

6 May 2021

Glenn Wigley
Director, Waste & Resource Efficiency – Policy and Regulatory
Ministry for the Environment
WELLINGTON

Via email: glenn.wigley@mfe.govt.nz

+64 9 476 7162

wasteminz.org.nz

Unit 2, 5 Orbit Drive
Rosedale 0632
PO Box 30542
Triton Plaza
Auckland 0757

Dear Mr Wigley

WasteMINZ and the Resource Management Act reform

Thank you for supporting your staff to attend the WasteMINZ Contaminated Land Sector Networking evening in Auckland on 21st April 2021. The event was well attended, and presentations by Scott, Bruce and Isla were very well received. The team gave a professional overview of the policy work programme for contaminated land, but of most interest to WasteMINZ members was work involving the Resource Management Act Reform.

WasteMINZ was formed in 1989 and has a membership base of over 1,400; a significant portion of those members have technical or policy background in contaminated land and these members are ably represented by the Contaminated Land Management (CLM) Sector Group, the Disposal to Land Sector Group, the Residential Lead Working Group and the Asbestos Working Group. WasteMINZ has a long working relationship with the Ministry for the Environment and we wish to continue supporting your team through this period of great change but also great potential.

Fundamentally, our members agree that the intent of the RMA is still relevant and valuable. We submit that the current regulatory environment contains unsupportable levels of uncertainty and encourages inconsistency which is costing our industry, communities and economy significant time and money, and results in poorer than envisaged environmental and human health outcomes. Reform for improvement is supported across all parts of the sector we represent, including asset owners, developers, practitioners, and regulators.

Our members have identified several areas that could be strengthened by reform and have noted these below. These issues span the full range of themes that your team have been asked to provide policy advice on, and link well to recommendations from 'New Directions for Resource Management in New Zealand', June 2020. Whilst we do not offer solutions here, our members have views on potential policy-based solutions, and we propose tangible support to your team, which we understand is going to be under significant time and resource pressure.

From our member base, we propose an 8 member 'Contaminated Land Focus Group' to support Bruce, Isla and James. This group would be responsive and prioritise requests from the Ministry for the Environment to enable rapid screening and editing of policy advice and direction and assist with Regulatory Impact Statement drafting if necessary. This would ensure that at a basic level, the direction of policy is tested across a cross-section of the CLM industry as it is built. Agreements regarding discretion and information sharing could be arranged.



We recommend that this team could be structured as follows:

- 4x local government regulators (1x territorial, 1x unitary, 2x regional authority)
- 2x CLM practitioner representatives
- 2x industry representatives (including one oil industry representative)

We look forward to hearing from you and the team and formalising how we can support RM reform.

Regards,



Timothy Dee
Chair – WasteMINZ Contaminated Land Management Sector Group
tim.dee@fultonhogan.com

CC: Scott Priestley, Bruce Croucher, Isla Hepburn, James Mitchell



Issues to be addressed by RM reform	MfE Theme and deadline for advice	Supports these key recommendations from 'New Directions for Resource Management in New Zealand' 2020
<p>Polluter liability. New Zealand does not currently have a 'polluter pays' regime for contamination caused before 1991. While the existing RMA contains provisions for holding the polluter responsible for discharges via section 15 and provides a variety of enforcement options, these options have been inconsistently applied across the regions. In addition, the provisions of the RMA are very unclear in relation to legacy groundwater contamination.</p> <p>Furthermore, there is a need to clarify the liability regime for future owners, e.g., current liabilities are potentially being passed from developers to multiple owners (i.e., via body corporates) who have limited understanding of or resources for long-term management of soil contamination. Costs to councils to monitor such sites should be considered in any liability regime.</p> <p>Despite a strong CLM Guidance framework, there is no consistent or consistently applied rules or regulations with respect to a duty to notify, or report contaminated land investigations.</p>	<ul style="list-style-type: none"> Revising the liability regime; how should polluters be held to account (31/07/2021). 	<p>Point #153 high-lights the polluter-pays principle as good practice criteria for the use of environmental taxes and charges.</p> <p>We are currently seeing a high cost of non-polluter pays regime at sites such as Sustainable Solvents, Concours in Timaru etc.</p>
<p>Registration of new HAIL sites. Currently there is no established mechanism for registering new potentially contaminating/HAIL activities. A register of new HAIL sites would allow better tracking of the impacts of these activities on land, surface water and groundwater, and assist government and local councils in enforcing existing regulations and guidelines.</p> <p>The link between HSNO, Plan rules and the NESCS needs to be carefully considered as part of RM reform.</p>	<ul style="list-style-type: none"> Sustainable development and remediation; reducing development pressures on greenfield or productive lands (7 June 2021). 	<p>Point #20 of the report notes that while regional councils currently process consents related to discharges into land; cumulative discharges that are not individually regulated are more difficult to regulate and there are also issues with CME.</p>



