NATIONAL OFFICE
P O Box 12 013
Thorndon
Wellington 6144
Ph: 0800 692 376
Cell: 021 576 109
Alan@civilcontractors.co.nz
www.civilcontractors.co.nz

Civil Contractors New Zealand submission to the Ministry for the Environment on "Have your say on proposed amendments to waste legislation"

To: Ministry for the Environment, wasteamendment@mfe.govt.nz

From: Alan Pollard, Chief Executive, Civil Contractors New Zealand

INTRODUCTION

Civil Contractors New Zealand (CCNZ) is an industry association representing the interests and aspirations of more than 800 member organisations, including more than 500 large, medium-sized, and small businesses in civil engineering, construction, and general contracting. Our 300 associate members provide valuable products, support, and services to contractor members. We live and work in all communities across New Zealand.

Our members play a vital role in the development of our country, our economy, and our way of life. They build and maintain the roads connecting our cities and towns; they install and care for the water networks that bring fresh water to houses and wastewater to treatment plants; they install the cables that bring the internet to homes and businesses. These are services a modern and developed economy must have to compete efficiently in world markets and to deliver high living standards for all New Zealanders.

For infrastructure to be constructed, earth must be moved, and earthmoving is the elephant in the room when it comes to waste legislation at present. Infrastructure construction is a major contributor to the Waste Levy, which is significantly adding to the country's infrastructure bill through inappropriately applied regulation of soil and material standards that go against the intent of re-use of materials, often resulting directly in large-scale cartage of material such as crushed concrete and re-usable soils.

Infrastructure construction does not have corresponding support from the Waste Minimisation Fund, which is a major contributing factor to reducing industry productivity and escalating cost. CCNZ considers the current waste policies have had significant and unforeseen consequences, and have incentivised perverse outcomes that are achieving the opposite of the stated goals of New Zealand's waste strategy.

INTRODUCTION TO THIS SUBMISSION

The consultation document says of its scope:

"The Ministry for the Environment (the Ministry) has prepared this consultation document to seek feedback on the following proposals for amending waste legislation:

• creating a framework for extended producer responsibility

• improving the levy system through changes to waste levy allocation, distribution and use

• clarifying roles and responsibilities in the waste legislation

• creating a modern, effective compliance regime

• enabling efficient and effective controls for littering and other types of mismanaged waste."

CCNZ addresses in its submission the matters listed in the first and second bullet points, being extended producer responsibility, and the levy system.

CCNZ supports in principle the submissions made by Business NZ, and by the Aggregate and Quarry Association (AQA).

Civil contractors have informed us of the massive issues that have arisen in soil management from the previous waste minimisation regulations, so we also feel that the scope must extend to resolve these issues where possible. These issues are extensively documented in our attached position paper on soil management.

The rest of this submission is structured as follows:

EXECUTIVE SUMMARY

The government's consultation on proposed amendments to the waste system is timely, because large volumes of surplus soil from earthworks are being disposed to landfill, when the bulk of this material could be re-used at a development site, or repurposed as cleanfill.

Core to the problem is how soil is defined or classified - i.e. "inert but lightly contaminated soils and rubbles" (eligible for class 3 and 4 fills), and "virgin excavated natural materials (eligible for class 5 fills). These characterisations betray a lack of understanding within government of surplus soil from earthworks in infrastructure construction.

This is a serious problem that requires bespoke policy and regulation to fix, to provide the infrastructure construction sector the right incentives, and the opportunities to promote a circular economy approach to waste, in particular, surplus soil from earthworks.

For this reason, we propose the exclusion of our sector from extended producer responsibility (EPR), because we think it would be unworkable, and to get the policy settings right for our sector before making corresponding changes to the levy system, as they affect infrastructure construction waste in different ways than the overall building and construction sector.

We do not consider the impacts on infrastructure have not been appropriately considered, and the significant issues our members – and by extension the country as a whole – are experiencing right now should be explored and addressed.

