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WESTERN CANADIAN BUSINESS LAW

Climate Change Bulletin

Legislative & Policy Initiatives: International, Regional, Federal & Provincial

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1. Introduction¹

Concerns over global climate change have sparked a series of legislative and policy responses on the provincial, federal, regional, and international levels. The challenge of complying with climate change policy is that different governments have invoked a number of different policy tools to respond and adapt. Of the multitude of policy options available, the most widely adopted tool is greenhouse gas (“GHG”) reporting, which allows governments to track emissions and create an overall inventory for monitoring purposes. Based on this inventory, some jurisdictions, such as British Columbia, have set goals to reduce their emissions in absolute terms by a certain date, while others, such as Alberta, prefer intensity based targets whereby they aim to reduce emissions per unit of GDP or per unit of production. Many jurisdictions also plan to create market-based credit trading systems (cap and trade), whereby less efficient operations can purchase emissions credits from more efficient operators or participate in offset programs to meet their compliance targets. B.C. has created a carbon tax on the combustion of fossil fuels, and some other jurisdictions are considering following suit. Additionally, there are several other policy options to consider, such as fuel and emissions standards, green building codes, and restructuring utilities legislation to encourage the growth of alternate source (non fossil fuel) power producers.

This bulletin provides a brief overview of current legislative and policy initiatives not only in B.C., but also regionally, nationally, and on the international stage. To provide a global context, the bulletin begins with a discussion of international initiatives such as the *Kyoto Protocol* and the Clean Development Mechanism, as well as developments in Europe. The federal government’s climate change plan is followed by a discussion of the Western Climate Initiative, whose membership is no longer confined to western states and provinces. The bulletin then provides a comprehensive overview of climate change-related legislation in B.C., a jurisdiction pursuing a full range of policy tools as part of its climate change response. Finally, a discussion of legislative initiatives in Alberta is followed by an overview of developments in the Territories as well as Ontario and Québec.

2. International

(a) *United Nations Framework Convention on Climate Change, 1992* (“UNFCCC”)

The objective of the UNFCCC is the stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Canada ratified the UNFCCC in 1994. The UNFCCC does not contain any binding targets itself; rather, it is a framework convention calling for further specification through the development of protocols, such as the *Kyoto Protocol*.

¹ We wish to acknowledge the work of summer articulated student Toby Kruger for the preparation of this bulletin.



(b) *Kyoto Protocol*

Canada has signed and ratified the *Kyoto Protocol*. The protocol imposes caps on GHG emissions in developed countries. GHGs included under the protocol are CO₂, methane, nitrous oxide, hydrofluorocarbons (“HFCs”), perfluorocarbons (“PFCs”), and sulphur hexafluoride. Canada’s commitments under the protocol require it to reduce average annual GHG emissions during the 2008-2012 period to six percent below 1990 levels. By 2005, each party was required to have made demonstrable progress in achieving its commitments under the protocol, which also requires the establishment of a national reporting system. Canada has established a national reporting system, but has not established regulatory measures to meet the Kyoto target of reducing emissions to six percent below 1990 levels.² No Canadian government has ever fully complied with the *Kyoto Protocol*. Non-compliance could mean, amongst other things, exclusion from the Kyoto trading scheme.

The *Kyoto Protocol* also contains several flexibility mechanisms, including the Clean Development Mechanism (“CDM”). The CDM is a program within which entities in developed countries outsource their obligation to cut carbon emissions by sponsoring carbon-cutting schemes in less developed countries. CDM projects are measured against a GHG emissions baseline, which represents the amount of GHGs that would have been emitted without the benefit of the project. Certified emission reductions from CDM projects can be sold and traded amongst developed country parties.

(c) Next steps

The *Kyoto Protocol* to the UNFCCC is 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 is 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 acknowledges the findings of the recent scientific assessment by the Intergovernmental Panel on Climate Change (“IPCC”) and concludes that deep cuts in global emissions of GHGs will be required to prevent global warming from reaching dangerous levels. The IPCC recommends global GHG emission reductions of 50 percent relative to 1990 levels by 2050. The next high level round of formal negotiations will be held in Poznan, Poland in December 2008, with a final agreement for post-2012 climate action to be reached in Copenhagen in 2009.

