

Submission to the Finance and Expenditure Select Committee on “CLIMATE CHANGE RESPONSE (EMISSIONS TRADING AND OTHER MATTERS) AMENDMENT BILL” (SEPTEMBER 2012)

INTRODUCTION

1. Straterra¹ welcomes the opportunity to submit on the Climate Change Response (Emissions Trading and Other Matters) Amendment Bill. We accept that a very short time frame has been made available because of the need to complete legislative amendments in 2012.
2. As explained previously to the Government, minerals producers such as Solid Energy, OceanaGold, and Newmont Waihi Gold are significant greenhouse gas emitters, and exporters. For them, liquid fossil fuels are a significant process input into minerals extraction - e.g. excavators, hauling trucks, ore crushing equipment – rather than a transport fuel in the traditional sense. As well, underground coal mines face fugitive emissions of methane. Many such mining companies are, therefore, emissions-intensive, trade-exposed businesses. However, they are not regarded as such under the Climate Change Response Act 2002, unlike other EITE businesses. While an attempt has been made in the Bill (clause 67, to amend section 161E of the Act, refer to Appendix 1) to rectify this situation, the wording fails to achieve this aim. We propose improved wording of this provision.
3. Straterra wishes to be heard by the Finance and Expenditure Select Committee on our submission.

EXECUTIVE SUMMARY

4. Overall, the Bill is supported, for the reasons provided in Business New Zealand’s submission. Specifically, EITE industries must remain competitive under the New Zealand Emissions Trading Scheme (ETS) in light of continuing uncertainty in the development of the global climate change response, and in light of the wide range in the level of GHG-related cost imposition across different jurisdictions. The ETS needs to remain flexible, for an indefinite period, and the Bill largely achieves that aim.
5. The minerals sector has two serious concerns that remain unaddressed in the Bill, despite the Government’s stated intention to address those concerns, viz. - “Two additional emissions sources are intended to be taken into account in determining eligibility for allocation, and in calculating allocative baselines. These are fugitive coal seam methane (FCSM) and stationary

¹ <http://www.straterra.co.nz/About+Straterra>

energy use of liquid fossil fuel (LFF). Previously these emissions were not included when calculating eligibility or levels of industrial allocation.”²

6. New Zealand’s largest producers and exporters of gold and coal fail to meet a test of moderately or highly emissions intensive under the Act and the Bill because they have been unable to include **liquid fossil fuels (LFF)**, where used as a process input, in calculations of emissions intensity. A separate issue relates to **fugitive coal seam methane (FCSM)**, a waste product and health & safety management issue inherent in underground coal mining operations. Straterra has submitted previously on these matters.^{3 4}
7. As a consequence, if and when global carbon prices increase, some gold and coal producers and exporters will find themselves trade exposed compared to jurisdictions where there is no carbon price. Obviously, that is inequitable, compared to other EITE industries in New Zealand, and a deterrent to globally-mobile investment in the resource sector in New Zealand. Such an outcome would run counter to the Government’s economic policy⁵. Equally obviously, the intent of the allocation provision is to mitigate the effects of the ETS on EITE companies in relation to international exposure to the carbon price.
8. Consistent with the Government’s policy intent of 60% or 90% free allocation of emissions units for EITE industries, for activities that are not “Australian eligible industrial activities” (section 161B of the Act), at least some large mining companies ought to be able to meet either threshold, of 800t CO₂e or 1600t CO₂e per \$1m of revenue, respectively.
9. To press the point: our arguments in relation to LFF and FCSM are intended to have mining treated as an **activity** equitable with other EITE industry activities. In addition, we note that, subject to agreement on the treatment of LFF and FE, there may need to be legislative changes, or the use of the regulatory functions and powers of the Minister for Climate Change Issues (section 161A) to ensure that mining activity(ies) can be defined and interpreted in a manner that allows officials to achieve that outcome.

² Ministry for the Environment factsheet on proposed ETS amendments 2012
<http://www.climatechange.govt.nz/emissions-trading-scheme/ets-amendments/key-changes-for-participants-and-industrial-allocation-recipients.pdf>

³ Straterra submission to the ETS Review Panel, April 2011
http://www.straterra.co.nz/uploads/files/ets_review_-_members.pdf

⁴ Straterra submission on the NZETS discussion paper, March 2012
http://www.straterra.co.nz/uploads/files/straterra_submission_ets_consultation_may_2012_final.pdf

⁵ e.g., Hon Steven Joyce interview on The Nation <http://www.scoop.co.nz/stories/PO1208/S00281/the-nation-steven-joyce.htm>