CCNZ would welcome engagement with MfE officials to discuss, in the first instance, how best to reduce the disposal of surplus soil from earthworks to landfill.

TAILOR POLICY TO THE INFRASTRUCTURE CONSTRUCTION SECTOR

There is no one-size-fits-all solution when it comes to policy on waste, specifically, the policy settings to enable a circular economy approach to surplus soil and other material arising from the construction of infrastructure, eg roading.

In the case of surplus soil resulting from earthworks, the policy failures for dealing with this material are well established. WasteMINZ has written a white paper on the topic, following on from a 2024 report by the Parliamentary Commissioner for the Environment, and extensive study by Landcare Research.

CCNZ has written a position paper on surplus soil (attached to this submission) out of concern over lack of government action to prevent 4.5-7.5 million tonnes of this material being disposed of annually to landfill (class 1 facilities) at a cost in the landfill levy alone of $1.35-2.25 billion a year (WasteMINZ).

The issues:

- Councils taking a narrow interpretation of contaminated soil in the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, with soil that is not harmful to human or environmental health being labelled as ‘contaminated’, because it contains higher than background (pre-human habitation) levels of contaminants

- Correspondingly, Table 1 of Hon. Penny Simmonds’ Cabinet paper lists “inert but lightly contaminated soils and rubbles” as suitable for class 3 and 4 fills, and “virgin excavated natural materials” as suitable for class 5 fills (cleanfills)

- This results in an onerous resource consenting requirement to send soil to managed, controlled and cleanfills, instead of incentivising the repurposing and re-use of soil on across infrastructure construction sites, which should be the goal under the waste strategy.

- Managed fill and cleanfill facilities are few and far between, as many councils do not support the construction of these facilities due to the opposition they face from their communities and the difficulties in consenting these sites.

- This places a strong incentive on civil contractors (and their infrastructure clients) to cart surplus soil to landfill, and pay the disposal levy

- The levy can amount to 20 per cent of the total infrastructure project cost, which is passed on to the client, often government

- Landfills are filling up with re-usable soil, instead of being available for the waste they were intended to receive. Landfills should be reserved for heavily contaminated material.

- In regions around New Zealand, there is either a shortage of landfills and other classes of facilities, or a looming shortage

- There appears to be little or no planning underway, in regions and districts, to deal with the above. Few regions have any idea of the volume of soil that requires management in their regions, and little inclination to proactively identify and manage consents for appropriate sites.

- This leads to surplus soil being trucked out of region, sometimes to sites hundreds of kilometres distant, to dispose of it, or otherwise manage it, leading to raised costs, reduced efficiency, increased road use, wear and tear on the transport network, and increased CO2 emissions from vehicles

- The same happens with surplus soil in regions having a restrictive interpretation of legislation and regulation, compared with other regions

- The cost of surplus soil disposal to landfill is also a strong incentive for illegal disposal, or “fly tipping”, where surplus soil is illegally dumped at the road or riverside due to the lack of any alternative

- Council revenue from levies is being used to clean up “fly tipping”, instead of being spent on something more useful, e.g. constructing new class 1-5 facilities

In CCNZ’s view, the government needs to address all of the above problems before amending waste and litter legislation, as regards the infrastructure construction sector specifically, as opposed to the overall building and construction sector.

The Cabinet paper referred to above does draw attention to the surplus soil issue in paragraphs 43-49, however, without proposing solutions, to which we now turn.

> **Recommendation 1:** Exempt the infrastructure construction sector from the present reform, which is clearly more centred around household waste, and initiate a separate reform to meet the needs of this sector, in particular around soil management.
>
> **Recommendation 2:** Welcome the CCNZ position paper on surplus soil, and engage with CCNZ and other stakeholders to resolve the significant issues

infrastructure construction faces from inappropriately applied regulation in this space

EXTENDED PRODUCER RESPONSIBILITY FRAMEWORK

The consultation document defines EPR as:

> "EPR describes a suite of policy instruments that shift financial and/or operational responsibility for material recovery and waste management upstream. This means the responsibility is on producers, importers and retailers, instead of falling by default on councils, communities, future generations and nature. Following a 'polluter pays' principle, an EPR framework extends responsibility for products – instead of just placing them on the market, producers need to manage and reduce any negative environmental effects."

