



New South Wales

# Environmental Planning and Assessment Amendment (Moratorium and Restrictions on Recovering Energy from Waste) Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to restrict energy-from-waste development (which is defined as the carrying out of development for the purposes of energy recovery from the thermal treatment of waste). This Bill:

- (a) permanently prohibits energy-from-waste development in those local government areas (including all of the Sydney Basin area) that are currently classified as **critical zones for air pollutants** for the purposes of the load-based licensing scheme established by the *Protection of the Environment Operations (General) Regulation 2009*, and
- (b) establishes a moratorium on energy-from-waste development in areas outside of the critical zones for air pollutants, and
- (c) provides for the regulations to lift the moratorium in its application to a particular area, but only after expert advice has been sought from the Standing Expert Advisory Body on Energy from Waste Technology that is established by this Bill, and
- (d) requires that advisory body to be consulted in relation to any application for development consent (including consent for State significant development) to carry out energy-from-waste development on land where the moratorium has been lifted.

Although the restrictions imposed by this Bill do not apply to energy recovery from the thermal treatment of waste that has been declared to be exempt waste fuel, such energy recovery:

- (a) may still be prohibited, or require development consent, under an environmental planning instrument, or require approval under the *Environmental Planning and Assessment Act 1979*, and

- (b) may be subject to licensing requirements and other obligations under the *Protection of the Environment Operations Act 1997*, the *Waste Avoidance and Resource Recovery Act 2001* and any other relevant legislation.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1      **Amendment of Environmental Planning and Assessment Act 1979 No 203**

**Schedule 1 [1]** defines terms used in the proposed provisions.

**Schedule 1 [2]** provides that development consent cannot be granted for energy-from-waste development unless the consent authority:

- (a) has consulted with the proposed Standing Expert Advisory Body on Energy from Waste Technology about the imposition of conditions that adopt world's best practices in emissions, emissions monitoring and residual waste disposal, the impact of the proposed development on human health and on current recycling targets and any scientific or technology advances that have an impact on energy-from-waste development that should be incorporated into the operations of the proposed facilities, and
- (b) has had regard to the current *Eligible Waste Fuels Guidelines*, or other guidelines regarding energy-from-waste technology, published by the Environment Protection Authority.

**Schedule 1 [3]** makes similar provision for the granting of consent to State significant development involving energy-from-waste development.

**Schedule 1 [4]** inserts a new Part that imposes restrictions on energy-from-waste development:

- (a) **Proposed section 7A.1** defines *critical zones for air pollutants* and *Sydney Basin area*.
- (b) **Proposed section 7A.2** prohibits energy-from-waste development in the critical zones for air pollutants. That prohibition is permanent.
- (c) **Proposed section 7A.3** prohibits energy-from-waste development in all areas of the State that are outside the critical zones for air pollutants. That prohibition only applies during the operation of the moratorium for each area.
- (d) **Proposed section 7A.4** provides for the regulations to lift the operation of the moratorium for part of the State (but not for any land in the critical zones for air pollutants). The Minister must not recommend the making of regulations that prescribe all or part of the State as an area where the moratorium no longer applies unless the proposed Standing Expert Advisory Body on Energy from Waste Technology has recommended to the Minister that the area of land be prescribed.
- (e) **Proposed section 7A.5** provides for the Minister to establish the Standing Expert Advisory Body on Energy from Waste Technology and for the Chief Scientist and Engineer to chair that body.
- (f) **Proposed section 7A.6** provides that the principal function of the Standing Expert Advisory Body is to advise, and make recommendations to, the Minister administering the *Environmental Planning and Assessment Act 1979* about lifting any moratorium and specific proposals for energy-from-waste development. The provision also confers the function of advising the Minister administering the *Protection of the Environment Operations Act 1997* about the application of the fit and proper person test under that Act when the Environment Protection Authority exercises licensing functions under that Act.