² Six percent below 1990 levels was an arbitrary target chosen by Canada. No rationale for this target was ever issued, and no studies were done in advance to determine whether the target was technically or economically achievable.



(d) Europe

As part of its commitment to GHG reductions under the *Kyoto Protocol*, Europe has had an emissions trading system (“EU ETS”) in place since January 1, 2005. The first phase of the EU ETS ended on December 31, 2007, and was intended as a trial run prior to the Kyoto compliance period 2008-2012. Phase one of the European cap and trade system applied to approximately 12,000 facilities in 25 EU member nations. The success of the system was variable and the price of emissions credits fluctuated, due in part to inconsistencies in the manner in which member nations distributed emissions allowances. While some nations were able to make reductions over the first phase of the EU ETS, overall emissions from facilities within the EU ETS rose slightly over the period.³ Because of this, the EU has set tighter emission caps for the 2008-2012 trading period. Nevertheless, emissions increases in the first phase were well below the EU’s GDP growth over the same period. Europe has also set aggressive long term emissions reduction targets: 20 percent below 1990 levels by 2020, and 50 percent to 80 percent below 1990 levels by 2050.

(e) 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, B.C., the European Commission, the Western Climate Initiative (see below) and the Regional Greenhouse Gas Initiative.

3. Federal

In an effort to improve Canada’s ability to monitor, report and verify its GHG emissions, the *Canadian Environmental Protection Act* requires GHG reporting. The system requires facilities emitting 100,000 tonnes or more of carbon dioxide equivalent emissions (“CO₂e”) per year to report their emissions.⁴ This is a large number – to put this into context, there were about 300 facilities caught by this threshold in 2006. Facilities falling into this category include, for example, large-scale generating stations, cement plants, and refineries.

³ Sweden, for example, was able to reduce emissions from facilities within the EU ETS by over 20 percent from 2005-2007, whereas Finland’s emissions grew by over 25 percent. Both Germany and the U.K. posted slight emissions increases over the period.

⁴ “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.



(a) *Kyoto Protocol Implementation Act and Bill C-377*

The purpose of the *Kyoto Protocol Implementation Act* (a private member's bill sponsored by a Liberal Member of Parliament) is to ensure that Canada meets its global climate change obligations under the UNFCCC and the *Kyoto Protocol*. It requires the federal Minister of the Environment to produce a Climate Change Plan by May 31 each year that includes a description of the measures to be taken to ensure that Canada meets its obligations under the *Kyoto Protocol*. A federal court application seeking a declaration that the federal government is not in compliance with the *Kyoto Protocol Implementation Act* was heard in mid June and a decision is pending. Additionally, Bill C-377, *An Act to ensure Canada assumes its responsibilities in preventing dangerous climate change* (a private member's bill sponsored by the NDP), which would require Canada to reduce its GHG emissions by 80 percent relative to 1990 levels by 2050 was passed by the House and is currently before the Senate.

(b) "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 requires 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 will 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 will have a three year grace period and then a 2 percent reduction in intensity every year thereafter. Draft regulations outlining these requirements are 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. Emissions reporting requirements will also be part of the regulations, in addition to existing reporting requirements under the *Canadian Environmental Protection Act*, until equivalent regulatory requirements are in force. There is an expectation that the data will eventually be managed under the "single window" reporting initiative currently promoted by Environment Canada.

The federal government's plan also establishes a "baseline and credit system", which allocates units to a company for making reductions beyond its intensity-based GHG emissions reduction targets. At the end of each compliance year, emissions from large regulated industrial emitters will be verified. Each emitter must then match its GHG emissions against its intensity-based GHG emissions reduction target established by the government. To offset the discrepancy between the imposed target and the actual emissions, regulated emitters will be able to choose from three compliance measures: buying units on the domestic carbon market, contributing to a technology fund, and buying international units. The initial compliance year is 2010.

Under the first option, regulated emitters that reduce the intensity of their GHG emissions beyond the target established by the federal government would be issued regulated emitter's credits. Offset credits will be attributed to companies that are not subject to intensity-based emissions reduction targets but are nevertheless involved in voluntary projects to reduce their eligible GHG emissions. Both



regulated and non-regulated emitters will be able to sell their credits on the market or keep them for subsequent compliance years. This option embraces the domestic carbon market and has led to, amongst other initiatives, the Montreal Climate Exchange, which launched in the summer of 2008. The voluntary market for carbon reductions has become increasingly active, as regulated emitters may be eligible to receive early action credits – up to 15 MT of CO₂e for verified actions taken between 1992 and 2006, with no more than 5 MT usable per year. The deadline for filing a notice of intent for early action credits under the federal government framework was July 28, 2008.