The infrastructure construction sector is unsuited to an EPR scheme, for the following reasons:

- horizontal infrastructure assets such as dams, roads and bridges can last 100+ years or more, posing a problem of which entity should hold an end-of-life liability
- a supplier of, eg aggregate, concrete, steel or asphalt into a project has no control over the use of the material, so should not have to take responsibility for end-of-life management of materials
- there are more efficient and effective approaches to circular economy management for infrastructure construction materials

On the third point, materials producers and asset owners already can use a life-cycle assessment approach to materials and infrastructure networks such as roads, of which Environmental Product Declarations are a subset, being internationally recognised and published.

The producers of materials such as cement, aggregate, concrete and asphalt cover only the cradle-to-gate part of the product life cycle. In the case of a road, water pipeline or dam, the life cycle takes construction materials as inputs (Module A), has to consider the operation of the asset (Module B), and end-of-life, ie disposal (Module C), and circular economy (Module D).

EPR seems best suited to waste products such as supermarket packaging, and goods at end-of-life such as vacuum cleaners, carpets, batteries and lightbulbs, not civil infrastructure, which regularly has a lifespan of 60-100 years.

> **Recommendation 3:** Exempt the infrastructure construction sector from an EPR framework, by implementing Recommendation 1

AMENDMENTS TO THE WASTE LEVY SYSTEM

CCNZ supports the government's intent to make changes to "waste levy allocation, distribution and use". Within that, levy revenue should be targeted at improvements to the waste management and reduction system.

As discussed above, the current levy system, combined with regulation, imposes perverse incentives on civil contractors and their clients to dispose of surplus soil to landfill instead of reuse or repurposing of this material for circularity.

The government should first amend legislation and regulation to enable the sustainable management of surplus soil (and certain other construction and demolition waste), and make changes to the levy system in light of that.

For this reason, we argue for a tailored policy approach to the infrastructure construction sector, which needs appropriate incentives placed on it, and options provided for the sustainable management of waste. The current policy approach is premature from the perspective of our sector, and risks being unworkable for us.

Part of the issue is its application at a regional level. Often, councils do not have a clear idea of the regional need for fill sites such as managed fills or cleanfills, and see no incentive in supporting these sites.

Private industry is far less likely to support these sites without council support. A failed resource consent application for a clean or managed fill site can take years and cost millions, also pitting the applicant directly against the community, if the case for the regional needs is not supported by the local authority.

With a dwindling number of sites for disposal, it is not unheard of for waste to be trucked hundreds of kilometres, sometimes adding millions to the cost of even small to moderate-sized projects such as community swimming pools.

Raising the levy without addressing these significant regulatory and policy failures will simply operate as a tax on producers of waste, and increase construction costs, ultimately for civil contracting clients (including government) without reducing waste. And sometimes resulting in the increase of waste to landfill through enforced definitions, which are inappropriate.

For instance, ‘lightly contaminated fill must go to a managed fill site’ implies it cannot be re-used on site, when in many cases there may be no harm at all to human health or the environment if this happens. The soil is already in place, and the act of moving it has not changed its chemical composition.

The key here to solving this issue is enabling re-use. Contractors can re-use soil or crush and stockpile concrete, but for true circular economies (which should be the goal), project engineering specifications must allow for the use of these materials in infrastructure construction.

> **Recommendation 4**: Direct all revenue earned by the waste levy system to improving the ability of producers of waste to apply a circular approach to it. This should include activities like facilities for re-use of hydrovac waste, and improved client material re-use specifications (i.e. crushed concrete)
>
> **Recommendation 5**: Exempt the infrastructure construction sector from the proposed changes to develop policy affecting, for good outcomes, by implementing Recommendation 1

ANSWERS TO SPECIFIC QUESTIONS

1. **Do you support the proposal for a modern EPR framework? No**

No, not for the infrastructure construction sector (discussed above – the reason being the long-lived nature of infrastructure assets).

