

## SUBMISSION TO DRAFT NATIONAL ENVIRONMENTAL STANDARD

<p>To:</p> <p>Ministry for the Environment PO Box 10362 WELLINGTON 6143</p> <p>Email: standards@mfe.govt.nz</p>	<p>From: (Your Name and Address)</p> <p>Rita O'Brien Kapiti Coast District Council Private Bag 60-601 Paraparaumu 5254</p>	
	<p>Closing date for comment</p> <p>19 April 2010</p>	<p>Date of your comments</p> <p>19 April 2010</p>
<p style="text-align: center;">Proposed National Environmental Standard for Assessing and Managing Contaminants in Soils</p>		

### 1.0 Summary

- 1.1 Along with many territorial authorities in New Zealand, Kapiti Coast District Council's District Plan currently has no specific contaminated land provisions, something that has been identified in scoping the extent of our District Plan review. The lack of any specific control can result in the ad hoc identification and assessment of contaminated land. If affected sites are not identified at the time of development, there is a chance that any environmental risk will not be adequately assessed or remediated / contained.
- 1.2 While Council understands the need to do something to promote consistency and ensure statutory functions are undertaken, it questions the appropriateness of developing a National Environmental Standard (NES) under the Resource Management Act for assessing and managing contaminants in soil that relates solely to human health. Humans are not an indicator species so it is unclear how the proposed NES leads to the sustainable management of natural and physical resources while:
- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations, and
  - (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems, and
  - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- 1.3 It is our view that a National Environmental Standard for Assessing and Managing Contaminants in Soils should focus on ensuring that land affected by soil contaminants is safe for all receptors relevant to assessing the effects of a contaminated site, not just human health. The scope should be widened to include the ***environment***, of which human health is only one component. At the very least, the management of effects that do not relate to human health and the associated interface between territorial authorities and regional councils needs to be clarified as the level of contaminants affecting ecology, surface and ground water, drinking water and amenity values occur at concentrations lower than those relating to human health. The need to control these receptors will lead to the *'inconsistent and inappropriate use of'* environmental guideline values, which is one of the problems the proposed NES is intended to fix.
- 1.4 It is requested that if adopted, the proposed standards are amended in line with the suggestions in this submission.

### 2.0 Subsurface Investigations

2.1 As landowners already have the right to sample and test their own soil, any reference to subsurface investigations being permitted should be removed. In any event, Council does not have the resources or capacity to audit subsurface investigation reports.

2.2 The removal of underground tanks can be a substantial undertaking and resource consent must be required.

### **3.0 Trigger for NES process**

3.1 Some activities that involve soil disturbance can occur without triggering the need for resource consent e.g. placing up to 4 dwellings on a residential allotment (provided all other permitted activity standards are met) or even gardening. If it is considered necessary for the NES to capture all activities that disturb soil, a mechanism is required to ensure all landowners are aware of their obligations under the proposed NES.

3.2 Requiring all landowners to get a PIM before any building work commences on site was one such mechanism. Recent changes to the Building Act, however, have removed this and it is becoming more of a challenge for territorial authorities to detect when work may be occurring on contaminated land.

### **4.0 Proposed Standards for SGVs<sub>(health)</sub>**

4.1 The NES should clearly state that SGVs<sub>(health)</sub> are minimum / baseline values. The values are purely for the protection of human health and do not necessarily protect ground water or ecosystems. For example, the SGVs<sub>(health)</sub> for chromium III and copper are in excess of a hundred thousand mg/kg. Although the threat to human health is minimal for these contaminants, these levels are well in excess of phytotoxic concentrations (i.e. nothing will grow in the site).

4.2 It would be expected that Councils will still need to consider environmental thresholds where the receiving environment warrants it. The proposed NES offers no guidance in terms of numerical values for levels of hazardous substances that are protective of the environment. As stated in the summary, territorial authorities still need to control soil contaminants for aquatic and ecological reasons, which will undermine the attempt of the standard to ensure greater consistency.

4.3 The proposed NES refers to current guidelines (Contaminated Land Management Guidelines No 1-5) which indicate that only parameters relevant to the identified source of contamination should be analysed. However, this is not clearly stated in the proposed NES itself. To avoid the potential for misinterpretation the NES should clearly indicate that analysis is not required for all parameters for which SGVs<sub>(health)</sub> have been developed.

4.4 The NES proposes that parameters for which no SGV<sub>(health)</sub> has been developed, but which are relevant to the source of contamination, are analysed and compared to existing guidelines. This could lead to a situation where the SGVs<sub>(health)</sub> are complied with and hence the activity is permitted, but the guidelines for other parameters are not and hence some controls may be appropriate.