The second option would allow regulated emitters to contribute to a technology fund in order to offset their emissions. Contribution to this fund will be limited to 70 percent of emitters' compliance needs in 2010, with a gradual 5 percent reduction each year to 50 percent in 2014, 40 percent in 2015, and 10 percent in 2016, with no more contributions permitted in 2018 or later. The fund's contribution rate has been fixed at \$15 per tonne of CO₂e between 2010 and 2012, and \$20 per tonne of CO₂e in 2013. The contribution rate thereafter would be indexed to GDP. In the near term, the technology fund will focus on deploying existing technology and infrastructure, and in the long term includes research and development.

The third option would allow regulated emitters to purchase international units under the CDM. Access to CDM credits for compliance purposes would be limited to 10 percent of each regulated emitter's target.

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

The WCI⁵ is a regional initiative currently comprised of Arizona, British Columbia, California, Manitoba, Montana, New Mexico, Ontario, Oregon, Québec, Utah, Washington, and several observer states. 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. What follows is a summary of the Draft Design Recommendations for the market-based mechanism, with final design recommendations expected in September 2008.

The WCI recognizes that a credible reporting system is the cornerstone of any cap and trade system. To this end, it appears very likely that the Climate Registry will be the instrument of choice for WCI. The Climate Registry is developing a GHG emissions measurement protocol that is capable of supporting voluntary and mandatory GHG emission reporting.⁶ It has a broad membership base that includes the majority of jurisdictions in Canada and the United States. The advantage of a regional reporting mechanism is that it will facilitate trading across jurisdictions.

⁵ The WCI has been compared to, but is different than, the Regional Greenhouse Gas Initiative (“RGGI”), which is an initiative by 11 north-eastern states. The RGGI aims to reduce emissions from fossil-fuel fired electricity generators to 10 percent below 1990 levels by 2019.

⁶ More information on the Climate Registry is available on their website at <http://www.theclimateresistry.org/>.



The final design recommendations will define the scope of the WCI trading system, including what kind of entities or facilities will have a compliance obligation under the cap and which emissions will be subject to the obligation. Sectors included in the current draft recommendations are: electricity, large stationary combustion sources, industrial processes, and fossil fuel production and processing. Even in the event that not all of these sectors are subject to a compliance obligation, there is a very high likelihood that all listed sectors will be subject to a reporting obligation. The final recommendations will likely use an emissions threshold to determine which facilities would have a regulatory compliance obligation. The current proposal is to include at least 90 percent of WCI-wide non-power plant stationary source fuel combustion emissions, which has the potential for disparate impact amongst member states. If this proposal is accepted, the emission threshold that defines facilities or entities that would have a regulatory compliance obligation under the cap and trade program would be 25,000 tonnes of CO₂e annually, which is 25 percent of the current federal reporting threshold.

State and provincial members of the WCI will set a regional GHG emissions cap that will decline over time. Each member will be allocated an allowance budget within that cap, and member states and provinces will distribute the allowances to entities within their jurisdictions at their discretion. The initial allowance budget will likely be flexible in the first compliance period as more reliable data becomes available through reporting. The advantage of the regional cap is that it will allow for interjurisdictional trading with interchangeable emissions credit units. The WCI will also likely place a high priority on the interchangeability of credits with other emissions trading systems. Credits for early action will likely be permitted, as will banking credits for future use without restrictions. Offsets will also be permitted, with WCI creating a set of eligible project types prior to launching the cap and trade system. It is not yet clear whether offsets using the Kyoto Clean Development Mechanism will be permitted, but it is likely that priority will be given to offset projects located within the WCI region.

5. British Columbia

British Columbia's climate action plans will affect every major sector in B.C. Particularly hardest hit will be sectors with the highest percentage of 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). A summary of current legislative initiatives in B.C. is provided below.

