

Are you carrying out earthworks on a potentially contaminated property?

Read this first.

Are you planning:

- Earthworks?
- Excavations/trenching?
- Ground-breaking?
- Soil disturbance?
- Sampling soil for contamination testing?

You'll need to know your responsibilities under regulations for contaminated land.

Even if you don't think your land has been contaminated by past or current land uses, you need to stop and check. Failure to do so could affect your plans. If you do this in the early stages of planning your project, you will be less likely to face unwelcome consent delays, increased costs or penalties.

For information on **how to find out whether your property is potentially contaminated**, see Fact Sheet One in this series.

Read on to find out:

- what the regulations require
- your responsibilities as landowner
- who can help you: the roles of professionals and the council
- information that council may require
- consents that you may need, and their conditions

What do I need to be aware of?

Earthworks and disturbance of contaminated soil can be hazardous for people working and living near your site, and to the environment. It is important that everyone involved in the work is aware of their responsibilities and understands how to protect the health of site workers, neighbours and the environment.

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (known as the NES Soil)¹ has introduced new requirements.

Resource consents may be required under the regulations. These consents are known as NES Soil consents. You will need to consider whether NES Soil consents are required before you carry out your activity. You'll need to provide information to council to show that any potential contamination arising from your activity can be appropriately managed.

Other types of consent may also be needed under the Resource Management Act 1991, for example land-use consent or consent for discharge of contaminants to the environment. Ask your local (district or city) and regional council about any relevant plan rules and bylaws.

Your responsibilities as a landowner

As a landowner you must:

- Contact your local (district or city) and regional council before earthworks begin. The council is likely to hold information about past land uses of the property (see Fact Sheet One in this series).

OR

- Arrange for a preliminary site investigation report to be prepared (see below). This report will reveal the history of land use on the property and assess the probability of a Hazardous Activities and Industries (HAIL)² activity having taken place. You will need to submit it to the council.
- If council records or your preliminary site investigation indicate that a HAIL activity may have occurred, the NES Soil applies. This means that any earthworks must comply with the NES Soil requirements.
- If the NES Soil applies, then your activity is permitted as long as you meet certain conditions. You will need to verify to council, for example, that:
 - The soil will be reinstated to an erosion resistant-state within one month of earthworks being completed.

¹ www.legislation.govt.nz/regulation/public/2011/0361/latest/DLM4052228.html

² www.mfe.govt.nz/issues/managing-environmental-risks/contaminated-land/is-land-contaminated/hail.html

- The earthworks volume will not exceed 25m³ per 500m² of the contaminated piece of the land that is affected by the earthworks.
- Other than for laboratory testing, no more than 5m³ per 500m² of soil will be taken away per year.
- Soils that are taken away will be disposed of at a facility approved for that type of soil.
- The earthworks activity will not occur for longer than two months.
- If these conditions are not met, you will need to obtain an NES Soil consent for the earthworks. Resource consents may also be required for the discharge of contaminants to land and water.

About site investigation reports

A preliminary or detailed site investigation report may be needed as part of the resource consent application.

This report includes soil sampling, testing, and the interpretation of results. A detailed investigation will assess the risks of contamination associated with your activity. You may be required to remediate your property, or to manage your activity so as to reduce those risks.

These reports must be prepared by a suitably qualified experienced practitioner (SQEP) - an environmental consultant with expertise in contaminated land. Your local council may be able to advise how to contact practitioners (SQEPs) operating in your area.

- If resource consent is required, it may also be necessary to engage a planning consultant to prepare your application to council.
- You must ensure that you dispose of contaminated soil only in landfills or managed fills which are approved to accept contaminated material.

Responsibilities of others

Your consultant must:

- Satisfy the council that they meet the professional (SQEP) requirements for the particular property they are reporting on.
- Complete your site investigation reports (including sampling, analysis and reporting) in accordance with:

Preliminary site investigations:

The current edition of Contaminated Land Management Guidelines No. 1 - Reporting on Contaminated Sites in New Zealand, Wellington, Ministry for the Environment³.

Detailed site investigations:

The requirements for a preliminary site investigation (above), and; the current edition of Contaminated Land Management Guidelines No. 5 - Site investigation and Analysis of Soils, Wellington, Ministry for the Environment⁴.

- Prepare any special reports that may be required, for example:
 - A remediation action plan detailing the proposed remediation works; and/or
 - A site management plan; and/or
 - A post-remediation site validation report (SVR) upon completion of works.

Additional testing may also be required to confirm remediation or for management.

Your city or district council should:

- Provide available council records upon request to establish whether a HAIL activity may have occurred on the site (Note: a fee may apply).
- Confirm that the site investigation reports have been prepared by a suitably qualified experienced practitioner (someone who meets the council requirements for a SQEP).
- Review the site investigation reports to determine if they have been prepared to a satisfactory standard.
- Carry out a thorough check of the consent application to ensure that any potential risks to human health and the environment associated with the current or proposed land use have been considered. Confirm the suitability and adequacy of proposed measures to avoid, remedy, or mitigate those risks.
- Liaise with other councils in the region to ensure that contamination issues are appropriately managed.
- Review the remediation action plan and/or site management plan for the site where contamination is present.

