



SNAPSHOT
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PROPOSED AMENDMENTS TO THE NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH: A SNAPSHOT

The Ministry for the Environment is seeking feedback on proposed amendments to the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS).

The NESCS came into effect on 1 January 2012. Since then we have received feedback from local authorities and other stakeholders about variations in, and difficulties with, implementing the NESCS. We conducted an interim review of the NESCS over 2014/15 to understand how it is working.

We are now seeking your feedback on proposed amendments to improve how the NESCS is working. These changes address all four parts of the NESCS framework.

1.	Hazardous Activities and Industries List (HAIL)
2.	Nationwide planning controls
3.	Requirements for undertaking and assessing site investigations and reports
4.	Nationwide soil contaminant standards for 12 priority contaminants

Findings of the interim review

The NESCS has increased awareness of contaminated land at the time of development...

By requiring potentially contaminated sites be investigated and assessed at the time of development, the NESCS has decreased the likelihood that sites will be developed, and then later found to pose an unacceptable risk to human health.

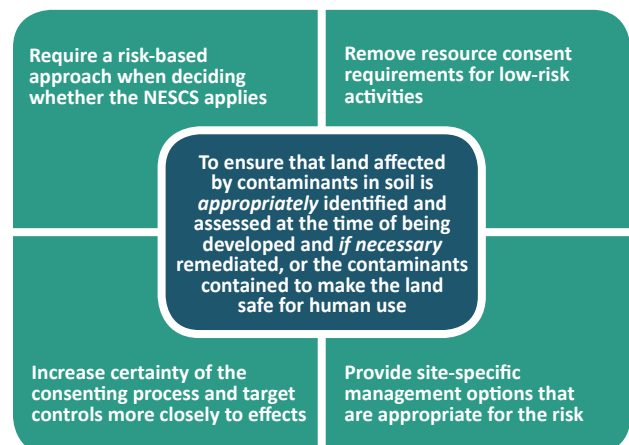
But... there are several areas where implementation of the NESCS is creating inefficiencies, resulting in low-risk sites and activities being required to comply with the NESCS:

- > **There is considerable variation in how the Hazardous Activities and Industries List (HAIL) is being applied by councils across the country.** This is creating confusion for developers and landowners and increased costs and delays at the time of development.
- > **A substantial proportion of sites identified as HAIL are found to be below the soil contaminant standards after testing.** This finding means a considerable percentage of land captured by the NESCS is later found not to pose a risk to human health.
- > **The NESCS is requiring landowners to obtain resource consents in circumstances where the risk to human health could be managed in other more cost-effective ways.** For example, landowners may be required to remediate the site where on-site management options are appropriate.
- > **How the NESCS planning controls are applied by councils and practitioners varies across the country.** This is increasing costs and delays and resulting in consents being obtained when not strictly required by the NESCS.

Intent of the proposals

The overall objective of the amendments is to deliver more effectively on the original policy intent of the NESCS, outlined in the inner box in the figure below.

The proposals seek to achieve four outcomes, depicted in the outer boxes.



We are seeking feedback on a range of proposals to address these issues

These proposals are to:

Clarify the HAIL and provide guidance

- > reword the HAIL categories to increase consistency
- > remove express reference to sports turfs, environmental discharges, and risk
- > provide guidance on the HAIL to support risk assessment.

Require a risk-based approach when deciding whether the NESCS applies to a site

For example, an orchard that has only used copper-based sprays, copper being a low toxigenic to humans, is not captured by the NESCS (although a HAIL activity may have been undertaken on the land), as it is not likely to have created a risk to human health. The site remains listed as a HAIL site as copper can be eco-toxic to organisms in water and soil.

Remove consent requirements for low-risk activities

No resource consent required for:

- > activities on sites found to be below soil contaminant standards or Tier 1 soil acceptance criteria for petroleum hydrocarbon contaminated sites in New Zealand
- > soil disturbance by network utility operators
- > subdivisions that are purely 'paper based' or do not facilitate a current or future change in use.

Increase certainty of consenting process and target controls more closely to effects

Class soil disposal as a stand-alone NESCS-controlled activity; remove the option of a discretionary activity class for soil disturbance and removal or replacement of fuel tank storage systems; remove the option of restricted discretionary and discretionary activity classes for soil sampling; define "soil disturbance ratio" and "piece of land" in regulation 8(3).

Provide options for site-specific management that are appropriate for the risk

Provide a template for an ongoing site management plan (with controls) for residential property owner. Landowners of residential and rural residential properties, in certain circumstances, will be able to opt for a template ongoing site management plan at the time of obtaining NESCS consent for subdivision or change of use.

Include an option to enable site-specific soil guideline values to be calculated using the fraction of the contaminant that is biologically available (bioavailable).

Other updates

Having consulted on them earlier in 2016, we have now made changes to:

- > *Contaminated land management guidelines No. 1: Reporting on contaminated sites in New Zealand* (Ministry for the Environment, 2011)
- > *Contaminated land management guidelines No. 5: Site investigation and analysis of soils* (Ministry for the Environment, 2011).

These are being released in draft form. We are now consulting on a further amendment to the guidelines – a requirement for suitably qualified and experienced practitioners to use a standardised certifying statement in their reports to provide clarity and certainty to report readers.

Comprehensive guidance

We intend to provide comprehensive guidance for councils and practitioners along with the amendments to the NESCS framework.

A strong understanding by council officers and practitioners of the specific risks posed by a proposal is important. We are interested in your views on what implementation support you need to effectively implement the amendments.

HAVE YOUR SAY

The consultation document is available at: www.mfe.govt.nz/consultation/proposed-amendments-national-environmental-standard-assessing-and-managing-contaminants
Submissions on the consultation document are due by **Friday 14 October 2016**.



- > For more information about the NES for Assessing and Managing Contaminants in Soil to Protect Human Health see www.mfe.govt.nz/land/nes-assessing-and-managing-contaminants-soil-protect-human-health.



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