(a) *Greenhouse Gas Reduction Targets Act*

This Act came into force on January 1, 2008. The Act establishes province-wide GHG reduction targets. The target for 2020 is emissions 33 percent lower than 2007 emissions, and for 2050 the target is 80 percent below 2007 levels. The B.C. government will establish 2007 baseline levels "as soon as practicable", and will publish GHG emission reports every two years thereafter. Intermediate reduction targets for 2012 and 2016 are expected late this year. Starting in 2008, the provincial



government and all other public sector organizations⁷ must commence actions to reduce GHG emissions with a view to becoming carbon neutral by 2010.

(b) *Carbon Tax Act*

This Act imposes a tax on the purchase of fuel and on the burning of combustibles to produce energy or heat (currently limited to peat, tires and shredded tires⁸) in B.C., and on fuel that is brought into or used in the province or transferred into the supply tanks of ships, aircraft or trains. The bulk of the taxing provisions under the Act came into force on July 1, 2008.

For fuel purchases, a tax will be imposed on the sale of fuel to a purchaser at the time of purchase. If there is difference in rate at time of purchase and time of delivery, the rate at time of delivery prevails. The Act provides a detailed schedule of the tax rate to be paid on various fuels and combustibles, with tax rate increases occurring annually. The carbon tax starts at a rate based on \$10 per tonne of associated carbon, or carbon-equivalent, emissions and will rise by \$5 a year for the next four years, reaching \$30 per tonne by 2012. Gasoline is currently taxed at a rate of 2.34 cents per litre, and will rise each year to a rate of 7.02 cents per litre in 2012. Marketable natural gas commences at a tax rate of 1.9 cents per m³, rising to 5.7 cents per m³ in 2012, and high value heat coal commences at a tax of \$20.77 per tonne in 2008, rising to \$62.31 per tonne in 2012.⁹ Where it is not possible to impose a tax on the purchase or transfer of fuel, a tax will be imposed on its use. There are limited exemptions from payment of the tax for fuel that is not combusted when used as a raw material in an industrial process.

The Act establishes an administrative scheme for the imposition and collection of tax, the collection of security and the refunding of tax and security, and an appeal mechanism that is similar to the administrative scheme established under the *Motor Fuel Tax Act*. It requires the Minister of Finance to regularly prepare a carbon tax plan that sets out the projections respecting revenue to be raised by the carbon tax and the consequential reduction in other Provincial revenues to make the carbon tax revenue neutral. It is important to note that regulations may be made providing for the exemption from payment of the tax with respect to a fuel or combustible that is the source for GHG emissions under the *Cap and Trade Act* (see below).

⁷ The definition of “public sector organization” and the sources of emissions which they need to track and report is to be determined by regulation.

⁸ There is an expectation that additional substances will be added to the “combustibles” list.

⁹ A complete schedule of taxable substances can be found online at http://www.leg.bc.ca/38th4th/3rd_read/gov37-3.htm by scrolling to the bottom of the page. Note that the schedule is subject to change.



(c) *GHG Reduction (Cap and Trade) Act*

This Act requires operations that are prescribed as regulated operations to match their GHG emissions with “compliance units” permitted under the Act.¹⁰ Regulations have not yet been established to determine what is considered a “regulated operation”. Under the Act, regulated operators must determine and report the GHG emissions attributable to their operation for a given compliance period. Of particular interest is that the government may make regulations establishing certain GHG emissions “deemed” to be attributable to a regulated operation, including GHG emissions that occur outside B.C., or, in the case of electricity suppliers, deeming GHG emissions associated with the generation and transmission of electricity until the point at which the electricity is received by the B.C. electricity grid to be attributable to the regulated operation.

Once regulated operators have identified their GHG emissions, they must use or “retire” a corresponding number of compliance units. Three types of compliance units will be made available, each of which represents one tonne of CO₂e.¹¹ A fixed number of B.C. Allowance Units (“BCAU”) will be issued to regulated operators either by sale, auction, or without charge. B.C. Emission Reduction Units (“BCERU”) will be issued for verified GHG emission reductions, avoidances or removals in relation to emission reduction projects accepted under the Act. Recognized Compliance Units (“RCU”), which are units from other systems, such as the WCI, may also be used for the purpose of matching credit retirements with GHG emissions. All types of emissions credits will be tradeable amongst regulated operators. Retired units cannot be used again.

