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Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil

Thank you for the opportunity to prepare submissions on the above discussion document.

The Wood Processors Association (WPA) represents 87 industrial and commercial enterprises involved in the full spectrum of manufacturing, utilising and retailing wood products, including chemically treated wood products.

Wood processing has occurred in New Zealand since before 1900, and at facilities throughout the country. WPA members have a long history of conducting their businesses in accordance with the standards of the day. In many instances, businesses occupy sites and facilities that have been utilised by a succession of related but legally distinct businesses where antecedence on a site including Government departments have left a chemical legacy associated with that past use.

WPA supports the development of an NES to guide the management of contaminated sites. We are concerned that the narrow focus of the proposed NES will largely negate any advantage from what's needed to be a system of national consistency and direction. We are concerned at an apparent unwillingness to address all aspects of the management of historically contaminated land including ecological considerations, such that the proposed NES may fail to significantly improve the management of contaminated sites as compared with current arrangement.

WPA would recommend significant modifications to the approach to contaminated sites management outlined in the Discussion Document. Our specific recommendations are:

1. Perverse Incentives

New Zealand has a long history of use and development which, judged in hindsight and against current scientific knowledge, could be considered 'contaminating'. Wood treatment is one example, with other obvious ones being extensive use of various persistent agrichemicals, unconfined land filling of a full spectrum of wastes, coal and other mineral mining and processing etc.

The legal presumption that historic contamination constitutes a liability for the current landowner is arguably unreasonable recognising that the 'contamination' occurred through compliance with the regulatory standards of the day. Similarly, the extent of the liability for contamination is calculated against a modern understanding of the

risks of certain practices and arguably, against an assumption that any chemical risk is unacceptable. The net effect is that 'contaminated' land represents a sufficiently significant liability as to motivate investors to manage the liability, which may or may not include management of the contamination.

WPA supports those aspects of the discussion document suggesting an NES should encourage a risk management approach to contaminated land and that risk management, through constraints on land use for example, rather than elimination of risk, is both cost effective and logical.

WPA is opposed to those aspects of the Discussion Document suggesting that "contamination" is determined by a measured level of contamination in soil if the interpretation can be taken that remediation requires removal of that contamination.

The Discussion Documents' suggestion that naturally occurring '*contaminants*' should be managed in a similar manner to anthropogenically generated contaminants is clearly illogical if the expectation is that naturally occurring environments need to be 'cleaned up'. Conversely, if the implication is that geothermal areas (for example), continue to be managed through systems of constraints on land use in areas of natural hazard, then an NES would be helpful. An NES leading to demands for removal of contaminants (anthropogenic and natural) to some other area will do little to progress contaminated sites management.

Care is required to ensure a "standards" based approach (as opposed to a risk management based approach) doesn't result in:

- Retrospective penalty for activities that were legally sanctioned at the time they occurred or, worse, naturally occurring.
- The costly excavation and removal of contaminants from one area to another, arguably doubling the risk if in the future the excavated and re-interred materials become a concern.
- A cost of remediation sufficient to encourage litigation and bankruptcy rather than management of any particular problem.
- Incentivised investment in 'green fields' areas at the expense of development of 'brown fields' sites, recognising the former approach eliminates the risk to a new investor of retrospective liability.

2. National vs Regional Direction and Expertise

WPA is concerned that efficiency and consistency in regulation of contaminated sites will not be achieved if the proposed separation and separate management of 'ecological' considerations from 'health and safety concerns', progresses through to an NES. The logic of a national approach is lost if only some aspects of contaminated sites management are nationally controlled. Indeed, separation of ecological and health and safety aspects of contaminated sites management has the effect of duplicating and potentially further complicating the management of contaminated sites, rather than simplifying it. The efficiency of retention and development of specialist contaminated sites expertise nationally will be lost if Regional Councils are required to retain the same or similar expertise in order to fulfil their environmental protection functions.

WPA is concerned that the explicit separation and segregation of ecological concerns carries with it the implication that historically contaminated land should be managed on an equivalent basis to all other land. We would question whether it is feasible or even possible to manage historically contaminated land with the objective of restoring pre-anthropogenic characteristics. We note that many other human developments, (roads, water supply dams etc) have the effect of fundamentally altering the natural character of land. A decision to build a road or approve a new landfill is presumably predicated on the judgement that the benefits outweigh the costs. The same assumption was presumably made in the past in respect of commercial land in the past, including land now deemed contaminated.

WPA recommends that an NES for contaminated sites expressly provides for cost effective management of the human health and safety concerns as a clear priority, with ecological concerns a secondary consideration where it is cost effective to do so.

WPA recommends that a National Standard for contaminated sites assume full responsibility for determining remediation. Regional Council's may retain the role of oversight of delivery of an NES-prescribed outcome but need not retain the specialist skills needed to determine that outcome in the first instance.

WPA recommends an NES be worded to encourage proactive management of historically contaminated sites by prescribing that implementation of an agreed program of works absolves the current and future owners of that site from further remedial liability. This protection may need to be limited to the specified contamination being targeted and subject to the land use being the same or similar as that assumed by the remediation plan.

We would appreciate the opportunity for further input and would be happy to clarify any of the points made above, on request.

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CHIEF EXECUTIVE

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