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## ENVIRONMENT/ RESOURCE MANAGEMENT

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## NEW NATIONAL STANDARD ON SOIL CONTAMINATION - HAS THE GOVERNMENT GOT IT RIGHT?

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Environmental contamination caused by chemicals, effluent and industrial and agricultural bi-products is a significant concern in New Zealand.

While the extent of soil contamination is still largely unknown, councils estimate that there are potentially 20,000 contaminated sites around the country. However until recently there has been little national guidance on identifying, managing or remediating contaminated sites.

Now the Ministry for the Environment (MfE) has released a Proposed National Environmental Standard for Assessing and Managing Contaminants in Soil (the standard) and is seeking public submissions.

It is worth a look – there is a risk that what is proposed may place unacceptable burdens on landowners and even create disincentives to undertake preliminary investigations for contamination.

### **Proposed national standard**

The proposed standard aims to ensure that land affected by contaminants in soil is identified and assessed at the time of development and if necessary remediated or contained to make it safe for human use.

This aim is to be achieved by providing consistent district planning controls both when subsurface investigations for

contamination are carried out, and when development, use and subdivision of land with soil contaminants is proposed. The standard also provides soil guideline values for 12 priority contaminants which form a national benchmark against which levels of soil contaminants must be assessed in a variety of development scenarios: rural/lifestyle block, residential, high-density residential, parks/recreational, and commercial/industrial outdoor worker.

### **Subsurface investigations**

Taking soil samples to determine the presence of contaminants, such as those carried out in Phase 2 environmental site assessments, will be a permitted activity under the standard. However, as a condition, all reports must be provided to the territorial authority and if the applicant does not want to supply the information, resource consent for a discretionary activity will be required.

### **Proposed use, development or subdivision**

For resource consent applications for new uses, development or land subdivision, the standard effectively proposes a series of pre-lodgement site investigations as part of the consenting regime.

The MfE discussion document says that if land is recorded by a district or regional council as potentially or actually contaminated, or activities currently or previously occurred on the property are on its Hazardous Activities and Industries List (HAIL), a preliminary site investigation should be carried out before making a resource consent application. If this investigation finds that the land is likely to be affected by contaminants a detailed site investigation should then be conducted.

Whether these investigations are carried out and reports are provided to the relevant territorial authority directly impacts on the status of the proposed activity: if the applicant provides site investigation reports to the territorial authority and the levels of contaminants are acceptable under the soil guideline values then the activity will be permitted, but if a site investigation report is not provided (or the levels of contaminants are not acceptable), the activity will be restricted discretionary.

While the proposed standard does include exemptions for certain activities, essentially any activity which involves a change of the character of use (for example, a change from commercial to residential activities) or more than a minimum level of soil disturbance will require a site investigation to be undertaken or a resource consent obtained.

### **Implications for business**

The proposed standard will go some way toward greater certainty in providing a uniform standard for redeveloping contaminated properties, as well as helping to remedy the current information vacuum on the extent of contamination in the country. However, a careful balance needs to be struck between achieving these objectives and unduly increasing compliance costs for applicants.

For subsurface investigations, there is a real risk that the requirement to either provide a report to the territorial authority or obtain a resource consent will create a disincentive to carry out Phase 2 site investigations in the first instance due to concerns over confidentiality or the risk of potential enforcement action.

MfE's recommendation that site investigations should be carried out pre-lodgement on the basis that Hazardous Activities and Industries List activities have occurred is unduly onerous given that many council list records include sites that are currently unverified. The requirement to carry out a site investigation for any proposed use, development or subdivision (subject to limited exceptions) will increase compliance costs and delay simple activities such as constructing a new building on an industrial site. The proposed standard will also shift the burden of obtaining information on contamination from territorial authorities to landowners. Overall, as drafted, the standard seems to be contrary to the Resource Management (Simplifying and Streamlining) Amendment Act 2009 aim of expediting the consenting process.

There are also outstanding issues surrounding contamination that the standard does not address, such as acceptable levels of contaminants for environmental receptors and ecology, liability for contamination, as well as standards and apportionment of costs for remediating contaminated sites.

### **One chance for submissions**

Unlike district plan changes or resource consent applications, the standard is not subject to the usual RMA consultation, hearing and appeal processes. However MfE is obliged to provide the public with an opportunity to comment on the proposal before reporting back to the Minister, who



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will then recommend whether the standard be made by order in council. MfE is seeking **public submissions by 19 April 2010** which will be the only opportunity to provide feedback.

For a full copy of the proposed standard visit: [www.mfe.govt.nz/publications/rma/proposed-nes-managing-contaminants-in-soil/](http://www.mfe.govt.nz/publications/rma/proposed-nes-managing-contaminants-in-soil/)

### ***Breaking news***

#### **Chance to have say on resource consent discounts**

In response to a parliamentary question yesterday, Environment Minister Nick Smith advised that public submissions are now open on the Discount Regulations: Issues and Options paper. The regulations will require local authorities for the first time to provide a discount on their administration charges when applications for resource consent are not processed within the timeframes in the Act. The paper was originally released for comment earlier in the year to local authorities only with a closing date for feedback in early February but it appears after question time yesterday that the Minister has decided to extend that to the public and feedback is now due by **5pm on 1 March 2010.**

*The Bell Gully resource management team is able to assist with drafting submissions or to discuss the potential implications for your organisation of these proposals.*

#### **Senior resource management specialist joins Bell Gully**

Bianca Tree, a specialist in resource management and environmental law, has joined Bell Gully as a senior associate. She has been advising clients on a wide range of resource management and environmental law issues for a decade. Bianca began her career at another major New Zealand law firm and has also worked in a specialist resource management firm.



**Bianca Tree**  
SENIOR ASSOCIATE

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