



**Franklin**  
DISTRICT COUNCIL

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

TO: Ministry for the Environment  
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**Background**

The Franklin District borders the south of Auckland and is a complex mix of urban, rural and coastal settlements. In 2004, 56,480 people were living in the Franklin District, accounting for 4.3% of the Auckland Region's population. The population of the district grew by 35.8% between 1991 and 2004. Franklin's position close to growing metropolitan Auckland has seen and will continue to see mounting pressure for development, often in competition for land in pastoral and horticultural use. This brings with it, concerns for the detection and management of potentially contaminated sites.

The main rural activity of the district is market gardening and has been since the late 1800's. Potatoes and onions have always been grown extensively within the District, with dairy and sheep farming also being important. Land uses have changed over time and areas once cropped, may now be in pasture and in turn subject to pressure for development. Aerial photographs often providing the only source of historical information that may trigger a site investigation.

The Franklin District Council feel very strongly about the importance of detecting and managing contamination within the district and appreciate the opportunity to make a submission on the proposed National Environmental Standard for Assessing and Managing Contaminants in soil.

**Executive Summary**

The Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil (NES) is the preferred option for managing contaminated land within the existing framework of legislation. The current lack of management, coupled with increasing information availability regarding sources of contamination and the

associated risks to human health, leaves many Councils wide open for legal action. We are therefore supportive of implementing the proposed NES to address this issue. Franklin District Council however, feels that several areas within the NES, require further clarification before the Standard could become operative.

### **Points to Consider**

- The proposed NES needs to clearly specify in both title and objective that the Standard relates solely to the management of contaminated land for human health protection. This is currently unclear and could lead to mismanagement and confusion during implementation, due to the fact that ecological receptors are not considered within the standard.
- The taking of soil samples to determine the presence, extent and nature of contaminants in soil, as a Permitted Activity does not on its own, add any particular value to current practice, as this is already permitted below existing earthworks thresholds. A legislative requirement for investigative reports to be submitted where properties have been identified as being subject to potential or actual contamination to ensure that the land is fit for the intended use, is however, beneficial. This process however, relies heavily on the ability of Council to identify and capture information relating to land that has been subject to HAIL activities which is currently dealt with poorly in many councils. Without the accurate assessment and capture of historical information relating to the potential contamination of a site, there will be no trigger to implement the appropriate NES process, meaning that the Standard may not be effective. One would assume therefore, that every site subject to a consent would need to undergo a preliminary site investigation to ensure that no HAIL activities have occurred on the land. This needs to be prescriptive within the standard to ensure that sites subject to potential contamination are detected and dealt with in accordance with the requirements of the NES. MfE Guideline No. 4 takes steps to manage the capturing of such information and should be referenced at this point within the Standard.
- The timeframe in which the submission of investigative reports is required must be defined. Our recommendation is that a report must be submitted within 60 days of investigation completion. We also feel that it will be necessary to outline how enforcement will be dealt with when landowners fail to submit investigative reports within the given timeframe.
- There is a Permitted Activity allowing the use, development or subdivision of land where there is no evidence of soil contamination. It would be assumed that this means soil that has no history of HAIL activities on site following a Preliminary Site Investigation, or that no contaminants have been found to be above relevant soil guideline values rather than above background levels. This may require clarification for planning purposes.

