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AUCKLAND REGIONAL PUBLIC HEALTH SERVICE

SUBMISSION ON

WORKING TOWARDS A COMPREHENSIVE POLICY FRAMEWORK FOR MANAGING CONTAMINATED LAND IN NEW ZEALAND

To: **Contaminated Land Policy Review**

Ministry for the Environment

P O Box 10-362

Wellington

From: Auckland Regional Public Health Service

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1. Thank you for the opportunity for the Auckland Regional Public Health Service to provide a submission on the discussion paper 'Working Towards a Comprehensive Policy Framework for Managing Contaminated Land in New Zealand'.
2. This submission represents the views of the Auckland Regional Public Health Service (ARPHS). ARPHS provides public health services for the three district health boards in the Auckland region (Auckland, Counties

Manukau and Waitemata District Health Boards), with the primary governance mechanism for the Service resting with Auckland District Health Board. This submission represents the views of ARPHS and does not necessarily represent the views of the three District Health Boards.

3. ARPHS understands that all submissions will be available under the Official Information Act 1982, except if grounds set out under the Act apply.
4. The primary contact point for this submission is:

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Introduction

1. Auckland Regional Public Health Service (ARPHS) is a regional public health service provider and works towards improving, promoting and protecting the health of people in the Auckland Region. ARPHS has an active commitment to working with central and local government, other health service providers, Iwi and local communities to develop effective strategies to promote and protect the health of the people of the Auckland Region.

2. ARPHS takes a whole of population approach but targets resources to those locations and people who will benefit the most. The Service operates in an outcomes based framework which reflects the reality that it cannot create public health by itself, but must work with a range of partners in a whole of community approach to achieve the public health ends sought. The Service has identified six vital few outcomes to be the focus of its efforts, namely:
 - Reduction in the incidence and impact of obesity, diabetes and cardiovascular disease.
 - Reduction in the incidence and impact of infectious disease.
 - Reduction in the incidence and impact of tobacco and alcohol related harm.
 - **Reduction in the incidence and impact of cancer.**
 - **Reduction in the incidence and impact of environmental inequalities.**
 - **Reduction in the incidence and impact of environmental hazards.**

ARPHS undertakes a range of activities with respect to contaminated land such as: providing advice on contaminated land e.g. to Auckland City Council with respect to Early Childhood Centres and urban parks and RMA submissions to territorial local authorities. It is also active in assessing the risks to drinking water sources through programmes such as water and sanitary service assessments, the Drinking Water technical assistance programme provided by its Drinking Water Assessment Unit (DWAU).

3. ARPHS supports the concept of a comprehensive Policy Framework for Managing Contaminated Land in New Zealand. Such policy has the potential to provide benefits to the communities inhabiting the whole country as well as communities in the Auckland region. ARPHS have identified several issues in relation to managing contaminated land (especially concerning the Auckland region) that need either further clarification or to be incorporated in the policy discussion. This submission will cover general issues pertinent to specific chapters of the paper, as well as ARPHS' position and recommendations on specific discussion points highlighted in the discussion paper.
4. ARPHS believes that the discussion paper's summary of 'Existing Measures' is not as accurate or comprehensive as it could be. ARPHS is happy to discuss its concerns further with the Policy Review team if it would be useful.

Opportunities for Change

5. Chapter 3 outlines the 'opportunities for change' and ARPHS identifies several issues, which are highlighted in response to discussion points as follows:

Discussion point 1) Are these the ideal key elements for a New Zealand contaminated land framework?

ARPHS agrees in principal with the key elements for a New Zealand contaminated land framework (identified in s 3.1 and table 1). Further elaborations on these key elements are given under discussion point 3.

Discussion point 2) Are there any additional opportunities for change that have not been identified here? If so what are they?

ARPHS can identify at least an additional opportunity for change, which is, the use and standardisation of nationally-agreed risk assessment models. These could be applied to set maximum acceptable health risks depending on

human activities-thus helping with the specifications of land use for human activity and ‘fitness for purpose’ of the land. The use of nationally agreed risk assessment models will also help with certainty of assessment plus help reduce the compliance costs for industry and regulators.

Discussion Point 3) Are the priorities that have been assigned to each opportunity appropriate? If not, what are more appropriate priorities?

