

Innocent Property Owners Set to Pay for Contamination Cleanups

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The Ministry for the Environment (MFE) is paving the way for property owners to be forced to pay for the cleanup of contamination that they did not know about when they purchased their land. This contamination was often legal at the time it occurred, and some was the result of activities required by Government regulation.

MFE estimated in August that the clean up of historic contaminated sites throughout the country will cost around \$1 billion.

The ministry is asking Parliament to change the RMA so that regional councils are assigned legal responsibility for the cleanup of the thousands of historic contaminated sites created prior to 1991. Councils will first look to the polluter to pay. However, no new Government funding has been promised to councils for this work. Without it, if the polluter is no longer the landowner, councils are left with little choice but to make the current owner pick up the tab even if they had no role in creating the pollution and did not know about it at the time of purchase. The Sustainability Council details these impacts in a document released today entitled *Contaminated Land: Pass the Parcel*.

An alternative set of law changes approved by Cabinet in 1999 was designed to head off precisely such unfair outcomes. Documents obtained by the Sustainability Council under the Official Information Act show these changes would have:

- given the current property owner the defence that if they had taken reasonable steps to check that the property was not contaminated before it was purchased, they could not be held liable; and
- allowed the original polluter to be billed for the cleanup even if it were not the current landowner.

For reasons that have still to be explained, this package was never put into law. Now rather than focusing on holding accountable those responsible for the pollution, the focus will be on landowners who can be billed regardless of the fairness of the case.

Yet MFE told Cabinet in 1999 that “Strict liability on the landowner is inequitable and contrary to natural justice if the current owner has to bear liability for effects they did not cause and which they could not reasonably have been expected to know about. Experience internationally and in New Zealand has shown that residential owners are unwilling to accept liability they did not cause.”

The ministry has also previously recognised that Government is morally responsible for a host of cleanup costs. It stated earlier in the reform process that “Site contamination has, in some cases resulted from the use of chemicals required, and at times promoted by Government agencies. The Government therefore, shares some historical responsibility as a regulator to ensure that the problems of past use of some chemicals are cleaned-up.”

When then Environment Minister, Simon Upton, announced the proposed 1999 package, he said it would “ensure that the Crown (as one of the biggest polluters of old when it used to run half the economy) will face its responsibilities”.

MFE has provided literally no justification to Parliament for the change of position and the proposed amendment to the RMA now before the House. The ministry is trying to pass the hot potato to regional councils and has yet to begin to explain the consequences.

While local government has already facilitated some contaminated site cleanup, the lack of a coherent framework and clear law has hampered this. In 1999, MFE told Cabinet in the first paragraph of its paper that a key problem was “Who is responsible for contaminated sites that were contaminated prior to the passing of the Resource Management Act 1991 (RMA)”. The law change it now proposes to resolve this question simply passes the parcel without going after the historic polluters - including the Crown - or addressing other key questions surrounding this assignment. The Government had key roles as regulator and owner of many of the entities that caused the site contamination.

While MFE has a Contaminated Sites Remediation Fund, only \$1 million a year is currently available beyond two high profile sites and this money goes essentially to councils for site investigation work, not cleanup.

How many properties are at risk is unclear as MFE has yet to complete a national register of sites and testing is still to be carried out in many places. What is clear is that the West Auckland properties recently in the news are just a microcosm of a wider national picture.

Parliament should not assign any new responsibilities to regional councils for contamination cleanup before the Government has fully faced up to its part in causing that pollution. Government needs to provide clear principles that it will adhere to in the cleanup of all sites and serious funding to achieve this.

Parliament can however act now to set in place an innocent landowners defence and law that allows historic polluters to be billed – including the Crown.

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Please call for copies of *Contaminated Land: Pass the Parcel* and Cabinet documents.