

21 April 2010

Ministry for the Environment
PO Box 10362
WELLINGTON 6143

Dear Sir/Madam

SUBMISSION TO THE PROPOSED NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL

1.0 INTRODUCTION

1.1 Hamilton City Council (HCC) welcomes the opportunity to make a submission to the Ministry for the Environment on the Discussion Document entitled "Proposed National Environmental Standard for Assessing and Managing Contaminants in Soils".

2.0 SPECIFIC COMMENTS

2.1 The issues

2.1.1 HCC agrees that contaminated land is a national issue that needs to be addressed, and that land contamination has the potential to adversely affect landuse, particularly residential development. HCC supports the need for national consistency on contaminated land.

2.1.2 Examples in Hamilton City that demonstrate the need for intervention are:

- Historical residential developments of ex-horticultural sites (that required investigation and management in latter times).
- Investigation and remediation/management of a large former timber treatment site.
- Remediation/management of an ex-gasworks site prior to subdivision and development of commercial use.
- Investigation and remediation of a former sheep dip site before subdivision and residential development (that most probably would not have occurred before 2000).

2.1.3 It is agreed that the priority problems include inadequate controls on the use, development and subdivision of land involving Hazardous Activities and Industries List (HAIL) sites, and that there is an inconsistency between territorial authorities in delivering their Section 31 (Resource Management Act 1991) function in relation to contaminated land - from no involvement to a full engagement based on the Section 31 function. This inconsistency of approach needs to change in the interest of public health.

2.2 The Policy Objective

- 2.2.1 The policy objective is generally supported. The limitation to human health is supported because that is the main focus of territorial authorities and always has been by HCC in relation to contaminated land.
- 2.2.2 The downside to this is that it can lead to multiple classification assigned to the site by HCC and Environment Waikato (EW). For example, a site that has been investigated and remediated/managed from a human health perspective might be classified as such by HCC but be classified as 'partially investigated' by EW because other environmental receptors were not included in the investigation.
- 2.2.3 Any release of information in a LIM or pursuant to a LGOIMA request would have to make it clear that the site classification is based on human health considerations only.

2.3 Preferred Option

- 2.3.1 HCC supports the preferred option of a National Environmental Standard as the issue is a national one and does not differ substantially from region to region. It will ensure national application (being compulsory) and consistency in the investigation of potentially contaminated land.
- 2.3.2 Concerns have been raised however regarding the process for changing Soil Guideline Values (SGV) should the need arise. The concern is that it may be difficult to update EGVs (which are numerical values) that are documented within a NES should the need arise. Reference could be made in the NES to another document that can easily be updated without having to go through a formal planning process.
- 2.3.3 A voluntary system would not work and would not achieve the policy objective stated in the discussion document. There would be significant costs for those territorial authorities that are actively engaged in contaminated land matters to establish/review District Plan rules.

2.4 The Proposed National Environmental Standard

Compliance with the NES by HCC

- HCC has been involved in the identification and assessment of potentially contaminated land since around 2000. One full-time equivalent (FTE) person is employed in this area. HCC utilises an in-house information management system (the Selected Land Use Register (SLUR) database) that lists sites known to be or have been supporting a HAIL landuse. This database is continuously updated.
- 2.4.1 Applications for resource (landuse and subdivision) and building consents involving sites on the SLUR database are referred to the FTE person who assesses the application and generally makes requests for further information involving at least a preliminary site investigation. This is to make sure HCC's responsibilities under the RMA and the Building Act are fulfilled **where consent is required** (HCC is not always aware of any change of use etc involving a HAIL site where consent is not required).
- 2.4.2 HCC sees the NES as formalising its current approach/function under the RMA in relation to contaminated land. It will also serve to trigger the need for resource consent in relation to the change of use or development of HAIL sites where that change of use or development is otherwise a permitted activity.
- 2.4.3 In light of the above HCC does not anticipate problems with implementing and enforcing the NES as currently proposed.
- 2.4.4 HCC acknowledges that not all territorial authorities will initially be in a position to adequately implement the NES in relation to resource and/or information management

systems. Guidance is provided in the establishment of a database information system in the MfE Guideline #4 (Classification and information Protocols).

