

# ENVIRONMENTAL LAW

## GHG UPDATE: PLOTING CANADA'S PATH FORWARD ON CLIMATE CHANGE

Ottawa has fleshed out its strategy to force large emitters of greenhouse gases (GHG) to meet their individual reduction targets by 2012. As expected, the feds intend to add GHGs to Schedule 1 of CEPA, enabling the promulgation of enforceable back-up regulations under the Act.

While working to guarantee compliance with the forthcoming compulsory limits, the feds have also offered to soften the economic blow of cutting GHGs by capping reduction costs. The measures, which should be in place by 2008, would affect about 700 companies in the oil and gas, mining and manufacturing, and thermal electricity sectors.

Emitters will have several compliance options. They could invest in in-house emission reductions, purchase domestic or international emission reduction credits, or contribute to a new Technology Investment Fund (TIF), which will help promote technological innovation and reductions beyond the Kyoto period. Access to the TIF will be capped at 9 megatonnes. If a company cannot meet its target, Ottawa has pledged not to seek a penalty "greater than \$200 per excess tonne of emissions unless circumstances dictate otherwise."

The plan includes a potentially costly pledge. To promote compliance, Ottawa would implement, "if required, a price assurance mechanism to ensure that companies would be able to meet their

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- ◆ Ontario promulgates new local air pollution regulation replacing O. Reg. 346 on Nov. 30

regulatory obligations at a cost of no more than \$15/tonne for the period 2008–2012." Special credits, rebates, or a new investment fund are among the funding supports suggested.

Companies that have surplus emission reductions may sell them to other companies or to the Climate Fund. Ottawa will establish the basic rules for trading domestic offset credits and an electronic system for tracking transactions. However, the private sector is expected to set up and run brokerages, carbon exchanges and other components of the trading infrastructure.

Details on setting emission reduction targets, compliance mechanisms, and the preferred regulatory options were published in the *Canada Gazette Part I* on July 16, 2005. In addition, the scientific rationale for regulating GHGs under CEPA s.64 has been posted on the CEPA Environmental Registry.

The Canadian plan mirrors renewed international support for the Kyoto Protocol. Despite the distraction of the

## U.S. BORDER RESTRICTIONS WORRY WASTE MANAGERS

After years of debate, Washington may begin to tighten the U.S. border to Canadian solid waste imports. Conventional wisdom has always held that NAFTA would preclude any closure. However, recent developments suggest NAFTA may no longer guarantee our trash access to U.S. landfills.

On June 29, the U.S. Congressional Committee on Energy and Commerce approved *The International Importation and Solid Waste Management Act* to give individual states greater control over the wastes that pass their borders. The notice and consent provisions that currently apply to transboundary hazwaste shipments (under the U.S.-Canadian Agreement) would also be applied to solid waste transfers. The bill (H.R. 2491) now moves to the full House for a vote.

Then in July, the U.S. Senate passed a provision that would prohibit vehicles containing Canadian waste from entering the U.S. until the Secretary of Homeland Security certifies the methods used to inspect the vehicles for potential threats.

Claiming we face "a waste management crisis", the Ontario Waste Management Association has called on the province to quickly implement an integrated waste management plan to handle Ontario's waste within its own borders. A study completed by RIS International earlier this year says the disposal situation will become "much worse over the next five years." The study showed that:

- ◆ Delays and inspections of Ontario waste crossing into the U.S. are already causing major problems.
- ◆ Michigan is imposing restrictions on waste imports and increasing the fees it charges on waste imports.

