on a commercial scale for at least 10 years and can be applied to areas of land akin to the area of the contaminated land site defined in Schedule 1. As there are no other remediation actions to be applied to the site this method will not have a detrimental effect on other remediation actions and nor will other remediation actions diminish the effectiveness of the in-situ bioremediation.

- 2.1.2 There is limited access to the rear of the residences and the oil tank compound, making it more impractical to move heavy plant equipment onto the site, as would be required if the method of soil excavation and removal were employed. Equipment required to undertake in-situ bioremediation can be moved through narrow gaps to gain access to the area to be treated. This will negate the need to remove fencing and planting which would increase the costs involved. The treatment will also work under hard surfaces therefore removing the need to dig up and replace surfaces such as patios. Hence the latter method is far more practical on the contaminated land site defined in Schedule 1 from the point of view of accessibility.

- 2.1.3 In-situ bioremediation is used regularly to treat kerosene spillages, where the pollutant has migrated through a soil medium. It can be applied to all soil types providing there is not a high concentration of heavy metals in the soil. As the desk top study does not indicate a history of mining on the site and the geology is not indicative of natural elevated levels of heavy metals in soils, the soils should not contain excessive concentrations of heavy metals.

Time constraints

- 2.2.1 The in-situ bioremediation method may take up to three weeks to design and produce the relevant report in respect of the assessment action. The actual remedial treatment action will take up to six months to gain the standard of treatment required. However, with the prevailing issues of possible harm on site various temporary precautions can be taken by the land owners until remediation scheme has been completed. It is believed that regulatory permits will not be required for the treatment of this contaminated land site. Therefore a time constraint should not result for this reason.

Regulatory constraints

- 2.3.1 The in-situ bioremediation method can be carried out within the statutory controls relating to health and safety. It can also be undertaken within the statutory requirements of pollution control regimes as it should not cause any adverse environmental impacts.

3.0 Adverse Environmental Impacts

There will be no risk to ground water as non-pathogenic bacteria are used which are biodegradable. The substrate is stable, odourless and does not produce any toxic gas emissions. The products of the treatment are carbon dioxide, water and simple non-harmful carbon compounds. Therefore, once the treatment is complete the land is left with no harmful residues. While the treatment is in progress it is harmless to plants and animals. While there will be some noise incurred it is unlikely to be regarded as causing a noise nuisance.

The countryside, places of special interest and buildings with special architecture or historic interest will not be affected by the treatment method.

4.0 Effectiveness of Remediation

It is considered that the in-situ bioremediation method will achieve the required standard of remediation of less than 56.1mg/kg TPH and 25.25mg/kg naphthalene. The method will treat all contamination. Although it may take longer to achieve the required standard compared with the excavation and removal of soil, the benefits outweigh the timeframe. People will be able continue using their gardens to a degree, while ensuring precautions are taken. Access will not be a problem and the method will cause less disruption. As the soil is not removed to a landfill site, the in-situ bioremediation method is sustainable.

5.0 Durability

Once the bioremediation treatment is complete the process of treating the kerosene in the ground is irreversible. There will be no need for ongoing management or maintenance of the site with regards to this treatment, once it is complete. This does not however provide a defence against any future discharges of kerosene into the soil.

SCHEDULE 5

Other Appropriate Persons (Section 78E (3) and Regulation 4(1)(h), (i) and (j))

Flintshire County council considers that you are the sole person responsible for the remediation described in Schedule 2 of this Notice.

SCHEDULE 6

Names and Addresses of Owners and Occupiers of the Contaminated Land (Regulation 4(1)(k))

Friars Management (UK) Limited, Matrix House, Wick Lane, Christchurch, Dorset. BH23 1HT;

Mr & Mrs B Hall, 6 Broad Oak Close, Connahs Quay, Flintshire, CH5 4TQ;

Mr & Mrs P Hughes, 6 Gayton Close, Connahs Quay, Flintshire, CH5 4TG;

Mrs JE Catherwood, 8 Gayton Close, Connahs Quay, Flintshire, CH5 4TG;

Mr & Mrs R Roberts, 10 Gayton Close, Connahs Quay, Flintshire, CH5 4TG.