4.5 The generic land-use scenarios use the assumption that 10% of fruit and vegetables consumed are grown on the property to determine acceptability of contaminant levels. A rural residential survey undertaken in Kapiti (2009) as background to the Wellington Regional Strategy indicated that 67% of people in the rural / residential situation grew or raised their own food (i.e. 200 of 300 surveyed). If a larger percentage of home grown produce is consumed, the threshold levels will be reduced as the extent of exposure increases. Although it is stated that a site-specific assessment is not triggered or required for reassessing the proportion of home-grown produce consumed (pg 71), site-specific principle 2 (pg 71) states that '*site-specific assessment must be carried out if the current use, or intended site use, results in greater human exposure than for any of the generic exposure scenarios*'.

This is confusing. Do territorial authorities have the ability to re-assess 10% produce if locally it is felt property owners consume more than 10% of the produce from a home garden or it is likely that chickens / eggs will be raised. Either a site specific exposure assessment should be allowed, or the generic exposure scenarios must take a precautionary approach. It is not appropriate to merely place a note on the building file to '*inform owner of the exposure risk and the range of measures that could be adopted to mitigate this risk*' as the guideline suggests.

## 5.0 Proposed Standards for planning controls

The following regulations will override any relevant current rules in planning documents:

Activity	Status
<u>Undertake subsurface investigations</u> to determine presence, extent and nature of contamination, subject to report provided to territorial authority within 60 days of receipt of laboratory results	Permitted Activity
<u>Use, develop or subdivide land</u> for which a desk top study of available information shows no potential for contamination, based on; <ul style="list-style-type: none"> <li>• HAIL list held by regional council</li> <li>• TA and regional council land information register</li> <li>• Any other available information</li> </ul>	Permitted Activity
<u>Use, develop or subdivide land</u> identified as potentially contaminated for which a subsurface investigation has shown that levels are acceptable for intended land use	Permitted Activity
<u>Use, develop or subdivide land</u> for which a subsurface investigation has shown that levels not acceptable for intended land use  <b>OR</b> insufficient information is available to determine potential risks to human health	Restricted Discretionary Activity

- 5.1 The proposed NES relies upon investigations being performed by '*an appropriately qualified and experienced practitioner*'. Due to a lack of in-house expertise, there will be a potential for increased costs due to peer review. Where the investigation is undertaken as part of a resource consent application, Council can recover the cost from the applicant provided they agree under s. 92(2) of the Resource Management Act. There is, however, no current mechanism for recovering the cost of peer reviewing an investigation associated with a permitted activity.
- 5.2 Consideration of the potential for land to be contaminated should be required through controlled activity status for any land identified as potentially contaminated through a study of available information or subsurface investigation. As a controlled activity, Councils will have input into the study framework (desk top or detailed investigation) to ensure it is appropriate for the planned activity and that the costs associated with reviewing the information provided are recoverable.
- 5.3 The lack of definition around 'appropriately qualified and experienced practitioner' is concerning as it can lead to much debate around who is or is not suitably qualified and experienced at the time of application. Although our proximity to Wellington ensures Kapiti Coast District Council has access to some of the larger consultancy firms, it is expected to be a small pool of people who would be considered '*appropriately qualified and experienced*'. Getting an independent peer review can be problematic if several consultancies have been involved in putting an application together.

- 5.4 Although it is stated throughout the document that the proposed NES relates specifically to making land affected by contaminants in soil safe for human use and that the use, development or subdivision of land may be subject to additional controls under the district plan to address other adverse effects, these points need to be highlighted. To avoid confusion, the final wording of the grey boxes within section 4.1 should be rewritten to clearly state that the activity status relates solely to land affected by contaminants in soil.

Currently the grey boxes within section 4.1.3 implies that changing land-use, development and subdivision of land is a permitted provided there is no evidence of soil contamination or the proven levels are acceptable for the intended land use as defined by the relevant soil guideline value. This is not correct as there are many other activity standards which must be satisfied.

- 5.5 Also all information requirements should be listed in the standard rather than the explanation. If a report is required within 60 days of receiving the laboratory results, then the permitted activity should be subject to that requirement being fulfilled. Similarly, a standard should not reference a level '...as defined by the relevant soil guideline value'. The guideline or value should be referenced directly.

A handwritten signature in black ink, appearing to read 'R. O'Brien', followed by a horizontal line extending to the right.

Rita O'Brien  
Subdivision Engineer