



Climate Change Bulletin

Provincial and Federal Legislative & Policy Initiatives: Selected Updates

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1. Introduction

As previously noted in our initial Climate Change Bulletin dated August 15, 2008 and subsequent updates, concerns over global climate change have sparked a series of legislative and policy responses on the provincial, federal, regional, and international levels. Governments have invoked a number of different policy tools to respond and adapt to these concerns. This bulletin provides a brief update on current legislative and policy initiatives in selected jurisdictions. To provide a global context, the bulletin begins with a brief discussion of recent international initiatives such as the Copenhagen Accord. We also review recent developments in climate change-related legislation in the United States and B.C. For a more detailed overview of international policy as well as other regional and provincial initiatives leading up to these developments, please see our initial [Climate Change Bulletin](#).

2. International

(a) Copenhagen Accord

The *Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1992* (“UNFCCC”) was only a first step in the international effort to address global climate change. The ultimate goal of the UNFCCC is to stabilise atmospheric concentrations of GHGs at a level that prevents interference with the climate system. The Bali conference, held in late 2007, marked the beginning of formal negotiations on a global climate regime for the post-2012 period. The conference set an end of 2009 deadline for completing the negotiations, which was intended to allow time for governments to ratify and implement the future climate agreement by the end of 2012, when the *Kyoto Protocol’s* first commitment period ends. The decision at Bali acknowledged the findings of the scientific assessment by the Intergovernmental Panel on Climate Change (“IPCC”) and concluded that deep cuts in global emissions of GHGs will be required to prevent global warming from reaching dangerous levels. The IPCC recommended global GHG emission reductions of 50 percent relative to 1990 levels by 2050.

The Poznan, Poland round of negotiations, held in December 2008, concentrated primarily on issues faced by developing countries including adaptation, finance, technology, reducing emissions from deforestation and forest degradation, and disaster management. Also, an agreement was made as to the final details of the Kyoto Protocol Adaptation Fund, a fund created to finance concrete adaptation projects and programmes in developing countries that are particularly vulnerable to the adverse effects of climate change. During the Poznan conference, developed countries, including Canada, faced criticism for their low level of ambition and failure to provide true leadership on reducing GHG emissions. The Poznan negotiations also marked the one-year countdown to Copenhagen, Denmark, where a new global final agreement for post-2012 climate action was to be reached.

Although the overall goal of the Conference of the Parties held in Copenhagen in December 2009 was to establish a global climate agreement for the post-Kyoto period, the parties were only able to reach a “politically binding” accord, deferring the majority of the difficult outstanding issues to a

future date. Under the provisions of the Copenhagen Accord,¹ participant countries have agreed to make combined efforts, based on equity and level of attainability, to contain GHG emissions and ensure that the increase in global temperature remains below 2 degrees Celsius. Under the Accord, Annex 1 parties to the UNFCCC² must implement economy wide emission targets by 2020. Non-Annex 1 parties³ must implement mitigation actions by 2020. Least developed states and small island states are encouraged to take whatever voluntary action they feel they have the capacity for.

The deadline for submission of all emissions targets and mitigation action plans was January 31, 2010. Canada committed under the Accord to reducing its greenhouse gas emissions by 17% below 2005 levels by 2020, to be aligned with the emissions target and base year of the United States (with which the Canadian government has committed to implementing a North American cap and trade system). The countries of the European Union committed to reducing their greenhouse gas emissions by at least 20% by 2020 compared to 1990 levels, and made a conditional offer to increase these reductions to 30% “provided that other developed countries commit themselves to comparable emission reductions and that developing countries contribute adequately according to their responsibilities and respective capabilities”.⁴

Under the Accord, participant countries pledged increased, accessible and predictable funding to help developing countries enact mitigation measures. Under Section 8, developed countries commit to jointly mobilizing up to US\$ 100 billion by 2020. Section 9 of the Accord requires that a High Level Panel be formed to determine where these funds should come from and how they should be managed. The funds will be used to establish the Copenhagen Green Climate Fund. This fund will be the financial operating mechanism for the UNFCCC and will be used to fund various mitigation programmes and projects in developing countries.

