

# ***Submission from Wellington City Council on the Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil***

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Submission to: **Ministry for the Environment**

Discussion Document: **Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil**

From: **Wellington City Council**

Date: **19 April 2010**

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## **1. Introduction**

Wellington City Council (WCC) welcomes the opportunity to comment on the Proposed National Environmental Standard (NES) for Assessing and managing Contaminants in Soil.

WCC supports the general direction of the proposed NES and the broad objectives that it is seeking to achieve as we recognise the need for consistency across the county in assessing and managing contaminated soil.

The remediation, use, development and subdivision of contaminated land, particularly when soil is disturbed, can increase the risk of exposing people and the environment to increased risk of exposure to contaminants. We believe that contaminated land needs to be managed so that it does not pose an unacceptable risk to current or future owners, occupiers and/or users.

The on-going management of contaminants on land needs to be adequate to protect the reasonably foreseeable needs of present and future owners, occupiers and users. Poorly implemented risk management plans and poorly managed information can result in uninformed land use decisions and expose people and the environment to unacceptable risks.

In addition to general comments on the draft NES (section 2.1), this submission also identifies specific sections within the draft NES where additions or clarifications are required to help improve clarity and accuracy (refer section 2.2).

## 1.1 Wellington City Context

A range of industries and activities have, in the past, contaminated areas of land within Wellington City. While much of this land has been identified by the Regional Council and the City Council, there remain areas of land within Wellington City that may potentially be contaminated due to past practices and activities.

This unidentified contaminated land can equally pose a risk to human health and the environment, because of its unknown nature and location. Potentially contaminated land ranges from former landfill and gasworks sites, to oil terminals and areas used for the storage of hazardous substances. In some cases, the contamination is not confined to the site at which the activity took place.

Generally the proposed NES aligns well with the Wellington City District Plan so is consistent with WCC's approach to contamination. This means WCC is familiar with a consenting regime that is similar to that proposed such that administering the NES would not have significant implications for the City.

## 2. Comments on the Proposed NES

### 2.1 General Comments

Overall the draft NES is well structured and written. The Council does however have comments to make on several areas. These are detailed in the specific comments in section 2.2 of this submission.

### 2.2 Specific Comments

<b>Content reference</b>	<b>Page no.</b>	<b>Comments and Action Sought</b>
<b>The Problem</b>		
<b>Definition and Objective</b>	<b>18</b>	We support the policy objective for land to be made safe for human use at the time of development and consider changes of land uses or subdivision to be an appropriate trigger for the NES.  The focus on safety for human use seems reasonable, however we note that while left alone, contaminated sites may already have resulted in environmental damage, and undertaking containment or remedial works could destabilise the current situation and create additional environmental risks.
<b>The Options</b>		
<b>Preferred Option</b>	<b>23</b>	We believe that the proposed NES is the best option, as it will create a consenting regime which will be able to be applied consistently throughout the country.

Content reference	Page no.	Comments and Action Sought
<b>The Proposed NES</b>		
<b>General</b>	<b>37</b>	The proposed NES is consistent with WCC's existing approach to contamination, therefore compliance and enforcement of the proposed NES would not be a problem for WCC.
<b>Use, Development and Subdivision</b>	<b>37</b>	<p>We support the focus should on the area of land that may be affected by contamination and not all of the land which comprises a site.</p> <p>Subdivision (including minor boundary adjustments) by nature creates the potential for new development or changes in land use even though no works may be proposed which would disturb the ground, or the use may not be changing at that time. Without the ability to properly consider contamination at the time of subdivision an opportunity to mitigate future effects through the use of consent notices or appropriate site works would be lost. It could also mean that new lots would be on-sold to unsuspecting new owners who would be caught later when they sought to use their land.</p> <p>It is unclear what is meant by landscaping and other minor actions which involves minimal ground disturbance. Depending on the nature of the contamination, any site disturbance may be undesirable if unregulated. Additionally, fence post holes may also be undesirable in certain situations as this could disturb contaminated soils or allow water penetration into an otherwise capped site.</p> <p>We would like to see a cap on the area of soil that can be disturbed as a permitted activity. We suggest that 30m<sup>3</sup> of soil in aggregate per site be an acceptable volume. This volume aligns with what is permitted in WCC's District Plan.</p> <p>We would also like to see activities of low or no risk provided for as permitted activities and not controlled activities to avoid unnecessary consenting requirements and additional cost. If a site is identified as being a contamination risk (in a register or otherwise), the onus of proof will fall on the developer/landowner with all associated costs. Unless collecting evidence for a prosecution, WCC puts the responsibility and cost back on the developer/landowner in these situations. The requirement for a restricted discretionary activity consent will provide for this because unless evidence is provided, consent will be necessary.</p>

<b>Content reference</b>	<b>Page no.</b>	<b>Comments and Action Sought</b>
<b>Subsurface Investigations</b>	<b>37</b>	<p>There may be a reluctance to investigate land due to the information requirements relating to permitted subsurface investigation and concerns that people may incriminate themselves. Additionally with the minor nature of the site works involved, unless the person undertaking the work discloses what they are doing it is likely to go undetected and be difficult to enforce.</p> <p>Although such risks exist, we believe that the benefits of having such a requirement appear to outweigh the negatives, even if this means that not all of the information will ultimately make its way to councils.</p> <p>We note that subsurface investigation is often carried out as a precursor to developing the land in some way, so sites would be caught by other requirements whenever the land is identified in a contaminated land register or is known to have previous activities that come under the Ministry's hazardous activities and industries list.</p> <p>Greater Wellington Regional Council maintains a comprehensive contaminated land register, while WCC maintains a similar but less comprehensive register. Both are referred to as a matter of course with all resource consent and building consent applications, and therefore it is only certain types of land uses where consent would not otherwise be required or land that has not been identified as having a contamination history that might slip through. In Wellington this is no different to the present situation under district plan requirements.</p>
<b>Costs and Benefits</b>		
<b>General</b>	<b>47</b>	We believe that the onus of proof and cost needs to sit with the developer/landowner.
<b>Property Values</b>	<b>47</b>	Subject to the contamination thresholds being set at an appropriate level, the fact that there may be valuation consequences should not be a consideration. The protection of people and the environment from harmful contamination effects should take precedent. Due diligence for potential purchasers would ensure that in situations where sites have been identified as contaminated a purchaser can make an informed decision on whether to buy the site or not.

<b>Content reference</b>	<b>Page no.</b>	<b>Comments and Action Sought</b>
		Not identifying that a site is or could be contaminated may mean hidden development costs/risks could be passed on unfairly. It may also mean that current owners or others could be at risk due to a lack of knowledge about the contamination concerns relating to their property.

### **3. Conclusion**

Thank you once again for the opportunity to comment on the Proposed NES for Assessing and Managing Contaminants in Soil.

If you have any comments or questions regarding this submission, please contact Warren Ulusele (04) 803 8187 or email [warren.ulusele@wcc.govt.nz](mailto:warren.ulusele@wcc.govt.nz)

On behalf of Wellington City Council:

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