

***IN THE MATTER OF***

***THE RESOURCE MANAGEMENT ACT, 1991***

***AND IN THE MATTER OF***

***THE PROPOSED NATIONAL ENVIRONMENTAL  
STANDARD FOR ASSESSING AND MANAGING  
CONTAMINANTS IN SOILS***

***A SUBMISSION FROM***

***NGATI KAHUNGUNU IWI INCORPORATED***

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**1. HE MIHI**

Kahungunu ki Uta  
Kahungunu ki Tai  
Mauri ora ki te Rangi  
Mauri ora ki te whenua  
Mauri ora ki te moana  
Waiora ki te tangata  
Takitimu karanga  
Kahungunu maranga  
Tihei Mauri Ora!

**2. Introduction**

2.1 Thank you for providing the opportunity to contribute to this important issue. Ngati Kahungunu Iwi Incorporated (hereinafter referred to as “NKII”) advocates the regional and national interests of Kahungunu whanau / whanui through their elected board structure and board chairman. The Kahungunu iwi rohe extends from Paritu; north of Te Mahia peninsula, to Turakirae; in southern Wairarapa, and inland to the Tararua, Ruahine and Kaimanawa ranges. This submission to the proposed National Environmental Standard (NES) for Assessing and Managing Contaminants in Soils has been collated to support the values and aspirations of our hapu constituents in relation to the management of our taonga tuku iho – nga whenua, nga awa, nga roto, and all the species of indigenous flora and fauna they contain.

2.2 The development of National Environment Standards under section 43 of the Resource Management Act (“RMA” or “the Act”) only provides one opportunity for interested parties to make comment on the proposal prior to it becoming regulation by Order in Council. The process does not allow for submitters to be heard on their submissions. It is imperative that our interests in relation to assessing and managing contaminated soils are taken into account when decisions affecting these interests are

made. Therefore, the proposed NES should be broad enough in scope to encompass all actual and potential matters relevant to the health and well-being of Ngati Kahungunu constituents, hapu and whanau, which arise from contaminated soils and their management.

### **3. Scope**

3.1 In general terms we acknowledge the need for a National Environmental Standard (“NES”) for contaminated soils, but would support some widening of the scope and consequential alterations to the objective. In its current form, the proposal does not go far enough to protect tangata whenua interests. Contamination of soil arises from past use of chemicals and compounds, some of which are highly toxic and persistent in the environment. It is important that we capture all of the relevant issues and ensure that the NES is fit for purpose.

3.2 There is comment made in the discussion document that ecological aspects, i.e., how contaminated soils may affect the ecology of soils and water, will be addressed at a later stage. From a tangata whenua perspective, any delaying in catering for such an important issue when we are aware of the problems (proposed NES, 8.1.1), is not promoting the purpose of the Act. Any of the contaminants for which the soil guideline values have been prescribed, can have significant adverse effects on other factors within the environment. Soil microbes, insects, and avifauna are highly susceptible to minute quantities of arsenic, dieldrin, mercury, DDT, lead etc. Failing to address these effects on indigenous species of fauna when the Ministry is well aware of harmful effects, is irresponsible.

3.3 The Executive Summary identifies the problems that hazardous substances can pose to human health and the environment. The definition of environment at section 2 of the RMA includes: -

*(a) Ecosystems and their constituent parts, [including people and communities]; and*

*(b) All natural and physical resources; and*

*(c) Amenity values; and*

*(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters*

3.4 While selecting only soils for the application of the SGV values, the NES should still be cognisant of the RMA definition of “contaminated land”. Instead the selected SGV’s appear to be circumventing the basic requirements of the Act, while purporting to be formulated in accordance with it. We support the more precautionary approach within the Act for dealing with hazardous substances, instead of the permissive approach currently in the proposed NES.

3.5 Of significance to Ngati Kahungunu and most tangata whenua, would be effects of soil contamination on ecosystems and cultural (tikanga Maori) values. The significance arises from the reverence given to Papatuanuku and our whakapapa relationships through nga Atua, with indigenous flora and fauna. Appropriate provision for cultural conditions from a tikanga Maori perspective when considering management of hazardous substances in soils would include a holistic approach that addresses all relevant matters. The proposed NES falls well short in this regard.

3.6 Ecological health should be included within the NES framework as tangata whenua through kaitiakitanga and matauranga Maori, including the collecting and utilising of natural resources for kai (food) and rongooa (medicinal and spiritual healing) can be affected to a greater degree than other sectors of the community. Uptake of the contaminants by taonga species of plants would reduce the Mauri and healing power within plant-based material commonly used for rongooa. The mere presence of persistent toxins interferes with the relationships of Maori with our taonga.