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**OTTAWA HAS SLEW OF REGULATORY CHANGES IN THE WORKS**

Proposal	Reference
The <i>Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations</i> (SOR/2005-149) harmonize federal-provincial requirements, permit the prohibition of exports under certain conditions, limit the time periods for the disposal/recycling of materials, set criteria for refusing to issue a permit, facilitate recycling by amending the definition of low risk recyclables and changing insurance requirements, and adopt a movement document harmonized with that used by the provinces to meet international requirements.	The new regulations were published in the <i>Canada Gazette, Part II</i> on June 1, 2005, and will come into force on November 1, 2005.
A proposed <i>Agreement respecting the Canada-wide Standard for Mercury Emissions from Coal-fired Electric Power Generation Plants</i> , consisting of emission caps on existing plants and capture rates for new plants, has been negotiated with provincial and territorial governments (except Quebec).	The proposed Agreement was published in the <i>Canada Gazette Part I</i> on July 23, 2005; the CWS is available on the CCME website.
2-methoxyethanol (2-ME), pentachlorobenzene (QCB) and tetrachlorobenzenes (TeCBs) would be added to the Prohibited Toxic Substances List in Schedule 1 of the <i>Prohibition of Certain Toxic Substances Regulations, 2005</i> .	Proposed amendments were published in the <i>Canada Gazette Part I</i> , July 09, 2005.
The proposed <i>Regulations Respecting 2-Butoxyethanol</i> would set limits for concentration of 2-BE in cleaning, painting and coating, and other products designed for indoor use.	Proposed regulation was published in the <i>Canada Gazette Part I</i> , July 09, 2005.

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London bombings during the G8 summit meetings of early July, the leaders (including the Americans!) found time to issue an extensive communiqué reaffirming their commitment to reduce GHG gas emissions, enhance energy security, support clean power and energy efficiency, and cut air pollution.

**UPDATE TO BROWNFIELDS REGULATION**

The province has filed housekeeping amendments to its brownfields regulation (O. Reg. 153/04). Of interest to consultants are provisions that qualified persons are no longer required to maintain their own insurance; QP insurance can now be held by an employer. See O. Reg. 366/05 published in the July 9, 2005, issue of *The Ontario Gazette*.

*(Waste Worries, continued from page 1)*

◆ If the border closed, Ontario's waste transfer stations have only two days capacity to manage the situation.

It's not just about Toronto's garbage. About two-thirds of the waste being trucked to the U.S. comes from other municipalities across the province, including Peel, York, Durham, Hamilton, Halton, Kitchener, Brantford, London, Barrie, Peterborough and Sudbury.

However, not everyone agrees that the situation is critical. We do not have to worry about the U.S. border closing to Canadian garbage, according to Michael Neely, area president of Republic Services, which holds the disposal contracts for a number of Ontario cities, including Toronto, Owen Sound and Kitchener. In a recent issue of *Better Farming* Neely is quoted as saying it's clear sailing to the end of the Toronto contract.

If Michigan does succeed in shutting its borders to Ontario's solid waste, the MOE can invoke emergency powers and force municipalities with untapped landfill capacity to take outside trash, at least for the short-term. The MOE can also alter the CofAs of private landfills, amending the allowed service area and annual fill rate restrictions, to permit them to handle more municipal waste.

**UPDATED GUIDELINES COVER CHEMICAL & WASTE STORAGE**

MOE is proposing new guidelines for chemical and waste storage which were last revised in 1978. The MOE will rely on the *Guidelines for Environmental Protection Measures at Chemical and Waste Storage Facilities* to develop CofAs, plan facility inspections, and draft the orders issued by environmental officers. Plant managers also use the guidelines to assess current operations, plan upgrades and design new facilities.

The revisions cover: above & underground storage tanks, drums and containers, loading chemicals, spills and accidents, maintenance, inspection, and employee training. See EBR Notice PA05E0012.

**ONTARIO FINALLY REPLACES AIR POLLUTION REG 346**

Ontario has finally replaced its long-outdated air pollution Reg. 346. After decades of deliberation, O. Reg. 419/05 comes into force on November 30, 2005. The new regulation, which introduces state-of-the-art U.S. EPA dispersion models and mandatory annual ESDM updates for many regulated sectors, will be phased in over 15 years. Some sectors will have to comply by 2010, but heavy emitters should begin assessing their ability to comply right away. Industries that cannot find the technology or capital to comply by 2010 can apply for "alternate standards". However, there will only be a narrow, 18-month window for applications, starting October 2007. Find O. Reg. 419/05, Air Pollution – Local Air Quality, under the *Environmental Protection Act*, at:

[www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)

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