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Contaminated land and the Health and Safety at Work (Hazardous Substances) Regulations 2017

The primary piece of legislation governing work health and safety in New Zealand is the Health and Safety at Work Act 2015 (HSWA).

Key points

- The HSWA HS Regulations apply to hazardous waste.
- WorkSafe New Zealand's position is that soil contaminated with hazardous substances by past work activities does not need to be managed as hazardous waste under the HSWA HS Regulations.
- There is an established framework for the management of contaminated land under the Resource Management Act 1991.
- HSWA and the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 apply.

Policy clarifications set out WorkSafe's approach to HSWA in relation to a clearly defined sector, a particular set of circumstances, or a specific function. This policy clarification sets out WorkSafe's position regarding application of the Health and Safety at Work (Hazardous Substances) Regulations 2017 (HSWA HS Regulations) to soil contaminated with hazardous substances by past work activities.

This policy clarification is for people who own contaminated land and those whose work involves the assessment, management and remediation of contaminated land.

What does the law say?

The HSWA HS Regulations set out requirements for the use, handling and storage of hazardous substances and hazardous waste in the workplace.

Hazardous waste is defined in the HSWA HS Regulations as waste:

- generated by a manufacturing or other industrial process and
- reasonably likely to be or contain a substance that meets one or more of the classification criteria for substances with explosive, flammable, oxidising, toxic, or corrosive properties under the Hazardous Substances (Classification) Notice 2017.

The HSWA HS Regulations place a number of duties on a person conducting a business or undertaking (PCBU) to ensure hazardous substances and wastes are managed safely. These include requirements to label containers, keep an inventory and safety data sheets and provide information, training, and instruction to those who work with hazardous substances/wastes.

What is WorkSafe's position?

WorkSafe's position is that soil contaminated with hazardous substances by past work activities does not need to be managed as hazardous waste under the HSWA HS Regulations.

Soil contaminated with hazardous substances by past work activities is a legacy issue that has resulted from the historical disposal, spillage or leakage of hazardous substance(s) or hazardous waste(s) on or in the ground.

Soil contaminated by past work activities typically contains a mixture of chemicals whose properties may alter over time. This would make it difficult to implement and comply with requirements in the HSWA HS Regulations to classify, label, list on an inventory and have a safety data sheet for the contaminated soil.

An established framework exists for managing contaminated land

There is an established framework for managing and remediating contaminated land under the Resource Management Act 1991 (RMA). The HSWA HS Regulations are not intended to duplicate or complicate these provisions.

Under the RMA, the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) sets nationally consistent planning controls and soil contaminant values. The NESCS ensures that land affected by contaminants in soil is appropriately identified and assessed before it is developed – and if necessary the land is remediated or the contaminants contained to make the land safe for human use.

The NESCS only applies to land on which an activity or industry on the hazardous activities and industries list (HAIL) is, has been, or is more likely than not to have been undertaken. The NESCS applies to five specified activities:

- removing or replacing all, or part of, a fuel storage system
- sampling the soil
- disturbing the soil
- subdividing the land
- changing the land use.

HSWA and the Health and Safety at Work (General Risk and Workplace Management) Regulations apply

HSWA and the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 (HSWA GRWM Regulations) continue to apply when dealing with contaminated soil.

HSWA and the HSWA GRWM Regulations requirements for PCBUs include:

- providing adequate information, supervision, training, and instruction to workers
- ensuring, so far as is reasonably practicable, that the workplace allows persons to enter and exit and work without risk to their health and safety
- providing personal protective equipment and ensuring the equipment is suitable, maintained and worn correctly

- managing risks to health and safety associated with substances hazardous to health
- ensuring prescribed exposure standards for substances hazardous to health are not exceeded
- undertaking exposure monitoring and/or health monitoring if required.

Contaminated soil may also either be or contain a substance hazardous to health. Where this is the case, under regulations 5-8 of the GRWM Regulations, a PCBU must also:

- identify hazards that could give rise to reasonably foreseeable risks to health and safety
- identify, implement and review control measures to manage risks to health and safety.

PCBUs must ensure they comply with the HSWA GRWM Regulations when workers are on a contaminated site or handling soil contaminated with hazardous substances. This includes during the remediation, excavation, testing and monitoring of the soil.