- There is a specification within the discussion document that submitted investigation reports must be prepared by ‘an appropriately experienced and qualified practitioner’. There is no specific course within New Zealand that qualifies a person for contaminated land investigation and no accreditation process. How do TLA’s therefore, ensure that a report has been prepared by someone suitably experienced. MfE state that they would ideally like to outline an accreditation scheme for practitioners, however, there is nothing in place at this point in time and possibly not for some time, so how must we manage this in the interim?
- There is an obvious requirement here for a dedicated in-house resource who is also qualified and experienced in the field of contaminated land management, and well versed in the recommendations of the MfE Contaminated Land Management Guidelines. There is an expectation that TLA’s will be able to assess every site for potential contamination, internally audit investigation reports received for adequacy of information, and will be able to provide technical advice to in house staff. TLA’s currently lack adequate resourcing within the area of contaminated land. How will the NES address this issue and will costs be recoverable against each application to allow for this position to be available within each Council? This needs to be further clarified or again the NES may prove to be ineffective.
- We support the use of the Restricted Discretionary rule to manage the use, development or subdivision of land where contaminants have been found at unacceptable levels. It is in specific cases, necessary to have the option to decline an application. We are also in support of outlining the reports that require submission through the consenting process.
- In determining sites that are acceptable vs unacceptable for use, TLA’s are to use the Soil Guideline Values (SGV’s) provided within the proposed NES. There are however, only 12 SGV’s given and they do not take into account whether a site will be fit for its intended use. A legislative requirement for investigative reports to be submitted where properties have been identified as being subject to potential or actual contamination to ensure that the land is fit for the intended land use, makes sense. However, where a site has contaminant(s) present at levels that are too high for plant life to exist, but the contaminant levels are below the listed SGV, are TLA’s expected to allow the development of that site to proceed. Also if a contaminant is found on a site and there is no national guidance on that particular contaminant, are you going to outline the process to be used for adopting the most relevant guideline from another country, or recommend that a peer review be sought in this instance? Further clarification required. It is our recommendation that the SGV’s remain separate from the proposed NES. As research into the uptake and bioaccumulation of contaminants advances, it is likely that changes to the SGV’s may be required. This will be a lengthy process through amending an NES and offers no room for Consultants or TLA’s to take a practical approach in assessing what is fit for the intended use, which may be lower than the SGV given.

- There is a recommendation that TLA's base their Regulatory assessments on a 10% threshold for home produce consumption and only look to a site specific assessment where it is known that a resident may be likely to consume more than 10% home produce. The Regulatory team at Council are only involved at the time of the application and so must ensure that the assessment they make on the site at the time of subdivision/development/change in land use, is suitable for all ongoing landowners, generally suitable for the specific zoning of that property. We have no input into the management of the site by future landowners unless the property is again subject to a change in land use, further development or subdivision, or we place a consent notice on the title restricting the amount of produce to be taken from a site. TLA's cannot make an assumption that future landowners in a rural-residential situation will not take more than 10% home produce and should manage this accordingly. Again, to provide a consistent approach across councils, the NES should address this matter rather than omit.
- We support sites where naturally occurring elements in the soil exceed background levels being treated as contaminated sites through development, for the purposes of human health protection. Again, the management of such sites will be down to their initial identification. Such sites may be difficult to identify unless studies have been undertaken previously in that area, or HAIL activities have coincidentally occurred on the site. Such sites, where remediation is not a feasible option, may be managed by way of Consent Notice registered on the Title of the property detailing the ongoing site restrictions.
- There needs to be a section within the NES on information sharing protocol. Where a site is found to harbor contaminants above SGV levels and the subdivided area is to be remediated, but the balance lot is to remain cropped, FSA should be made aware of existing information and furnished with copies of associated reports, as should the Department of Labour at a minimum. What is the process for sharing such information. This should be a prescriptive obligation to ensure we effectively manage contaminated land.

## Questions

### What is the Problem?

1. The priority problems have been defined correctly
2. The process surrounding the identification of historical HAIL activities and associated information capture are integral in the successful implementation of the proposed NES. As such, we feel that these should be addressed through the NES as a priority. One way to capture this process may be to amend MfE's Contaminated Land Management Guideline (CLMG) No.4 to include a complete process for contaminated land identification, information capture, NES implementation through to sign off, then reference Guideline No. 4 within the

