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Attention: James Court

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AD40-39-0

Dear James

**MINISTRY OF HEALTH'S SUBMISSION TO THE PROPOSED NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL: DISCUSSION DOCUMENT**

Thank you for the opportunity to comment on this discussion document. Contaminated land can present a risk of adverse effects to human health and the environment where these sites are not managed appropriately resulting in inappropriate use which may create exposure pathways that endanger human health or the environment. It is therefore necessary that such land is managed in such a way where any adverse effects arising are minimised and controlled.

The structure of this submission follows the format of applicable questions for the Ministry of Health outlined in Appendix 6 (page 49) of the discussion document.

**Do you agree with the policy objective?**

Yes. In 1996 the OECD *Environmental Performance Review of New Zealand* noted that legislation as it related to contaminated sites was highly fragmented, and responsibilities sometimes overlapped under the numerous laws involved. At present the distribution of responsibility among national, regional and territorial authorities is unclear in certain cases, a situation likely to hinder their ability to respond if urgent action is needed. Under the Resource Management Act (RMA) 1991, local authorities are responsible for issuing resource consents for hazardous waste management to mitigate risks to public health and the environment. But few local authorities have the technical capacity for the necessary risk assessments, and the transaction costs of proceeding case by case would be quite high.

While it is recognised that the Contaminated Land Management Guidelines No.2<sup>1</sup> provide a suggested hierarchy of selection for the various guidelines, with New Zealand risk-based guidelines preferred in the first instance, there is currently no

<sup>1</sup> Ministry for the Environment (2003) *Contaminated Land Management Guidelines No. 2: Hierarchy and Application in New Zealand of Environmental Guideline Values*. Ministry for the Environment: Wellington.

statutory guidance in New Zealand on how the various guidelines may relate to the 'significant adverse effects' contained in the legal definition of contaminated land under the RMA.

In New Zealand, the situation has really not evolved significantly from the late 1990s. Risk based guidelines are generally being applied. However, as discussed above, guidelines derived in New Zealand are unavailable for the full range of typical contaminants and are not always consistent. Practitioners are being forced to use overseas guidelines that are not always directly applicable to New Zealand sites. Therefore considering the potentially grave and even irreversible effects that could stem from mismanagement of hazardous waste, as well as the diseconomies of scale associated with regional-level management, greater central government involvement is warranted, in this case in the form of a national environmental standard for assessing and managing contaminants in soil contaminants.

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

Terms such as "wellbeing, "health and safety" appear in the definition of "sustainable management" in section 5(2) of the RMA. Therefore, health is seen as an integral part of the well being of local communities. Hence the assessment of health impacts (or "assessment of environmental effects" (AEE) under the RMA, or environmental impact assessment (EIA) in overseas literature) should be a part of any impact assessment. However, none of the terms in the RMA are defined, which has resulted in broad interpretation. As a result the experience of the intervening years has suggested that the link between environmental quality and human health is not articulated particularly well or has tended to be sidelined within the resource consent process set out in the RMA. This has increased the likelihood of important health-related consequences being missed when resource management decisions are made<sup>2</sup>. This is consistent with empirical investigations outside New Zealand which has revealed a lack of coverage and deficiencies in the consideration of human health in EIAs<sup>3 4</sup>.

One explanation is that the AEE process under the RMA is administered by local authorities with a mandate for environmental management and protection. As a result these agencies generally do not view the AEE process as an avenue for considering; let alone addressing, human health objectives. Case law has provided virtually no support for specific health analysis in AEE under the RMA, possibly because plaintiffs in the RMA litigation process (Environment Court,

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<sup>2</sup> Morgan T (2002) *Health Impact Assessment at the Project Level*. Unpublished Masters thesis, Geography Department, University of Otago, New Zealand.

<sup>3</sup> Noble BF and Bronson JE (2005) Integrating Human Health into Environmental Impact Assessment: Case Studies of Canada's Northern Mining Resource Sector. *Arctic* 58(4): 395-405.

<sup>4</sup> Steinemann A (2000) Rethinking human health impact assessment. *Environ Impact Assess Rev* 20(6): 627-645.

New Zealand's principal adjudicator of sustainability under the RMA) have commonly represented ecological concerns. Any detailed cases to date related to the possibility of adverse effects on human health have concerned the erection of cellphone towers (*McIntyre v Christchurch City Council* ([1996] NZRMA 289) and electricity pylons (*Transpower New Zealand v Rodney District Council* Decision A85/94) in urban areas<sup>5</sup>. The result is that there is no mechanism in place to ensure that human health is adequately protected. Under the RMA decision makers often struggle to balance health concerns with a proposed activity such the impacts of a contaminated site against ecological impacts only rather than examining the impacts *on* humans *from* the environment. Therefore any planning policy or AEE that compromises human health could by definition not be counted as sustainable.

Finally terms such as "Environment" is defined in section 2(1) of the RMA as including people and communities so the soil guideline values (SGV) should be applied for the protection of human health. In addition, the definition of "Environment" also includes "*ecosystems and their constituent parts...all natural and physical resources; and amenity values*" therefore by default the proposed NES SGVs also applies to assessing and managing soil contaminants and does not diminish the importance of the actual or potential adverse effects other aspects of the environment namely receptors including on-site and off-site ecology, surface waterways, groundwater (including human drinking water sources) and amenity values. It is for this reason that the Ministry considers it highly desirable that the objective should be limited to ensuring that land is safe for human use prior to development in the first instance.

### **Do you agree with the preferred option?**

The Ministry of Health considers the development of this NES to be fundamental in addressing how soil contamination is managed and that it will add certainty and ensure consistency. It is for these reasons that the Ministry of Health supports the intention of this proposed NES. The intention of the NES to assess and manage the risk associated with potential contaminants in soils for applications relating to a change in land use, and or land that is being developed or subdivided is also supported.

In summary it is recognised that contaminated land is inherently complex. The Ministry of Health supports the development of a NES for assessing and managing contaminants (including the proposed thresholds) that will contribute to the protection of human health and sustainable environments.

If you have any queries, please do not hesitate to contact me on (04) 816 4380 or email: frances\_graham@moh.govt.nz.

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<sup>5</sup> Sinclair D (2003) The Resource Management Act (1991) in Public Health Law. *New Zealand Journal of Environmental Law* 7: 275-312.

Yours sincerely

A handwritten signature in black ink that reads "F. Graham". The signature is written in a cursive style with a large, looped initial "F".

Frances Graham  
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Environmental & Border Health  
Population Health Directorate  
Ministry of Health