

## Legal update

### Ontario introduces cap-and-trade system

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**May 2016**

#### **Environmental**

The *Climate Change Mitigation and Low-carbon Economy Act* (Act) was recently passed by the Ontario legislature. This Act, previously described in our [February bulletin](#), introduces the new cap-and-trade system for Ontario. The corresponding Ontario Regulation 144/16 (the Regulation), described in our [April bulletin](#), setting out the details how cap and trade will be implemented has been filed and is set to come into force on July 1, 2016. The province anticipates the first auction under the new system will be held in March 2017.

While the Act as passed is very similar to the earlier version, one of the key changes will be enhanced accountability and public reporting on the cap-and-trade proceeds. For instance, the money raised will go to a Greenhouse Gas Reduction Account to invest in programs that reduce greenhouse gas emissions, and the minister is now required to make a report available to the public each year on initiatives that are funded from the Greenhouse Gas Reduction Account.

Ontario Regulation 144/16 is also similar to its previous draft, but with greater specificity regarding details such as the timeframes for registration of mandatory participants.

In addition, Ontario Regulation 143/16 was filed to address the technical details of quantification, reporting, and verification of greenhouse gas emissions. It will take effect on January 1, 2017, and will ultimately replace the older Ontario Regulation 452/09 under the *Environmental Protection Act* (the EPA Regulation).

#### **Registration timelines for mandatory participants**

Registration by November 30, 2016, is required for:

- Entities that were required under the 2015 EPA Regulation (O. Reg 452/09 as it read on January 1, 2015) to make a verified report.
  - This captures facilities that emit at least 25,000 tonnes of GHG per year.
- Entities that were required under the 2016 EPA Regulation (O. Reg 452/09 as it read on January 1, 2016) to make a report but were exempt from verification under section 26.
  - This captures petroleum product suppliers that supply at least 200 litres of petroleum product per year, electricity importers who import more than zero megawatt hours of electricity per year, and natural gas distributors that are attributed at least 25,000 tonnes of GHG emissions per year.
- Electricity generators who receive natural gas directly from an international or inter-provincial pipeline who were required to make a verified report under the 2016 EPA Regulations.

Registration by March 31, 2017, is required if the above criteria are met on or after November 30, 2016. For any other entities that must prepare a verified 2016 report, registration by September 1, 2017, is required.

#### **Free allowances during transition period**

Free allowances will be granted during a transitional period. In distributing these allowances, the Regulation states the

minister will follow the guidelines provided in the "[Methodology for the Distribution of Ontario Emission Allowances Free of Charge](#)" dated May 16, 2016.

These guidelines foresee allocations based on one or more of the following methods:

- Product output benchmark allocation
  - This method of calculation would be used for products such as iron, steel, grey cement, beer, and hydrogen.
- History-based allocation
  - This method would be used for products such as white cement, glass, ammonia, nitric acid, carbon black, ethylene, refinery feed, styrene, magnesium, high-calcium lime, dolomite, Dolopel, brick, mineral wool insulation, copper, and nickel.
- Direct allocation method
  - This method would be used for certain facilities including: Carmeuse Lime Canada, Terra International (Canada) Inc., London Health Sciences Centre, Hamilton Health Sciences Corporation, Emerald Energy From Waste Inc., Clean Harbors Canada, Inc., and a variety of universities.
- Energy use-based allocation
  - This method would be used for facilities not using the methods listed above.

## Climate Change Action Plan

As reported by *The Globe and Mail*, the province is drafting an updated Climate Change Action Plan, which has yet to be released. Early indications suggest the plan will include \$7 billion in spending over four years, including \$3.8 billion to retrofit buildings, \$1.2 billion towards cutting emissions at industrial businesses and factories, and \$375 million for cleantech research and development.<sup>1</sup>

Ontario also announced on May 26 an [agreement](#) with Alberta to accelerate development of cleantech initiatives. This agreement's goal is to help Ontario and Alberta "reduce greenhouse gas emissions and shift to a lower-carbon economy by identifying technology development and demonstration projects."

## Quebec and California carbon markets

As adopted, Ontario's cap-and-trade legislation and regulations appear to embody the technical features required to establish a full liaison with Quebec and California's joint carbon market. This will contribute to enhancing the vitality of the forthcoming unique tri-jurisdiction and bi-national carbon market.

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## Footnote

<sup>1</sup> See <http://www.theglobeandmail.com/news/national/ontario-to-spend-7-billion-in-sweeping-climate-change-plan/article30029081/>.

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