A PROPOSED NATIONAL ENVIRONMENTAL STANDARD FOR THE

Outdoor Storage of Tyres

2020 CONSULTATION

Ministry for the Environment
Manatū Mō Te Taiao

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Purpose

The purpose of this document is to seek feedback from businesses, farmers, local government, iwi and the general public on options for a proposed National Environmental Standard (NES) for the outdoor storage of tyres. The Ministry for the Environment is conducting this consultation on behalf of Hon Eugenie Sage, Associate Minister for the Environment.

What is a National Environmental Standard?

In New Zealand, most decisions on how resources are managed are made locally by local authorities (ie, councils). In some cases, it is appropriate to have a nationally consistent approach, for instance where there are national benefits or where the costs of local variation outweigh the benefits. In such instances, the Government can make a National Environmental Standard (NES) under Part 5 of the Resource Management Act 1991 (RMA) which would be implemented at the local level by councils. An NES takes effect without the need for council plan changes.

An NES can provide certainty by setting out national requirements and conditions for particular activities (eg, relating to land use, water take, discharges).

Councils can have more stringent or lenient rules in their plans that prevail over an NES, only if the NES expressly states they can do so.

A revised NES proposal and set of options

A proposal for an NES was consulted on in August 2017,[1] with most respondents supporting the introduction of an NES to address outdoor tyre storage.

This consultation builds on the 2017 proposal following a change of Government, further consideration of submissions, research and consideration of options for strengthening the NES.

In particular, we are seeking information and feedback on three key variations to the original NES proposal:

1. Responsibility for the NES: It is now proposed regional councils be responsible for administering the NES.
2. Threshold for consent: Feedback is now sought on two potential NES thresholds for requiring discretionary resource consents for the outdoor storage of tyres. These are the option consulted on in 2017 (200m^3) and a new option of 100m^3, which is intended to provide a stronger framework for mitigating key environmental and public health risks.
3. Permitted activity rule with requirements: Introducing a permitted activity rule with requirements for outdoor tyre storage between 40m^3 and the volume threshold for discretionary resource consent.

[1] https://www.mfe.govt.nz/waste/waste-strategy-and-legislation/proposed-national-environmental-standard-outdoor-storage-of

Because these changes would have implications for a range of stakeholders (notably councils required to implement the proposed NES and businesses required to comply with the proposed NES), we are seeking further feedback and information on the proposal and options.

Submissions close at 5.00 pm on Wednesday 25 March 2020. Information on how to make a submission, including questions to guide your feedback, is on page 25.

Background

The problem

What happens to end-of-life tyres

About four million car tyres and one million truck tyres reach their end of life every year in New Zealand. There is a lack of proper disposal options for tyres. Once these tyres reach their end of life and can no longer be used as tyres or re-treaded, some will be exported, some will be recycled, some will be used for agricultural purposes (eg, silage weights) and some will be disposed of to landfill. In addition, a large number will end up in storage or stockpiles.

Demand for energy is increasing worldwide, and there is demand overseas for waste tyres to be used as fuel, for instance in cement kilns in India. The market is a changing one, with countries wanting to reduce environmental impacts and increase economic efficiency of imported waste by controlling the quality of the waste (for instance, by requiring chipping or shredding of tyres instead of baling).

Informed anecdotal evidence suggests that in New Zealand it is common to stockpile used and end-of-life tyres with the intent of future reuse, reprocessing or sale. These piles are often uncovered and easily accessible to the public. As tyres degrade over time, they lose their commodity value, and this can decrease the incentive to store them appropriately and manage storage risks.

There are significant gaps in the information relating to the extent and scale of outdoor tyre storage in New Zealand and the available evidence is anecdotal. Feedback from a survey of councils indicated the extent of the problem of tyre storage varies across the country. Notably, it was seen as a significant issue in some regions (Auckland, Waikato, Bay of Plenty and Canterbury), but was not considered to be a significant issue for the other regional councils surveyed as part of the research (4Sight Consulting, 2019).

The risk and harm associated with large tyre stockpiles

Storing or stockpiling tyres outdoors poses a risk of harm to the environment, human health and local communities, as set out below.

Fires

Tyre piles create a risk of significant adverse effects from fire.

Tyres are not easy to ignite. However, once ignited, burning tyres can be difficult to extinguish. An individual standard tyre contains about 7.5 litres of fuel (as well as other combustible carbon compounds). A tyre pile can burn for days, weeks or longer depending on the size of the stockpile. The smoke and run-off from tyre fires contains a range of toxic and carcinogenic compounds including dioxins, furans, mercury and lead. These can require evacuation of nearby downwind, residential areas and also contaminate soil and water supplies (Firecone, 2004).