## **4. Objective**

4.1 The proposed objective is:

*“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.”*

Some of the issues requiring making land safe for people could be regulated sufficiently under the above objective; however, the scope of the proposal is too narrow. It fails to address all relevant matters arising from the environmental fate of contaminants, effects on terrestrial and aquatic organisms, the leaching of contaminants to ground water, and implementation of appropriate protocols for removal, transport, storage and disposal of contaminated soils. It suggests addressing these matters at the time as development when it would be more prudent for such land to be identified and protocols or best practice guidelines for the management of contaminants within soils to be in place prior to the developmental stage.

4.2 When land is rezoned for more intensive use or for subdivision would be an ideal time for soils to be tested if they are on the HAIL list or suspected of being contaminated with one or more of the chemicals subject to the NES. Failure to sufficiently control preparatory work prior to development could create a loophole where contaminated soils are removed from a site prior to investigation, without regulators being aware of where these soils have been moved to.

4.3 The objective is also misleading as it does not state or indicate that the Crown through the minister has quantified and decided that there are levels of exposure to heavy metals and carcinogens deemed to be safe, when literature confirms that for some of the substances there is no safe level.

## **5. Soil Guideline Values and Exposures**

5.1 The contaminants for which Soil Guideline Values (SGV's) are proposed are persistent toxins with some being bio-accumulative. The recommended SGV's indicate a level of contamination that reflects caution but the bio-accumulative properties of the target toxins and metals detrimentally affect soil organisms and increase the potential for ingestion by faunal species including birds and mammals. This is not catered for in the proposed NES.

5.2 Some of the substances listed in Tables 7 and 8 are carcinogenic. A precautionary approach is necessary to protect human health, not assumptions that there are safe levels or percentages of these contaminants that human physiology can tolerate.

5.3 The SGV's are to inform the protection of human health, yet little proof is provided for justifying such claims. Effects from the substances identified in Tables 7 and 8 have been well researched and documented in peer reviewed literature, yet the proposed SGV's infer they are sufficient to protect human health. There are other sources of contamination to which people are exposed besides those posed by hazardous substances in soils. Some people's immune systems are already compromised through toxin or heavy metal ingestion from other sources, e.g., mercury in fish, chemical residues in fruit and vegetables. The cumulative effects of similar toxins and / or several toxins to which people are exposed over time have not been appropriately taken into account. People currently using medication may also be more susceptible to the NES hazardous substances as their natural immune system is already weakened.

5.4 The NES and accompanying SGV's account for only one pathway for chemical exposure risk to people. For some cultures the ideal guideline value is zero. MFE through this process is assuming authority or mana to over-ride people's choice. For Maori, self-

determination is paramount as is the right to choose inherent within the Treaty guarantee of tinorangatiranga. The proposals undermine these Treaty guarantees.

5.5 There is little liability accepted by the Ministry, for ill-health effects were they to eventuate from exposure to soils containing hazardous substances below or at these SGV limits. If adverse health condition were to occur, the onus would then be on the aggrieved party to seek redress and prove cause-effect to satisfy legal requirements. The connections between toxin origin, chemical processes and pathways and environmental fate within the food chain are a complex and expensive process to research and quantify. This would place an unfair burden on members of the general public seeking recompense under a NES regime.

5.6 In addition, with an increase in people growing their own food and the lifestyle block owners who seek some level of self-sufficiency, the percentages within the SGV's could be guesswork only, and lacks sound judgment and ethics. Scenarios where children, including babies, are fed homegrown vegetables come to mind. Home grown produce is becoming more prevalent due the global economic meltdown, loss of employment and reduction in household incomes as businesses close down. Produce should be safe to use and our tamariki not put at risk due to uptake of toxins in soil.

## **6. Treaty Settlement Assets**

6.1 Ngati Kahungunu whanau / whanui are currently in the process of Treaty settlement with the Crown. Pending settlement will include a percentage of land assets that were illegally taken by the Crown or acquired through dubious means. Where such lands previously contained forests that have been felled, it is unfair for them to be returned without indigenous forest cover and in some cases, contaminated as well through past practices in the forestry industry..

6.2 Partial remediation under a Soil Guideline Value regime for which Ngati Kahungunu has not been consulted is not likely to be supported by our claimant hapu. Full remediation or replacement of contaminated soils would likely be a prerequisite for such lands as it is the more ethical response for cultural redress in this regard.