While the legislative framework has received Royal Assent, there are currently no associated regulations. It can be expected that the first regulations under the Act will provide for the establishment of a compliance unit tracking system that records the ownership, transfer, and retirement of compliance units.

(d) *GHG Reduction (Renewable and Low Carbon Fuel Requirements) Act*

This 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.¹² To date, there

¹⁰ One “compliance unit” or credit gives the holder the right to emit one tonne of CO₂e). Most jurisdictions contemplating a cap and trade system appear to be adopting this standard.

¹¹ GHG equivalents will be determined by regulation.

¹² “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.



are no regulations specifying what specific quantities of renewable fuels are required for different classes of fuel or what types of fuel can be considered renewable, although they are expected in the fall this year.

(e) *Greenhouse Gas Reduction (Emissions Standards) Statutes Amendment Act*

This Act amends the *Environmental Management Act* and the *Forest Act* to reflect the B.C. government's climate change plan. Some highlights of the amendments to the *Environmental Management Act* include prohibiting the introduction of prescribed GHGs from coal-based generating facilities into the environment, unless an equivalent amount of GHG from the facility is stored or sequestered in accordance with regulations under the Act. The definition of coal based facilities includes those facilities that only use coal from time to time or generate electricity from sources in part from coal and in part from another energy source. Additionally, the amendments require all electricity generating facilities (as determined by regulation) to offset their emissions of GHGs, other than those that are stored or sequestered, with emission offsets permitted under the regulation. Effectively, this requires electricity generators to have net zero emissions. The amendments will apply to all new electricity generation facilities and to existing facilities within the first compliance period that includes all or part of 2016.

Amendments to the *Forest Act* provide for Crown timber to be harvested under a forest licence for the production of bioenergy. The Act intends to support the growth of a wood bioenergy sector by encouraging the use of wood residue as a potential energy source. Harvesting of timber attacked by mountain pine beetles will also be encouraged for this purpose.

(f) *Greenhouse Gas Reduction (Vehicle Emissions Standards) Act*

This Act requires motor vehicle manufacturers to have their vehicle fleets for a model year meet a prescribed fleet emissions standard. This requirement will target both GHG emissions and air pollutants, and is to be achieved by actual compliance with the standard or through the application of credits generated from other vehicle fleets that have GHG emissions lower than the established fleet emissions standard. The Act also requires motor vehicle manufacturers to meet the prescribed requirement for including "Zero Emissions Vehicles" in their fleets for a model year, again either by actual compliance or through the application of credits generated from other vehicle fleets. The B.C. approach is modeled on the California low-emission vehicle regulations, which are also being adopted by seventeen U.S. states and contemplated by several Canadian jurisdictions. Following California's model, B.C.'s regulations will set two separate fleet average standards per year: one standard for passenger cars and small trucks, and a less stringent standard for larger trucks, SUVs and vans. It should be noted that in September 2007, a U.S. federal court rejected automaker claims that the California-style regulations were burdensome and would cause undue economic hardship to the industry.



(g) Other Initiatives

The B.C. Energy Plan contains the B.C. government's vision for meeting the climate change challenge while maintaining an affordable energy supply. The plan provides a background for several of the legislative initiatives outlined above, including setting targets for zero net GHG emissions from new electricity projects, new investments in innovation, and an ambitious target to acquire 50 percent of B.C. Hydro's incremental resource needs through conservation by 2020.

In response to the B.C. Energy Plan, the *British Columbia Utilities Commission Act* has been amended. The amendments align the Act with the B.C. Energy Plan objectives and mandate that public utilities achieve electricity self-sufficiency by 2016 and that at least 90 percent of all electricity in B.C. be produced from clean or renewable resources. Legislative response to the B.C. Energy Plan is not limited to the *Utilities Commission Act*. Various measures, including amendments to the *Local Government Act* (requiring local governments to set GHG emission targets) have also been recently enacted.

In November of 2007, B.C. also established the Climate Action Team ("CAT") to offer expert advice on targets and actions for reducing GHG emissions. CAT issued a report on July 28, 2008 titled "Meeting British Columbia's Targets".¹³ The report makes a number of recommendations for action in areas such as transportation, building, communities, agriculture, and forestry.