- (g) **Proposed section 7A.7** confers on the Standing Expert Advisory Body additional functions, including providing an annual report to the Minister of its activities during the year, and requires the Minister to make any such report publicly available.
- (h) **Proposed section 7A.8** provides that the proposed Part does not prohibit development for the purposes of the recovery of energy from the thermal treatment of exempt waste fuel only. The regulations may amend Schedule 9 (which sets out the categories of waste that are exempt waste fuel).
- (i) **Proposed section 7A.9** provides that the proposed Part applies despite any other provision of the *Environmental Planning and Assessment Act 1979*, or of any other Act, or of any environmental planning instrument.
- (j) **Proposed section 7A.10** provides that the State is not required to pay compensation in connection with the enactment or operation of the proposed Act, but may nevertheless voluntarily choose to do so.
- (k) **Proposed section 7A.11** provides that:
  - (i) any existing development consent or approval ceases to have effect to the extent to which it authorised the carrying out of energy-from-waste development, except as provided by the regulations, and
  - (ii) pending applications for development consent or for certain planning approvals are to be refused.

**Schedule 1 [5]** declares certain waste to be exempt waste fuel. The categories of waste fuel declared are based on the *Eligible Waste Fuels Guidelines* published by the Environment Protection Authority.



New South Wales

# Environmental Planning and Assessment Amendment (Moratorium and Restrictions on Recovering Energy from Waste) Bill 2018

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New South Wales

# Environmental Planning and Assessment Amendment (Moratorium and Restrictions on Recovering Energy from Waste) Bill 2018

No. , 2018

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## **A Bill for**

An Act to amend the *Environmental Planning and Assessment Act 1979* to impose a moratorium and other restrictions on the carrying out of development for the purposes of recovering energy from the thermal treatment of waste.

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**The Legislature of New South Wales enacts:**

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**1 Name of Act**

2

This Act is the *Environmental Planning and Assessment Amendment (Moratorium and Restrictions on Recovering Energy from Waste) Act 2018*.

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**2 Commencement**

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This Act commences on the date of assent to this Act.