- NES. We agree with the Policy objective but do feel that it is a very narrow objective.
3. The policy objective should also take into account whether a site is fit for use as discussed above. Where land is such that landowners could grow a large proportion of home produce and residual contaminant levels on root vegetables would exceed FSA Standards, there seems to be a contradiction in objective. This is not safe for human consumption, yet contaminant levels would not exceed SGV's. There also needs to be some focus placed on changing land use activities that would not require a resource consent but could lead to contaminant exposure e.g land converted from growing grapes historically to growing root vegetables. MfE need to consider all exposure pathways in determining that a site is 'fit for human use', or need to further clarify the definition of 'fit for human use' to exclude such instances.
  4. Safe for human use is one objective in managing contaminated land and seems a sensible option for breaking the management of such land, into manageable parts. The objective however, needs to consider all aspects of 'safe for human use' as outlined above e.g home produce consumption. Fit for use should also be addressed somewhere within the NES as TLA's have a requirement to ensure that land is fit for use within the specific zoning of that land. Also, the protocol for incorporating regional requirements of dealing with ecological receptors needs to be covered. The NES should be specifically dedicated to ensuring that land is safe in terms of human health protection but should include a section detailing the process for incorporating rules dealing with ecological receptors where required, to avoid confusion for planners.

### **What are the options?**

5. Yes we do agree with using the proposed NES for assessing and managing contaminants in soil for the purposes of ensuring that land is safe in terms of human health protection. We do however feel that modifications are required to the proposed NES before it is fit for implementation.
6. RMA amendment in addition to the proposed NES could be considered to change the roles of Regional Councils and TLA's from a function to a duty..
7. Yes, the change detailed above would ensure adequate resource was dedicated to contaminated land.

### **The Proposed NES**

8. There should be a specific reference to MfE's CLMG No. 1 within the NES to ensure a standard approach and measurable compliance with reporting requirements. There then needs to be a process surrounding the submission of reports, timeframes for submission and consequences when failing to adhere to designated timeframes. The enforcement of report submission may be an issue particularly with this being a Permitted Activity. Complying with the NES in terms of identification of previous HAIL activities on a site may also be a problem, without a more robust process surrounding the identification and capture

- of information to trigger the NES process. Internal Auditing of reports may become an issue due to a lack of dedicated in house resource and cost recovery should be addressed within the NES.
9. The thresholds for determining if a resource consent is required are clear in the most part, however, those instances outlined in 4.1.3 as not requiring a site investigation leave room for ambiguity. Subdivision which is not associated with a change in use or a disturbance of the ground, leaves room for loop holes. If a property is to be subdivided but not developed at the time, the planner may rely on the fact that the Building team at Council will address the potential contamination issue at the time of site development. This is not always the case. 'Landscaping, fencing and other minor activities which involve minimal soil disturbance' also leaves room for hazardous contaminants to become mobile and to come into contact with humans. Obviously it depends entirely on the type of contaminant as to what 'minimum' level of soil disturbance is acceptable. Obviously any activities that are on agricultural land and continue to remain agricultural are unlikely to trigger a site investigation report requirement by Council, but may change the use of the land to one of a more sensitive nature in terms of human health protection, there needs to be a prescriptive process for linking in with NZFSA where required and a trigger to detect such instances.
  10. Yes, the subsurface investigation requirement to provide an investigative report is appropriate, again our recommendation is that this report be submitted to Council within 60 days of investigation completion.
  11. Yes, land is clearly defined, however, process for identifying and capturing information relating to this land is not clearly outlined. Without addressing this, the NES will not be effective.
  12. No, it needs to be clearly stated that this NES relates solely to site safety with regard to human health protection.
  13. The adequacy of the site investigation should be ensured through: accreditation of practitioners; reference to MfE Guidelines within the NES; implementation support; dedicated in house resources who attend regular workshops through MfE to ensure they are well versed in the requirements of the NES and the MfE CLMG's.
  14. A Controlled Activity would allow for recoverable costs which would make implementation much easier for Councils.
  15. Produce consumption as detailed above should include the 50% threshold for produce consumption.
  16. We support naturally occurring elements in soil that exceed SGV's being treated as contaminated sites, as detailed above.

### **Costs and Benefits**

17. No. Costs to Councils need to be further assessed and the potential for recoverable costs should be detailed.
18. As above.
19. No.

## **Conclusion**

The thresholds detailing when a consent will be required are clear within the proposed NES. The process however, relies heavily on the identification of potentially contaminated sites and accurate interpretation and review of associated investigative reports. The problem we foresee is a lack of consistency with regard to capturing contaminated land information, identifying potentially contaminated sites and appropriately reviewing reports. Without structure around each of these areas, the NES may not function as intended.