



14 October 2016

NESCS Consultation 2016
Ministry for the Environment
PO Box 10362
WELLINGTON 6143

Re: Submission on Proposed Amendments to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

Thank you for the opportunity to provide feedback on the proposed amendments consultation.

About us

Regional Public Health (RPH) is a regional service, organisationally part of Hutt Valley District Health Board but serving the greater Wellington region. Our business is public health action - working to improve the health and wellbeing of our population and to reduce health disparities. We aim to work with others to promote and protect good health, prevent disease, and improve quality of life across the population. We are funded mainly by the Ministry of Health but also have contracts with District Health Boards and other agencies to deliver specific services.

We have a particular focus on children, Māori and Pacific populations. Our staff include a range of occupations comprising: medical officers of health/public health physicians, public health advisors, public health analysts, health protection officers, vision and hearing technicians and public health nurses.

The Ministry of Health requires Public Health Units to make submissions on processes under the Resource Management Act to ensure that public health aspects are considered. For this reason we are submitting on this proposed amendment.

We are happy to provide any points of clarification. The contact point for the submission is:

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Kind regards

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General Overview

RPH supports the intent of the proposed amendments to the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS). We support the main objectives of improved guidance to Councils and property owners to support risk-based decisions on the application of the NESCS to specific sites, consistency in interpretation and application of the Hazardous Activities and Industries List (HAIL), and targeting controls more closely to effects with additional options for site-specific management.

We note that the development or change in use of contaminated land can increase the risk of exposing people to contaminants in soil. Appropriate application of the NESCS can achieve the objective of decreasing the likelihood of sites being developed and subsequently found to pose an unacceptable risk to human health.

RPH supports a risk-based approach to management of contaminated land to protect human health. This is not only based on the degree of contamination but the exposure pathways and who could be exposed via these pathways. We would expect more stringent controls over use of contaminated land that involves potential exposure to vulnerable groups, for example, young children.

Testing to confirm the degree of contamination and support risk assessment can be very complex, costly, and knowing the likely level of contamination alone does not inform the best mitigation strategy to be used. The decision to fully remediate contaminated land has the potential to expose further groups if not managed appropriately. Often the risk is better managed by other mitigation means which have less potential to lead to unintentional exposure, for example, capping or for residential sites recommending that vegetables are only grown in raised beds. For this reason we support the objective of site-specific management appropriate for risk. It will be important to have easily accessible records of decisions made around managing potential or confirmed contamination risk, to maintain adequate risk management in the future.

Overall, the success of the NESCS depends on access to expertise in human health risk assessment. It will be important to consider any training or workforce development needs that the proposed amendments may drive. This is particularly relevant for small councils or residential property owners where accessing appropriate expertise is more limited.

Specific Comments on Consultation Questions

The following section contains comments on selected questions posed by the consultation document. The numbering of questions refers to the question number contained within the consultation document.

Hazardous Activities and Industries List (HAIL)

1 Do you agree with the overall approach to amending the HAIL? Why, or why not?

The HAIL categorisation system is central to the effective functioning of the objectives of the NESCS therefore it is essential that it is robust and targets risk to human health. Regional Public

Health is supportive of provisions that support the intentions of the NESCS only being applied to specific areas considered to be HAIL within a site, and to remove ambiguity. To ensure that the proposed changes do not allow sites posing potential risk to human health to be missed, Regional Public Health recommends that consistent detailed guidance is developed and utilisation of this guidance be specified in regulation.

2 Do you agree or disagree with any of the amendments to the HAIL provided in Appendix 3? Why, or why not? Where possible, please provide quantitative evidence for or against any of the proposed changes (ie, soil testing of playing fields).

Generally Regional Public Health has no concerns with the amendments proposed in Appendix 3. With regard to sports turf and playing fields we believe that often histories of use may extend over decades, and the level of intensification may vary over time. Also, there will be variation in the level of intensification across and within categories of playing fields, parks and sports turf. It is important, as with all HAIL sites, that the actual pattern of pesticide use is determined as far as possible, rather than merely the activity category.

Does the NESCS Apply to my Land?

8 Do you agree with the proposal to introduce a risk-based assessment into the NESCS framework? Why, or why not?

Regional Public Health agrees with the proposal to introduce a risk based assessment into the NESCS framework. As noted in our introduction, full remediation of all sites can lead to unintended exposure consequences or can have negative impacts on well-being (e.g. economic impacts, discouragement of outdoor activity within residential sites), when a lesser mitigation strategy will adequately manage human health risk.

9 What terminology should be used in the risk-based assessment (ie, “reasonably likely”, “more likely than not”)?

Regional Public Health prefers that the terminology should be “reasonably likely”. However, we would be comfortable with either terminology as long as it is clearly defined within the standard.

10 What are the expected impacts of this proposal? Where possible, please provide quantitative evidence.

It may be relatively easy to determine if a site has been the subject of a HAIL activity or, if it is likely that an activity or industry described in the HAIL is being or has been undertaken on it. It may well be far more difficult however to determine if it is likely that the activity or industry has resulted in contaminants in soil that could pose a risk to human health. The consultation document indicates that where possible it is intended that landowners and Councils assess and exclude sites where it is clear that there is unlikely to be a risk to human health. The custom and practice of land use and activities on particular sites may change over decades. Histories may not be well known. Regional Public Health believes that if a Council is making a decision about whether the NESCS applies to particular sites then it will be necessary for the proposed

guidance to clearly indicate the level of proof necessary for a Council to exempt from the NESCS. We recommend that application of this guidance should be regulatory.

NESCS Activities and Planning Controls

12 Do you agree with the proposal(s)? Why, or why not?

5.1 Sites found to have contamination below soil contamination standards or Tier 1 soil acceptance criteria:

Regional Public Health agrees with this proposal.

