

14/04/09

Dr. Stephen Bygrave
Assistant Secretary Coverage & Market Development Branch
Department of climate Change
GPO BOX 854
Canberra ACT 2601

Dear Sir,

RE: Submission in respect to the CPRS Exposure draft legislation

In response to your request (Sydney Workshop 26 March 2009) for comments on the operation of the 'threshold' and determination of the 'legacy waste profile' detailed in the exposure draft legislation we are pleased to make the attached submissions.

In developing these submissions we have attempted to embrace the intent behind each issue. For example:

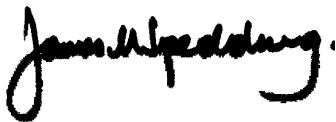
- in respect to the 'threshold' we have returned to the original intent of this provision which was to guarantee fairness by ensuring that 'uncovered' facilities cannot take advantage of the cost difference created by the CPRS.

- in respect to the commencement date for 'legacy waste' we have reverted to the comments of the White Paper page 6-33 which states "legacy [waste] emissions will comprise the whole solid waste sector in 2010 and will continue to be present in significant (but diminishing) quantities for decades to come"

We trust these submissions are of assistance as you work through the exposure draft.

If you have any queries please do not hesitate to contact me on 0400 880 677.

Kind regards



Max Spedding
Secretary
ALOA

(4 attachments)



Submission: Exposure draft of the Carbon Pollution Reduction Scheme legislation

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Date of submission:	April 14, 2009

Please read the confidentiality statement and choose from the options below.

Confidentiality statement

All submissions will be treated as public documents, unless indicated otherwise below. Public submissions may be published in full on the Department of Climate Change website (www.climatechange.gov.au).

If your submission contains personal information of any third party individuals, please indicate below whether or not these individuals have consented to the publication of their information. If third parties have not consented to the publication of their information but you are happy for your submission to be made public, the Department will delete the personal information of third parties prior to publishing the submission on the Department of Climate Change website.

Any requests made under the Freedom of Information Act 1982 for access which is wholly or partly confidential will be determined in accordance with that Act.

Confidentiality

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2

3. I am/we are happy for this submission to be treated as a public document and understand that the submission may be published on the Department of Climate Change website

Personal Information

Please choose **one** of the options below by **deleting the options that are not applicable**.

1..

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Carbon Pollution Reduction Scheme Bill

Part/s	Division/s	Clause/s	Comment
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Part 3	Division 2, Subdivision B	20, 21, 22	See attached documents

Consequential Amendments Bill			
Schedule	Part/s	Item/s	Comment

Australian Climate Change Regulatory Authority Bill			
Part/s	Division/s	Clause/s	Comment

General comments

Please return **by 5pm (AEST) on 14 April 2009** to:

The CPRS Exposure Draft Team
Emissions Trading Division
Department of Climate Change
GPO Box 854
Canberra ACT 2601
Email: emissions.trading@climatechange.gov.au

**RECOMMENDED AMENDMENTS TO
CARBON POLLUTION REDUCTION SCHEME BILL 2009**

Amendments to section 20

Exemption for pre-1 July 2018 emissions attributable to legacy waste

- (7) If:
- (a) the landfill facility was open for the acceptance of waste at any time during the period:
 - (i) beginning on 1 July 2008; and
 - (ii) ending at the end of 30 June 2018; and
 - (b) the eligible financial year is included in that period; and
 - (c) during the eligible financial year, an amount of greenhouse gases was emitted from the operation of the landfill facility; and
 - (d) waste was accepted by the facility before 1 July 2010;
- so much of the amount mentioned in paragraph (c) as is, under the regulations, taken to be attributable to waste accepted by the facility before 1 July 2010:
- (e) does not count for the purposes of subsection (1); and
 - (f) counts for the purposes of whichever of subsection (4) or (5) is applicable to the landfill facility.