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| <b>Schedule 1</b>  | <b>Amendment of Environmental Planning and Assessment Act 1979 No 203</b> | 1  |
|  |   | 2  |
| <b>[1] Section 1.4 Definitions</b>   |   | 3  |
| Insert in alphabetical order in section 1.4 (1):   |   | 4  |
| <i>energy-from-waste development</i> means development for the purposes of the recovery of energy from the thermal treatment of any waste, or anything derived from waste.   |   | 5  |
| <i>exempt waste fuel</i> means any waste, or anything derived from waste, of a kind that is set out in Schedule 9.   |   | 6  |
| <i>Standing Expert Advisory Body on Energy from Waste Technology</i> means the advisory body established under section 7A.5.   |   | 7  |
| <i>thermal treatment</i> , in relation to waste, means the processing of waste by burning, incineration, thermal oxidation, gasification, pyrolysis, plasma or other thermal process.  |   | 8  |
| <i>waste</i> has the same meaning as in the <i>Protection of the Environment Operations Act 1997</i> .   |   | 9  |
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| <b>[2] Section 4.14A</b>   |   | 17 |
| Insert after section 4.14:   |   | 18 |
| <b>4.14A Consultation and development consent—energy-from-waste development</b>  |   | 19 |
| (1) Development consent cannot be granted for the carrying out of energy-from-waste development unless the consent authority has:  |   | 20 |
| (a) consulted with the Standing Expert Advisory Body on Energy from Waste Technology about the following:  |   | 21 |
| (i) the imposition on the consent of conditions that adopt world’s best practices in emissions, emissions monitoring and residual waste disposal and incorporate any scientific or technology advances that have an impact on energy-from-waste development, |   | 22 |
| (ii) the impact of the proposed development on human health and on current recycling targets, and  |   | 23 |
| (b) had regard to whether or not the development can be carried out in compliance with the current <i>Eligible Waste Fuels Guidelines</i> , or other guidelines regarding energy-from-waste technology, published by the Environment Protection Authority.   |   | 24 |
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| (2) This section does not apply to consent for development for the purposes of the recovery of energy solely from the thermal treatment of exempt waste fuel.  |   | 35 |
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| <b>[3] Section 4.37A</b>   |   | 37 |
| Insert after section 4.37:   |   | 38 |
| <b>4.37A Consultation and development consent for State significant development—energy-from-waste development</b>  |   | 39 |
| (1) The Minister is not to grant consent to State significant development that involves the recovery of energy from the thermal treatment of any waste, or anything derived from waste, unless the Minister has:   |   | 40 |
| (a) consulted with the Standing Expert Advisory Body on Energy from Waste Technology about the following:  |   | 41 |
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| (i)  | the imposition on the consent of conditions that adopt world's best practices in emissions, emissions monitoring and residual waste disposal and incorporate any scientific or technology advances that have an impact on energy-from-waste development,   | 1<br>2<br>3<br>4<br>5                        |
| (ii) | the impact of the proposed development on human health and on current recycling targets, and   | 6<br>7                                       |
| (b)  | had regard to whether or not the development can be carried out in compliance with the current <i>Eligible Waste Fuels Guidelines</i> , or other guidelines regarding energy-from-waste technology, published by the Environment Protection Authority.   | 8<br>9<br>10<br>11                           |
| (2)  | This section does not apply to State significant development that involves the recovery of energy solely from the thermal treatment of exempt waste fuel.  | 12<br>13                                     |
| [4]  | <b>Part 7A</b>   | 14   |
|      | Insert after Part 7:   | 15   |
|      | <b>Part 7A Energy-from-waste development</b>   | 16   |
|      | <b>Division 7A.1 Preliminary</b>   | 17   |
|      | <b>7A.1 Definitions</b>  | 18   |
|      | In this Part:  | 19   |
|      | <b><i>critical zones for air pollutants</i></b> means:   | 20   |
| (a)  | the Sydney Basin area, and   | 21   |
| (b)  | the local government areas of City of Blue Mountains, Kiama, City of Shellharbour and City of Wollongong, and  | 22<br>23                                     |
| (c)  | the local government areas of Central Coast, City of Cessnock, City of Lake Macquarie, City of Maitland, Muswellbrook, City of Newcastle, Port Stephens, Singleton and Wollondilly.  | 24<br>25<br>26                               |
|      | <b><i>Sydney Basin area</i></b> means the local government areas of Bayside, City of Blacktown, Burwood, Camden, City of Campbelltown, Canada Bay, Canterbury-Bankstown, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter's Hill, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby and Woollahra. | 27<br>28<br>29<br>30<br>31<br>32<br>33<br>34 |
|      | <b>Division 7A.2 Restrictions on energy-from-waste development</b>   | 35   |
|      | <b>7A.2 Permanent prohibition on energy-from-waste development in critical zones for air pollutants</b>  | 36<br>37                                     |
|      | The carrying out of energy-from-waste development is prohibited in any of the critical zones for air pollutants.   | 38<br>39                                     |
|      | <b>7A.3 Moratorium on energy-from-waste development outside critical zones for air pollutants</b>  | 40<br>41                                     |
|      | The carrying out of energy-from-waste development is prohibited in any area of the State outside the critical zones for air pollutants, subject to any regulations made under section 7A.4.  | 42<br>43<br>44                               |