Threshold for Consent

- 2.4.5 Is it considered that the threshold for determining whether consent is required for the use, subdivision or development of land are clear and are appropriate for both the permitted activity and restricted discretionary activity status (however refer to the next section below re permitted versus controlled activities).
- 2.4.6 Some comment has been made about the need for the permitted activity rule in relation to subsurface investigations. HCC considers that it is prudent to have this rule if only to make it clear to everyone involved that this is a permitted activity.
- 2.4.7 The second part of the rule requires a report to be provided within 60 days. HCC has the following concerns with this requirement and questions its usefulness:
- It will be difficult to enforce by councils, as unless notified by the owner, councils will not know that sub-surface investigations are being undertaken.
 - If a report is not provided, and councils are aware that sub-surface investigations have taken place, the activity is discretionary. It would be difficult for a processing officer to assess the effects of this activity to consider whether a discretionary resource consent should be granted. This is because the effects of the activity are the same (undertaking sub-surface investigations) regardless of whether a report is provided to councils or not.
- 2.4.8 Notwithstanding concerns about the rule, HCC does support the underlying intent. The requirement clearly places the onus on a property owner to provide information to councils. If a report is not submitted to councils then liability rests with the property owner in the event that issues arise out of the subsequent change of use, development or subdivision of a HAIL site. However, the same onus would result from the assessment required for any reuse of development.

Sites that would be permitted

- 2.4.9 As the standard is currently proposed, HCC would see that sites with the following classifications (as recorded on HCC's SLUR database) would be permitted activities (provided that with the first three classifications the proven levels are acceptable for the intended landuse - supported by a site investigation report already held on a Council file or provided to Council in support of the permitted activity status).
- LUI - Remediated.
 - LUI - Managed.
 - LUI - Low risk.
 - LUI - Never contaminated.
- 2.4.10 It is considered that it is appropriate to require site investigation reports to prove that affected land (including known HAIL landuse) is appropriate for its intended landuse.
- 2.4.11 Those subject to consent and this investigation and/or remediation/management would be (in the absence of any investigation report proving otherwise):
- The first three classifications above where a more sensitive landuse is proposed.
 - LUI - Confirmed.
 - LUI - Partially investigated.
 - Contaminated land.

- 2.4.12 These fall into two categories in the document for a restricted discretionary activity where either the risk to human health from soil contaminants is assessed as being unacceptable for the intended landuse or there is insufficient information.

Permitted versus Controlled Activity

- 2.4.13 Currently, the subdivision, use or development of a HAIL site where contaminant values are below SGV levels is a permitted activity, provided that a report is provided to the Council to check the assessment. HCC is of the view that any subdivision, use or development of a HAIL site, where contaminants are of an acceptable level, should be a controlled activity. This would improve the ability of HCC to enforce this rule, and allow the time of the officers assessing the investigation report to be charged back to the applicant. If this remains a permitted activity, and the applicant chooses not to apply for a certificate of compliance, HCC would have to cover the costs.
- 2.4.14 In addition, the controlled activity status would be useful for perhaps the majority of territorial authorities who do not have the in-house expertise to assess reports against the MfE guideline or to understand the technical information contained in such reports (including the significance of any assumptions and limitations etc.). This would enable them to obtain a peer review and be able to recover the cost of this. This would provide the MfE with greater assurance that the NES is effective in achieving the policy objective in all districts. The downside of course is that it increases the cost to the applicant.
- 2.4.15 An alternative to making the activity controlled is to establish an accreditation scheme or a national register for practitioners (this is already being considered by the MfE). This would provide territorial authorities with greater assurance that site investigations and assessments have been carried out in accordance with best practice and would significantly reduce the need for peer reviews of reports submitted with applications. A suggestion is that a condition of a permitted activity could be that the report is prepared by an accredited practitioner; otherwise it is a controlled activity. Requiring a report by an accredited practitioner would reduce the time that HCC's officers spend assessing the report, and thus reduce the costs of the permitted activity.
- 2.4.16 Comments have been made that making all change of use, development and subdivisions of a HAIL site a controlled activity would provide a solution to the difficulties in monitoring a permitted activity (where territorial authorities are necessarily aware that an activity is being undertaken). However, it is considered that the controlled activity status would not solve this issue where the need for consent would be based purely on contaminated land issues and not other unrelated matters.