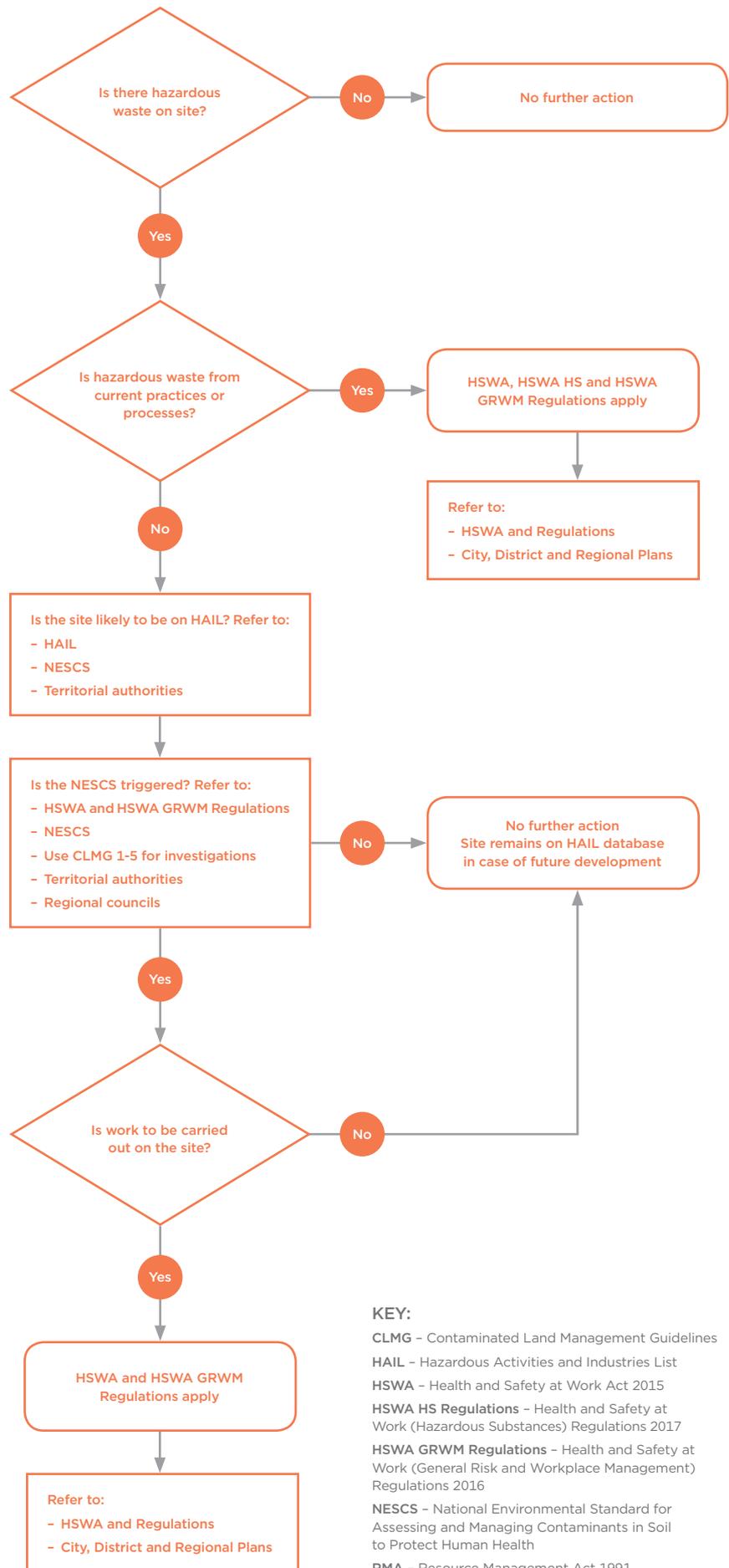
Further information

For more information see:

- WorkSafe New Zealand, (2018). *Understanding the Law*. Retrieved from: worksafe.govt.nz/managing-health-and-safety/getting-started/understanding-the-law
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- WorkSafe New Zealand, (2017). *General Risk and Workplace Management Interpretive Guidelines (Part 1)*. Retrieved from: worksafe.govt.nz/dmsdocument/886-general-risk-and-workplace-management-part-1
- WorkSafe New Zealand, (2017). *General Risk and Workplace Management Interpretive Guidelines (Part 2)*. Retrieved from: worksafe.govt.nz/dmsdocument/1960-general-risk-and-workplace-management-part-2
- Ministry for the Environment, (2016). *About the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health*. Retrieved from: www.mfe.govt.nz/land/nescs-assessing-and-managing-contaminants-soil-protect-human-health/about-nescs
- Ministry for the Environment, (2016). *Hazardous Activities and Industries List (HAIL)*. Retrieved from: www.mfe.govt.nz/land/hazardous-activities-and-industries-list-hail
- Ministry for the Environment, (2016). *Contaminated land management guidelines*. Retrieved from: www.mfe.govt.nz/land/risks-contaminated-land/managing-contaminated-land/contaminated-land-management-guidelines

Contaminated soil, the Health and Safety at Work Act 2015 and the Resource Management Act 1991

This document provides a decision tree for those who have contaminated soil on their site. It sets out the key legislation that needs to be considered to protect the health and safety of workers and others on and near the site.



KEY:

- CLMG – Contaminated Land Management Guidelines
- HAIL – Hazardous Activities and Industries List
- HSWA – Health and Safety at Work Act 2015
- HSWA HS Regulations – Health and Safety at Work (Hazardous Substances) Regulations 2017
- HSWA GRWM Regulations – Health and Safety at Work (General Risk and Workplace Management) Regulations 2016
- NESCS – National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health
- RMA – Resource Management Act 1991