PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

Publication of Exemption Granted under Section 284

The following exemption is published by the Environment Protection Authority (EPA) in accordance with section 284 of the Protection of the Environment Operations Act 1997. Section 284 of the Act provides that the EPA may exempt a person or class of persons from a specified provision of the Act or Regulations under the Act. The Board of the EPA approves the making of the exemption.

Dated:

LISA CORBYN
Director General
Environment Protection Authority
PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

Order Granting Exemption under Section 284

Preamble

This Order grants a temporary exemption to permit NSW Sugar Milling Co-Operative Limited (SMC) to use native forest bio-material, which has been approved to be cleared for major infrastructure, industrial or/and housing developments, as fuel to generate electricity. The fuel is to be used at the Broadwater (south of Ballina) and Condong (north of Murwillumbah) cogeneration plants located on the NSW North Coast.

SMC requested that the EPA Board consider, under section 284(2) of the Protection of the Environment (Operations) Act 1997 (the Act), the granting of an exemption from clause 97 of the Regulation. Clause 97 which specifies that:

The occupier of any premises who causes or allows native forest bio-material to be burned in any electricity generating work in or on those premises is guilty of an offence.

Native forest bio-material is defined as the bio-material comprised in any native tree.

The prohibition exists to ensure there is no incentive provided for the clearing of native vegetation biomass by allowing its use for the purposes of generating electricity or burning as a fuel. Previously, environment groups have expressed concerns about allowing the use of native vegetation from clearing and forestry operations on public and private lands. Their concerns were focussed on the potential increase in clearing and subsequent impacts on biodiversity if native biomass was used for energy production. These concerns contributed to the development of the legislation prohibiting the use of native biomass.

SMC requested that the EPA Board consider a temporary exemption to permit the burning of native forest bio-material that is derived from developments that are approved under relevant planning legislation.

The exemption would apply for two years from the date of gazettal of the exemption and SMC would continue investigations to identify and secure alternative fuel sources during this period.

The proposed order contains conditions that require SMC to notify the Environment Protection Authority, in advance, of each proposed source and the predicted volumes of native forest bio-material to be received from that source. SMC must also report at monthly intervals on the actual volume received from each source.

The native forest bio-material to be used by SMC to generate electricity is required to meet the Office of the Renewable Energy Regulator’s (ORER) criteria for Renewable Energy Credits. Previously, the Land and Environment Court’s approval for the Broadwater co-generation plant required all fuel to meet this requirement and the major conservation groups were supportive of this as it provided a second level of checking for fuel sources. ORER has strict requirements and native biomass material cleared for agriculture purposes is not permitted to be used.
The Environment Protection Authority has reviewed the proposal and concluded that the use of native forest biomass in accordance with this exemption does not pose a significant risk to human health, property or the environment.
Background

I. The NSW Sugar Milling Co-operative (SMC) consists of approximately 600 cane growing families on the North Coast of NSW. SMC operates three sugar mills at Condong (north of Murwillumbah), Broadwater (south of Ballina) and Harwood (north of Grafton).

II. Each mill holds an Environment Protection Licence (EPL), issued by the Department of Environment, Climate Change and Water (DECCW).

SMC operates 30 MW cogeneration plants at the Broadwater and Condong sugar mills which are capable of producing electricity sufficient to supply approximately 60,000 homes. These commenced operation in late 2008.

It was originally proposed that the sugar cane would be harvested green (unburnt) and the excess cane leaf-trash would be used to fuel the boilers to generate electricity. However, difficulties in extracting sugar from green cane were encountered due to the increased bulk associated with processing the entire cane stalk unburnt. Ongoing plant breakdowns and the reduction in the volume of sugar extracted have further compromised the financial viability of the Company. SMC members returned to burning sugar cane in the field to maximise sugar extraction.

III. Producers of electricity from renewable sources, such as SMC, are eligible to receive renewable energy credits (RECs) from the Office of Renewable Energy and Regulation (ORER).

IV. SMC has advised the EPA that poor sugar cane crops in 2008 and 2009, the depreciation in the value of RECs, the outstanding costs related to installing the cogeneration plants and the shortage of approved boiler fuel, have placed considerable financial stress on the cogeneration plants and the NSW sugar industry.

V. Both cogeneration plants are currently closed due to the shortage of approved fuels. The closure of the cogeneration plants continues to place financial pressure on SMC due to the inability to sell electricity to the grid and claim resource funding via RECs. This position is further compounded due to ongoing costs related to servicing original debt that was incurred to install the cogeneration plants. In turn, if the plants closed, there would be loss of employment in the two mills, the co-generated electricity would be replaced with power from less environmentally friendly sources and there would be no mechanism or incentive to work towards the cessation of cane burning in the field.

