



## Flexibility of reporting dates for the agriculture sector

<b>Date:</b>	20 May 2009	<b>MfE Priority:</b>	urgent
<b>Security Level:</b>		<b>Number of Attachments:</b>	Nil
		<b>MfE Ref No:</b>	09-B-01409

## Action Sought

	<b>Action Sought</b>	<b>Deadline</b>
Minister for Climate Change Issues Hon Dr Nick Smith	<b>Discuss</b> these options with Minister Carter so that officials can reflect your preference in the delay cabinet paper and legislation.	25 May 2009
Minister for Agriculture Hon David Carter	Note	None
Associate Minister for Climate Change Issues (International Negotiations) Hon Tim Groser	Note	None

## Ministry for the Environment Contacts

<b>Name</b>	<b>Position</b>	<b>Telephone</b>		<b>1st Contact</b>
		<b>(cell)</b>	<b>(work)</b>	
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## Ministry for Agriculture and Forestry contact

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Mike Jebson	Director, Natural Resources Group	[withheld]	[withheld]	✓

## Executive Summary

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This paper outlines the issues around the point of obligation for the agricultural sector, and sets out options on the flexibility for the decision date on the point of obligation and subsequent entry and reporting dates for the sector.

The paper also brings to your attention a matter regarding the relationship between existing reporting dates for some sectors, and the OIC power to set the date from which surrender obligations accrue.

### **Background**

Under current legislation, the agriculture sector enters the ETS on 1 January 2013, and voluntary reporting is due to commence on 1 January 2011. The Act specifies that the point of obligation for the sector will be at the processor level, unless an Order in Council is made by 30 June 2010 to change it to the farm level.

The point of obligation for the agriculture sector involves a trade-off between the accuracy of measurement (and hence the incentives for mitigation) and ensuring that the method is practical, can be verified, and risks of significant levels of non-compliance are minimised.

In theory, a farm level point of obligation generates a superior price signal by attaching the cost of emissions to farm inputs (including management practices). This means that an emitter can use low-emission inputs instead of high-emission inputs and reduce their liability, or use land differently to generate fewer emissions should this be profitable. An example is substituting nitrification inhibitors for urea. There is no doubt that a processor point of obligation will give a weaker price signal.

The most obvious problem with a farm level point of obligation is ensuring that information used to determine emissions is accurate. Verifying farm level information is difficult because it requires the audit of physical quantities, in some cases in real time. This is costly, difficult, and there is a significant risk of non-compliance that is essentially undetectable.

A processor point of obligation is much easier and less costly to implement. It therefore represents a starting position that can be delivered. The reasons for this is that the necessary data is already collected for regulatory and/or commercial purposes, and the number of processors is relatively small. However under this method, changes in farm practices that reduce emissions will be missed unless specific mechanisms to verify these practices are also developed.

It is officials' view that initially setting the point of obligation at the processor level is the only practical option, even if entry of the sector is delayed by 2 or so years. It is however desirable in the long term to move to a farm level point of obligation, and there are options to progress this including establishing trials with small numbers of farms.

Officials also advise that for practical purposes, a decision on the point of obligation should be made at least 12 months before the commencement of voluntary reporting. This is the minimum time that would be required to develop the regulations, emissions factors, guidance materials etc and allow the sector some time to prepare once this has been completed. Consequently, if the voluntary reporting is to commence from 1 January 2011 a decision on the point of obligation should be communicated publically by 1 January 2010 at the latest, and ideally by December 2009.

### ***Legislative options to allow flexibility for timing***

There are options available to amend to the decision and reporting dates through the delay bill. These are:

1. Leave the dates unchanged. The existing timeframe in the Act can be achieved if the point of obligation remains at the processor level. This would effectively require a decision and public announcement on the point of obligation by the end of 2009 as there needs to be a gap of at least 12 months between the decision date and the commencement of the voluntary reporting period.
2. Leave the decision date unchanged and insert a provision into the CCRA that enables the reporting and entry dates to be specified by way of Order in Council. This does not provide much advantage over option 1, as it still requires a decision on the point of obligation to be made by the end of 2009.
3. Insert a provision into the CCRA that enables the decision, reporting and entry dates to be specified by way of Order in Council. This option provides maximum flexibility and allows the decision date to be deferred, however the 12 month notice period should be included.

Officials would consider that the choice is effectively between option 1 and option 3, and would give a slight preference for option 1 from a policy viewpoint. Option 1 sends a signal to the sector of seriousness of entry into the ETS, and still provides for any problems with reporting to be sorted out prior to entry. It also provides time to work through emissions factors and perhaps set up some on-farm reporting trials. Given the likelihood of the government making substantive amendments to the legislation later this year, option 3 is a serious alternative if the government would prefer not to make a public announcement on the point of obligation by 1 January 2010.

### ***Relationship between existing reporting dates and entry date via OIC power***

In the course of drafting the amendment Bill, a further matter has come to our attention regarding the relationship between existing reporting dates for some sectors, and the OIC power to set the date from which surrender obligations accrue. For example, the waste and synthetic gasses sectors currently do not have mandatory reporting obligations until 1 January 2012. Under the new OIC power, it would theoretically be possible to provide for surrender obligations to accrue in advance of that date. However, in practice, this would not be workable.

Although we are not aware of any intention to use the OIC power to bring the waste or synthetic gasses sectors into the ETS prior to 1 January 2012 we thought it was necessary to draw this matter to your attention. We consider that there are two principle ways of managing this issue:

1. The first option is to note that there are legal impediments to introducing surrender obligations for a sector before commencement of mandatory reporting obligations for that sector, but take no further action in terms of legislative amendment.
2. The second option is to amend the OIC power in the amendment Bill to clarify that the OIC power cannot be used to introduce surrender obligations for a sector in advance of its first mandatory reporting date. This would be a simple amendment.

Option 1 is simpler and perfectly viable, so long as the practical limitations on the OIC power are recognised. More clarity is offered by option 2.

## Recommended Action

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### We recommend that you:

#### Agriculture

(a) **Discuss** the options for the agriculture sector with Minister Carter. **Yes / No**

(b) **Indicate** your preference for inclusion in the delay bill:

Leave the dates for decision and reporting unchanged **Yes / No**

OR

Leave the decision date unchanged, and insert a provision into the CCRA that enables the reporting and entry dates to be specified by way of Order in Council (not recommended). **Yes / No**

OR

Insert a provision into the CCRA that enables the decision, reporting and entry dates to be specified by way of Order in Council. **Yes / No**

#### Waste and synthetic gasses

(c) **Indicate** your preference for addressing the relationship between existing reporting dates and entry date via OIC power

Take no further action in terms of legislative amendment **Yes / No**

OR

Amend the OIC power in the delay Bill to clarify that the OIC power cannot be used to introduce surrender obligations for a sector in advance of its first mandatory reporting date **Yes / No**

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Hon Dr Nick Smith  
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