2. **Do you support discontinuing the government accreditation of voluntary product stewardship schemes? Unsure**

Bespoke policy is needed on this topic in the infrastructure construction sector, e.g. to provide more government understanding and recognition of an LCA approach to materials and structures, including Environmental Product Declarations (EPDs). Materials such as bitumen, sand and aggregate pose different challenges to what has been considered under the current policy proposals, and our members are already undertaking EPDs for these.

3. **Do you support changing the distribution of levy funds to territorial authorities from a population-based calculation to a combination of a base flat rate (20 per cent) and a population-based calculation (80 per cent)? Yes | No | Unsure**

As long as levy funds are spent on improving the waste system. These initiatives need to lead to better outcomes – i.e. if infrastructure is a significant funder (as demonstrated in the WasteMINZ white paper), the levy fees should provide for better infrastructure waste outcomes.

4. **Please indicate your support for changes that would permit territorial authorities to use the levy for:**

activities that promote or achieve waste minimisation, in accordance with and as set out in the territorial authorities' Waste Management and Minimisation Plan. Unsure

Yes, provided the activities are fit for purpose. These waste minimisation plans often do not acknowledge key infrastructure materials, including sand, aggregate, bitumen, asphalt and reusable soil, which leads to a poor regulatory fit.

costs associated with managing emergency waste. Yes

activities that provide for the remediation of contaminated sites and vulnerable landfills. Yes

compliance, monitoring and enforcement of mismanaged waste. Yes

Yes, noting policy and regulatory reform would help reduce the incidence in the first place of "mismanaged waste". We consider the current regulatory settings to be partially responsible for the mismanagement of soil and infrastructure construction material waste by preventing circular economies for these resources.

activities that reduce environmental harm or increase environmental benefits. Yes | No | Unsure

Considerable benefit could be reached if the Levy is used to fund enabling infrastructure, such as facilities for remediation and disposal of hydrovac slurry (material excavated through

hydroexcavation that requires de-watering to become re-usable material). This is further explored in the CCNZ position paper.

Some of this reform is likely to fall under the reform of the Resource Management Act 1991. We ask if there is a risk of regulatory duplication or overlap.

5. Please share any suggestions for criteria that could form a decision-making framework for possible spending of the waste levy on environmental benefits and/or reduction of environmental harm.

In the case of the infrastructure construction sector, the top priority is to address policy and regulatory failure, and improve the incentives on contactors to reuse and repurpose waste, e.g. surplus soil, and provide management options, e.g. nearby class 1-5 facilities. This is discussed above.

7. **Do you agree that the Minister's considerations for a review of the effectiveness of the waste levy should mirror the scope of the purpose of the WMA and the parameters for levy spend (once these are decided)? Unsure**

As answered and discussed above, CCNZ considers the infrastructure construction sector needs the right legislation and regulation, and to have management options available, to optimise a circular economy approach to waste. This is clearly not in place at present, and significant attention is needed to resolve these issues.

If infrastructure is funding a large portion of the Waste Levy, it should be seeing positive outcomes from this funding. This is not happening at present, only increased cost.

8. **Do you support changing the timeframe for review of the effectiveness of the waste levy from every three years to at least every five years? No**

A full and urgent review is needed now, in consideration of the billions of dollars worth of surplus soil from earthworks disposed of in landfills every year, that is going to the waste levy when it could have been reused or repurposed. In turn, this is massively reducing the amount of infrastructure we can construct as a country.

CONCLUSION

Thank you for your time in reading this submission.

CCNZ is happy to further discuss the needs of the country's civil construction industry in relation to this legislation, to address the significant issues we have highlighted in this submission, and in the attached position paper on soil management.

Yours sincerely,

Alan Pollard
Chief Executive
Civil Contractors New Zealand
www.civilcontractors.co.nz