

15 April 2010

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File:  
Your ref:

Dear Sir/ Madam

**SUBMISSION ON PROPOSED NATIONAL ENVIRONMENTAL STANDARD FOR  
ASSESSING AND MANAGING CONTAMINANTS IN SOIL**

Thank you for the opportunity to submit on the proposed national environmental standard for assessing and managing contaminants in soils.

A submission from the Queenstown Lakes District Council is attached and responds to the questions raised in the discussion document. The submission identifies a number of concerns the Council has regarding the proposed national environmental standard, which can not be supported at this time.

In addition to the submission provided, Queenstown Lakes District Council fully supports the submission from Local Government New Zealand on this matter.

Yours sincerely



Clive Geddes  
**MAYOR**

## **SUBMISSION ON PROPOSED NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOILS**

Thank you for the opportunity to submit on this matter. The following submission has been ratified by the Queenstown Lakes District Council. Our submission responds to questions identified in the Discussion Document.

### **1. Have the priority problems been correctly identified?**

#### **Comment**

The Queenstown Lakes District Council is generally supportive of the use of national instruments where there is a need ensure wider consistency across regions and to reduce the costs associated with each local authority replicating the work to defend new provisions of this nature.

In general most of the priority problems have been identified in the discussion document, however they have been structured to support the preferred option presented by the proposed NES and we would differ in our opinion of the significance attached to them.

### **2. Are there other problems you can think of that need to be addressed as a priority?**

The most significant problem in relation to contaminated land is the inadequacy of information on the location of potentially contaminated sites. The NES does little to address this issue and places insufficient importance on the role of Regional Councils to investigate and monitor contaminated land. Without adequate information on the location of contaminated sites, the controls proposed in the NES will be of limited use. Consequently greater emphasis needs to be placed on the information gathering function to put proper resources into identifying these sites and this should be prioritised.

The role of ERMA is not identified. Most sites associated with dangerous goods will also be sites on the hazardous activities and industries list (HAIL) and potentially contaminated. The failure of ERMA to pick up the role managing information on the location of dangerous goods when these responsibilities were taken from Territorial Authorities has contributed to the loss of information.

Continuing the thread from above, the focus of this NES on identification and assessment at the time of development does little to increase investigation into the identification and location of contaminated sites. Given this has been identified as an issue of such significance as to merit the preparation of a NES, it is appropriate that greater resource be put into identification of contaminated sites prior to development. As identified on page 10 of the Discussion Document, a Stats NZ survey of Regional Council's identified 1895 sites as either confirmed as contaminated, remediated or under management. In contrast the Ministry estimates that Councils have identified approximately 20,000 potentially affected sites. No further discussion or action is suggested regarding how to address the sites actually identified by regional authorities with the estimates provided by territorial authorities.

The inadequate development of controls by Territorial Authorities may in part be attributed to the poor information on the nature and scale of this issue and the technical nature of measures to address it. This reflects the uncertainty created by the division of responsibilities between Regional Authorities and Territorial Authorities under sections 30

and 31 of the RMA and the poor alignment of the skills employed by these organisations to administer these functions.

Territorial Authorities have a function in relation to the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land. An assessment of the effects of contamination requires a scientific skill base not generally employed by District Councils who will generally refer matters of this nature to regional authorities or consultants for consideration. The complex interrelationship and information flows between regional and territorial authorities needs to be identified as a problem and greater attention needs to be given to how this relationship can be improved if the proposed NES is to be successfully implemented.

### **3. Do you agree with the policy objective?**

*Ensuring that land affected by contaminants in soil is **appropriately identified and assessed** at the time of being **developed** and if necessary remediated, or the contaminants contained, to make the land **safe for human use**.*

The Council is supportive of the intent of the policy objective insofar as it wishes to see land affected by contaminants in soil identified and any contaminants remediated or contained.

The Council wishes to, as far as possible, see land affected by contaminants in the soil identified prior to development as this may influence decisions on the appropriateness of the inclusion of these areas for development. The presence of contaminants, similar to the presence of natural hazards, may make 'avoidance' of development on areas so affected a better option than attempting to remedy or mitigate them.

The Council has concerns about the objective being limited to making the land safe for human use which is discussed under Question 4 below.

### **4. Should the objective be limited to ensuring that land is safe for human use? If not, why not?**

The Council has not commented on the appropriateness of the relevant Soil Guideline Values (SGV) as this is not an area we have appropriate expertise in.

