

A188137

25 March 2010

National Environmental Standards
Ministry for the Environment
PO Box 10362
Wellington 6143

Dear Sir / Madam

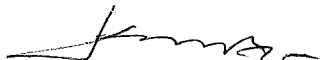
Otago Regional Council Submission on the Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil

Please find attached the Otago Regional Council's submission on the Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil.

The Otago Regional Council wishes to be heard in support of its submission. However, we welcome the opportunity to discuss the proposal with the Ministry for the Environment and wish to be involved in any further discussion.

If you require clarification or would like to discuss this further do not hesitate to contact me on (03) 474 0827 or fraser.mcrae@orc.govt.nz

Yours sincerely



Fraser McRae
Director Policy and Resource Planning





**Otago Regional Council Submission
on the
Proposed National Environmental Standard for Assessing and Managing
Contaminants in Soil**

This is a submission to the Ministry for the Environment on the Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil.

The Otago Regional Council wishes to be heard in support of this submission. If others make a similar submission, the Otago Regional Council would not consider presenting a joint case with them at a hearing.

Signature of submitter (or person authorised to sign on behalf of submitter):

A handwritten signature in black ink, appearing to read "Graeme Martin".

**Graeme Martin
Chief Executive**

25 March 2010

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Fraser McRae, Director Policy and Resource Planning

Name of submitter:

Otago Regional Council

This submission is:

The Otago Regional Council (ORC) agrees in principle with the intent of the Proposed National Environmental Standard (NES) to address issues around assessing and managing contaminants in soil, but opposes the narrow scope and implementation proposed.

Executive Summary:

The proposal sets policy that cuts through many regulatory and institutional complexities; however it does not address these complexities. The identification of the issue seems to be embedded in local level government functions.

ORC considers that the fundamental issues have not been adequately explored in this proposal, leading to a narrowed scope, which has limited the options considered to address management of contaminated soils and sites.

Key Points

- 1 Poor Issue Identification and Narrow Scope
- 2 Flawed Regulatory Approach
- 3 Duplication and Inefficiencies
- 4 Soil Guideline Values

Discussion:

1 Poor Issue Identification and Narrow Scope

1.1 ORC considers that the issues have not been properly identified, leading to the narrowed scope of the proposal. ORC considers the issue to be broader than a lack of knowledge and effects on human health.

1.2 ORC sees theoretical flaws in the way that the NES is justified, where human health is seen not as a significant component of the environment, but as the central element in the management and assessment of contaminants in soil. The focus needs to be on the cause and source of contamination and the effects of that contamination on the environment as a whole, rather than the human health sub-set.

1.3 ORC would like to point out that viable option analysis can only be done within a multiple dimension perspective that accommodates the connections between the environmental stressors and receptors. ORC understands that this perspective is not covered by the proposed NES. However, ORC is aware that the scale of the problem usually comes down to these multiple stressors and cumulative effects which require an integrated perspective that ensures there are no gaps in understanding cause-source connections.

2 Flawed Regulatory Approach

2.1 The proposed NES has significant implications on local government functions and planning that might potentially create a costly, inefficient system almost opposite to what is intended. The proposal will not reduce inefficiencies, inconsistencies and duplication that currently occur, and in fact may even increase them.

2.2 The proposal is not retrospective and will therefore not assist in managing current issues.

- 2.3 The proposal is based on the Hazardous Activities and Industries List (HAAIL) which is not universally accepted as being a robust mechanism.
- 2.4 The proposed rule structure is fundamentally flawed, and possibly beyond the law. It is neither possible nor appropriate to have a 'managed' permitted activity (for instance refer to page 27 and 31: the permitted activity statements in these pages do not really fit what is understood of permitted activities).
- 2.5 ORC considers that a permitted activity applying to identification, assessment and remediation issues, will not address the practical aspects and potential adverse effects on the environment as a whole.

3 Duplication and Inefficiencies

- 3.1 Currently there is potential for overlap and duplication between territorial authorities and regional council's, and the proposal does not address this. In fact, the process as proposed appears to become more cumbersome and expensive. Empowerment of territorial authorities in terms of information gathering and making decisions on contaminated sites might prove more difficult and costly than originally envisaged in the national proposal.

4 Soil Guideline Values

- 4.1 Soil Guideline Values (SGVs) are proposed to identify trigger points for investigation of contaminated soils. However, these values seem to be based on judgement rather than values that are practical and robust tools for decision-making. ORC considers value judgements are not appropriate to determine assessment and consent requirements.
- 4.2 The methodology adopted for SGVs are confusing since the implementation of values rely on opinion for deciding whether an activity should be consented or permitted. ORC considers that SGVs cannot be understood at a practical level and is prone to confusion in the management of contaminated sites.

4.3 The proposed soil guideline values are extremely high. It is considered that with values set at this level many recognised contaminated sites in Otago may not be classed as 'contaminated' even though the effects of future site development may be adverse.

The Otago Regional Council seeks the following decision from the Ministry for the Environment:

An enabling National Environmental Standard which:

- Appropriately identifies the issues
- Widens the scope to include the environment as a whole