Liquid fossil fuels

10. At issue is that LFF are a process input into the accessing, extraction, storage, crushing and processing of mineral ore, which are necessary steps before the product can be transported away from the mine site and sold. For that reason LFF in the mining of minerals is not a transport fuel in the traditional sense. While diesel-fuelled excavators and haul trucks that load and move ore from the bottom of the mine to a processing plant at the mine site may fail to meet a narrow definition of “stationary equipment”⁶, viz. clause 67 of the Bill, this technology is, nonetheless, the most cost-effective and practical technology available to produce minerals commodities for sale.
11. To be clear, the trucks that carry waste rock and ore out of an open pit or underground mine to a waste stockpile, or an ore crushing and processing plant within the development footprint cannot be compared to trucks moving materials on a legal or formed road. The activities are totally different, and it appears they have become confused in the Bill. The most straightforward solution is to expand the provision for “stationary equipment” in the Bill into “stationary equipment, or equipment used for the purposes of undertaking the activity within the area in which the activity occurs”. Alternatively or in addition, there is a clear distinction to be made between mine vehicles and vehicles on roads, and that is that mine vehicles are not subject to road user charges because they do not use roads, and, because of their physical dimensions and weight in many cases, cannot be permitted to use roads.
12. Furthermore, the issue of boundary definition in relation to activities has been thoroughly traversed by officials and industry, and has been clearly and precisely dealt with in the context of the New Zealand Refinery Company, and OceanaGold Negotiated Greenhouse Agreements. There is no confusion to be imagined between the use of LFF in mine operations, and the use, for example, of LFF in milk trucks transporting product from the farm gate along public roads to a milk factory.
13. We make a recommendation to enable appropriate treatment of LFF in mining.

Fugitive coal seam methane

14. The Bill provides for FCSM to be brought into calculations of emissions intensity for the purpose of allocation, with a proposed addition to section 161E of the Act: “(E) fugitive coal seam gas from coal that is *used* as part of, or to generate steam that is used as part of, the activity” (Straterra’s italics). That definition captures coal users but not coal producers, which are

⁶ It is noted that “stationary equipment” is not defined in the Act or the Bill.

generally trade exposed, both for exports as well as domestic coal (where there is competition potentially with imported coal). That is inequitable treatment of coal producers, as opposed to other EITE industries.

15. At issue is that FCSM are difficult to measure or capture, and, therefore, they are an inevitable and unavoidable waste product in coal production. As well, they pose a serious health & safety management issue for underground coal mines. Clearly, the ETS and H & S are significantly different drivers for FCSM management, posing a challenge to coal miners to optimise that management. This is highly undesirable.
16. Industry should be enabled, therefore, to concentrate on the H & S aspect of FCSM. We recommend, accordingly, that FCSM should be zero rated, via regulation (section 60 (1) (b) of the Act).

Activity definitions

17. Section 161A of the Act provides for regulations to be made for “(a) prescribing, for the purposes of subpart 2, the activities that are eligible industrial activities: (b) prescribing in respect of each eligible industrial activity, as appropriate,— (i) a description of the activity, including (but not limited to)— A) the input or inputs: (B) the output or outputs: (C) the physical, chemical, or biological transformation that takes place to transform the inputs into the outputs: (ii) whether the activity is— (A) highly emissions-intensive; or (B) moderately emissions-intensive:”
18. In relation to the above, it is noted that the extraction, crushing and processing of coal for sale meets the definition of “physical transformation” because coal from a coal seam must be processed into a granular material to a specified grain size distribution, and is often blended to achieve a specified chemical composition, to meet client requirements.
19. The processing of gold-bearing ore, in addition to crushing rock, entails chemical and electrolytic processes to dissolve, concentrate, and precipitate gold, followed by melting of the gold, pouring into moulds, and cooling into bars for export.
20. We make recommendations to clarify these matters to aid decision-making by the Minister and officials.

RECOMMENDATIONS

- a) Note Straterra’s support in general of the Climate Change Response (Emissions Trading and Other Matters) Amendment Bill;
- b) Agree that the Bill fails to address the eligibility of liquid fossil fuel (LFF) use in mining for allocation, and in calculating allocative baselines, despite the Government’s stated intent to do that;
- c) Agree to amend clause 67 of the Bill as follows: “(D) the direct use of any liquid fossil fuel in stationary equipment *or equipment used for the purposes of undertaking the activity within the area in which the activity occurs*”;
- d) Agree on the need for the Minister for Climate Change Issues to propose a regulation to exempt fugitive coal seam methane from participation in the ETS, under section 60 (1) (b) of the Act;
- e) Note that in respect of regulations made under section 161A of the Act that mining should be recognised as an “eligible industrial activity”, for the purpose of assessing eligibility for allocation, and, to that end, that the definition of the activity should include all process inputs or factors of production, notably LFF; and
- f) Agree on the need for the Minister for Climate Change Issues to regulate mining as an “eligible industrial activity” under section 161A, and other relevant sections of the Act, drawing on Recs. (b) – (e).