In New Zealand, there has not yet been a tyre fire involving millions of tyres as has been the case overseas. However, there have been smaller tyre fires reported in the media in recent summers,

including an arson at a stockpile in rural Amberley, Canterbury, and an accidental tyre fire on a farm in Taranaki. Several years ago, a tyre fire in Hamilton resulted in nearby residents being evacuated and a child being hospitalised.

Discharge of contaminants

Inappropriate storage of tyres can result in leaching of toxic material into the soil and, occasionally, groundwater and other water bodies. The concentration of leaching is specific to the storage time and local conditions. The longer a tyre pile is exposed, the more contaminants will be released, particularly in damp conditions.

Contaminants that can leach from tyres include cadmium, lead, aluminium, manganese and zinc (Kim, 2004). Laboratory tests suggest leachate from tyres can be toxic to some fish species (such as rainbow trout), invertebrates and algae (MWH, 2004).

Pests

Large tyre piles can become a public health risk by creating breeding grounds for mosquito and rodent species which may spread diseases.

Currently, New Zealand has few mosquitoes capable of carrying serious diseases, and those that exist don't appear to breed in tyres (Firecone, 2004). However, exotic mosquito species capable of carrying serious diseases (like dengue fever) that are known to breed in tyres are discovered near ports reasonably often (Ministry for the Environment, 2014 and Firecone, 2004). These risks are likely to increase with climate change.

Financial liability

Illegal dumping and abandonment of tyre stockpiles can create a large financial liability for removing the tyres and/or cleaning up the site.

Removal of illegally dumped tyres has cost councils and landowners between $8000 and $100,000, depending on the amount of tyres and location (Firecone, 2004).

Visual and amenity impacts

Large piles of tyres are unsightly for neighbours and communities in general, and can impact on natural scenic values.

Current regulatory framework

At present, there are no national regulations that relate specifically to the storage of tyres. The rules for storing tyres are determined by regional and district councils under the RMA and bylaw powers under the Local Government Act 2002. However, there has been limited use of these two Acts to develop rules and bylaws that can effectively manage tyre storage.

In 2019, the Ministry commissioned a targeted survey of regional plans, and some district council plans, to further assess the extent of rules applied to outdoor tyre storage. While most councils surveyed have bylaws for waste management and district plan rules for general outdoor storage in certain zones, those rules are generally not used to address issues with outdoor tyre storage. Councils that have specific rules on tyre storage or tyre activities include Auckland Council, and Hastings and Napier District Councils.

Rationale for the proposed NES for the outdoor storage of tyres

Local government is best placed to address tyre issues, as they know the local area and have enforcement officers. However, as discussed above, currently the regulatory tools are inadequate. If councils were to each develop their own rules for tyres, this could result in tyres being moved around the country to avoid the most stringent rules or enforcement action (this reportedly happens now). A consistent nationwide regulation would mitigate this, and would save councils the cost of each developing their own rule.

For these reasons, an NES for the outdoor storage of tyres is proposed to:

a) ensure the risks of harm to the environment, human health and local communities from outdoor tyre storage are appropriately managed

b) support more consistent management practices across New Zealand, filling gaps in regulatory settings that create incentives to move tyres between regions.

The proposed NES is aligned with the overarching purpose of the RMA – to promote the sustainable management of natural and physical resources. It will encourage improved management of the storage of tyres in a way that enables people and communities to provide for their economic wellbeing while avoiding and mitigating adverse effects on the environment from this activity.

Other related projects Government has underway

The Government is progressing other initiatives that will complement the proposed NES.

Regulated product stewardship

One of the problems that has led to tyre stockpiles is a lack of end uses for end-of-life tyres. One solution that is common overseas is product stewardship schemes, where the producers and industry across a supply chain take responsibility for managing the environmental impacts of their products. New Zealand does not yet have a product stewardship scheme for tyres but this is set to change.

The Government has recently consulted on the proposal to declare tyres a priority product under the Waste Minimisation Act 2008. If tyres are declared a priority product, this will provide a strong framework for implementing an effective, comprehensive and national-scale product stewardship scheme that would support the objectives of the NES. Decisions are yet to be taken by the Government on the outcome of that consultation process. A scheme for tyres could be accredited by the Minister for the Environment in 2020.

The proposed NES would help set the market conditions for regulated product stewardship, since participants in a scheme would need to comply with the NES. A product stewardship scheme would assist compliance and monitoring of the NES and the investigation of illegal dumps, because there would be better record-keeping of tyre movements.