Notification of applications

- 2.4.17 The Discussion Document states that no specific requirements for notification are to be included within the NES. HCC supports this approach, as it allows an assessment of affected persons to be made for each site subject to an application and allows more flexibility to respond to special circumstances. The RMA provides an adequate framework for notification.

Identification of Land Subject to Intervention

- 2.4.18 The use of the HAIL list to identify potentially contaminated sites that should be subject to investigation provides a degree of certainty to all parties (as to the types of sites that will be required to be investigated). If a HAIL landuse has been carried out on a site then it must be investigated. However, the efficiency and success of this approach depends on how well territorial authorities have researched both the historical and current occurrence of HAIL activities in their districts. Where this is lacking then HAIL

sites maybe developed (etc.) without investigation and assessment of Chemicals of Concern (COCs).

Exclusion of Specific Activities / Situations from Intervention

- 2.4.19 The proposal to identify some activities as permitted activities due to their minor and small-scale effects is supported. All the activities listed in the discussion document on pages 28 and 29 are supported. Another situation that has been the subject of discussion in relation to whether a site investigation is required is the change of use of a site that is completely covered in some way (paved or buildings etc.). It is considered that this situation could also be a permitted activity provided that the 'cover' retains its integrity in terms of providing an effective barrier. This could apply even when the change of use is to a more sensitive landuse.

Standard of Site Investigation Reports

- 2.4.20 HCC supports the requirements for reports on site investigations in relation to information requirements (adequate evidence of contamination or lack of it), who prepared the report (an appropriately experienced and qualified practitioner), and the standard to be used - MfE guideline #1 (Reporting on Contaminated Sites in New Zealand).
- 2.4.21 This formalises the standard that is to be achieved in future reports. Despite already having the MfE guideline, it is not enforceable and certainly not always observed.
- 2.4.22 It is considered that the requirements for reports would provide sufficient certainty for a person to know whether they comply or not, and for councils to carry out their assessment in relation to activity status under the NES. This certainty is necessary to provide the necessary assurance that land is suitable for its intended use.
- 2.4.23 The reports would have to be written in a manner that clearly differentiates the investigation, findings and subsequent conclusions between human health considerations and other environmental receptors (if these are also part of the scope of the report). This is necessary to make it clear whether or not the site complies in relation to human health guidelines.
- 2.4.24 Hamilton City has a small number of practitioners that would be considered appropriately qualified and experienced in land contamination investigations and assessment.

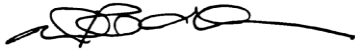
Costs and Benefits

- 2.4.25 HCC has just commenced a general review of its District Plan. It is therefore both timely and beneficial that this NES is being developed at this point in time.
- 2.4.26 As far as HCC is concerned the benefits are significant in terms of the savings in costs that would be realised in not having to develop its own District Plan rule around contaminants in soil (which in reality would have been initially based on Wellington City Council's recently developed rule).
- 2.4.27 Improved public health benefit is already being realised in Hamilton as contaminated land issues have been considered as part of the resource and building consenting processes since around 2000 (e.g. a new child care centre being established on a former service station site).
- 2.4.28 The costs described in the discussion document in large part have already been realised in Hamilton City both within HCC and by property landowners / developers due to HCC's long term involvement in contaminated land.

3.0 CONCLUDING COMMENTS

- 3.1 HCC trusts that the points made in this submission are helpful to the Ministry for the Environment when considering all submissions to the Proposed National Environmental Standard for Assessing and Managing Contamination of Soils.
- 3.2 HCC **does not wish to be heard** in support of this submission if hearings on the Discussion Paper are to be held by the Ministry for the Environment
- 3.3 Please contact the following people if you require clarification of points raised in this submission:
- For comments around contaminated sites and procedures used by HCC contact Peter McGregor (Environmental Health Manager) on 07 838 6582 or email peter.mcgregor@hcc.govt.nz.
 - For RMA planning issues contact Angela Goodwin (Senior Planner) on 07 838 6911 or email angela.goodwin@hcc.govt.nz.

Yours faithfully



Michael Redman
CHIEF EXECUTIVE