The role that deforestation has played in global warming and the need for funding for reforestation as a significant mechanism for reducing GHG emissions was recognized in the Accord. Parties to the Accord agreed to encourage the reduction in GHG emissions by several other mechanisms as well including incentives and market based programs. The Accord also established a Technology Mechanism to facilitate technology development and transfer to further accomplish GHG emission reduction targets and mitigation projects.

The Accord’s progress will be reassessed in 2015.

¹ The Copenhagen Accord may be found online at: http://unfccc.int/meetings/cop_15/items/5257.php

² Generally, developed countries. A complete list of Annex 1 parties can be found at http://unfccc.int/parties_and_observers/parties/annex_i/items/2774.php

³ Generally, developing countries. A complete list of Non-Annex 1 parties can be found at http://unfccc.int/parties_and_observers/parties/non_annex_i/items/2833.php

⁴ A complete list of commitments under the Copenhagen Accord and copies of the commitment letters submitted by the participating nations is available at <http://unfccc.int/home/items/5264.php>.

(b) International Carbon Action Partnership (“ICAP”)

The ICAP is comprised of countries and regions that have implemented or are considering the implementation of carbon markets through cap and trade systems. ICAP provides a forum to share experiences and knowledge, with a view to helping ICAP members formulate and establish a uniform global cap and trade market. Current ICAP members include, amongst others, the European Union, and members of both the Western Climate Initiative (including B.C., see below) and the Regional Greenhouse Gas Initiative. In August 2009, ICAP convened its first conference targeting emerging and developing countries in Berlin, Germany, followed by a conference focussing on greenhouse gas emissions data management in Beijing, China in October, 2009. The organization also made a presentation at the United Nations Climate Change Conference 2009 in Copenhagen, at which B.C. Premier Gordon Campbell spoke.

ICAP will convene its next public conference on Cap and Trade to discuss lessons learned so far and the potential for an international carbon trade market later this month (June, 2010) in Tokyo, Japan.

(c) United States

On May 12, 2010 Senators Kerry and Lieberman released their proposed energy and climate change legislation, called the *American Power Act*. The release followed many months of negotiations and the timeframe for its passage is still unknown and as it progresses through the next stages it will likely remain subject to further evolution. Among other initiatives, the legislation would require a 17% reduction in total US greenhouse gas emissions by 2020 as compared to 2005 levels (consistent with its commitments under the Copenhagen Accord), 42% by 2030 and 83% by 2050, and would establish a cap and trade market in which greenhouse gas emissions from certain energy-intensive sectors (but excluding transportation, to be separately regulated) would be capped and those regulated emitters would have an ability to trade allowances and purchase offsets in order to comply with their regulated targets. The bill includes a scheme for initial allocation of free allowances and provides that a price collar of \$12-\$25 would be set for auctioned allowances, subject to inflation at set rates. Banking for and borrowing from future compliance periods would be permitted, as would the use of certain international allowances and offsets. The bill also regulates the emissions trading market and would require all trading through an exchange. The proposed federal legislation would trump any state initiatives (although it does contemplate a role for regional initiatives such as WCI and RGGI for certain purposes) and would also restrict the authority of the US Environmental Protection Agency (EPA) to regulate greenhouse gases under the Clean Air Act (which it is proceeding to do now in the absence of other federal legislation and pending its enactment).

On that point, the US EPA recently proposed amendments to its mandatory GHG reporting rules which currently apply to certain fuel suppliers, manufacturers and facilities that emit 25,000 tonnes or more of GHGs per year. The proposed amendments expand the application of the requirement to submit an annual report to the EPA to include the following: petroleum and natural gas systems, facilities involved in CCS or enhanced oil and gas recovery. The US EPA also recently announced a final rule regarding emissions from large stationary sources and the requirement to obtain a permit to emit GHGs under the Clean Air Act. Commencing July, 2011 new facilities with GHG emissions

of at least 100,000 tonnes per year, and modifications to existing facilities that would increase GHG emissions by at least 75,000 tonnes per year would be required to obtain a permit, and must demonstrate the use of best available control technologies to minimize emissions. The rule confirms that no sources that emit less than 50,000 tonnes per year would be subject to permitting requirements until at least April, 2016. The thresholds are significantly higher than the initial proposal set at 25,000 tonnes per year.