Currently, when a new tyre is purchased in New Zealand the price typically includes a disposal fee (this is a private arrangement). The fee is then used to pay for someone to collect the end-of-life tyres when they accumulate. However, there is no obligation for the tyre disposal to be environmentally sound. A product stewardship scheme with a disposal fee that is paid when the tyre goes to an

environmentally sound end use would encourage responsible operators, and could create an incentive for developing more uses for end-of-life tyres. This would help the owners of stockpiles to find legitimate destinations for excess tyres and to comply with the NES.

The expected outcomes of these two initiatives working together are:

- safe outdoor storage of tyres
- steady supply of end-of-life tyres for reuse and recovery
- demand for end-of-life tyres for reuse and recovery.

There is a risk that if a new regulation is brought in without a concurrent product stewardship scheme for tyres, there may be unintended consequences such as illegal dumping or burying of tyres. A product stewardship scheme would make it easier for those storing tyres to reduce their stores.

Golden Bay cement project

The Government is progressing a number of other initiatives that will complement the proposed NES. Notably, the Waste Minimisation Fund has provided approximately $15.6m of funding to introduce technology at the Golden Bay Cement plant (in Northland) that will use tyres as a substitute for coal.

The Waste Minimisation Fund grant will help pay for the upgrade of the cement kiln and incorporation of leading world-class technology to introduce tyre-derived fuel (TDF) into the fuel mix. TDF is used widely in Europe and the United States in cement kilns and is proven as an environmentally sound fuel for the process.

It is expected the new technology will be operational in late 2020, ensuring significant ongoing demand for surplus end-of-life tyres across New Zealand.

Results of previous consultation

In August 2017, the previous government consulted on a proposed National Environmental Standard (NES) for the Outdoor Storage of Tyres.

Feedback from submitters at the time was broadly supportive of the introduction of an NES, although submitters expressed varied views on specific aspects of the proposal. For instance, in relation to the proposed 200m^3 threshold requirement for a resource consent, a significant number of submitters thought the proposed threshold was too high.

There were concerns the proposed NES would have the unwanted effect of permitting tyre piles just under the threshold.

Twelve submissions were received from local government. All local government submitters were strongly supportive of the proposal, and many made suggestions on how to improve it.

Eleven submissions were received from business and industry groups. Six submitters agreed with the proposed NES, while four agreed with the NES provided certain conditions were met.

Five district health boards submitted on the proposal. All supported the proposal and favoured a relatively low threshold. There were no submissions from iwi.

Revised NES proposal

Following further consideration of submissions, surveying of local government rules, and additional research and engagement, we have developed this revised proposal with three variations to the 2017 proposals:

1. Responsibility for the NES: It is now proposed regional councils be responsible for administering the NES.
2. Threshold for consent: Feedback is now sought on two potential NES thresholds for requiring discretionary resource consents for the outdoor storage of tyres. These are the option consulted on in 2017 (200m^3) and a new option of 100m^3 which is intended to provide a stronger framework for mitigating key environmental and public health risks.
3. Permitted activity rule with requirements: The introduction of a permitted activity rule with requirements for outdoor tyre storage between 40m^3 and the volume threshold for discretionary resource consent.

1. Change to proposed council responsibility

It is now proposed regional councils, rather than territorial authorities, be responsible for implementing, administering and enforcing the NES. There are two reasons for this proposed change.

First, it is considered that responsibility for the most significant risks associated with outdoor tyre storage (fire, chronic leaching) is better aligned to the functions of regional councils than district councils. For instance, while district councils can manage land use for a range of reasons such as water quality, regional councils have specific functions to manage the discharge of contaminants and control the use of land to manage water quality. Regional councils are also more involved in monitoring and enforcement in relation to the unauthorised storage of tyres. The voluntary *Guidance for storage and stockpiling end-of-life tyres for local government* was developed by a group comprised primarily of regional councils (Waikato Regional Council, 2017).

Second, the proposed change would ensure the NES can address risks associated with existing stockpiles of tyres. The 2017 proposal stated the NES would be the responsibility of district councils and therefore would not apply to existing tyre piles due to existing use rights provisions (section 10 of the RMA). At the time, some submitters, including Local Government New Zealand, requested the NES apply to existing stockpiles given the associated risks.

The nature of existing use rights depends on whether it is a district rule or regional rule that requires a resource consent for the activity. Shifting responsibility for issuing resource consents under the NES to regional councils will ensure the risks associated with existing stockpiles can be addressed.

1. Do you agree with responsibility for the NES sitting with regional councils rather than district councils? Why?

Amenity effects

Amenity effects are defined as effects that make the living environment either pleasant and attractive, or the converse.

District councils would continue to have the ability to address amenity effects associated with the outdoor storage of tyres through their plan rules, as section 43A(5)(b) of the RMA enables plan rules to address the effects of an activity not dealt with in the NES.

