



STAFF REPORT

TO: Environment & Planning Committee

FROM: Steve Markham, Policy Manager

REFERENCE: R427

SUBJECT: **SUBMISSION TO MINISTRY FOR THE ENVIRONMENT ON POLICY FRAMEWORK FOR MANAGING CONTAMINATED LAND IN NEW ZEALAND - REPORT EP07/02/17** - Report Prepared for 28 February Meeting

1. PURPOSE OF REPORT

This report recommends adoption of a submission to be lodged today with the Ministry for the Environment on its discussion paper on working towards a comprehensive policy framework for managing contaminated land in NZ.

2. BACKGROUND

For many years the government through the Ministry for the Environment has considered policy options for addressing both the legacy of contaminated sites in New Zealand, and avoidance of creation of new sites. The Tasman District Council has had experience with a major contaminated site at Mapua; with the development of rules to manage hazardous facilities and contaminated land; the development of its site contamination register; and the issue of historical horticultural land with some degree of contamination. In this latter issue several years ago the Council sought progress from the government in setting threshold levels of contamination of soil for assisting with the management of historical horticultural land.

The discussion paper addresses the existing measures under RMA, HSNOA and other legislation, and options for methods of managing contaminated lands, including setting soil guideline values, liabilities, remediation funding, competence of practitioners in relation to site management; and priority actions.

3. RECOMMENDATION

It is recommended that the Committee **approve** the submission to Ministry for the Environment on the discussion paper on working towards a comprehensive policy framework for managing contaminated land in NZ as attached to this report.

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Submission on Ministry for the Environment's Discussion Paper: Working towards a Comprehensive Policy Framework for Managing Contaminated Land in NZ

February 2007

We wish to commend the Ministry for starting their consultation early on in this project, and hope that this communication and involvement of stakeholders will continue. If central government is sincere about addressing the suite of issues hinted at in the Paper, and it wishes to impose additional responsibilities and commitments onto local government, the government needs to continue a process of close liaison with local government, and its solutions to the issues need to be practical and properly resourced.

Legislative framework for managing contaminated land

- 1. We request that the government investigate the special needs for the statutory management of present contamination risks from occupying or using land, be considered as a new statutory code.**

The Tasman District Council considers that the RMA is not well designed to deal with the further use of already contaminated land, in order to manage the risks of exposure of humans and the environment to contaminants. While the RMA can put in place decisions to avoid future contamination, the risks from already contaminated land are not easily dealt with under either the land use (S 9) or discharge (S 15) regimes in Part III of the RMA. Unlike the natural hazards function, management of contaminated land requires reducing the present risk by some calculated action, such as a management plan, as well as regulation of future activities to avoid or mitigate the hazard risk. However. the hazardous substances function:

1. addresses only the land use (S 9) jurisdiction, and
2. allows a complete opting out of addressing present activities with present risks (more on this below).

As an example of the inadequacy of the RMA in dealing with the prevention or control of contaminated sites, is the regime for addressing hazardous facilities (HFs) (the hazardous substances function under both Ss 30 and 31 RMA). This can only allow for preventative or remedial actions to be undertaken for existing sites that may be in the process of becoming contaminated, if the function is undertaken by the regional council. To date, only one region (Tasman) has done this. Elsewhere, under the TLA functions only new sites or facilities are regulated. So, the present risk is ignored pretty much around the whole country.

But the problems do not end here. Tasman's regional land use rules for HFs do not require cleanup, rather upgrading design and operational aspects of the HF. Many of the HFs so regulated already have some degree of contaminated land. The issues under RMA jurisdictions are:

1. showing that the existence or scope of "passive" discharges from the HF needs authorisation,

2. linking HF site practices to contamination (where information is obtained by required site sampling and assessment) that surpass thresholds and therefore require it to be, either or both, closed down or remediated.

So far neither of these issues have been effectively addressed in Tasman. It is only where historical contaminated site investigations have yielded an assessment in terms of notional thresholds for human and environmental values, that in Tasman there is a consent requirement for both remediation and any site use (under the Chemical Hazard Area). This restriction applies to the Mapua site and a disused industrial site on Waimea Plains.

We note that biosecurity management has a separate statute.

Existing measures to prevent contaminated sites

2. **We request that ERMA and HSNO are adequately resourced for enforcement and resolving technical issues such as EELs and TELs**

HSNO is not well integrated with RMA in dealing with future risks from use of often multiple hazardous substances on sites (hazardous facilities). Individual HS controls need to be aggregated at the site scale for effective site management. This needs to be accounted for under HSNOA in the development of appropriate ambient exposure standards (EELs and TELs).

HSNOA implementation is not adequately resourced in the development of technical standards, and in enforcement. Firstly, the development of values for the exposure limits for humans (TELs) and the environment (EELs) for all the appropriate HSs is important, but the development of EELs and TELs has been very slow. The purpose of EELs and TELs is to provide councils and others with nationally standardised exposure limits for toxic and ecotoxic hazardous substances. Without these standards the chemicals are not being correctly regulated, there is no national consistency, and there is a high probability that contaminated land is being created because of the limited oversight of HS use against such standards. We understand the reason they are not being provided is because of complex technicalities, and we strongly recommend that central government resources are used to solve these problems so that we have the tools to protect human and environmental health.