3. Federal

(a) *Canadian Environmental Protection Act, 2009* (“CEPA”)

In an effort to improve Canada’s ability to monitor, report and verify its GHG emissions, CEPA requires GHG reporting. The system requires facilities emitting a certain threshold of carbon dioxide equivalent emissions (“CO₂e”) per year to report their emissions.⁵ The data will be used to formulate objectives and codes of practice as well as guidelines for issuing and reporting data to the government.⁶ For the 2009 calendar year, the reporting threshold was 50,000 tonnes of CO₂e, a reduction from the previous year’s reporting threshold of 100,000 tonnes, and the report was required by June 1, 2010. The federal Department of the Environment has not yet published the reporting threshold for the 2010 calendar year, although we expect it to be released soon.

On April 17, 2010 the Government of Canada published in the Canada Gazette the *Passenger Automobile and Light Truck Greenhouse Gas Emission Regulations* which are proposed pursuant to CEPA. These regulations will harmonize with the mandatory national fuel economy standards of the United States beginning with 2011 models, and will apply to any vehicle manufacturing company that manufactures or imports vehicles for sale in Canada. The comment period on the proposed regulations will end 60 days after the date of publication of the regulations.

(b) *Bill C-311 – Climate Change Accountability Act*

Bill C-311, *An Act to ensure Canada assumes its responsibilities in preventing dangerous climate change*, was introduced as a private member’s bill and, on April 1, 2009, the Second Reading vote resulted in sending Bill C-311 to Committee Stage by a vote of 141 to 128. The House Standing Committee on the Environment and Sustainable Development made a request for more time to consider Bill C-311 and an effective delay in the passage of the legislation until after the conclusion of the international negotiations in Copenhagen in December 2009. The request was granted, with the official opposition supporting the government, on October 21, 2009.

⁵ “Carbon dioxide equivalent emission” means the mass of carbon dioxide that would produce the same global warming impact as a given mass of another GHG. Some provincial and international climate change initiatives have also adopted the CO₂e unit, but it is not yet clear whether other jurisdictions will adopt similar equivalency standards.

⁶ The list of GHG’s that now have mandatory reporting requirements are listed under “Schedule 1” and may be found online: <http://www.gazette.gc.ca/rp-pr/p1/2009/2009-07-11/html/notice-avis-eng.html#d101>. The website also describes what facilities are required to report their emissions.

The Bill was re-introduced on March 3, 2010 (following the December 2009 prorogation of Parliament), passed the April 14, 2010 Report Stage challenge with a vote of 155 to 137 and was debated at third reading in the House of Commons on April 28, 2010. On May 5, 2010 the Bill was passed by the House of Commons and we await to see whether it will now pass through the Senate. If passed, the resulting *Climate Change Accountability Act* would commit Canada to a 25% reduction of emissions below 1990 levels by 2020 and 80% reduction by 2050, with progress reports due every 5 years.

(c) “Turning the Corner: Regulatory Framework for Industrial Greenhouse Gas Emissions”

In 2005, Canadian GHG emissions were estimated to be 25 percent above 1990 levels, which translates into 32 percent above commitments under the *Kyoto Protocol*. The federal government’s Turning the Corner Plan required a long-term Canada-wide reduction in GHG emissions by 20 percent relative to 2006 levels by 2020 (approximately 3 percent above 1990 levels, and 9 percent above Canada’s Kyoto commitments), and by 60-70 percent relative to 2006 levels by 2050. In the short term, existing major emitters were to be required to reduce their emissions intensity by 18 percent relative to 2006 by 2010, and then by 2 percent per year thereafter. New facilities would have had a three year grace period and then a 2 percent reduction in intensity every year thereafter. Emissions reporting requirements were also expected to be part of the regulations, in addition to existing reporting requirements under CEPA.

