

THE NES

issues of practice – perspective of a consultant working with the oil industry

WHAT UNDERLIES MY PERSPECTIVE?

- Removing or replacing a fuel storage system is an activity specifically mentioned in the NES;
- Oil companies also carry out other activities controlled by the NES, including disturbance of soil;
- Oil companies have sites across New Zealand, the vast majority of which require consideration pursuant to the NES. This includes “supply sites”, where the activity is not a service station per se.
- Oil companies have historic contamination reports for a number of sites.



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WHAT ARE THE MAIN CONCERNS?

- Identifying the “piece of land”
- Overcoming the perception that getting a discretionary activity consent is somehow cheating.
 - Disagreement as to what constitutes a DSI
 - Failure to accept the opinions of a SQEP
 - Failure to consider the permitted baseline
 - Wide variation in consent conditions



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- **WHAT IS THE “PIECE OF LAND”?**

... an activity or industry described in the HAIL is being, has been or is or has been more likely than not, undertaken on a piece of land.



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IS GETTING A DISCRETIONARY ACTIVITY CHEATING?

- There is little point in seeking discretionary activity consents on the basis that a DSI is not provided, if Council is going to require a DSI through a Section 92 request or conditions.



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CAN A HISTORICAL REPORT BE A DSI?

- A Council raised concerns that a particular historical report:
 - Was not undertaken for the purpose of the specific works being proposed;
 - Didn't benchmark the operational tank pit and/or the entire site;
 - Didn't fully consider both petrol and diesel;
 - Relied on investigation work done by another SQEP, even though another SQEP essentially adopted and reported on it.



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WHAT IS A DSI?

- Does it meet the requirements of the NES.
- Is it an investigation...
 - Done by a suitably qualified and experienced practitioner?
 - Done in accordance with CLMG No 5?
 - Reported on in accordance with CLMG No 1?
 - Resulting in a report that is certified by the practitioner?



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FAILURE TO ACCEPT A SQEP

Wasteminz doing work in this area but sometimes qualification as a SQEP is 'obvious'

WHAT IS THE PERMITTED BASELINE?

This identifies what effects may be disregarded. It includes:

- an adverse effect of an activity on the environment if a national environmental standard or the Plan permits an activity with that effect (may)
- the effects forming part of any approved but unimplemented resource consent(s) (may)
- the effects of the existing lawfully established environment (must)

HOW SHOULD THE PERMITTED BASELINE INFLUENCE CONSENTS?

- Have to acknowledge the presence of the existing land use;
- Only the effects associated with the removal of more than the quantity of earthworks permitted should be considered – relates to such matters as truck movements, noise, dust, odour and amenity as well as risk to human health.



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WHY IS THERE SUCH A VARIATION IN CONSENT CONDITIONS?

- Differences in experience, competence, technical knowledge.



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