Secondly, to help prevent more contaminated land it is important that there are enough Test Certifiers, and that HS Classes 6, 8 and 9 are included in classes requiring Location Certificates. The HS Classes 6: human toxic, 8: corrosive and 9: ecotoxic are the classes of HSs that may result in contaminated sites and to not require location certificates for them omits a useful point of regulation.

Contaminated Sites Remediation Fund

3. **We strongly support more funding and improved management of the Contaminated Sites Remediation Fund.**

One of the current problems with the Fund is the uncertainty about the quantity of money in the contestable portion. Planning for the remediation of contaminated sites takes time and resources from councils and landowners, and it is very

unsatisfactory not to know in good time whether the proposal has been accepted. The Fund needs to operate within the budgeting and seasonal constraints of remediation.

4. We strongly support a separate Contaminated Sites Remediation Fund for location and remediation of sites with historic and complex liability issues such as sheep dips.

There is estimated to be thousands of sheep dips throughout the country so they affect many people and communities. However each site is small compared with most of the applicants for the current CSRF and unlikely to be able to compete for funds. In addition these sites are unusual in that just the location of them would enable the risk to be managed, and the CSRF does not usually fund investigations into the location of sites. This Fund should be set up as soon as possible so that sheep dip sites work can start before all the people with the location knowledge die, and the sites are much more expensive to locate. The Council considers that the Crown has a responsibility for the creation of this type of site through early compulsory dipping regulations (eg Stock Act 1908) to assist with this pesticide legacy.

5. We recommend that Government investigate establishing a liability regime for contaminated land that targets the polluter.

It would be fairer, and therefore easier for Councils to administer, if the liability and responsibility for contaminated land included the polluter as well as the landowner. Although the RMA in principle seeks to make the polluter responsible, the high level of proof required for this, and the high costs of investigation and enforcement are such that in reality it is the landowner who is responsible for the contamination on their land, whether or not the landowner created the site. It is particularly difficult to establish proof and allocate responsibility where the land has been used both before and after 1991 when the RMA commenced, for potentially contaminating activities. In other words, chemicals found in soil are not date stamped. It would be very beneficial for Council if the polluter had a duty to report, and the Council did not have to spend scarce resources locating the contaminated sites.

This issue is particularly relevant when dealing with possible contamination of Maori Perpetual Lease Land. In this case the Maori landowners have no control over how their land is used or managed.

6. We strongly support the NES proposal for a list of human health-based soil guidelines and some possible rules to manage contaminated land.

A list of key human health soil contaminants and soil parameters for different land uses would provide part of the answer to the issue of the current variance in contaminated land management across NZ. In addition to the soil values, for consistency of application it will be necessary to have detailed statistical requirements for site assessment, soil sampling and validation criteria. (Council considers that Contaminated Land Management Guideline #5 is not adequate). It will be necessary to set up a specialised task group to decide on the methodology for calculating these human health soil parameters, the ecological values, and the

sampling statistics; and to review the data supporting the NES at intervals to ensure it remains current.

Many sites have ecological risks from soil contamination as well as human health, and a set of these for New Zealand's conditions and animals would be very useful, rather than extrapolating overseas values into the NZ situation.

It is difficult under the RMA to have rules that effectively manage the risks from actual and potentially contaminated land and it may be beneficial to have some rules in the NES to enable this (see our first recommendation). However, it is imperative that the group that designs these rules is well resourced and consults properly with Council practitioners.

There is the general issue of central government requiring local government to carry out additional work without commensurate resources, and the proposed NES will need to address funding for implementation.

7. We recommend MfE funds training for risk communication and contaminated land investigation and assessment

The primary requirement is for risk communication training for all people dealing with contaminated land issues. Without this training staff will not have the skills and confidence to deal with their own council, landowners, media and the public. Contamination has both an actual and perceived risk and they both need to be managed correctly to get a good outcome.

8. Other issues

The Council has identified a number of miscellaneous issues for contaminated land management, which have not been addressed in the Discussion paper. These are complex issues and require further debate to find suitable solutions..

The present RMA definition of "contaminated land" is inadequate because of its gross vagueness. It will need to be changed if there is an NES.

Lead paint in the soil around old houses creates many thousands of small contaminated sites where the risk is from small children ingesting the lead and soil and suffering from acute lead poisoning.

Timber treated (CCA) posts also create millions of small contaminated sites around and under the posts.

The Agchem collections will not actually be completed throughout the country in 3 years, and councils need continued financial assistance for this ongoing project.

National information has to wait until the information is consistent, and part of the problem is the proposed classes in Contaminated Land Management Guideline #4. The current structure of the Contaminated Land Register with 3 categories and their definitions makes it much more difficult for Council staff to manage the risks from the sites, and this Guideline may need to be revised to encourage all councils to adopt it.