Draft regulations outlining these requirements and setting reductions targets were initially expected to be ready for public comment in the fall of 2008 and approved by the fall of 2009, with the provisions coming into force on January 1, 2010. However, since the publication of the Turning the Corner Plan, the Canadian federal government has publicly stated that it will delay implementing any specific federal greenhouse gas emissions legislation or targets until after the United States implements its own legislation, so that Canadian greenhouse gas legislation is integrated and consistent with the U.S. legislation.

4. Regional – The Western Climate Initiative (“WCI”)

The WCI is a regional initiative currently comprised of Arizona, British Columbia, California, Manitoba, Montana, New Mexico, Ontario, Oregon, Québec, Utah, Washington, and several observer states, including Saskatchewan. The WCI is pursuing a regional GHG reduction target of 15 percent below 2005 levels by 2020, and plans to establish a market-based cap and trade mechanism to achieve the reduction targets. The Design Recommendations for the WCI Regional Cap-and-Trade Program were released on September 23, 2008. Since then, the WCI has been active establishing policy relating to a number of issues, including early reduction allowances, auction design and offset protocols. Whether the Program will now be implemented by enabling legislation in the various Partner jurisdictions as originally planned will likely depend on what happens on the U.S. federal stage.

5. British Columbia

British Columbia's climate action plan will affect every major sector in B.C., particularly those with the highest percentage of GHG emissions, which in B.C. include transportation (38 percent), fossil fuel production (21 percent), industry (15 percent), residential and commercial (11 percent), waste (8 percent), agriculture (4 percent), and electricity (3 percent). In 2008, the Province introduced a suite of legislative initiatives aimed at climate change, including the *Greenhouse Gas Reduction Targets Act*, the *Carbon Tax Act*, and the *Greenhouse Gas Reduction (Cap and Trade) Act*, which were previously summarized in our initial Climate Change Bulletin dated August 15, 2008.

Under the *Greenhouse Gas Reduction Targets Act*, the provincial government passed the *Emission Offsets Regulation*⁷ which defines how GHGs are measured in order to determine reductions, removals, emission offsets, and the recognition of project plans by industries to reduce their GHG emissions.

In late 2009, the provincial government approved the *Reporting Regulation*⁸ under the *Greenhouse Gas Reduction (Cap and Trade) Act*, which is now in force. As of January 1, 2010, "single facility operations" and "linear facilities operations" located in British Columbia and emitting 10,000 tonnes or more of GHGs per year will be required to register with the Ministry of Environment (MOE), collect emissions data, and report their GHG emissions.

The Reporting Regulation includes a detailed list of the types of single facility operations which must report GHG emissions including:

- Aluminum or alumina production
- Base metals smelting
- Cement production
- Chemical/petrochemical production
- Large commercial or institutional facilities
- Electricity generation and co-generation (thermal)
- Electricity transmission (SF6 emissions)
- Food production
- Lime manufacturing
- Manufacturing
- Mining
- Non-metallic mineral products manufacturing
- Oil and gas extraction and gas processing
- Pipeline transportation/transmission
- Petroleum refining
- Pulp and paper production
- Wood products manufacturing

Linear facilities operations include:

- Oil and gas extractions and gas processing activities
- Electricity transmission
- Natural gas transmission, natural gas distribution or natural gas storage

⁷ *Emissions Offset Regulation*, B.C. Reg. 393/2008.

⁸ *Reporting Regulation*, B.C. Reg. 272/2009.

- Oil transmission
- Carbon-dioxide transmission

Both single site and linear operations are required to report emissions from general stationary combustion. Only single facility operations are required to report emissions from mobile equipment.

Reporting facilities with emissions in 2010 greater than 10,000 tonnes were required to register with the MOE before April 1, 2010 and should have begun data collection and documentation as of January 1, 2010. Emissions reports for these facilities for 2010 must be submitted by March 31, 2011.

The Reporting Regulation also requires that reporting operations with annual GHG emissions of 25,000 tonnes or more include with their emissions report a verification statement prepared by an accredited verification body. Verification of emissions reports must comply with the requirements specified in the Reporting Regulations and in ISO 14064-3, and be conducted to provide a reasonable level of assurance. The verification manual issued by the Ministry in December, 2009 provides details on both reporting requirements and verification standards. The deadline for submission of verification reports is September 1, 2011 for emissions reported in the 2010 calendar year.