Threshold number

- (13) For the purposes of this section, the landfill facility's **threshold number** for the eligible financial year is 25,000, unless:
- (a) the Authority determines that a threshold of 10,000 should apply in accordance with subsection (14); or
 - (b) a landfill facility has not accepted any waste during an eligible financial year and the landfill facility's threshold number for the last eligible financial year when the facility was open for the acceptance of waste was 10,000, in which event the landfill facility's threshold number shall remain at 10,000 for 10 financial years following the landfill facility's closure.
- (14) Upon application by a liable entity which has operational control over a landfill facility (the **large landfill facility**), the Authority may determine that the lower threshold number should apply to another landfill facility located within a prescribed distance from the large landfill facility (the **small landfill facility**) if the Authority is satisfied, having regard to the matters set out in the regulations, that waste previously accepted by the large landfill facility is being transported to the small landfill facility.
- (15) If the Authority makes a determination under subsection (14) that the lower threshold number will apply to the small landfill facility, the lower threshold number will also apply to the large landfill facility until the financial year following the closure of the small landfill facility, and from this financial year the large landfill facility's threshold number will return to 25,000.

Similar amendments to be made to section 21 and 22

Amendment to section 346

Add the following:

A decision to make a determination under subsections 20(13)(a), 21(12)(a) or 22(12)(a)

**RECOMMENDED AMENDMENTS TO
CARBON POLLUTION REDUCTION SCHEME BILL 2009 COMMENTARY**

Replacement of paragraph 1.19 with the following:

1.19 Generally, entities with operational control over a landfill facility that has emissions of 25,000 tonnes of CO₂-e or more a year will be liable under the Scheme. However, if the Authority becomes aware that waste is being displaced from a landfill facility covered by the Scheme to a competitive less engineered landfill facility that is not covered by the Scheme, the Authority may determine that a threshold of 10,000 tonnes of CO₂-e should apply to both landfill facilities. A competitive less engineered landfill facility is a landfill that is licensed to accept the same types of wastes as the large landfill facility and that does not have any landfill gas capture.

Replacement of paragraph 1.113 with the following:

1.113 For the purposes of landfill facilities, emissions from a solid waste disposal source are categorised into two components. The first component is emissions from past waste, or 'legacy emissions', generated from waste deposited prior to 1 July 2010. The second component is emissions from new waste; that is, emissions from waste deposited from 1 July 2010 onwards.

Replacement of paragraphs 1.114 to 1.118 with the following:

Thresholds for covered landfill facilities

1.114 Thresholds for landfill facilities include all scope 1 emissions from the facility; that is, all scope 1 emissions that are covered under the Scheme including emissions from legacy waste and emissions from new waste.

1.115 Generally, only landfill facilities which have emissions of 25,000 tonnes or more of carbon dioxide equivalence per year will be liable for these emissions under the Scheme. *[Part 3, Division 2, clauses 20-22]* This will be determined over a financial year, or on a pro-rata basis for the number of control days for which a landfill facility was under the operational control of a controlling corporation's group.

1.116 If the Authority becomes aware that waste is being displaced from a landfill facility that meets or exceeds a threshold of 25,000 tonnes of carbon dioxide equivalence (large landfill facility) to a competitive less engineered landfill facility that does not meet this threshold (small landfill facility), the Authority may determine that a threshold of 10,000 tonnes of carbon dioxide equivalence should be applied to both landfill facilities. *[Part 3, Division 2, clause 20(13)], [Part 3, Division 2, clause 21(13)], [Part 3, Division 2, clause 22(12)]*

1.117 In making its decision as to whether to apply the lower threshold, the Authority will have regard to the matters prescribed by the regulations. These matters will include the carbon price, the volume of waste displaced, the time period of the waste displacement, the transportation costs and the distance between the two landfill facilities. The regulations will also specify that the Authority will be required to have regard to whether the small landfill facility has less developed engineering than the large landfill facility.