Your contractor should:

- Check that underground services (e.g. power, gas, water, telecom, stormwater and wastewater) will not be compromised during the works. There are companies that can locate services, for example contact 124 for underground telecommunication services.
- Write up safe work practices for each task to identify hazards and what will be done to eliminate, isolate, or minimise the hazards to site personnel and the public. They should also provide training to staff, for example on use of personal protective equipment (PPE) and handling of hazardous substances.
- Ensure that all works either meet the above 'Permitted Activity' status under the relevant city/district and regional plan or are in accordance with the council's resource consent.
- Have all permissions from affected parties and lodge required notifications.
- Have a contingency plan to deal with discharges of contaminants to air (e.g. dust), water (e.g. stormwater runoff) and land (e.g. stockpiles of contaminated soil) and to deal with unexpected contamination.
- Have a plan to deal with incidents and emergencies (e.g. spills, fire).

³ www.mfe.govt.nz/publications/hazardous/contaminated-land-mgmt-guidelines/

⁴ www.mfe.govt.nz/publications/hazardous/contaminated-land-mgmt-guidelines-no5/guideline-5.pdf

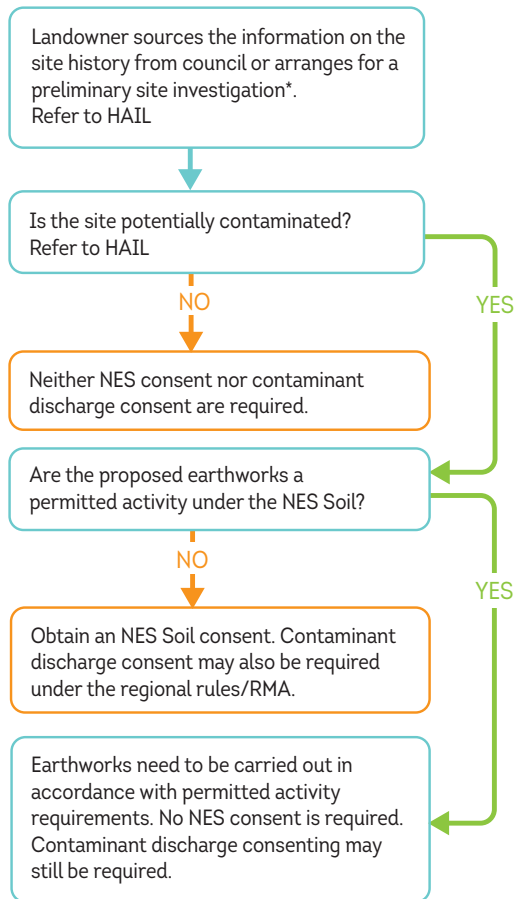
Resource Consents

Resource consents are issued by councils under the NES Soil regulation as a tool to manage the potential adverse effects of activities on human health and the environment arising from contaminated soil.

You may need to submit an application to council for an NES Soil consent.

Consents may also be needed for land-use or for any discharges of contaminants to the environment. Some regional councils (and unitary authorities) also regulate discharges of contaminants to land or water under contaminated land rules of the relevant regional plan. These rules must also be considered.

See your local (city or district) and regional council for advice on consent requirements.



HAIL Hazardous Activities & Industries List
NES Soil National Environmental Standard for Assessing and Managing Contaminants in Soil to protect Human Health

* The landowner may additionally provide their own information on the site to council to update the file record.

What will the consent cover?

Your application will need to consider:

- The requirement for site remediation and/or management to minimise risk to human health.
- The nature of the proposed land use activity and/or earthworks and the degree of risk to human health from exposure to hazardous substances, including contaminated soils, current and in the future.
- The extent that any contaminants may be mobilised and methods for containment, mitigation and/or remediation.
- The requirements for the disposal of contaminated material and for site validation testing upon completion of earthworks or remediation.

You will need to provide an Assessment of Environmental Effects (AEE) to the council that addresses any potential adverse effects and how these can be avoided, remedied, or mitigated.

Consent conditions for contaminated properties may include:

- Site activities - procedures for the management of contaminated soil and/or ground water to be followed during the proposed earthworks or activities that must occur as part of site works (e.g. site investigation following the removal of contaminated material or underground petroleum storage tanks).
- Site remediation - requirements to mitigate adverse effects on health and the environment. This may include specifications for imported backfill for excavations, site remediation methods and timing, and site validation testing.
- Mitigation of adverse effects - requirements to address exposure to contamination or discharge of contaminants through the control of dust, odours, vapours erosion, sediment and stormwater runoff, etc.
- Site management - controls to prevent adverse effects on human health and the environment through ongoing site management and/or monitoring.

Other conditions, including conditions specific to your site, may also be imposed.

More information can be found in the other fact sheets in this series:

Contaminated Land Fact Sheet One

Are you planning to undertake earthworks, subdivision, change of land use, selling or buying a property etc?

Contaminated Land Fact Sheet Two

Are you selling or buying a property that may be contaminated?

Contaminated Land Fact Sheet Three

Are you about to subdivide or change the land use of a potentially contaminated property?

These factsheets can be downloaded from www.wasteminz.org.nz

Further Information

Risks from Contaminated Land

www.mfe.govt.nz/issues/managing-environmental-risks/contaminated-land/index.html

Users' Guide: National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

www.mfe.govt.nz/publications/rma/users-guide-nes-for-assessing-managing-contaminants-in-soil/guide-nes-for-assessing-managing-contaminants-in-soil.pdf