The Council welcomes the establishment of greater guidance on SGVs that may affect human health but has concerns that the objective is limited to making the land safe for human use. The discussion document justifies this approach on the basis that the soil quality of the affected site is already compromised. However, our concern is the risk that the soil quality or ecosystem health of other sites will also be affected.

The Council's responsibilities under the RMA are not limited to the adverse effects of activities on human health and it is difficult to reconcile this objective with the other functions of the Council under the RMA. Indeed enabling the potential development of a contaminated site in a manner that would not affect human health but with SGVs set at a value that could result in adverse effects on the ecosystem would seem to be in direct conflict with the concept of sustainable management of natural and physical resources as established by Part II of the RMA. We note that although the discussion document states that stakeholders supported human health as a high priority during consultation 'Working towards a Comprehensive Policy Framework for Managing Contaminated Land in New Zealand' we note that 66% of actual submissions in that document indicated that felt that both ecological and human health should be considered.

The Council also has concerns regarding permitting an activity with a threshold established by SGVs which would directly conflict with the functions of the Regional Council in relation to controlling discharges to land, air or water. The proposed NES identifies the overlapping responsibilities and relationships of territorial and regional authorities as contributing to the problem of managing contaminated land but proposes a solution that adds complexity to this relationship and provides no clear guidance on how these issues should be addressed.

**5. Do you agree with the preferred option?**

A highly technical issue such as this which also requires a consistent approach nationally would seem to define an area where national direction is appropriate. The Council is generally supportive of the use of the NES where appropriate.

However, as noted elsewhere in this submission, the Council has concerns in relation to the detail of the NES and seeks that a higher priority be given to the continued identification and investigation of contaminated land at a national and regional level prior to application for development.

**6. Is there an alternative option that has not been considered?**

An alternative option may include providing both the NES and national guidelines to address the interrelationship and overlapping functions of regional and territorial authorities in this area.

**7. Are you aware of any other costs or benefits of the alternative options?**

Avoiding information gaps and providing greater clarity and national consistency in the administration of contaminated land is a clear benefit in providing greater direction or best practice guidance.

**8. Do you see any problems complying with the proposed NES or with enforcing it?**

The Council considers there will be a number of problems complying with and enforcing the proposed NES. These include:

- The introduction of a permitted activity that requires considerable administration and assessment.
- The inability to recover the costs of administering this process.
- The quantum of disturbance allowed as a permitted activity is undefined and may conflict with and override existing District Plan earthwork rules. The effects of earthworks in many areas are controlled through conditions on consents and not through other standards contained in the plan itself. For example conditions may address matters such as noise, hours of operation, dust mitigation, sediment control. These will not be addressed for the proposed permitted activity. Dust control in particular would seem appropriate if an indeterminate volume of trenching can be undertaken on a site containing contaminated soil.
- Monitoring permitted activities is problematic. The applicant can undertake the activity without application and Council will generally be unaware that it has occurred.
- The report on soil contamination is to indicate the degree and nature of contamination. Few territorial authorities have the expertise to understand the implications of this

information and will need to either (i) accept the findings of the report as is, (ii) seek a peer review to verify its interpretation - raising issues of additional costs and the recovery of those costs, (iii) refer to the relevant regional authority for consideration. The regional authority will face similar issues in terms of the administration and recovery of costs for what is essentially a permitted activity.

- As these processes have neither a limitation on processing time or are cost recoverable they will inevitably be afforded a lower priority.
- There are benefits for the applicant in having no application fee but the cost will be borne by the wider community.
- This process is dependent on the site being identified as potentially contaminated in the first instance. Given the lack of information on contaminated sites, most will not be identified as such in the first instance.

**9. Are the thresholds for determining whether resource consent is required clear and appropriate?**

The thresholds appear to be clear but they rely on adequate information and good database management. As stated earlier we have concerns about the adequacy of existing information on contaminants, the accessibility of this information and the lack of direction provided by this process. Further, as also noted earlier we also have concerns that the threshold is set at acceptable levels for human health and that the development may have other adverse environmental effects – such as on flora and fauna.

