



October 2007

# Envirolink

This edition of Envirolink has a strong legislative influence. It shows that the Government is trying to “tick off” certain work streams as accomplished as it moves closer towards the election. The flurry of documents being continually released concerning climate change is the obvious headline, but there are many others.

## Emissions Trading Scheme

With much fanfare the Government has confirmed that an emissions trading scheme, as opposed to the previously proposed carbon tax, will be its central platform for implementing New Zealand’s commitments under the Kyoto Protocol and more generally reducing New Zealand’s greenhouse gas emissions. It is proposed that the scheme will be phased in from 1 January 2008, beginning with the forestry industry, and including all other sectors over a five year period, with agriculture and waste coming on line in 2013. Details about the scheme are outlined in our Climate Change Focus newsletters located on our website.

In conjunction with the emissions trading scheme, the Government has also announced a variety of other initiatives aimed at reducing New Zealand’s greenhouse gas emissions. These include goals to increase renewable electricity generation and to implement measures to encourage forestry and environmentally-friendly land use and generally help New Zealand progress towards a “more sustainable nation”. As a result, the Government has a number of documents that it is seeking comments on, including the tax issues with the scheme and forestry aspects of its proposal. It also intends to introduce legislation by year end to introduce the scheme and ensure that obligations under it can be effectively enforced.

## Energy Developments

The New Zealand Energy Strategy to 2050 was released on 11 October as part of the Government’s package of sustainability and climate change initiatives. The Strategy aims to set the strategic direction for the energy sector. It intends to ensure there will be security of supply and the “right” conditions for capital investment in coming years, while reducing greenhouse gas emissions. The Strategy aims to take action to produce resilient low carbon transport and low emissions power and heat while simultaneously providing affordable energy and ensuring the wellbeing of the public. It is debatable whether the Strategy itself will achieve these goals, but it is clear that it will be a source of reference for all green energy business proposals in the next few years.

The New Zealand Energy Efficiency and Conservation Strategy (“EECS Strategy”) has been released as a companion document to the Energy Strategy and will give effect to a number of the objectives in that Strategy. It aims to enable:

- “energywise” homes by improving the performance of existing and new homes, better products, better information and increasing the uptake of household renewable energy
- “energywise” business by improving the energy efficiency of industrial processes and encouraging renewable energy programmes
- “energywise” transport by managing demand for travel, encouraging more efficient transport nodes, improving the efficiency of the transport fleet and developing and adopting renewable fuels.

Unlike the earlier 2001 Strategy the EECS Strategy targets the primary production sector – providing incentives for a wide range of land-based agricultural, horticultural and forestry enterprises. It also aims to promote an efficient electricity system and promote the uptake of renewable electricity. The Energy Strategy prefers that all future electricity generation be renewable, except to the extent necessary to maintain security of supply: it sets a target of 90 percent by 2025 for renewable electricity generation.

There are many companies that will delight in the government's encouragement of renewable energy. However, the Petroleum Exploration and Production Association suggests that such a target is likely to result in more power blackouts and costs associated with constructing back-up generation sources. (The Energy Strategy does contemplate ongoing use of existing fossil fuel generation to maintain security of supply, albeit at a decreased rate.)

For now the Energy Strategy is simply policy, and achieving its objectives will require action by central and local government as well as the relevant industry sectors, but will not necessarily require legislation or further policy development. Two National Policy Statements under the Resource Management Act are to be developed in 2008 pursuant to the Strategy in relation to National Environmental Standards on electricity transmission and renewable energy. Once created these will require territorial authorities to change their district and regional plans to give effect to the policy. The Government is also considering regulatory options under the Electricity Act to support the objectives for limiting new baseload fossil fuel generation over the next ten years.

In the meantime, the Ministry of Economic Development will report progress on both the Energy Strategy and the EECS Strategy to the Minister of Energy and will publish annual progress reports. This may help increase awareness of these issues.

## Biofuels

The Government has introduced its Biofuel Bill to Parliament to implement its publicised biofuel sales obligation by primarily amending the Energy (Fuels, Levies and References) Act 1989. Mandatory biofuel use is proposed to begin in New Zealand next year, and will comprise 3.4 percent of fuel company sales by 2012.

Biofuels may be sourced from New Zealand, or from overseas. New Zealand sources are likely to initially include animal fats (tallow) and, in the future, wood-waste, syngas derived from biomass, or algae grown on sewage ponds.

The Government is aware that some biofuel production can cause the destruction of rainforests (causing greenhouse gas emissions and loss of biodiversity), and can compete unduly with food production. As a result, it has left open the possibility that biofuels may have to meet prescribed environmental sustainability standards in the future. For example the Bill suggests that specifications may be

introduced by the Government requiring qualifying biofuels to be produced from biomass grown without causing undue environmental harm and without unduly impinging on food production.

## Waste Minimisation

The Bill that the Green Party originally proposed, the Waste Minimisation (Solids) Bill, has been revamped and renamed the Waste Minimisation and Resource Recovery Bill (WMRR Bill) following submissions to the Local Government and Environment Select Committee. The aim of the WMRR Bill is to promote sustainability by encouraging waste minimisation, introducing a waste disposal levy and a "product stewardship" scheme for a list of priority products.