In addition, the *Miscellaneous Statutes Amendment Act (No. 3), 2010*, which includes amendments to the *Greenhouse Gas Reduction (Cap and Trade) Act*, received Royal Assent on June 3, 2010. According to the Province, the amendments are required to “meet regulatory requirements and timelines approved by the cabinet committee for climate action and clean energy,” and “expand or clarify authorities needed to draft regulations for a cap-and-trade system.” The amendments also help integrate British Columbia’s cap-and-trade requirements with those of WCI partners to ensure consistency with the WCI cap-and-trade design.

The *GHG Reduction (Renewable and Low Carbon Fuel Requirements) Act* requires suppliers of gasoline and diesel fuels to have a prescribed percentage of renewable fuel in the fuel they supply. This requirement can be achieved either by actual compliance or by notional transfer from other fuel suppliers who have supplied a higher percentage of renewable fuel than required within a given compliance period. In relation to fuel used for transport purposes, the Act requires fuel suppliers to ensure that the fuel they supply does not exceed a prescribed carbon intensity, again either by actual compliance or by notional transfer from another fuel supplier.⁹ The Act came into force on January 1, 2010.¹⁰

⁹ “Carbon intensity” in this context means the GHG emissions attributable to the fuel proportionate to the energy provided by the fuel in its expected use for transport. The amount of GHG emissions attributable to a particular fuel will be set by regulation.

¹⁰ *GHG Reduction (Renewable and Low Carbon Fuel Requirements) Act*, 2008, S.B.C. c. 16.

The *Renewable and Low Carbon Fuel Requirements Regulation* also came into force on January 1, 2010. The regulation establishes requirements in relation to renewable fuels as well as requirements in relation to the carbon intensity of fuels. It also contains enforcement provisions such as administrative penalties.¹¹

Clean Energy Act

The provincial government tabled Bill 17, the proposed *Clean Energy Act*, on April 28, 2010. The Act received Royal Assent on June 3, 2010 with certain provisions to come into force on July 5, 2010 or by regulation. The Act sets 16 “energy objectives” for British Columbia, including the achievement of energy self-sufficiency, the promotion of clean and renewable energy sources and the encouragement of energy source selection and other measures to reduce GHG emissions in the province. It provides for extensive regulation of BC Hydro by the Minister to achieve energy objectives and exempts many BC Hydro projects from BCUC jurisdiction. It also contemplates the export of “clean or renewable” resources from BC and provides for the reintegration of BC Transmission Corporation into BC Hydro. The GHG reduction targets for the province set out in the Act are as follows:

- at least 6% less than the 2007 level by 2012 and for each subsequent year;
- at least 18% less than the 2007 level by 2016 and for each subsequent calendar year;
- at least 33% less than the 2007 level by 2020 and for each subsequent calendar year;
- at least 80% less than the 2007 level by 2050 and for each subsequent calendar year; and
- by any other amounts determined under the *Greenhouse Gas Reduction Targets Act*.

Other Developments

On April 6, 2010 Canada’s Environment Minister Jim Prentice and B.C.’s Minister of State for Climate Action John Yap signed an Agreement in Principle which supports cooperation between the province and the federal government to ensure a coherent and efficient approach to climate change. The federal government has indicated that this Agreement in Principle is a first step towards a formal Equivalency Agreement under CEPA, the goal of which is to avoid the duplication of regulatory measures and ensure that the environmental needs of both parties are met.

¹¹ *Renewable and Low Carbon Fuel Requirements Regulation*, B.C. Reg. 294/2008.

6. Conclusion

The climate change landscape is still constantly shifting as policy initiatives transform into legislative action, and we expect to see further developments. Of particular note will be the proposed U.S. program, and its impact on WCI and Canada. If you would like more information on the issues discussed in this bulletin please contact any member of our Climate Change Law Group listed below, who would be happy to provide further information on any of these issues.

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