## **7. Implementation**

7.1 With the permitted activity status for preparatory investigations of contaminated soils there is a danger of contaminated soils being relocated prior to actual development. The proposed regime would be open to abuse by unscrupulous operators and there is very little local government could do under the permitted

activity status. Territorial involvement gets triggered only at the actual development stage as indicated in the current objective. A more sensible approach may be to have the objective applied prior to land being rezoned. Then an assessment could be required to gauge whether the land meets conditions suitable for residential housing or for other land-use alternatives.

7.2 The permitted activity status seems too lenient for dealing with hazardous substances of such toxicity. We need to ensure that conditions are robust enough to prevent adverse effects being spread to other locations, and to meet the purpose of the RMA. With the risk to human health and the environment, one would think a different activity status would be required for use or development of land with soils contaminated by carcinogenic material.

## **8. Consequential Plan Changes**

8.1 Territorial authorities will be required to implement plan changes to accommodate the NES and its provisions. Where tangata whenua believe that the NES is too lenient on developers, any opportunity for meaningful input to this plan change process is negated by the NES, as local government is automatically required to adhere to the NES. This also undermines the mana of local hapu in relation to their preferences and aspirations.

8.2 Several local government entities within the Kahungunu rohe have acknowledged Treaty principles within their various planning regimes. One of these is the principle of active partnership and consultation. No consultation with Ngati Kahungunu has been undertaken during the preparatory phase of the proposed NES. Consultation during the implementation phase will no longer be a requirement once the NES is approved by the minister. Therefore, in this regard, the proposed NES is in breach of this Treaty principle.

8.3 The principle of tinorangatiranga has been referred to previously (paragraph 6.2). Another Treaty principle that is relevant within the NES context is the principle of active protection. If the proposed NES is not going to consider all matters and adverse effects relevant to the hazardous substances to which the SGV's apply, then the interests of Ngati Kahungunu whanui are not being actively protected.

## **9. Mining Activities**

9.1 The current state of the world economy, the rise in the price of gold, and plans by government and multinational companies to increase mining activities within the conservation estate will require increased scrutiny, particularly where previous gold extraction activities have used hazardous substances like mercury and cadmium. Consequently, there should be reference to section 4 of the Conservation Act to help

manage the risks and ensure that Maori interests in conservation lands are not compromised.

9.2 The Department of Conservation has also bought iconic farm land for conservation purposes. Past farm management particularly in the 1950's included use of DDT, dieldrin and PCP. These lands should be further researched to establish where sites that pose significant risks are located.

## **10. Site Specific Management**

10.1 This concept would be valuable for the mining issues mentioned above and for lifestyle block developments, but the threshold levels are too high. Many buyers of lifestyle blocks make their choices on the purchase of property due a wish to pursue a lifestyle more in tune with the natural environment. Land containing hazardous substances at any level would undermine the prevailing philosophy of these buyers. Their preferences would be for no exposure to such contaminants at all. Having SGV's and different levels of risk would require them to manage their activities to reduce risk when the developer should be meeting these costs through full remediation or replacement of soils.

10.2 The cost benefit analysis for the NES has omitted to include the costs to potential purchasers of lands were they to be sold with a permitted level of contamination. This would be both in financial terms from immediate purchase plus the incurring of medical expenses resulting from chemical exposure.

10.3 Regulating or managing people's behaviour due to them being sold contaminated land is faulty methodology. It places restrictions on basic freedoms and rights. The better option and the safest is not to allow the selling of contaminated lands for residential or lifestyle development at all, unless full remediation has been undertaken. Then the costs are met by the person or entity who wishes to profit from the development. This is not only the more sensible approach but the most logical and ethical.

10.4 Varied pursuits are carried out on lifestyle blocks, dependent on the owner's wishes - stock management, fruit and vegetable production, equine pursuits and self-sufficiency to name a few. Where a lifestyle block changes owners, the land-use could also change. Full remediation of soils would prevent ongoing monitoring of land-use change and the associated expense.

## **11. Industry Influence**

There appears to have been undue emphasis on industry and developer preferences in determining the SGV values. Reliance on information from these sectors is what caused

the problems for which we are now seeking potential solutions. Their interests lie in a permissive regime with little acceptance or responsibility for liability. The general public should not bear the cost for health related issues arising from lenient regulation of hazardous substances.

Noho ora mai,

Na maua,

Ngati Kahungunu Iwi Incorporated

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Meka Whitiri

Kaiwhakahaere      Matua

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Morry Black

Resource Management Advisor