

28 April 2008

Greenhouse Gas Reduction Scheme Transition Review
Department of Water and Energy
GPO Box 3889
SYDNEY NSW 2001

By email to: ggastransition@dwe.nsw.gov.au

Dear Sirs,

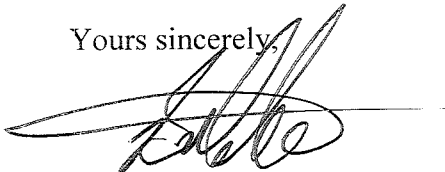
**Transitional Arrangements for the NSW Greenhouse Gas Reduction Scheme –
Consultation Paper (April 2008) Comments**

Thank you for the opportunity to provide comment regarding the proposed Transitional Arrangements for the NSW Greenhouse Gas Reduction Scheme.

The reduction of greenhouse gases plays an important role in Australia's energy industry, and we are pleased to enclose comments relating to the Consultation Paper.

Please don't hesitate to contact me should you wish to discuss this submission in any further detail.

Yours sincerely,



GENERAL MANAGER – CORPORATE BUSINESS
Brett Maple

LMS Submission to the Transitional Arrangements for the NSW Greenhouse Gas Reduction Scheme: Consultation Paper (April 2008)

Introduction

LMS Generation is an Australian owned company with over twenty five years experience in successful landfill gas to energy projects. LMS have been involved in Greenhouse Gas Abatement Scheme since 2004 and created over 820,000 NGACs.

We commend the NSW Government on the implementation of GGAS and subsequent administration of the scheme by the relevant departments. LMS has been involved in various other schemes and believe that GGAS has been extremely well managed. It has greatly assisted investment in abatement in our industry and many of the small landfill gas projects that LMS has developed would not be viable without NGAC revenue and therefore would not have been built.

LMS have 13 landfill gas projects in Australia, totaling 17MW. These projects have been derived from the investment of approximately \$50 million, with a further 24MW and \$60 million planned. Changes to the NSW Greenhouse Gas Reduction Scheme will have a significant affect on the LMS's future business strategy and the likelihood of investment in small landfill gas projects.

Landfill gas power generation projects have abated significant quantities of greenhouse gases in Australia and assisted the waste industry to be the only sector to reduce emissions over the past ten years. This is in no small part due to the introduction of GGAS and the additional income derived from NGACs due to the destruction of methane and the associated multiplier which recognizes the double greenhouse benefit of using landfill gas to generate electricity.

This submission contains LMS's view of the proposed Transitional Arrangements for the NSW Greenhouse Gas Reduction Scheme with particular emphasis as it applies to the landfill gas industry.

Head Office

2, 48 King William Road, Goodwood
South Australia 5034

T (08) 8357 2777
F (08) 8357 2700

Gas Group

1 Union Street, Stepney
South Australia 5069

T (08) 8363 0100
F (08) 8363 7700

Energy Group

Unit 2/269 Abbotsford Road
Bowen Hills, Queensland 4006

T (07) 3257 4949
F (07) 3257 4939

Power Group

1 Union Street, Stepney
South Australia 5069

T (08) 8363 0100
F (08) 8363 7700

LMS Generation Pty Ltd
ABN 39 059 428 474

E info@lms.com.au
W www.lms.com.au

Section 4.1 Transitional Issues and Options

Page 4 – Transitional Timeframe

LMS do not necessarily agree that we could not reasonably expect to be compensated beyond 2012 for projects that were accredited before November 2006. We did assume, even with projects accredited prior to that date, that we would not be any worse off under a new National Emissions Trading Scheme that may be introduced. Projects were built on the expectation that they would generate NGACs until at least 2012 and then carbon credits under any new ETS to 2020 and beyond.

As suggested in the discussion paper, projects accredited in the period between the NSW Government announcing the extension to 2020 in November 2006 and the Federal Government announcing the NETS in 2007 definitely and reasonably expected that the NGAC Scheme would have continued until 2020 and should be compensated accordingly.

However, we feel that in the case of landfill gas projects, that all projects that were accredited after November 2006 will be disadvantaged under the ETS. Any developer of landfill gas projects would have reasonably considered that if GGAS did not continue past 2012 it would be possible to create offsets under any new NETS. This is due to the fact that waste was not considered a “covered” sector at that time, by either the National Emissions Trading Taskforce or Prime Ministers Taskforce, and waste is not covered under any other international trading scheme. Therefore there was a reasonable assumption that Australia would follow suit and not cover the waste sector, allowing the projects to create offsets in place of NGACs without a significant loss of revenue.