If the NES regulation is gazetted, we intend to develop guidance to support the implementation of the NES. This guidance would also clarify the effects not dealt with in the NES and show district councils how they are still able to manage certain adverse effects.

As with the status quo, we anticipate enforcement action based on amenity effects would not be required often given tyre piles are not typically located in residential areas or areas of high amenity or visual value. Overall, we expect the NES may indirectly help to address visual amenity, for example through setbacks or the reduced size of piles.

2. Threshold options for resource consent

A key decision for the NES is the threshold (defined in terms of the volume of tyres) above which a resource consent would be required. Setting the threshold involves a balance between risk mitigation benefits against compliance requirements and associated costs.

In response to submissions that thought a 200m^3 threshold would be too high, this proposal seeks feedback on a lower threshold (100m^3).

When assessing an application for a resource consent, councils would have discretion to impose any conditions needed to address these effects:

- fire risk and associated adverse effects (discharge to air, contamination of soils, run-off to water bodies or the coastal marine area)
- discharge of contaminants to soils, water bodies and coastal marine area through leaching.

The permitted activity rule would continue to apply, with the council having discretion to be more stringent if needed to address the effects.

We estimate a discretionary activity resource consent would cost the applicant a fee of between $1000 and $4000, although this varies between councils.[2] There may also be costs associated with advice relating to the consent application and, of course, the costs of mitigating risks and meeting the requirements of the consent. The latter will vary according to a range of factors – notably individual circumstances (size, scale, location of tyre pile), and the extent to which the risks associated with any particular tyre pile are already being well managed.

The requirement for resource consent will not apply to tyres used as weights on silage stacks (see page 20 for explanation).

[2] These cost figures are indicative of council fees only, and do not include other costs faced by the applicant.

All options would have a degree of effectiveness at reducing the risks of tyre storage. In terms of fire risk, Fire and Emergency New Zealand advises 360m^3 as a maximum size tyre pile (located on sites with other measures to minimise fire risk).

We will publish implementation guidance along with the NES to support consistent implementation (see page 22 for more details).

2. Do you support having a resource consent threshold for the outdoor storage of tyres below the previously proposed 200m^3? Why?

3. Adding a permitted activity rule with requirements

What is a permitted activity rule?

An activity specified as a permitted activity in a rule that is included in a regional plan can occur 'as of right' without the need to obtain a resource consent, provided the activities comply with the requirements stated in the rule.

How a permitted activity rule would work

If the proposed NES proceeds with either a 200m^3 or 100m^3 threshold for discretionary resource consent, we propose adding a permitted activity rule for the outdoor storage of tyres between 40m^3 and the discretionary activity threshold. This permitted activity rule with requirements would result in tyre piles just below the volume threshold becoming permitted activities with associated requirements (or standards).

This proposal means sites with outdoor tyre storage greater than 40m^3 but less than the discretionary activity threshold would be obliged to comply with the permitted activity rule, otherwise they would require a discretionary resource consent.

The proposal aims to provide a more nuanced rule framework in the NES, recognising smaller tyre piles also have the potential for adverse effects, particularly when located near sensitive environments.

Some industry submitters indicated a preference for the NES to provide clear rules instead of allowing councils to be more stringent than the NES, to provide more certainty and consistency. This proposal addresses this concern – the permitted activity rule means there is no need for the NES to provide for regional councils to be more stringent.

Table 1 below sets out the requirements in detail. Note these requirements are indicative and will be refined following consultation. We are particularly interested in your feedback on the main adverse effects and sensitive environments that should be dealt with through the rule and requirements, and your suggestions for suitable requirements to ensure these are fit for purpose and do not result in undue complexity and compliance costs.

Table 1: Indicative requirements for a permitted activity rule

Permitted activity rule	
Outdoor tyre storage with a volume of between 40m³ per site and the threshold for discretionary resource consent must comply with standards a to e below. *NB: this will exclude tyres in 'active use'. We intend to define active use in the NES.*	
Indicative requirements	**Effects to be addressed**
a) The height of the tyre pile must be no more than 3m	Fire hazard and to facilitate effective firefighting in the event of a fire
b) Tyres must not be located within 50m from the centreline of power lines or other National Grid infrastructure	Fire hazard
c) Tyres must not be located within 20m of any water body	Discharge of contaminants to waterbodies (through leaching and as run-off in the event of fire), pests and visual impacts
d) Tyres must not be located within 50m of the coastal marine area	Discharge of contaminants to coastal marine area (through leaching and as run-off in the event of fire), pests and visual impacts
e) Where this requirement is complied with compliance with c. and d. is not required: Tyres must be stored on sites which have impervious surfaces and where suitable bunds are provided to prevent contaminants from being washed or spilled into natural ground or entering any piped stormwater systems or stormwater ground soakage.	Discharge of contaminants to waterbodies (through leaching and as run-off in the event of fire) and pests

3. Do you support the addition of a proposed permitted activity rule with requirements? Why/why not?
4. Do you have any suggestions on the indicative requirements in Table 1?