Names and addresses of persons whose consent is required for remediation purposes and (Regulation 4(1) (l))

Mr & Mrs B Hall, 6 Broad Oak Close, Connahs Quay, Flintshire, CH5 4TQ;

Mr & Mrs P Hughes, 6 Gayton Close, Connahs Quay, Flintshire, CH5 4TG;

Mrs JE Catherwood, 8 Gayton Close, Connahs Quay, Flintshire, CH5 4TG;

Mr & Mrs R Roberts, 10 Gayton Close, Connahs Quay, Flintshire, CH5 4TG.

SCHEDULE 7

Offences, Penalties and Appeals (Regulation 4(1)(n) and (o), Regulation 4(2)(a), (b) and (c))

Offences and Penalties (section 78M)

- Under section 78M of the 1990 Act, it is an offence to fail, without reasonable excuse, to comply with any of the requirements of this Notice.
- A person who commits such an offence is liable to the following penalties:
 - Where the contaminated land to which the notice relates is “industrial, trade or business premises” as defined in section 78M(6) of the 1990 Act, on summary conviction, to a fine not exceeding £20,000 or such greater sum as the Secretary of State may from time to time by order substitute and to a further fine of an amount equal to one-tenth of that sum for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c) of the 1990 Act.
 - Where the contaminated land to which the notice relates is not “industrial, trade or business premises”, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the enforcing authority has begun to exercise its powers by virtue of section 78N(3)(c).

Right of Appeal (section 78L)

You have a right of appeal against this Notice, under section 78L of the 1990 Act. If you wish to appeal you must do so, within the period of twenty-one days beginning with the day on which the notice is served. In this instance the notice was served by a local authority and thus the appeal must be made to a magistrates’ court. (In cases where the notice is served by the Environment Agency the appeal must then be made to the Secretary of State).

Appeals to a Magistrates’ Court (Regulation 8)

- Regulation 8 states the following:
 - (1) An appeal under section 78L(1) to a magistrates’ court against a remediation notice shall be by way of complaint for an order and, subject to section 78L(2) and (3) and regulations 7(3), 12 and 13, the Magistrates’ Courts Act 1980 shall apply to the proceedings.
 - (2) An appellant shall, at the same time as he makes a complaint,-
 - (a) file a notice (“notice of appeal”) and serve a copy of it on –
 - (i) the enforcing authority;
 - (ii) any person named in the remediation notice as an appropriate person;
 - (iii) any person named in the notice of appeal as an appropriate person;
 - (iv) any person named in the remediation notice as the owner or occupier of the whole or any part of the land to which the notice relates;
 - (b) file a copy of the remediation notice to which the appeal relates and serve a copy of it on any person named in the notice of appeal as an appropriate person who was not so named in the remediation notice; and
 - (c) file a statement of the names and addresses of any persons falling within paragraph (ii), (iii) or (iv) of sub-paragraph (a) above.

- (3) The notice of appeal shall state the appellant's name and address and the grounds on which the appeal is made.

[Note: "file" means deposit with the justices' chief executive]

- Further information relating to appeals to a magistrates' court is given in Circular 02/2000, Annex 4 "Guide to the Contaminated Land (England) Regulations 2000".

Grounds of Appeal (Section 78L and Regulation 7)

- (1) The grounds of appeal against a remediation notice pursuant to section 78L of the 1990 Act are any of the following:-
 - (a) that, in determining whether any land to which the notice relates appears to be contaminated land, the local authority-
 - (i) failed to act in accordance with guidance issued by the National Assembly for Wales under section 78A(2), (5) or (6); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably identified all or any of the land to which the notice relates as contaminated land;
 - (b) that, in determining a requirement of the notice, the enforcing authority-
 - (i) failed to have regard to guidance issued by the National Assembly for Wales under section 78E(5); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably required the appellant to do any thing by way of remediation;
 - (c) that the enforcing authority unreasonably determined the appellant to be the appropriate person who is to bear responsibility for any thing required by the notice to be done by way of remediation;
 - (d) subject to paragraph (2) below, that the enforcing authority unreasonably failed to determine that some person in addition to the appellant is an appropriate person in relation to any thing required by the notice to be done by way of remediation;
 - (e) that, in respect of any thing required by the notice to be done by way of remediation, the enforcing authority failed to act in accordance with guidance issued by the National Assembly for Wales under section 78F(6);
 - (f) that, where two or more persons are appropriate persons in relation to any thing required by the notice to be done by way of remediation, the enforcing authority-
 - (i) failed to determine the proportion of the cost stated in the notice to be the liability of the appellant in accordance with guidance issued by the National Assembly for Wales under section 78F(7); or
 - (ii) whether, by reason of such a failure or otherwise, unreasonably determined the proportion of the cost that the appellant is to bear;
 - (g) that service of the notice contravened a provision of subsection (1) or (3) of section 78H (restrictions and prohibitions on serving remediation notices) other than in circumstances where section 78H(4) applies;
 - (h) that, where the notice was served in reliance on section 78H(4) without compliance with section 78H(1) or (3), the enforcing authority could not reasonably have taken the view