ARPHS believes that the priorities given to each opportunity (in Table 1 and Appendix B) are not always appropriate and need reassessment. Specifically:

a). There is a need for **clarity (legislative certainty) of roles and responsibilities** for agencies that work with contaminated land toward the protection of people and the environment, and this issue should be given HIGH priority rather than medium. This is to ensure that contaminated land is managed appropriately for future generations and doesn’t slip through the responsibility of many agencies.

b) It is of high importance to address the **liability regime for pre-1991 sites**, especially for orphan sites and sites that may have had a change of land use (rural or industrial to residential for example), and particularly if such sites are close to food-producing land. Certainly the support and guidance from the Ministry for the Environment is essential to achieve such goals and the CSR-Fund could play an important role for some situations (i.e. orphan sites).

c) In regards of measures to **prevent** contamination of land, although legislation is in place that should prevent further contamination of land, ARPHS believes that such controls are not sufficient or not sufficiently enforced as land continues to get contaminated. One factor that may play a part in the current situation is the lack of consistency on how guidelines are applied and in some areas this could be due to lack of expertise. The development of standard risk assessments, methodologies and models for the identification and management of contaminated sites, and perhaps the creation of a central agency or centre of excellence where independent

experts could be consulted, could help address some of the issues currently faced.

d) ARPHS supports the idea of a tracking system for contaminated soil and waste (i.e. based on the Waste TRACK system currently used for other purposes), as this would ensure that contaminated material is treated appropriately (it would help to deal with illegal dumping, which should also be considered as a separate risk) and doesn't lead to further land contamination (i.e. in residential or productive areas).

e) Certainly it is necessary to investigate and identify the current barriers to achieve effective prevention, and find measures to achieve enforcement of current legislation. This should be given a HIGH priority as this issue is clearly linked to roles and responsibility as well as to mechanisms to identify record and manage contaminated land.

f) In regard of mechanisms to **identify, record, investigate, manage, remediate and report** on contaminated land, ARPHS acknowledges that agencies face difficulties in identifying and recording contaminated sites. Part of these problems could be solved with the creation of a consistent database to suit the needs of agencies and the Ministry for the Environment's (MfE), as well as a legislative duty to report contamination, and test certifiers' requirements to lodge information with territorial authorities (data that should be also included into a database). ARPHS believes that there is also a need for incorporation of notification of Public Health Units when toxins are identified at a site (i.e. such as PAHs). This notification should be based on trigger levels that could be determined through collaboration between Ministry of Health, Ministry for the Environment and ERMA NZ.

g) ARPHS believe that it is of HIGH importance that standards (in methods, risk models etc.) are provided as these will add certainty and ensure consistency, and therefore ARPHS supports the concept and development of National Environmental Standards (NES).

h) ARPHS strongly agrees with the HIGH priority given to the need of producing consistent methodologies and a NES for the **protection of human health** from the effects of contaminated land.

i) ARPHS believes that also the **protection of the environment** is of HIGH importance if we have to achieve effective human protection. Humans interact with the surrounding environment at all times and the environment around them provides a major exposure pathway to contaminants. Therefore it is of high importance to develop consistent methods for deriving ecologically based soil levels as these will be also protective to human health and would guarantee protection for future generations.

j) ARPHS supports the establishment of an accessible national database with **information** on contaminated land, and we believe that it is an essential tool also to achieve planning controls and establish liabilities and therefore should be given a HIGH priority. The guidance and support of the Ministry for the Environment is certainly essential for managing this information.

Discussion Point 4) Is a national guideline progressing to a NES the most appropriate way to develop nationally consistent soil contamination levels?

ARPHS believes that a national guideline progressing to a NES could be an appropriate way to develop a nationally consistent soil contaminants levels. This will allow for improvements to be made (if necessary) before becoming a standard, allowing time also to investigate and build up data for ecological soil levels. ARPHS agrees that any guideline or standard ought to be developed in collaboration with other relevant government agencies, and Public Health Units should be included in such collaboration. ARPHS also believes that it will be beneficial to undertake a Health Impact Assessment (HIA) for NES, and to start this process at the earliest stage possible to ensure appropriate participation and best outcomes.

If there are worries about the loss of flexibility of a guideline compared to a NES, these could be addressed by developing a regime whereby you have to

follow the NES unless you have served notice on the regulator (presumably TLA or MFE) that you have adopted a differing scheme and provided justification of why and how it is achieving the aims of the NES (albeit by going down a differing approach).

Discussion Point 5) If a NES is considered appropriate, what should the NES contain (numerical values, methods, etc) and what should its function be?

ARPHS believes that NES should contain both numerical values and methods. These prescribed methods could then be used to derive site-specific criteria for non-standard landuses or unusual contaminants (i.e. for situations not adequately covered by the numerical values in the NES). These agreed methods could also be used to estimate health risks as part of site assessments. When there is scientific uncertainty (as we recognised the complexity of some issues), a cautionary approach should be adopted. NES should function to provide consistency, reference, and to ensure the implementation of best practise and protection of health.

Discussion Point 6) If a NES for contaminated land includes soil contaminant levels, what should these levels be used for?