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| <b>7A.4 Regulations may lift moratorium for part of State</b>   | 1                    |
| (1) The regulations may prescribe part of the State as an area to which section 7A.3 does not apply.  | 2<br>3               |
| (2) The Minister must not recommend the making of a regulation under this section in relation to an area unless:  | 4<br>5               |
| (a) the Minister is satisfied on reasonable grounds that no part of the area is within the critical zones for air pollutants, and   | 6<br>7               |
| (b) the Minister has consulted the Standing Expert Advisory Body, and that body has provided the Minister with a certificate to the effect that, in its opinion:  | 8<br>9<br>10         |
| (i) the carrying out of energy-from-waste development in the area would be safe and not cause permanent harm to any part of the area's environment, and   | 11<br>12<br>13       |
| (ii) the carrying out of energy-from-waste development in the area would not result in an increase of the net greenhouse gas emissions for the State during the life of the proposed development, and                             | 14<br>15<br>16<br>17 |
| (iii) it is appropriate for the moratorium established by section 7A.3 to no longer apply to the area.  | 18<br>19             |
| (3) The making of a regulation under this section does not operate to revive any development consent or approval to the extent to which that consent or approval ceased to have effect because of the operation of section 7A.11. | 20<br>21<br>22       |
| <b>Division 7A.3 Standing Expert Advisory Body on Energy from Waste Technology</b>  | 23<br>24             |
| <b>7A.5 Standing Expert Advisory Body on Energy from Waste Technology</b>   | 25                   |
| (1) The Minister is to establish the Standing Expert Advisory Body on Energy from Waste Technology (referred to in this Part as the <i>Standing Expert Advisory Body</i> ).   | 26<br>27<br>28       |
| (2) The Standing Expert Advisory Body:  | 29                   |
| (a) is to be chaired by the Chief Scientist and Engineer, and   | 30                   |
| (b) is to consist of at least 4 additional members who, in the opinion of the Minister, have qualifications and expertise in an earth, environmental or biological science.   | 31<br>32<br>33       |
| (3) The regulations may make provision for or with respect to the following:  | 34                   |
| (a) the terms of office of members of the Standing Expert Advisory Body,  | 35                   |
| (b) the appointment of deputies for members,  | 36                   |
| (c) the vacation of office of members (including by removal),   | 37                   |
| (d) the remuneration of members,  | 38                   |
| (e) the procedure for meetings and decisions of the Standing Expert Advisory Body (including quorum requirements).  | 39<br>40             |
| <b>7A.6 Advisory functions of Standing Expert Advisory Body</b>   | 41                   |
| (1) The principal function of the Standing Expert Advisory Body is to advise, and provide recommendations to, the Minister in connection with the following:  | 42<br>43             |

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| (a)                  | the lifting of the moratorium established by section 7A.3 and, in particular, whether energy-from-waste development should be permitted in any particular area,  | 1<br>2<br>3                                  |
| (b)                  | if the moratorium were to be lifted, any conditions that should be imposed on development consent so as to adopt world's best practices in emissions, emissions monitoring and residual waste disposal,  | 4<br>5<br>6                                  |
| (c)                  | any scientific or technology advances that have an impact on energy-from-waste development, including whether such advances should be incorporated into conditions of development consent or otherwise be incorporated into the operations of the proposed facilities,   | 7<br>8<br>9<br>10                            |
| (d)                  | the operation of the current <i>Eligible Waste Fuels Guidelines</i> , or other guidelines regarding energy from waste technology, published by the Environment Protection Authority,   | 11<br>12<br>13                               |
| (e)                  | the impact of energy-from-waste development on human health,   | 14   |
| (f)                  | the impact of energy-from-waste development on current recycling targets,  | 15<br>16                                     |
| (g)                  | any specific proposal for energy-from-waste development.   | 17   |
| (2)                  | The Standing Expert Advisory Body also has the function to advise, and provide recommendations to, the Minister administering the <i>Protection of the Environment Operations Act 1997</i> about the application of the fit and proper person test in section 83 of that Act to any applicant for, or holder of, an environment protection licence that authorises a scheduled activity (within the meaning of that Act) that involves the recovery of energy from the thermal treatment of any waste, or anything derived from waste, that is not solely exempt waste fuel. | 18<br>19<br>20<br>21<br>22<br>23<br>24<br>25 |
| <b>7A.7</b>          | <b>Other functions of Standing Expert Advisory Body</b>  | 26   |
| (1)                  | The Standing Expert Advisory Body also has the following functions:  | 27   |
| (a)                  | to provide an annual report to the Minister of its activities during the year to which the report relates,   | 28<br>29                                     |
| (b)                  | such other functions as may be imposed or conferred on it by or under this or any other Act.   | 30<br>31                                     |
| (2)                  | The Minister is to ensure that any annual report provided to the Minister by the Standing Expert Advisory Body is published and made publicly accessible on the website of the Department.   | 32<br>33<br>34                               |
| <b>Division 7A.4</b> | <b>General</b>   | 35   |
| <b>7A.8</b>          | <b>Part does not prohibit recovery of energy from exempt waste fuel</b>  | 36   |
| (1)                  | This Part does not prohibit development for the purposes of the recovery of energy from the thermal treatment of exempt waste fuel only.   | 37<br>38                                     |
| (2)                  | The regulations may amend Schedule 9.  | 39   |
| <b>7A.9</b>          | <b>Operation of Part</b>   | 40   |
|                      | This Part applies despite any other provision of this or any other Act or of any environmental planning instrument.  | 41<br>42                                     |
| <b>7A.10</b>         | <b>Compensation not payable</b>  | 43   |
| (1)                  | Compensation is not payable by or on behalf of the State:  | 44   |