6. Alberta

Alberta's 2008 Climate Change Strategy addresses climate change issues by regulating the production of GHGs, implementing Carbon Capture and Storage ("CCS"), and encouraging conservation and energy efficiency on the grassroots level through a series of incentive programs. While action on these three fronts is still developing, there are some policies currently in place.

In contrast to B.C.'s absolute GHG caps, the Alberta *Climate Change Emissions Management Act* specifies an intensity based¹⁴ gas emissions target to an amount equal to or less than 50 percent of 1990 levels by 2020. The Alberta plan does not permit interjurisdictional cooperation for complementary or compatible actions in respect of specified gas emissions unless the agreement is consistent with the specified gas emission target set by Alberta.

Effective July 1, 2007, climate change regulations require existing Alberta facilities that emit more than 100,000 tonnes of GHGs a year to ensure their annual emissions intensity is at least 12 percent below their 2003-2005 average intensity levels. New facilities will be allowed a three year grace period, followed by a 2 percent intensity improvement per year up to 12 percent over 6 years, relative

¹³ The report is available at:
http://www.climateactionsecretariat.gov.bc.ca/attachment/CAT_FINAL_REPORT_July_23_2008.pdf.

¹⁴ "Intensity based" in the Alberta context refers to a reduction of specified gas emissions relative to GDP.



to third year intensity. Emissions offsets, fund credits, and emission performance credits may be subtracted from total emissions. Every emitter under the regulation who releases specified GHGs must report the release within every compliance period.

There are three mechanisms by which facilities may meet their reductions. Compliance options include: making operating improvements, buying Alberta-based credits or contributing to the Climate Change and Emissions Management Fund (“Fund”). Emissions offsets must occur in Alberta, must be from an action not otherwise required by law, must result from actions taken after January 1, 2002, and must be demonstrable and quantifiable. Offsets may be used only once. Note that since the Alberta system is limited to Alberta-based offsets, the Clean Development Mechanism under the *Kyoto Protocol* will not be available. Emissions credits will be available from the Fund for \$15 per tonne, and the funds will be used for purposes related to reducing emissions of specified gases or improving Alberta’s ability to adapt to climate change, including energy conservation and efficiency, new technologies that reduce specified gas emissions in Alberta’s energy sector, CCS, and sequestration. Emissions trading will also be permitted amongst Alberta firms.

CCS initiatives are being developed through the Alberta CCS Development Council established in April 2008. \$2 billion in public funds has been allocated towards the development of CCS projects. In order for these projects to move forward, Alberta has recognized the need for regulatory clarity on such issues as pore-space ownership, disposition right, and liability issues. The Development Council is expected to report to the government in the fall of 2008 and it is anticipated that new regulations concerning CCS will follow.

7. Northern Territories

All of the Northern Territories have released climate change plans outlining, amongst other things, energy efficiency, GHG accounting, and mitigation measures. Yukon has pledged to establish territory-wide targets for GHG emission reduction by 2010, while the government of the Northwest Territories has pledged to reduce GHG emissions from its own operations to 10 percent below 2001 levels by 2011. To date, Nunavut has not set its own targets.

8. Ontario and Québec

The premiers of Ontario and Québec recently signed a Memorandum of Understanding (“MOU”) that acknowledges the risks of climate change and global warming and contemplates the establishment of an emissions cap and trade system that does not rely on intensity-based targets. The MOU envisions harmonization of reporting requirements with other jurisdictions and cooperation between provinces, territories and states, and it invites other “like-minded provinces and territories” to sign on to the MOU. To this end, Québec and Ontario have already joined the Climate Registry and the WCI. It is unclear at this time whether or not any other provinces or territories will sign the MOU.



9. Conclusion

The climate change policy landscape is constantly shifting. Policy initiatives are transforming into legislative action, and a series of regulatory frameworks are set to emerge over the coming months. Specifically, before the end of the year we can expect to see developments in international climate change negotiations, finalized recommendations for the WCI cap and trade system, a draft regulatory framework for federal emissions reductions, and further details on B.C.'s spread of policy initiatives. It is our commitment to keep you informed of these developments with regular update bulletins. Our climate change group possesses a wide range of experience and would be happy to provide further information on any of these issues.

If you would like more information on the issues discussed in this bulletin please contact any member of the Climate Change Law Group listed below.

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