Soil contamination levels should be used to define a contaminated site, trigger further investigation, mitigation and management; and help establishing suitability of land for different land uses and human activities (i.e. suitability of land for its intended use). Soil contaminant levels should not be used as “pollute up to levels” in situations where an activity has the potential to contaminate land.

Discussion point 7) Should the guideline and NES criteria include ecological as well as human-health criteria?

Guidelines and NES should include ecological criteria as well as human-health criteria. As stated under discussion point 3 (i), the surrounding environment provides a major human exposure pathway to contaminants.

Discussion point 8) Are the local authorities in your region/district aware of their new responsibility placed on them by the RMA amendments? I so, are they acting on them?

We are not aware of whether the local authorities in our region/district know of their 'new' responsibility under the RMA amendments.

Discussion point 9) How well do the main agencies work together on contaminated land in your region/district?

ARPHS has a limited mandate and this dictates the interactions with other agencies. However we are happy to improve work with other agencies.

Discussion point 10) What could be done to improve the way the main agencies work together?

To improve the way that main agencies work together, it is essential to have legislative certainty of roles and responsibilities. This should include details on the interaction between different agencies (i.e. identification of best practise, multi-agency mechanisms) and take a whole of government approach. There is certainly a need for improved communication between agencies (i.e. via a network contact link/database or memoranda of understanding).

Tracking Contaminated Soil and Wastes

ARPHS is supportive of the extension of the Waste TRACK system to track contaminated soil. ARPHS notes the comments on page 18 of the Discussion Document "Problems arising from this uncertainty have most notably occurred in Auckland, with the residential subdivision of former horticultural areas". It is common practice with subdivisions that top soil is transported to new subdivisions to complete a development. This transportation and relocation of top soil coupled with the uncertainty noted in the Discussion Paper as to the location of contaminated sites means that it

may be preferable to consider whether the Waste TRACK system should be used to track all soil movement, not just that which is known to be contaminated.

Waste TRACK will help provide certainty around the movement of contaminated soils, it will not however, provide any control over soil moved illegally and 'fly tipped' or where the 'person' in control of the receiving site has colluded to knowingly or recklessly accept contaminated soil. ARPHS recommends that the next stage of the policy framework consider the extent and impact of such illegal 'dumping'.

Discussion point 12) Considering the guidance already developed, is there a need for further guidance? If so, what additional guidance should be developed?

The main question with any guidance is whether it fulfils its purpose, and whether it is based on the correct evidence (i.e. the most up-to-date), and the same applies when considering guidance already available. Certainly, any guidelines should be reviewed at regular interval to ensure that it still protects public health and that it is comprehensive (i.e. data that was originally unavailable may be available now and should be used in re-assessments of the guideline).

Discussion point 13) How significant a barrier is the absence of a historical liability regime?

ARPHS does not have a formal position on historical liability.

However, it is certainly of high importance to address the liability regime for pre-1991 sites especially for orphan sites, sites that may be under a change of land use (rural or industrial to residential for example), and particularly if such sites are close to food-producing land. Absence of a system to remediate such sites would be a barrier to future proofing (i.e. fail to protect future generations).

Consideration also needs to be given to the effects of corporate failure and liquidation on the generation of future orphan sites. The ‘Weathertight Home’ situation has been made worse for those owning affected housing by the ability of past building industry participants to avoid liability by going into liquidation. It would be unjust if liability fell on other than the polluter to remediate any contamination in all but exceptional cases.

Discussion point 14) Which liability regime is considered best fit?

The ‘best fit’ liability regime is essentially any liability regime that is achievable, very clear, maintains focus, and is fair. Certainly a ‘polluter pays’-based system is favoured, as it is considered to be the fairest system.

Discussion point 15) If no liability regime is established, what modifications (if any) would need to be made to the Contaminated Sites Remediation Fund?

If no liability is established and the ‘Contaminated Sites Remediation Fund’ will be used to remedy pre-1991 or orphan sites, certainly this fund will need to increase in size to ensure that historical contaminated sites are managed appropriately to safeguard future generations and public health in general.

Discussion point 16) Is an accreditation system a necessary component of a contaminated land policy framework?

ARPHS generally supports ‘accreditation’ as it will bring uniformity in approaches to contaminated land assessment and remediation. There needs to be a mechanism to ensure that both contaminated land report writers and reviewers can view the application from a public health perspective.

Discussion point 17) If so, what additional benefits would an accreditation system bring, how could it work, and how would it be administered?

Accreditation systems can bring uniformity in assessment and remediation methodologies/approaches, and can also add guarantees of best practice.

Similar systems exist in all areas that require detailed oversight to protect human health and environment.

Accreditation would, however, impose additional costs in the short term to control contaminated land. Costs of accreditation should be allocated after a full consideration of the public / private benefits of accreditation and where possible the polluter pays principle should be used.