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| (a)          | because of the enactment or operation of the amending Act or any Act that amends this Part or Schedule 9 (or any regulations made under this Part), or  | 1<br>2<br>3          |
| (b)          | because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or  | 4<br>5<br>6          |
| (c)          | because of any conduct relating to any such enactment or operation.   | 7                    |
| (2)          | This section extends to conduct and any other matter occurring before the commencement of the amending Act.   | 8<br>9               |
| (3)          | To avoid doubt, nothing in this section prevents the State from voluntarily providing compensation, in such circumstances as it considers appropriate, for any conduct or other matter of a kind referred to in subsection (1) (a), (b) or (c).   | 10<br>11<br>12       |
| (4)          | In this section:  | 13                   |
|              | <i>amending Act</i> means the <i>Environmental Planning and Assessment Amendment (Moratorium and Restrictions on Recovering Energy from Waste) Act 2018</i> .   | 14<br>15<br>16       |
|              | <i>compensation</i> includes damages or any other form of compensation.   | 17                   |
|              | <i>conduct</i> includes any statement, or any act or omission:  | 18                   |
| (a)          | whether unconscionable, negligent, false, misleading, deceptive or otherwise, and   | 19<br>20             |
| (b)          | whether constituting an offence, tort, breach of contract, breach of statute or otherwise.  | 21<br>22             |
|              | <i>statement</i> includes a representation of any kind, whether made orally or in writing.  | 23<br>24             |
|              | <i>the State</i> means the Crown within the meaning of the <i>Crown Proceedings Act 1988</i> or an officer, employee or agent of the Crown.   | 25<br>26             |
| <b>7A.11</b> | <b>Transitional provisions</b>  | 27                   |
| (1)          | Any development consent or approval that is in force immediately before the commencement of this Part ceases to have effect to the extent to which it authorises the carrying out of energy-from-waste development, except as provided by the regulations.                                    | 28<br>29<br>30<br>31 |
| (2)          | Any pending application for development consent under Division 4.3 or 4.7 to carry out energy-from-waste development that was made, but not finally determined, before the date of commencement of this Part is to be refused.  | 32<br>33<br>34       |
| (3)          | In particular, the application for consent for State significant development that involves the construction and operation of an energy-from-waste facility at Honeycomb Drive, Eastern Creek is to be refused if it has not been finally determined on the date of commencement of this Part. | 35<br>36<br>37<br>38 |