1.118 The lower threshold will apply to the large landfill facility, until the small landfill facility ceases to be a competitive landfill facility or closes, at which time the threshold for the large landfill facility will revert to 25,000 tonnes of carbon dioxide equivalence.

1.119 If the small landfill facility closes, and its threshold number for the last financial year that it was open was 10,000 tonnes of carbon dioxide equivalence, then its threshold for the next 10 years is 10,000 tonnes of carbon dioxide equivalence. This provision is designed to ensure that there is parity of costs between the large landfill facility and the small landfill facility whilst they are both operational, by imposing on the small landfill facility an obligation to acquit eligible emissions units for emissions arising from waste deposited prior to closure, if those emissions exceed 10,000 tonnes of carbon dioxide equivalence.

1.120 If the large landfill facility closes, and its threshold number for the last financial year that it was open was 10,000 tonnes of carbon dioxide equivalence, the threshold for both the large landfill facility and the small landfill facility will revert to 25,000 tonnes of carbon dioxide equivalence. The reason for this approach is that there will no longer be a competitiveness issue.

[Part 3, Division 2, clause 20(4-5), (13)], [Part 3, Division 2, clause 21(4-5), (13)], [Part 3, Division 2, clause 22(4-5), (12)]

Amendment of paragraph 1.121 and insertion of new paragraphs after paragraph 1.122

1.121 Emissions from legacy waste are excluded from the Scheme until 2018 and are not included as part of a landfill facility's liability until then. Therefore, a landfill facility's liability until 2018 is annual total emissions generated minus the emissions set out in the legacy waste emissions profile (as shown in the example detailed in Figure 1) and emissions captured through gas collection (in accordance with the allocation arrangement set out in paragraph 1.23 below). [Part 3, Division 2, clause 20(7)], [Part 3, Division 2, clause 21(7)], [Part 3, Division 2, clause 22(7)]

1.122A The legacy waste emissions profile for a landfill facility will be measured using the methods set out in the *National Greenhouse and Energy (Measurement) Determination 2008* (as amended). Measurement will be undertaken by assuming that the landfill facility closed on 30 June 2010. The legacy waste emissions profile will be reported in the *National Greenhouse and Energy Reporting Act 2007* report submitted by a liable entity for the first financial year in which a liability under the Scheme arises (the liable entity's first Scheme report).

1.122B The legacy waste emissions profile set out in the liable entity's first Scheme report will be applied in each subsequent financial year until 2018 to calculate the landfill facility's liability, unless:

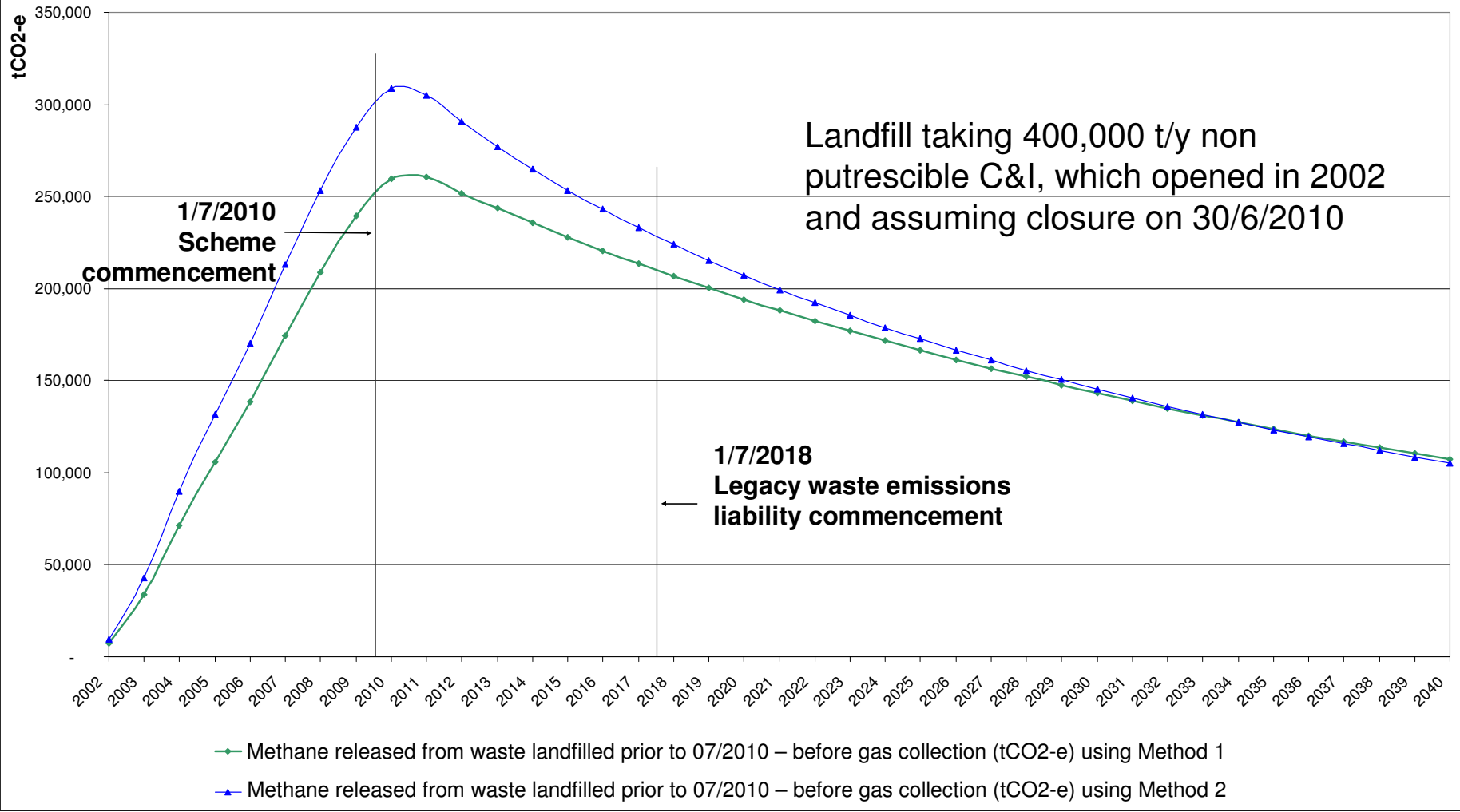
- (a) under Method 1 of the *National Greenhouse and Energy (Measurement) Determination 2008* a correction is made in a particular financial year to the overall landfill gas generation estimate to incorporate a higher level of gas capture; or
- (b) the landfill facility adopts a higher order measurement method (for example, moves from Method 1 to Method 2); or
- (c) the global warming potential for methane set out in regulation 2.02 of the *National Greenhouse and Energy Reporting Regulations 2008* is amended.

1.122C If a correction is made in a particular financial year to the overall landfill gas generation estimate in accordance with subparagraph 1.122B(a) above, the legacy waste emissions profile for that landfill facility shall also be amended for that financial year in accordance with the same variation factor applied to the overall landfill gas generation estimate.

1.122D If the legacy waste emissions profile is amended as a result of any of the circumstances set out in paragraph 1.122B above, the amended legacy waste emissions profile will be reported in the *National Greenhouse and Energy Reporting Act 2007* report for the next financial year, and with the exception of an amendment made in accordance

Figure 1

EXAMPLE OF LEGACY WASTE EMISSIONS PROFILE



with subparagraph 1.22B(a) which shall only apply to the relevant financial year that a Method 1 correction is made, the amended legacy waste emission profile shall be used to calculate the landfill facility's liability for that financial year and any subsequent financial years up to 2018.

1.22E Provisions relating to the legacy waste emissions profile as detailed above will be included in the regulations.