Issues to be addressed by RM reform	MfE Theme and deadline for advice	Supports these key recommendations from 'New Directions for Resource Management in New Zealand' 2020
<p>Industry professional standards. We are seeing a widening gap in industry reporting standards between Australia and New Zealand.</p> <p>We already have access to CEnvP accreditation (not just for contaminated land but a range of specialisations relating to environmental practice) and we believe that New Zealand is ready for a phasing in period with a view to making accreditation mandatory for practitioners. We do not need to plan or create and manage an accreditation scheme, we simply need to better entrench the one we have.</p>	<ul style="list-style-type: none"> • Environmental monitoring and oversight; how should we monitor and manage contaminated land issues (30 June 2021) • Environmental Reporting; mandating contaminated land information and reporting requirements (30 June 2021) 	<p>While there is not a specific recommendation noted to this issue, the document does in many parts note the importance of quality monitoring, data and analysis is needed to support good decision-making.</p>
<p>Incentivising brownfield land development. The RMA and the NESCS as it stands, without any sister regulation, has an unintended consequence of incentivising greenfields development for both commercial/industrial and residential use.</p> <p>Concurrent Infrastructure reform has potential to incentivise infrastructure development on brownfields land.</p> <p>Changing development trends (i.e., redevelopment, gentrification, smaller exposed soil for food production/exposure, marginal land, e.g. slopes) and construction methods (i.e., slab on ground) requires legislation to match these issues.</p> <p>In-situ management requires clear guidance.</p>	<ul style="list-style-type: none"> • Sustainable development and remediation; reducing development pressures on greenfield or productive lands (7 June 2021) 	<p>Strategic Planning Act is recommended to have strategies identifying suitable areas for urban growth as well as those not suitable for development.</p> <p>Chapter 4, #3: "Regional spatial strategies should set long-term objectives for urban growth and land use change, responding to climate change, and identifying areas inappropriate to develop for reasons such as their natural values or their importance to Māori."</p>



Issues to be addressed by RM reform	MfE Theme and deadline for advice	Supports these key recommendations from 'New Directions for Resource Management in New Zealand' 2020
<p>Lack of focus on whole environment rather than human health. Currently the single NESCS tool makes human health a focus and makes it difficult to protect more sensitive environmental receptors where relevant; and means that territorial and regional priorities are sometimes in conflict.</p>	<ul style="list-style-type: none"> • National Planning Framework and the NES-CS (2/07/2021) • Institutional arrangements as they relate to contaminated land; who should do what and why (30 June 2021) • Environmental monitoring and oversight; how should we monitor and manage contaminated land issues (30 June 2021) 	<p>Chapter 7, #7: "All existing and new national direction should be brought together into a coherent combined set and any conflicts [or gaps] between them resolved."</p> <p>The report also recommends the resolution of uncertainty arising from overlapping functions of regional councils and territorial authorities.</p>
<p>Information sharing. Our current framework of contaminated land and HAIL information is fragmented and inconsistent, meaning that practitioners and landowners must seek information from many sources. There is no consistent data classification or data management system, which means that national reporting is difficult and less meaningful, and complex information is presented in a region-specific way which is difficult for users.</p>	<ul style="list-style-type: none"> • Environmental Reporting; mandating contaminated land information and reporting requirements (30 June 2021) 	<p>Chapter 12, #1: "The ministry for the environment should establish in consultation with other agencies a comprehensive, nationally coordinated environmental monitoring system..."</p> <p>#4: "Local authorities should continue to have primary responsibility for the collection of data and the monitoring of system performance at local government level."</p>
<p>Managing risks to health from lead in soil from legacy lead-based paint. The current framework focuses on the contaminating activity rather than the contaminant(s). This means that for diffuse and/or backyard contaminants such as asbestos from cladding, cadmium from fertiliser and lead from paint, it is difficult to effectively manage risks from these contaminants as the initial triggers for assessment do not fall under the HAIL, and properties where these risks exist may not be subject to an activity under the NES and therefore no action is required (despite the risk).</p>	<ul style="list-style-type: none"> • Environmental monitoring and oversight; how should we monitor and manage contaminated land issues (30 June 2021) • National Planning Framework and the NES-CS (2/07/2021) 	<p>Chapter 2 outlines a clear requirement to establish environmental limits to protect soil quality</p>
<p>Incentivised sustainable remediation methods and moving away from disposal of material to landfill. Tier 2 risk assessment is commonly employed in other countries but the current NZ framework does not incentivise this and the result is remediation of sites that do not pose a risk.</p>	<ul style="list-style-type: none"> • Sustainable development and remediation; reducing development pressures on greenfield or productive lands (7 June 2021) 	<p>The RMA set a high-level goal of promoting sustainable management, and this document sets a more targeted focus of 'strategic planning for environmental outcomes and sustainable development'.</p>