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| <b>[5] Schedule 9</b>   | 1                    |
| Insert after Schedule 8:  | 2                    |
| <b>Schedule 9 Exempt waste fuels</b>  | 3                    |
| (Section 1.4 (1))   | 4                    |
| <b>1 Biomass from agriculture</b>   | 5                    |
| (1) Biomass from agriculture is declared to be exempt waste fuel if it is free of any physical contaminants.  | 6<br>7               |
| (2) However, the following biomass from agriculture is not declared to be exempt waste fuel:  | 8<br>9               |
| (a) waste from the processing of dairy products or beverages,   | 10                   |
| (b) waste from the production of food,  | 11                   |
| (c) dead animals, animal parts or pelts,  | 12                   |
| (d) manure,   | 13                   |
| (e) animal bedding such as cage litter or barn poultry litter.  | 14                   |
| (3) In this clause:   | 15                   |
| <i>agriculture</i> means:   | 16                   |
| (a) farming, including the cultivation of soil for the growing of crops, and  | 17                   |
| (b) the rearing of animals to provide food, wool or other products.   | 18                   |
| <i>biomass from agriculture</i> means any weed, plant or crop residue that is produced directly from agricultural practices and includes non-putrescible natural organic fibrous materials and organic residues from harvest activities.  | 19<br>20<br>21       |
| <i>crop residue</i> includes:   | 22                   |
| (a) fibres, roots, stalks, stubble, leaves, seed pods and nut shells, and   | 23                   |
| (b) other waste from agricultural processing, such as cotton and cane trash.  | 24                   |
| <b>2 Clinical and related waste</b>   | 25                   |
| (1) Each of the following are declared to be exempt waste fuel:   | 26                   |
| (a) clinical waste,   | 27                   |
| (b) cytotoxic waste,  | 28                   |
| (c) pharmaceutical, drug or medicine waste,   | 29                   |
| (d) sharps waste.   | 30                   |
| (2) In this clause:   | 31                   |
| <i>clinical waste</i> means any waste resulting from medical, nursing, dental, pharmaceutical, skin penetration or other related clinical activity, being waste that has the potential to cause injury, infection or offence, and includes waste containing any of the following: | 32<br>33<br>34<br>35 |
| (a) human tissue (other than hair, teeth and nails),  | 36                   |
| (b) bulk body fluids or blood,  | 37                   |
| (c) visibly blood-stained body fluids, materials or equipment,  | 38                   |
| (d) laboratory specimens or cultures,   | 39                   |

- (e) animal tissue, carcasses or other waste from animals used for medical research, 1  
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but does not include any such waste that has been treated by a method 3  
approved in writing by the Secretary of the Ministry of Health. 4  
**cytotoxic waste** means any substance contaminated with any residues or 5  
preparations that contain materials that are toxic to cells principally through 6  
their action on cell reproduction. 7  
**pharmaceutical, drug or medicine waste** means waste: 8  
(a) that has been generated by activities carried out for business or 9  
commercial purposes, and 10  
(b) that consists of pharmaceutical or other chemical substances specified 11  
in the Poisons List made under section 8 of the *Poisons and Therapeutic 12  
Goods Act 1966*. 13  
**sharps** means those things: 14  
(a) that have sharp points or edges capable of cutting, piercing or 15  
penetrating the skin (such as needles, syringes with needles or surgical 16  
instruments), and 17  
(b) that are designed for the purpose of cutting, piercing or penetrating the 18  
skin, and 19  
(c) that have the potential to cause injury or infection. 20  
**sharps waste** means any waste collected from designated sharps waste 21  
containers used in the course of business, commercial or community service 22  
activities, being waste resulting from the use of sharps for any of the following 23  
purposes: 24  
(a) human health care by health professionals and other health care 25  
providers, 26  
(b) medical research or work on cadavers, 27  
(c) veterinary care or veterinary research, 28  
(d) skin penetration or the injection of drugs or other substances for medical 29  
or non-medical reasons, 30  
but does not include waste that has been treated on the site where it was 31  
generated (and to a standard specified in an EPA Gazettal notice made under 32  
the *Protection of the Environment Operations Act 1997*) or waste that has been 33  
treated by a method approved in writing by the Secretary of the Ministry of 34  
Health. 35

- 3 Forestry and sawmilling residue** 36  
(1) Forestry and sawmilling residue is declared to be exempt waste fuel if it does 37  
not contain any treated, preserved, lacquered, glued, laminated or coated 38  
timber or wood product. 39  
(2) However, forestry and sawmilling residue that is native forest bio-material is 40  
not declared to be exempt waste fuel. 41  
(3) In this clause: 42  
**forestry and sawmilling residue** means uncontaminated, organic fibrous 43  
wood residue and natural wood waste that results from forestry and sawmilling 44  
operations such as heads, tree thinnings, sawmill sawdust, shavings, chips, 45  
bark and other off-cuts. 46  
**native forest bio-material** has the same meaning as in clause 96 of the 47  
*Protection of the Environment Operations (General) Regulation 2009*. 48

*sawmilling operations* means the primary processing of round wood into non-round wood products such as planks, boards, beams and other cut and processed wood products.

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#### 4 Landfill gas and biogas

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(1) Landfill gas and biogas is declared to be exempt waste fuel.