The accreditation system should be course-based and form part of the wider NZQA system. It could be operated under the auspices of the Ministry for the Environment or an appropriate private provider involved. To operate as accreditors, participants would need to both pass the course and be subject to some form of continuing education or updating process. A listing of accredited people should be formed (i.e. under the auspices of MfE); it should use independent auditors, and perhaps have an oversight by regional councils. Certainly it needs to be carefully set-up with a long transition period.

Discussion point 18) Does a lack of capability in local government form a significant barrier to the effective management of contaminated land?

The lack of capability in local government can form a significant barrier to effective management of contaminated land. Assessment of public health aspects of contaminated land is one area where capability is important.

For example Auckland City Council's Urban Soils Review has required significant and ongoing input from ARPHS, and if this is the situation for the largest council in the country it is likely that significant capability problems are encountered in other councils. However, this could be a result of lack of standard methodologies and expertise, lack of effective systems to collect and report information, and unclear roles and responsibilities, which can also affect funding allocations within organizations. ARPHS would certainly like to see compulsory and timely consultation of local government bodies/territorial local authorities with Public Health Units. Providing Councils with clear procedures, clearly defining roles and responsibilities, and with appropriate tools to manage information would assist in helping

their capability. NES would further address the lack of guidance and could also help council gain the necessary expertise. Alternatively, local government capability could be enhanced by providing access to a central pool of expertise. Examples of similar schemes are the Envirolink scheme, which supports regional councils and the Ministry of Health- funded supporting local needs programme for public health services.

Discussion point 19) ARPHS identifies that there is a variety of expertise and approaches adopted by consultants in regard to contaminated land management. The provision of standardised methodology and approaches and an accreditation course/system could help address these issues.

Additionally, ARPHS believes that a pro-active approach from the consulting community to consult with Public Health Units and Territorial Local Authority Environmental Health Officers, at early stages of projects would ensure that potential health risks are assessed and communicated to prevent involuntary health exposures.

Discussion point 20) Should national information on contaminated land in New Zealand be collected and reported? If not, why not?

ARPHS strongly believes that national information on contaminated land should be collected and reported. Government should be supporting local government toward the creation of a consistent database to suit the needs of agencies and the Ministry for the Environment (i.e. to inform policy decisions), and that is accessible. This national information system needs to be designed in such a way that consistent metadata is used across the entire country and that compatibility with current national, regional or local systems is maximised.

Discussion point 21) How could the implementation of CLMG No.4 be supported?

The implementation of CLMG No 4 could be **supported with** training courses, and making available tools and resources for data collection and reporting

Discussion point 22) To what other issues could a NES be applied to improve contaminated land management?

NES could be applied to set maximum acceptable health risk standards for human activities on land. The development of standard health risk assessment models is an essential and crucial step toward achieving this.

Discussion point 23) How would you suggest NES improve contaminated land management?

The above mention use of NES would help specification for human activity and fitness for purpose of land by determining acceptable health risk.

Discussion point 24) Are there any additional key additional research areas that should be identified?

ARPHS identifies the need for a comprehensive study to investigate background levels of common contaminants in New Zealand soils.

Also, internationally consideration is being given to making site-specific bioavailability adjustments. The New Zealand contaminated land policy framework will need to include policy relating to bioavailability. This policy will need to state if bioavailability adjustments are acceptable. If site-specific bioavailability assessments are to be accepted under the NES, robust guidance will need to be provided on when adjustments could be made, which exposure pathways could be adjusted for bioavailability and the evidence required to support site-specific bioavailability adjustments.

Other comments:

With reference to **Chapter 2 section 2.5** (Food Act) of the discussion paper:

ARPHS believes that this section could be more comprehensive in its details, as it fails to mention that Public Health Units act as agents of New Zealand Food Safety Authority (NZFSA) for the administration of the Food Act 1981 (although it is acknowledged in Appendix A).

Additionally, we believe that we should be giving credence to a link between food standards and soil contamination, to protect future generations from soil contaminants entering the food chain.

Page 26 mentions that landowners are not compelled to report land contamination to councils. This lack of mandatory reporting is not protective of public health and potentially allows contaminated land to be converted to more sensitive landuses if there are not appropriate provisions in the district plan and/or the site is not identified as potentially contaminated as part of a building consent application.

A possible mechanism to overcome shortcomings in reporting requirements would be a legislative change requiring reports on contamination status when the land-use is changed.

Conclusion

ARPHS supports the development of a comprehensive national policy on land contamination and development of National Environmental Standards for New Zealand that would contribute to the protection of human health and sustainable environments through integration of current and future policies on contaminants of land, food, water (surface and groundwater) and air.

Yours faithfully

Auckland Regional Public Health Service

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