**10. Is the permitted activity – subsurface investigation requirement to provide a site investigation report appropriate?**

A number of concerns on this matter have been addressed in responses to Question 8 above. The Council is also concerned about defining an “appropriately experienced practitioner”. The use of this term has been applied in relation to other areas of expertise previously but has proven so vague as to be meaningless when concerns about the experience or credentials of a practitioner are questioned. Consideration could be given to MfE holding a national register of such practitioners or providing greater direction on what constitutes appropriate experience.

Uncertainty regarding the credentials of a potential practitioner and the potential liability issues Councils face increase the likelihood some form of peer review will be required. We again note a concern that cost recovery of internal staff time or any peer review is not provided for at this stage of the process as it relates to a permitted activity. Guidance may also be required on when it is appropriate for the Council to undertake a peer/technical review of the testing/validation done by an applicant.

If subsurface investigation is defined as a controlled activity the Council has greater ability to impose appropriate conditions, recover costs and monitor and enforce the process as required. Irrespective of cost, some Councils will find it difficult to resource the peer review of the investigation.

**11. Have we adequately defined the land that should be subject to a condition requiring site investigation?**

The approach outlined appears reasonable. Our concerns are more about whether these sites are adequately identified prior to the process starting, and who will monitor, maintain and ensure timely access to this information.

**12. Have we adequately provided for activities that should not be caught by the requirements of this NES?**

The definition of activities that should not get caught by the NES is unclear in terms of the threshold at which the exemption applies, for example what constitutes 'landscaping' and 'a minimum level of soil disturbance'? Further, the Council questions the rationale of permitting an existing activity to continue if it is discovered that it is occurring on a contaminated site and may be generating adverse effects.

**13. How do you think the NES should ensure the adequacy of site investigation?**

The usual means to ensure adequacy of a report is by way of a peer review or for it to be processed by an organisation with the technical expertise to interpret it effectively.

**14. Is the permitted activity (sic) – use, development and subdivision better provided as a controlled activity or another alternative?**

The presumption created by the NES permitting the use, development and subdivision of contaminated land is that contaminated land should be used. Given the inherent risks associated with the development of contaminated sites a more precautionary approach which provides the opportunity to avoid development of these areas may be more appropriate. Consequently a restricted discretionary status is considered a more appropriate activity status.

**15. How should the NES address site-specific assessment for produce consumption?**

It appears difficult for a territorial authority to determine if inhabitants consume more than 10% of their fruit and vegetables from their home gardens and therefore require a site specific assessment, consequently we agree that an educational approach may be most appropriate.

**16. Should the NES address naturally occurring elements in soil?**

The Council supports the NES taking a comprehensive approach to addressing soil contamination whether occurring naturally or as a result of human interference.

**Costs and Benefits**

**17. Have we accurately reflected the range of costs and benefits arising from the proposals for an NES, and who might bear the costs or receive the benefits?**

The range of costs and benefits identified appears comprehensive in terms of the benefits of a NES against other options at a broad scale, but do not consider the costs and benefits of the preferred approach proposed. Further, the Council would differ in terms of where we consider the costs identified will fall. In particular we differ in the opinion that most of the costs will be borne by landowners and feel the permitted activity regime proposed by the NES will put the greatest cost on to territorial authorities and ultimately ratepayers. We question the appropriateness of this when the development of sites is to the benefit of the landowner.

**18. Are there any costs and benefits we have overlooked?**

The discussion document indicates that most of the costs of administering the NES incurred by Councils would be passed on to landowners as consent fees. However, under the permitted activity regime proposed in the NES these costs would not be passed on to the landowner.

The uncertainty regarding cost recovery of peer review of soil reports, by either independent parties or the relevant regional authority, is also a cost that should be considered. The resolution of such disputes is both time consuming and expensive. This is a potential cost associated with administering the preferred option.

As the information associated with the soil contamination reports is not part of an application process per se it will inevitably be afforded a lower priority when compared to processing resource consents which have an established processing timeframe and associated penalties for failure to meet these timetables. This is a cost in terms of the effectiveness of processing this information under the preferred option.

We consider the figure associated with managing the information associated with contaminated land a significant underestimate. The consultation event run by the MfE identified the need for more effective software to be able to share information. Database purchase/ licensing, training, population and maintenance of existing information, research on additional sites and sharing of that information with other agencies will be a significant and ongoing cost.

The potential cost to the environment of limiting consideration of the effects of contaminants to human health has not been assessed.

**19. Do you have information that you would like to see included in the cost-benefit analysis that will be carried out after the submissions are analysed?**

As above.