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(2) In this clause:

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*anaerobic digestion* means the biological process that occurs when organic matter is decomposed by bacteria in the absence of oxygen.

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*landfill gas and biogas* means gas generated during anaerobic digestion, either naturally in the decomposition of organic waste materials contained in landfills or in an anaerobic digester, and includes organic waste streams for an anaerobic digester including municipal wastewater treatment, industrial wastewater treatment, food waste digestion and agricultural waste such as manure.

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#### 5 Organic residue from virgin paper pulp activities

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(1) Organic residue from virgin paper pulp activities is declared to be exempt waste fuel.

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(2) However, the following organic residue from virgin paper pulp activities is not declared to be exempt waste fuel:

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(a) organic residue from processes using waste cardboard or paper (including recycled paper),

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(b) organic residue that contains any trace of organic residues from processes using waste cardboard or paper (including recycled paper),

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(c) organic residue derived from any processes involving chlorine, whether elemental chlorine, total chlorine or both.

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(3) In this clause:

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*organic residue from virgin paper pulp activities* means any solid organic waste, such as cellulose fibres, fibre bundles and minor quantities of sand, mud and fine grit, from pulping and screening operations.

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#### 6 Recovered waste oil

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(1) Recovered waste oil is declared to be exempt waste fuel.

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(2) In this clause:

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*oil* includes vegetable oil and mineral oils.

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*recovered waste oil* means oil that has been recycled back into lower grade oils for combustion as a start-up fuel.

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#### 7 Source-separated green waste

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(1) Source-separated green waste is declared to be exempt waste fuel if it is:

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(a) used in a thermal process to produce char (such as pyrolysis) for land application, and

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(b) free of any physical contaminants such as plastics and treated, painted or coated timbers.

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- (2) However, the following source-separated green waste is not declared to be exempt waste fuel: 1  
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- (a) green waste extracted from mixed waste streams, such as construction and demolition waste, 3  
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  - (b) waste that is recovered as part of cleaning up any waste that was dumped in contravention of this Act or the *Protection of the Environment Operations Act 1997*, 5  
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  - (c) source-separated green waste that is also biomass from agriculture (within the meaning of clause 1) or wood waste (within the meaning of clause 8). 8  
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- (3) In this clause: 11
- source-separated green waste*** means garden vegetation and plant materials (such as branches, grass, leaves, plant trimmings, tree stumps and bark) that are segregated at the point of generation and collected as a separate material stream for processing (such as garden organics from arborist operations, commercial gardening operations, council garden waste kerbside collections and public drop-off collections). 12  
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**8 Uncontaminated wood waste** 18

- (1) Wood waste that is not contaminated is declared to be exempt waste fuel. 19
- (2) However, the following wood waste is not declared to be exempt waste fuel: 20
- (a) post-consumer waste, 21
  - (b) treated timber, 22
  - (c) wood waste that is also source-separated green waste (within the meaning of clause 7), 23  
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  - (d) painted or coated wood, 25
  - (e) wood waste extracted from mixed waste streams, such as construction and demolition waste, 26  
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  - (f) wood waste recovered from a highly variable stream, such as mixed municipal solid waste or construction and demolition waste. 28  
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- (3) In this clause: 30
- treated timber*** means wood treated with water, solvent and/or oil-borne preservatives including, but not limited to, copper chromium arsenic (CCA), light organic solvent preservative (LOSP), creosote and envelope treatments for preservation, insecticides and fungal treatments. 31  
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- wood waste*** means waste derived from wood that is generated in primary and secondary manufacturing processes, and includes pre-consumer manufacturing and processing waste materials such as off-cuts, sawdust, wood shavings, untreated packaging crates, untreated pallets and engineered timbers made with urea formaldehyde or phenol formaldehyde resins only. 35  
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- 9 Waste tyres** 1
- (1) Waste tyres are declared to be exempt waste fuel, but only in respect of use in a cement kiln. 2  
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- (2) In this clause: 4
- waste tyres* means used, rejected or unwanted tyres, including shredded tyres, tyre pieces, or tyre crumb containing at least 98% tyre material. 5  
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