that the contaminated land in question was in such a condition by reason of substances in, on or under the land, that there was imminent danger of serious harm, or serious pollution of controlled waters, being caused;

- (i) that the enforcing authority has unreasonably failed to be satisfied, in accordance with section 78H(5)(b), that appropriate things are being, or will be, done by way of remediation without service of a notice;
- (j) that any thing required by the notice to be done by way of remediation was required in contravention of a provision of section 78J (restrictions on liability relating to the pollution of controlled waters);
- (k) that any thing required by the notice to be done by way of remediation was required in contravention of a provision of section 78K (liability in respect of contaminating substances which escape to other land);
- (l) that the enforcing authority itself has power, in a case falling within section 78N(3)(b), to do what is appropriate by way of remediation;
- (m) that the enforcing authority itself has power, in a case falling within section 78N(3)(e), to do what is appropriate by way of remediation;
- (n) that the enforcing authority, in considering for the purposes of section 78N(3)(e), whether it would seek to recover all or a portion of the cost incurred by it in doing some particular thing by way of remediation-
 - (i) failed to have regard to any hardship which the recovery may cause to the person from whom the cost is recoverable or to any guidance issued by the National Assembly for Wales for the purposes of section 78P(2); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably determined that it would decide to seek to recover all of the cost;
- (o) that , in determining a requirement of the notice, the enforcing authority failed to have regard to guidance issued by the Environment Agency under Section 78V(1);
- (p) that a period specified in the notice within which the appellant is required to do anything is not reasonably sufficient for the purpose;
- (q) that the notice provides for a person acting in a relevant capacity to be personally liable to bear the whole or part of the cost of doing any thing by way of remediation, contrary to the provisions of section 78X(3)(a);
- (r) that service of the notice contravened a provision of section 78YB (interaction of Part IIA of the 1990 Act with other enactments), and-
 - (i) in a case where subsection (1) of that section is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of the Environment Agency under section 27 might be exercised;
 - (ii) in a case where subsection (3) of section 78YB is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of a waste regulation authority or waste collection authority under section 59 might be exercised; or

- (s) that there has been some informality, defect or error in, or in connection with, the notice, in respect of which there is no right of appeal under the grounds set out in subparagraphs (a) to (r) above.
- (2) A person may only appeal on the ground specified in paragraph (1)(d) above in a case where-
- (a) the enforcing authority has determined that he is an appropriate person by virtue of subsection (2) of section 78F and he claims to have found some other person who is an appropriate person by virtue of that subsection;
 - (b) the notice is served on him as the owner or occupier for the time being of the contaminated land in question and he claims to have found some other person who is an appropriate person by virtue of that subsection; or
 - (c) the notice is served on him as the owner or occupier for the time being of the contaminated land in question, and he claims that some other person is also an owner or occupier for the time being of the whole or part of that land.
- (3) If and in so far as an appeal against a remediation notice is based on the ground of some informality, defect or error in, or in connection with, the notice, the appellate authority shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

Suspension of Remediation Notice Upon Appeal (Regulation 14)

Once an appeal has been duly made, the relevant remediation notice is suspended until the appeal is finally determined or is withdrawn (abandoned) by you. "Duly made" for this purpose means that an appeal must be made within the time limit, and in accordance with the Regulations.