The options

Feedback is sought on three potential options set out in table 2 below.

Table 2: Options

Option A	**200m^3 threshold for resource consent – original proposal in 2017**
Threshold	Tyres in volumes equal to or more than 200m^3 per site[3] would be a discretionary activity and therefore a resource consent would be needed to store these tyres outdoors. 200m^3 is estimated to equate to approximately 2500 stacked standard passenger tyres (EPUs).
Impacts	The people likely to have outdoor tyres equal to or more than this threshold would be tyre collectors and recyclers and some mining operations. To comply with the NES, these people would need to either reduce the volume of tyres per site to below the threshold, or seek a resource consent. Councils would have discretion to require any conditions needed to address the environmental effects in the NES.
Effectiveness	This option would be effective at reducing risks of tyre storage, but a number of submitters to the 2017 consultation were concerned that this threshold was too high. Some council submitters were concerned this option would make tyre piles below the threshold a permitted activity (and therefore lawful), which could undermine approaches in regions that don't currently have a significant problem with tyre storage. Some council submitters thought this option could result in individual councils making additional rules to address tyres storage under the threshold. Some industry submitters were concerned about this scenario and preferred the NES create more certainty.
Costs	Those storing over 200m^3 of tyres would need to reduce the number of tyres on site to the 200m^3 threshold or obtain a resource consent. There would be costs to councils to implement the NES, recoverable through the fee to process resource consent applications (estimated to be $1000 to $4000).
Option B (new option)	**200m^3 threshold for resource consent permitted activity rule with requirements for tyre volumes of 40m^3 or more per site**
Threshold	This threshold is estimated to equate to approximately 2500 stacked standard passenger tyres (EPUs).
Impacts	The resource consent requirement in Option B would affect the same people as with **Option A**. The permitted activity rule would affect a wider range of persons, potentially including truck tyre retreaders, tyre retailers (particularly in rural or provincial areas where collections may be less frequent), livestock farmers and businesses either dealing in or using large vehicle tyres (whether as suppliers or through the storage of the spares, for instance ports or forestry companies). Tyres may need to be moved to meet the set-

[3] 'Site' has the same meaning as in the National Planning Standard.

	back requirements, or alternatively bunding would be required to prevent run-off in the event of a fire.
Effectiveness	This option would be more effective than **Option A** at reducing the risks of tyre storage.
Costs	There would be costs to those storing over 200m^3 of tyres in either complying with the permitted activity requirements or paying to get a resource consent. As with **Option A** above, the cost to councils of processing resource consent applications would be recoverable through the fee to the applicant. The NES would also provide for actual and reasonable costs of permitted activity monitoring and addressing non-compliance, which can be on-charged to the regulated party.
Option C (new option)	**100m^3 threshold for resource consent** **permitted activity rule with requirements for tyre volumes of 40m^3 or more per site**
Threshold	This threshold is estimated to equate to approximately 1250 stacked standard passenger tyres (EPUs).
Impacts	This option would capture a larger number of tyre stockpiles and may provide a stronger framework for mitigating key environmental and public health risks. It is expected that a 100m^3 threshold would affect tyre collectors and recyclers. Anecdotally, it is unlikely to affect smaller retailers and re-treading businesses. This option could entail these businesses needing to organise more frequent pickups of tyres or seek a resource consent. We would like to know which types of businesses would be affected. The lower threshold may result in tyre collection businesses needing to seek resource consent for more than one site. In this case, the application may be processed as a 'bundled' consent. The permitted activity rule would have the same impacts as for **Option B**.
Effectiveness	This option may be more effective than **Options A and B** at reducing environmental risk and harm. The permitted activity rule can be expected to reduce both the risks and harm of tyre storage.
Costs	This option would have greater compliance costs than **Option A**.

5. Which of the options (200m^3 or 100m^3) for setting a resource consent threshold do you support? Why?
6. How would the proposed options affect your business/organisation?

Summary of NES proposal

Table 3 summarises the proposal in its entirety.