It was not publicly known that waste was even being considered for inclusion under the proposed NETS until March 2008 when the Garnaut Climate Change Review released the Emissions Trading Scheme Discussion Paper. Until that time we had assumed that all projects built up to that point would generate revenue under GGAS and then offsets under a NETS.

Whilst LMS does not necessarily have Power Purchase Agreements in place that extend all the way to 2020, all business modeling for landfill gas power projects is based on a project life of a minimum of 15 years in order to achieve our required internal rate of return. Therefore LMS have projects that are currently operating that would not have been developed had this been known.

Transitional arrangements should consider the legitimate business decisions that have been based around the NSW GGAS Scheme and information on hand at the time.

Section 4.2 Treatment of Accredited Abatement Certificate Providers

Page 7 – Waste Coal Mine Methane Generators and Landfill Gas

It is LMS's understanding that coverage of the waste sector under the NETS will preclude any creation of offsets and there will be an obligation to acquire permits for emissions not captured at landfill sites.

There is indeed an incentive for the landfill operator to reduce methane emissions under the proposed NETS in order to reduce its liability, however in the majority of cases the landfill operator has assigned the legal rights to the landfill gas captured at the site to a third party expert such as LMS.

The structure of waste industry relating to landfill gas projects is such that a third party landfill gas expert acquires the rights to the landfill gas captured at the site, and thus is engaged to control and utilise the gas. This is an important fact as due to contractual arrangements at virtually all landfill gas power generation projects in Australia the owner of the power generation project will not gain any benefits from the reduction of emissions at the site. The power generation project owner will have invested many millions of dollars to install gas capture infrastructure and to develop the project only to now find that the landfill operator will reap the benefit.

The landfill operator will benefit by not having to purchase permits for the gas that is captured at the site by someone else. The power generation facility owner on the other hand will lose the revenue from approximately 4 NGACs for every MWh produced. This is a massive loss and a substantial percentage of our income that cannot be recouped in anyway.

Therefore a transition to the NETS, if waste is to be a covered sector, would leave parties such as LMS significantly disadvantaged. Whilst we are not completely opposed to the suggestion of using the transitional approach, as set out in 4.2.1 if waste is a covered sector, if this method is adopted, compensation should be paid at the contractual value of NGACs so as not to be disadvantaged by recent, and possible future, drops in the price of NGACs in the transitional phase.

LMS believes that it would be simpler and fairer to allow generators in the landfill gas industry to continue to create offsets under the NETS in lieu of NGACs in the same way that has been suggested if waste is not a covered sector, as discussed below.

LMS agree with the discussion option that if waste is not a covered sector under the NETS that all GGAS accredited landfill gas projects be allowed to create offsets (with no expiry date) until the end of 2012. But we also feel that all projects built after November 2006 should be allowed to create offsets under the NETS until 2020.

Therefore regardless of whether waste is covered or uncovered the same transitional arrangements should apply.

Whilst it is a matter for the Federal Government, it does seem particularly unfair for the NETS to preclude projects which commenced prior to 3 June 2007, as it is these projects which have risked the most to provide greenhouse benefits in an uncertain market. Projects registered under GGAS or other schemes should not now be penalised under the NETS because of early action to abate greenhouse gas emissions and the lack of action by the previous Federal Government.

Section 4.3 Unused Abatement Certificates

Page 12 – Transition Options

LMS agree with the suggestion that it would be most effective for unused abatement certificates to be treated as offset credits under the NETS.

We do not consider that price variance is a valid concern, as these are market instruments. NGAC prices have varied considerably during the scheme and are contracted at different rates, whilst NETS permit and offset prices are also likely to start low and vary over time. Therefore the only fair way is to convert on a one for one basis, with no expiry or validity requirements.

Section 4.4 New Accreditations

Page 14 – Transition Options

LMS agree with the suggested option that projects should be allowed to apply for accreditation until the end of the scheme, but projects applying for accreditation after a certain date not be eligible for transitional assistance.

We also agree that the date should be something like the suggested September 2008 and allow discretion if it can be demonstrated that commitment has been made prior to application for accreditation. This should allow projects that are already under development to be included in the transitional arrangements.