VI. The Protection of the Environment Operations (General) Regulation 2009 (the Regulation) provides in clause 97 that the occupier of any premises who causes or allows native forest bio-material to be burned in any electricity generating work in or on those premises is guilty of an offence. This provision commenced in 2003 and the aim of the regulation was to prevent an incentive to burn native timber and hence increase the rate of clearing of native vegetation by providing a financial incentive.
VII. SMC has requested a temporary exemption to use native forest bio-material that has been cleared as part of approved major infrastructure, industrial or housing development projects, as a fuel to generate renewable energy. Examples of these projects include the Pacific Highway Upgrade and a major residential development in south-east Queensland.

VIII. Sections 284(1) and (2)(b) of the Protection of the Environment Operations Act 1997 provide that the EPA may exempt a person or class of persons from any specified provision of the Act or the regulations under the Act in circumstances where:

(i) the EPA is satisfied that it is not practicable to comply with the relevant provision or provisions, by implementing operational changes to plant or practices, and

(ii) the EPA is satisfied that non-compliance with the provision or provisions will not have any significant adverse effect on public health, property or the environment, and

(iii) the Board of the EPA approves the granting of the exemption.

IX. The EPA has concluded from its review of all relevant information that:

(i) the exemption will be restricted to native forest bio-material that is derived from developments that have received planning approval under Part 3A of the Environmental Planning and Assessment Act 1979 in NSW or all the appropriate planning approvals under relevant state legislation outside NSW; and

(ii) no other appropriate fuel is immediately available and no plant or operational changes are achievable at present due to financial constraints; and

(iii) the exemption will allow SMC to continue operating and producing renewable energy, whilst concurrently identifying, securing and transitioning to an alternative fuel source; and

(iv) the proposed fuel is a standard fuel as defined in the DECCW’s Guidance Note: Assessment of Non-Standard Fuels and its use would have no additional human health consequences than sawmill wood waste that is currently used by the mills to generate electricity (no changes to the stack emissions are expected); and

(v) permitting the temporary use of the native forest biomass will allow the continuation of the biogeneration plant which will ultimately, if sugar cane waste is eventually used as the main fuel source, be a more positive environmental outcome than the return to the previous practice of burning of sugar cane crops pre-harvest in the field.

X. On 8 March 2010, the Board of the EPA approved the granting of the exemption, subject to the conditions outlined in the Exemption Order.
The Order

By this Order, the Environment Protection Authority (EPA), with the approval of the Board of the EPA, grants NSW Sugar Milling Co-Operative Ltd (SMC), ABN 52 052 052 209, an exemption from clause 97 of the Protection of the Environment Operations (General) Regulation 2009 (the Regulation) in relation to using native forest bio-material to generate electricity. The only native forest bio-material that may be used is that which has been cleared in accordance with an approval that has been issued by the relevant government authority. Clearing must be associated with major infrastructure, industry or residential developments only.

The exemption applies for two years from the date of being granted.

The EPA is satisfied that:

(a) It is not practicable for SMC to implement operational changes to the plant or practices at this time to comply with clause 97 of the Regulation as plant changes are not financially viable and this time and no alternative fuel source is available.

(b) Non-compliance with clause 97 of the Regulation will not have adverse effects on public health, property or the environment as the EPA considers the burning of native forest biomaterial to be of equal or better health and environmental consequences to other fuels currently used.

The exemption is granted under s284 of the Protection of the Environment Operations Act 1997 subject to the following conditions:

1. SMC must comply with the Pollution Reduction Programs detailing the actions to
   a. Ensure alternative renewable fuel sources are in place within two years, to prevent any need for reliance on material accessed under this order beyond the expiry of this Order.
   b. Process whole cane and recover trash for renewable energy generation within three years.

2. SMC must comply with all other Environment Protection Licence conditions for each mill.

3. SMC must provide the EPA with written notification at least seven days in advance of each source of native forest bio-material and the predicted volumes of this material proposed to be available from this source to be used as cogeneration plant fuel. This notification must include a copy of the relevant planning approval permitting the clearing, issued by the appropriate planning authority in the relevant State.

4. All native forest bio-material to be used must be sourced from clearing undertaken either in accordance with an approval issued under Part 3A of the Environmental Planning and Assessment Act 1979 in NSW or the appropriate approval from the relevant government authority for sources outside NSW.

5. No timber suitable for milling or other higher value uses may be used as fuel in the cogeneration plants.
6. No bio-material from forestry operations (including thinnings) in native forests on public or private lands, or from clearing associated with rural or agricultural activities may be used.

7. All fuel to be used must meet the requirements of the Commonwealth Office of the Renewable Energy Regulator and be applicable for Renewable Energy Credits.

8. SMC must continue to explore efforts into alternative fuel sources for long term use in the cogeneration plants and invest in appropriate technology to process and utilize sugarcane waste for this cogeneration plant, and must provide progress reports to the EPA at three monthly intervals detailing progress on identifying and securing an alternative fuel source.

9. SMC must keep records and must submit those records monthly to the EPA. Records must include details of the volume, source and type (chipped or logs) of all native forest biomaterial received from each source and the gross amount of electricity generated. Information for each source must be presented separately.

Dated:

LISA CORBYN  
Director General  
Environment Protection Authority