Table 3: Summary of NES proposal

Tyre volume	Control
Between 40m^3 and the prescribed volume threshold per site of tyres stored outdoors (either a 200m^3 or 100m^3 threshold)	Tyre piles of this size would be a permitted activity if they comply with the permitted activity requirements: a) the height of tyre pile must be no more than 3m b) tyres must not be located within 50m from the centreline of power lines and other National Grid infrastructure c) tyres must not be located within 20m of any water body d) tyres must not be located within 50m of the coastal marine area e) an alternative to complying with conditions c and d is for the tyres to be stored on sites which have impervious surfaces and where suitable bunds are provided to prevent contaminants from being washed or spilled into natural ground or entering any piped stormwater systems or stormwater ground soakage.
Large quantities of tyres (in volumes equal to or more than the prescribed volume threshold per site) NB "site" as defined by the National Planning Standard.	Classified as a discretionary activity. Any storage of tyres that exceeds the threshold would need to obtain resource consent from the consent authority. A discretionary activity status enables the consent authority to consider any relevant matter when making a decision on the application and imposing consent conditions. The implementation guidance for the NES would outline relevant matters to consider when assessing resource consent applications for tyre storage under the NES, including good practice and mitigation methods to manage adverse effects and minimise risks to the environment and communities (see 'Effects to be addressed' below). When assessing an application for a discretionary activity, consent authorities would have discretion to consider any relevant matters, with (non-binding) guidance to consider the following matters: • effects on water bodies and the coastal environment • effects on soil • fire risk • the risk of leaching contaminants • the sensitivity of the receiving environment • proposed mitigation methods to manage actual or potential adverse effects (eg, location and turnover in relation to leaching) • proposed methods to manage the risk of fire (eg, security, bunding, access to a water supply) • the provision of a bond to secure performance of conditions. Effects to be addressed:

	• fire risk and associated adverse effects (discharge to air, contamination of soils, run-off to water bodies or the coastal marine area) • discharge of contaminants to soils, water bodies and coastal marine area through leaching.
In addition, the NES would:	• Be implemented and enforced by regional councils • Allow for amenity, landscape and heritage provisions in district plans to continue to apply • Apply to tyres in all states – whole, chipped or shredded • Define tyre storage as tyres stored on a property, with no minimum timeframes imposed before tyres were deemed to be 'stored' • Exempt farm silage tyres, when stored in the off-season, from the requirement for a resource consent (but would be subject to the permitted activity rule) • Not apply to tyres in a building as these do not present the same risks as outdoor storage of tyres. • Become operative at least one month after the NES is gazetted (length to be determined)

Other national environmental standard matters

By way of an update for the sector and additional context, this section sets out our interim analysis on other aspects of the proposed NES for the outdoor storage of tyres. Feedback is also welcome on these issues.

Indoor tyre storage

In the 2017 discussion document, indoor storage was not in scope because tyres stored indoors have the benefit of being more secure, covered and not in public view, and therefore do not present the same degree of adverse effects and risks. Legitimate tyre businesses that store tyres indoors have an incentive to store them safely to protect their investment and for insurance purposes. However, two submissions suggested the scope of the NES should be extended to include indoor storage of tyres, noting examples in Hamilton and Australia where unscrupulous waste collectors had stockpiled end-of-life tyres in abandoned warehouses and the local council had to cover the cost of removal to make the land usable again.

We are interested in stakeholders' views on this and have included a question about the desirability of widening the scope of the proposed NES to include indoor storage.

7. Do you think the scope of the proposed NES should be extended to include indoor tyre storage? Why/why not?

Definition of a "site"

The threshold in the NES would apply to a site rather than to individual tyre piles. This would avoid the scenario of multiple tyre piles below the threshold being stored on one site to avoid the need to obtain a resource consent.

Before considering what threshold is most appropriate for an amount of tyres to sit on a parcel of land, it is important to determine how the parcel of land will be defined.

As a result of consultation, the interim conclusion has been the threshold should be measured as the volume of tyres per site. The National Planning Standards include a definition of 'site'. It is recommended the definition of 'site' for the purposes of the proposed NES be the same as the definition in the National Planning Standards which is as follows:

a) an area of land comprised in a single record of title as per Land Transfer Act 2017; or

b) an area of land which comprises two or more adjoining legally defined allotments in such a way that the allotments cannot be dealt with separately without the prior consent of the council; or

c) the land comprised in a single allotment or balance area on an approved survey plan of subdivision for which a separate record of title as per Land Transfer Act 2017 could be issued without further consent of the council; or

d) except that in relation to each of sub-clauses (a) to (c), in the case of land subdivided under the Unit Title Act 1972 or 2010 or a cross-lease system, a site is the whole of the land subject to the unit development or cross lease.

Definition of ‘tyres’

The proposed NES consultation document included the following definition of tyres:

> *“all pneumatic (air-filled) tyres for cars, motorcycles, trucks, buses, off-road vehicles, aircraft, and certain solid tyres (forklifts), but not bicycle tyres.”*

Many submitters questioned the exclusion of bicycle tyres from the definition. The definition used in the consultation document also inadvertently omitted some types of motorised vehicles including tractors, cranes, quad bikes and golf carts.