Priority products are products that the Minister for the Environment declares he or she is satisfied that:

- will or may cause significant environmental harm at the end of the product's life, or
- there is significant public concern about the nature or level of environmental harm arising from the product at the end of the product's life, or
- there will be benefits from the reuse, recycling recovery or treatment of the product.

Product stewardship schemes are intended to manage the product's lifecycle and will either be established by the Minister or must meet certain criteria to be accredited by the Minister. In some cases the Government will require accredited schemes to be in place before products can be sold in New Zealand.

The waste disposal levy provisions are intended to be introduced a year after the main content of the WMRR Bill is passed. The purpose of the levy is to raise revenue to fund waste minimisation projects and administration expenses, and to increase the cost of, and accordingly discourage, waste disposal.

The levy will be imposed on waste disposed at disposal facilities, with the operator of the facility paying the levy, which will inevitably be passed on to the customer. The levy has been initially set at \$10 per tonne of waste. Operators of waste disposal and resource recovery facilities will also be subject to reporting obligations to the Ministry for the Environment.

Territorial authorities will receive a share of the total levy money collected each year in order to implement and review their own newly imposed waste management and minimisation plans.

The WMRR Bill has been released for a limited consultation period, with the Select Committee due to report back to the House on 31 October 2007.

The WMRR Bill will affect:

- Product manufacturers
- Importers
- Retailers

- Consumers
- Waste disposal operators
- Recycling/Treatment business operators
- Territorial authorities.

## Contaminated Land Policy

Work continues toward the development of a comprehensive policy framework for managing contaminated land in New Zealand. The Ministry for the Environment has just released a position paper laying out a prioritised Ministry work programme towards this goal. It should keep Ministry officials busy for quite some time. The paper identifies three initiatives as being high priority:

- development of nationally consistent methods for deriving soil contaminant levels and numbers for triggering defined management actions (via a National Environmental Standard and associated guidance documents) for the protection of human health
- development of nationally consistent land-use and subdivision rules for contaminated land, possibly via a National Environmental Standard
- continued advocacy of the contaminated sites remediation fund.

The Ministry continues to suggest that a legal liability regime might only be contemplated if the absence of a regime can be clearly demonstrated to be inhibiting the clean up of pre-1991 contaminated sites (for which there is no clear liability). Exploring this topic is identified as a medium-priority, as is the concept of tracking and disposing of contaminated soil and waste. In this manner, the Ministry for the Environment is determined to take a "steady and slow" consultative approach toward development of contaminated land policy to avoid the backlash from key stakeholders it has received in the past.

## Voluntary Water Standards Now Mandatory

The Health (Drinking Water) Amendment Act came into force on 17 October. The Act was created to respond to the concern that the current organisation of New Zealand's drinking water supplies is not adequate to safeguard communities. The Act seeks to protect the health and safety of people and communities by promoting the provision of adequate supplies of safe and wholesome drinking water through amendments to the Health Act 1956. One way it aims to achieve this is by imposing legal duties on suppliers of drinking water. The Act proposes to turn current voluntary standards (found in the Ministry of Health's Drinking Water Strategy) into legal duties. Under the Act it will become a legal duty for suppliers to:

- take all practicable steps to comply with the (currently voluntary) drinking water standards
- introduce and implement public health risk management plans for the water supply (if serving more than 500 people)

- take reasonable steps to help protect drinking water sources from contamination, and
- apply to be on a register of community drinking water suppliers.

These duties only apply to suppliers above a certain size and different sized suppliers will face different obligations under the scheme.

The likely cost to suppliers of complying with this Act has been contentious. In particular there is concern about the costs faced by local government (the predominant suppliers affected by this Act), and the reality that these costs may be passed on to consumers through increased charges. There has also been concern about the costs faced by rural suppliers and the Government has agreed to help smaller communities through its Drinking Water Assistance Programme. As an answer to these concerns the Act provides for a phased timetable for compliance to enable suppliers to meet their obligations.

## Rachel Devine Joins Environment Team



Last, but not least, we are delighted to announce the appointment of Rachel Devine, as a new Partner\* specialising in Environment, Resource Management and Planning matters.

Rachel joins six other New Zealand Partners and 35 staff in the Real Estate Division within the firm specialising in Commercial Property, Resource Management / Environment / Planning, and Construction. Rachel heads the Resource Management / Environment / Planning team.

Rachel is a fantastic addition to our Real Estate team who continue to provide all aspects of advice to clients in property matters from RMA / environmental matters, to construction, to property and, if required, dispute resolution. It also reinforces the capabilities and depth in the Minter Ellison Real Estate Division throughout the Australasian offices. Rachel's NZ and international experience will be invaluable to our clients.

Rachel has previously worked in New Zealand, the UK and Europe and is an experienced environmental and public law adviser specialising in all aspects of environmental and resource management issues for private and public sector clients. This includes commercial environmental and planning advice on real estate projects, environmental dispute resolution (mediation, negotiation and litigation), and issues arising on or consequent to the sale or purchase of businesses and assets. Rachel has worked with local authorities and private clients on a range of issues arising under the Resource Management Act, the Building Acts, the Local Government Acts, Public Works Acts, and related public legislation.

Rachel will be working with our Environment/Litigation Partner Paul Radich and the environment and planning team.

\*Subject to Law Society requirements

## Key contacts



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## Further information

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### \*Disclaimer

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