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PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

Order granting exemption under section 284

Background

- (a) On 1 March 2022, Natural Disaster Declaration AGRN 1012 was announced by Resilience NSW in relation to storms and floods which began in February 2022. This Declaration was extended on 5 March 2022 to include additional Local Government Areas (**LGAs**). To date, a total of 62 LGAs have been declared natural disasters.
- (b) The storms and floods have generated waste such as tea tree mulch, firewood, log debris and dead sugar cane in LGAs subject to Natural Disaster Declaration AGRN 1012. An estimated 90,000 tonnes of dead sugar cane will need to be harvested but cannot be used to produce sugar. This flood generated waste, if not utilised, would likely be burnt in situ. The Environment Protection Authority (**EPA**) considers that a better environmental outcome can be achieved by permitting this flood generated waste to be used as fuel in cogeneration power plants which are licensed by the EPA and have emission limits and air monitoring requirements imposed by licence to ensure that air quality is maintained.
- (c) Cape Byron Management Pty Ltd (**CBM**) operates two cogeneration power plants. One is located at Broadwater, near Ballina and the other is at Condong, near Murwillumbah. Both power plants are licensed by the EPA for the generation of electrical power otherwise than from coal, diesel or gas. These power plants are fuelled by a number of fuel sources, including sugar cane waste (bagasse), macadamia tree off cuts and biomaterial obtained from plantation timber, sawmill residue, and trees lawfully cleared in accordance with a development consent or approval, or as part of clean-up works in a declared natural disaster area.
- (d) CBM wishes to utilise tea tree mulch, firewood, log debris and dead sugar cane generated by the storms and floods as fuel at its Broadwater and Condong cogeneration power plants. The use of this waste as fuel by CBM, without an exemption, would trigger the requirement in section 48 of the *Protection of the Environment Operations Act 1997* (**POEO Act**) to hold an environment protection licence (**EPL**) authorising the scheduled activities of waste disposal (thermal treatment) and waste storage, and the requirement in section 88 of the POEO Act to pay the waste levy.
- (e) To assist in the management and disposal of waste generated by the storms and floods, the EPA has considered whether to grant an exemption to CBM under section 284 of the POEO Act from sections 48 and 88 of the POEO Act in relation to the use of tea tree mulch, firewood, log debris and dead sugar cane generated by the storms and floods as fuel at its Broadwater and Condong cogeneration power plants.
- (f) The purpose of this Order is to exempt CBM from the requirement to hold an environment protection licence authorising the scheduled activities of waste disposal (thermal treatment) and waste storage, and to pay the waste levy, in respect of flood generated tea tree mulch, firewood, log debris and dead sugar cane from LGAs subject to the Natural Disaster Declaration AGRN 1012 that is used as fuel at its Broadwater and Condong cogeneration power plants.
- (g) The exemption will cease to have effect on 30 December 2022. The EPA considers this timeframe to be reasonable as the harvesting of the sugar cane killed by the storms and floods cannot occur until September when the cane fields have fully dried.

- (h) The EPA is satisfied that the use of tea tree mulch, firewood, log debris and dead sugar cane generated by the storms and floods will not have any significant adverse effect on public health, property or the environment. The exemption is subject to conditions to help ensure that air quality is maintained and will operate alongside CBM's licences which impose emission limits and air monitoring requirements.

Order

By this Order, the EPA, in circumstances of an emergency, being the February/March 2022 storms and floods in New South Wales, grants an exemption under section 284 of the POEO Act to Cape Byron Management Pty Limited from compliance with the requirement in:

- (a) section 48 of the POEO Act to hold an EPL authorising the scheduled activities of waste disposal (thermal treatment) and waste storage; and
- (b) section 88 of the POEO Act to pay the waste levy

in respect of storm and flood generated tea tree mulch, firewood, log debris and dead sugar cane from LGAs subject to Natural Disaster Declaration AGRN 1012 (**flood generated waste**) that is received, stored and used as fuel at the Broadwater Cogeneration Power Plant (EPL 20425) and the Condong Cogeneration Power Plant (EPL 20424).

Conditions

This exemption, granted under section 284 of the POEO Act, is subject to the following conditions:

1. CBM must keep the following records in relation to any flood generated waste that is received and used as fuel under this exemption:
 - (a) the quantity (tonnes) of each category of material
 - (b) the source of the material
 - (c) a clear description of the material
 - (d) the date the material was received and the name and address of each person who supplied the material.
2. CBM must sample and test flood generated waste received for use as fuel under this exemption for moisture upon receipt and keep a record of the sampling and testing results.
3. CBM must retain the records required by the conditions 1 and 2 of this exemption for a period of 6 year and provide a copy of the records to authorised officers of the EPA upon request.
4. CBM must carry out air monitoring at monitoring point 1 of EPL 20424 and monitoring point 2 of EPL 20425 in accordance with condition M2 of EPL 20424 and EPL 20425 when flood generated waste is initially burnt as fuel at the relevant premises under this exemption. CBM must provide a copy of the air monitoring results to the EPA within one week of receipt of the results.
5. This exemption ceases to have effect on 30 December 2022.

Duration of Exemption

This Order takes effect immediately upon the signing of this Order. The Order may be revoked, varied or renewed under section 284 of the POEO Act.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line that tapers to the right.

Jacqueline Moore
Acting Chief Executive Officer
Environment Protection Authority

16 May 2022