Bicycle tyres are comparable to tyres on motorised vehicles in that they (a) are made primarily of rubber and (b) the beads inside the tyre consist of wire bundles (the exception being a folding tyre). While bicycle tyres present very limited risk of adverse environmental effects, we see no effects-based rationale for them being exempt from the NES. In cases where there is a mixture of tyre types on a site, it may make compliance and enforcement simpler if all tyres are in scope.

We agree with submitters who did not see a meaningful difference between motorised vehicle tyres and bicycle tyres. We also agree there is a need for maximum clarity in the definition. Therefore, we recommend the definition of tyres cover all tyres fitted to motorised vehicles and non-motorised vehicles. The revised definition would cover tyres from vehicles other than those included in the initial proposal, such as wheelchairs and scooters, as well as from bicycles.

Shredded or chipped tyres and baled tyres

Some previous submissions suggested shredded or chipped tyres should have a lower threshold for resource consent because they are at higher risk of leaching, as there is more surface area and metal material exposed to the elements.

This concern is acknowledged. However, there are two factors mitigating the potential negative effects. First, those processing shredded tyres are likely to have a discharge consent from their council. Second, due to their nature, chipped or shredded tyres are generally stored in containers and therefore pose a much reduced risk. Our current thinking is that one threshold is sufficient for the NES, including baled tyres.

Crumb rubber is out of scope because the material has been changed, the metal component having been removed.

No minimum timeframes for storage

‘Storage’ would be defined as presence on a property, with no minimum timeframes before tyres were deemed to be ‘stored’.

Some stakeholders have previously stated tyres should not be counted toward the threshold if they have been stored for a short time. It is acknowledged turnover is a mitigating factor for leaching, but turnover does not reduce fire risk. We intend to cover turnover and time stored in implementation guidance, so it is a factor when considering consent conditions (ie, no conditions would be necessary to address chronic leaching if there is evidence of regular turnover).

Tyres in ‘active use’

We intend the NES will not capture tyres in ‘active use’ rather than in storage.

The 2017 consultation document did not include any specific exemptions but suggested that any tyre stores less than 200m^3 would not be subject to the proposed NES. This threshold was anticipated to exclude small tyre stores for legitimate purposes (such as tyres used for silage cover) which present a reduced level of risk.

Submitters' opinions diverged as to whether certain activities involving the outdoor storage of tyres should be exempt. Many of the activities requested by submitters to be exempt are end-of-life tyres being re-used for other purposes, for instance tyres used around raceways and equestrian areas.

The NES will distinguish between tyres that are being stored and tyres that are in active use for a particular purpose, as the latter generally present very limited environmental risk. For example, the *Guidance for Storage and Stockpiling End of Life Tyres for Local Government* (Waikato Regional Council, 2017) recognises there are a wide variety of uses for tyres that present minimal, if any, environmental risk and do not warrant intervention. This list of activities provided in the guidance includes (but is not limited to) equestrian arenas, raceways, gun ranges, gardens, art, retaining walls and tyre houses (not in waterbodies or the coastal marine area), buffers and structures such as wharves and jetties, and tyres used as weights such as on silage stacks.

Any instances where these uses of tyres may be present in large quantities (for instance tyres used as retaining walls) would still be subject to RMA requirements such as section 12 (restrictions on use of coastal marine area) and section 15 (discharge of contaminants into the environment). Councils can use the enforcement provisions in the RMA if these sections are breached and the scale or the location of the tyres elevated the risk (although it can be difficult to prove adverse effects on the environment).

Farm silage tyres exemption

We propose exempting farm silage tyres from the resource consent requirement, but having them subject to the permitted activity rule, whether they are on silage stacks or being stored in the off-season.

According to Federated Farmers, the 200m^3 threshold could affect nearly 7000 farms (10 to 15 per cent of livestock farms) using tyres for silage production. This could potentially result in significant costs for these farmers to obtain resource consent without requiring any changes to actual best practice.

The original policy intent (as stated in the 2017 proposed NES consultation document) was that tyres used legitimately for silage cover would not be affected by the NES because they were thought to be under the threshold.

One reason supporting an exemption for silage tyres is the existing controls in regional plans relating to silage, production and leachate. Most regional plans have rules on the location of silage (eg, setbacks to waterbodies) to prevent leachates entering water bodies. These rules may indirectly mitigate the adverse effects of silage tyres by controlling the proximity of these tyres to sensitive environments, such as waterbodies. This mitigation assumes tyres are stored on silage stacks or directly next to a silage stack when not in active use, which is common practice across the country.