Issues to be addressed by RM reform	MfE Theme and deadline for advice	Supports these key recommendations from 'New Directions for Resource Management in New Zealand' 2020
<p>Increasing risks from contaminated sites vulnerable to climate change. Within this, considering the Managed Retreats and Climate Change Adaptation Bill, we have no strong framework for identifying, assessing risk, and funding the management/remediation and especially the retreat of sites that are vulnerable to climate change.</p>	<ul style="list-style-type: none"> Managing retreat from contaminated land or HAIL sites in the face of climate change; what would appropriate remediation goals or standards look like (30 June 2021) 	<p>Chapter 6, #1(i): "Reduction of risks from natural hazards" AND Chapter 6, #7(ii): "establish an adaptation fund to enable central and local government to support necessary steps to address climate change adaptation and reductions of risks from natural hazards."</p>
<p>Environmental limits and best practice. We do not currently have a proactive framework for developing, reviewing and revising best practice guidance and environmental limits. Our current guidance is out of date and shows that an agile framework is needed. In many instances we tender that international jurisdictions may already have useful guidance we can use. This extends as far as the very definition of contaminated sites and contaminated soils, with competing definitions in various nationally relevant documents. The process for guidance adoption and/or support by Government ministries/agencies is neither clear nor are timelines certain.</p> <p>In particular, we need guidance to help us prioritise high risk sites; e.g. ground gas management and guidance for anthropogenic (e.g. landfills) and natural sources (e.g. peat soils), (i.e., there is no comprehensive planning framework around buffers, risk assessments, liabilities, mitigation, and monitoring).</p> <p>In addition, New Zealand does not have a proactive or protective groundwater management regime. Responsibility for groundwater resource commons is unclear. Groundwater quality is disassociated from soil contamination.</p>	<ul style="list-style-type: none"> Environmental monitoring and oversight; how should we monitor and manage contaminated land issues (30 June 2021) Environmental Reporting; mandating contaminated land information and reporting requirements (30 June 2021) 	<p>Chapter 2, #7: "Mandatory environmental limits should be specified for...soil..." #10: "Principles to guide implementation should be identified."</p> <p>Chapter 14, #5: "The Ministry for the Environment should provide easily accessible public guidance on all the essential aspects of a reformed RMA."</p>



Issues to be addressed by RM reform	MfE Theme and deadline for advice	Supports these key recommendations from 'New Directions for Resource Management in New Zealand' 2020
<p>We need to strengthen the CLM sector in a Te Ao Maori world view and incorporate Matauranga Maori.</p>	<ul style="list-style-type: none"> • Institutional arrangements as they relate to contaminated land; who should do what and why (30 June 2021) 	<p>Chapter 3, #7: "The current Mana Whakapono ā Rohe provisions should be enhanced to provide for an integrated partnership process between mana whenua and local government to address resource management issues".</p>
<p>Compliance, Monitoring and Enforcement for contaminated land. CME activities under the current framework are resource intensive; with a heavy burden of evidence on the regulator. This means that CME in contaminated land is effectively absent. Often action is only undertaken if contamination is identified when it crosses property boundaries.</p>	<ul style="list-style-type: none"> • National Planning Framework and the NES-CS (2/07/2021) • Revising the liability regime; how should polluters be held to account (31/07/2021). 	<p>Currently the Randerson Report does not specifically recommend the reduction of burden of evidence on regulators, but does recognise the cost of enforcement on regulators and recommend strengthening enforcement and buffering of the costs of CME: Chapter 13, #4: "A number of new compliance, monitoring and enforcement measures should be introduced and existing measures improved..."</p>
<p>Greater consideration of emerging contaminants. Additional guidance is needed for identifying emerging contaminants, as these are not currently included in the HAIL, and a framework for assessing the risk(s) posed by these contaminants.</p>	<ul style="list-style-type: none"> • Environmental monitoring and oversight; how should we monitor and manage contaminated land issues (30 June 2021) 	<p>Chapter 2, #10: "Principles to guide implementation should be identified." Chapter 14, #5: "The Ministry for the Environment should provide easily accessible public guidance on all the essential aspects of a reformed RMA."</p>