5.2 Network utility operators Site Management Plans:

Regional Public Health agrees that the risks posed by network utility operators will be appropriately addressed by site management plans (SMP) for permitted activities. Requirements should be developed in relation to: guidance on the development of these site management plans; lodging of SMPs with Councils; and that the SMP be written in a form which can be audited (a “compliance check”) with a regulatory provision for such auditing.

5.4 Soil Disposal:

Regional Public Health supports the proposal that soil disposal is classed as a stand alone activity under the NESCS. Matters for control or discretion should include transport, location of disposal, and disposal site specific conditions.

5.10 Standardised certifying statements for contaminated land investigations

Regional Public Health supports the proposal for standardised certifying statements. Removing the perceived need for a peer review of a Suitably Qualified and Experienced Practitioner’s (SQEP) report will be dependent on the report requestor ensuring the SQEP they employ is appropriately experienced and skilled to undertake the assessment they have requested.

14 In terms of proposal 5.3 (subdivisions and change of use), do you agree with either Option 1 or Option 2? Why, or why not?

Regional Public Health supports the principle of linking changes in use to increase in risk. For this reason Option 2 that introduces an assessment about whether a subdivision is ‘highly unlikely to increase risks to human health’ would be our preferred option.

18 What (if any) implementation support would be required to ensure effective implementation of the proposal(s)?

Regional Public Health supports the proposed consent classification and requirements as per appendix 4 as adequately managing the risk to public health. We note that the test for permitted activity status for change of land use and subdivision is proposed to be that the preliminary site investigation demonstrates that the activity is highly unlikely to increase risks to health. As this preliminary site investigation is the key assessment step to manage public health risk, robust checks and balances would need to be in place at this stage to ensure that correct decisions are being made. This will require the implementation of effective guidance and standard assessment procedures.

Template Ongoing Site Management Plan (TOSMP)

- 19 Do you agree with the overall proposal to introduce an option for a Template Ongoing Site Management Plan (TOSMP) that applies to residential and rural-residential land-uses? Why, or why not?**

Regional Public Health supports the use of TOSMPs to manage residual soil contamination risks that takes into consideration greater protection of children as a vulnerable group. We support that future owners will be made aware of the TOSMP via obtaining a LIM report for the property. Landlords would also need to make tenants of their properties aware of the mandatory management practices and the advice notes for residential occupation of that property. The mechanism to ensure landlords provide this information to tenants requires further exploration.

- 21 What information would you like to see included in the guidance on options for remediating or managing contamination on residential properties?**

It will be important that the guidance is explicit about understanding the likely activities and who is likely to be involved in those activities for the property, to support selecting the most appropriate remediation option. This needs to be a risk assessment and not an isolated response to meeting soil guideline values. The risk assessment also needs to consider the likelihood of any future changes in activities on the site, for example, developments that are not aimed at family groups may in the future be occupied by families with young children.

- 23 Do you agree with the new soil guideline value proposed to apply to sites that have a TOSMP? Why, or why not?**

We support acceptance of a higher level of residual contamination when additional control measures are put in place. The value should be treated as a guide only and occupiers observing the mandatory management and advice activities could be viewed as a precautionary approach even at levels just under the guideline value. It is important that variability of the level of contamination is considered as a possibility, for example, hot-spots and the potential limitations in identifying all of these even with a detailed site investigation.

- 24 How should a TOSMP's implementation (both short-term and long-term) be monitored? For example, what matters of control should be reserved for council (ie, council must have the plan, and evidence of the soil excavation is provided to council)?**

Consideration of how this process could be audited would be of value. This could be linked to other activities such as attending the property for follow-up of compliance with other regulatory issues, for example, swimming pool fencing.

- 25 Do you agree with the proposed mandatory management practices and advice notes of the TOSMP? Why or why not?**

These appear to be a good start. The advice notes could be available in other languages to mitigate the risk for more vulnerable users of residential properties with TOSMPs.

26 *Could there be unintended outcomes from the proposal(s)? If so, what are they and how could they be avoided?*

It is important that all members of the public are protected and are able to implement the mandatory management and advice activities to provide adequate protection. This includes more vulnerable groups such as tenants of a property that has a TOSMP. Requirements on landlords or property owners of sites with TOSMP to fully inform tenants will be necessary.

There is likely to be gaps in access to expertise in human health risk assessment especially for residential land owners and smaller councils. This could lead to inappropriate management decisions being taken or councils not having the expertise to assess adequacy of TOSMPs. Some consideration of workforce development or sharing of the limited expertise in human health risk assessment for contaminated land will need to be considered.

Bioavailability

27 *Do you agree with the proposal(s)? Why, or why not?*

We support the application of bioavailability to risk assessment for human health as this acknowledges mitigation being appropriate to the exposure pathways identified.

29 *Could there be unintended outcomes from the proposal(s)? If so, what are they and how could they be avoided?*

It will be important that there is a clear understanding of the risk of any changed activities within residential properties that might mean a higher level is no longer acceptable. These would be small changes in land use, for example, exposure of a grassed area for a garden which would not trigger any review of the risk, or decision to offer childcare from a residential property. This is a particular risk when the residents are not the owners of the property. Placing requirements on landlords to fully inform tenants about managing soil exposure as part of tenancy agreements is a mitigation measure that could be explored for these issues.

30 *What, if any, implementation support would be required to ensure effective implementation of the proposal(s)?*

Regional Public Health recommends development of plain language public information for residential properties with known or potential soil contamination issues. This could be distributed in a number of ways, for example, via landlords or garden centres to reach people who are developing gardens and ensure they are aware of the quality of the soil on their property.