The NES will need to ensure the exemption will not result in loopholes. It will be important for the NES to be able to capture tyres on any sites, including farm properties, which are not genuine silage tyres. We will work with the Ministry for Primary Industries on a suitable definition and the

accompanying implementation guidance. We welcome any suggestions on ways to make this workable and avoid loopholes.

8. Do you agree with the proposed exemption from the resource consent requirement for farm silage tyres? Why/why not?

Treatment of underground tyres

Some previous submitters suggested tyres buried underground on a site might be part of the threshold for that site. Our view is that the act of burying tyres is subject to landfill rules, requiring landfill consent. If a consent has not been sought the council should take enforcement action.

9. Do you have comments on the other aspects of the proposed NES?

Implementation

Guidance

We intend to publish implementation guidance alongside the NES, including how to address adverse effects of tyres above and below the threshold. The guidance will cover technical aspects of the requirements on those who store tyres, and aim to create shared understanding and expectations of what is required among councils and those businesses storing tyres. It will also support the consistent and cost-efficient application of the NES.

While our guidance will not have legal weight, past experience has shown that non-statutory guidance can be effective to:

a) support the consistent implementation of RMA national instruments

b) assist with disputes about interpretation and implementation approaches.

Monitoring and evaluation

Councils have the main role in monitoring the implementation and use of the NES. Councils are empowered to charge for monitoring compliance with a resource consent required by the NES. They can also charge for monitoring permitted activity requirements.

We intend to evaluate the NES approximately one year after it has come into force, by way of a survey to assess outcomes and any issues associated with the NES.

Next steps

Following the consultation period, we will analyse the submissions and make our recommendations to the Minister (and Associate Minister) for the Environment (as required by section 46A of the Resource Management Act 1991).

The Government will then make policy decisions on the NES. A Regulatory Impact Statement and an analysis under section 32 of the RMA will be completed at this stage.

We expect the NES will be completed and gazetted by August 2020 (with implementation guidance published at the same time). The NES would come into force at least 28 days after it is gazetted (or the NES could specify a longer lead-in time – this is yet to be determined).

When the NES comes into force (becomes operative), under section 20(2) of the RMA there is a period of six months for affected persons to apply for a resource consent.

Consultation questions

Please provide explanations with your answers:

1. Do you agree with responsibility for the NES sitting with regional councils rather than district councils? Why?
2. Do you support having a resource consent threshold for the outdoor storage of tyres below the previously proposed 200m^3? Why?
3. Do you support the addition of a proposed permitted activity rule with requirements? Why/why not?
4. Do you have any suggestions on the indicative requirements in table 1?
5. Which of the options (200m^3 or 100m^3) for setting a resource consent threshold do you support? Why?
6. How would the proposed options affect your business/organisation?
7. Do you think the scope of the proposed NES should be extended to include indoor tyre storage? Why/why not?
8. Do you agree with the proposed exemption from the resource consent requirement for farm silage tyres? Why/why not?
9. Do you have comments on the other aspects of the proposed NES?

How to make a submission

We welcome your feedback on this consultation document. The questions posed in this document are a guide only and all comments are welcome.

To ensure your point of view is clearly understood, you should explain your rationale and provide supporting evidence where appropriate.

You can make a submission in two ways.

1. Use our online submission tool, available at https://www.mfe.govt.nz/consultations/outdoor-storage-tyres
2. Write your own submission by responding to the consultation questions above and emailing it to us at: tyres@info.mfe.govt.nz. We can accept either a PDF or Microsoft Word document (2003 or later version).

Alternatively you can mail your submission to:

NES Tyres Consultation
Ministry for the Environment
PO Box 10362, Wellington 6143.

If you are posting your submission, include

- the title of the consultation
- your name or organisation
- your postal address

- your telephone number
- your email address.

Submissions close at 5pm on Wednesday 25 March 2020.

Contact for queries

Direct any queries to: tyres@info.mfe.govt.nz

Publishing and releasing submissions

All or part of any written submission (including names of submitters) may be published on the Ministry for the Environment's website, www.mfe.govt.nz. Unless you clearly specify otherwise in your submission, the Ministry will consider that you have agreed to have your submission and your name posted on its website.

Contents of submissions may be released to the public under the Official Information Act 1982 if requested. Please let us know if you do not want some or all of your submission released, stating which part(s) you consider should be withheld and the reason(s) for withholding the information.

Under the Privacy Act 1993, people have access to information held by agencies about them. Any personal information you send to the Ministry with your submission will only be used in relation to matters covered by this document. In your submission, please indicate if you prefer that we do not include your name in the published summary of submissions.

If you have any questions about the publishing and releasing of submissions, or if you would like to access or correct any personal information you have supplied, email tyres@info.mfe.govt.nz.

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