

Ontario's GHG reporting reg to support cap-and-trade system

Ontario has begun to lay the technical groundwork for joining a North American cap-and-trade network designed to control and reduce greenhouse gas (GHG) emissions. On October 7, 2009, the Ministry of the Environment posted its draft Greenhouse Gas Emission Reporting Regulation and Guideline on the Environmental Registry (under EBR Registry # 010-7889). The deadline for public comment is November 6, 2009.

The proposed regulation only covers facilities that release at least 25,000 tonnes of carbon dioxide equivalent (CO₂e) per year. However smaller emitters and fuel suppliers have been put on notice that they may also be subject to annual reporting requirements once a continental cap-and-trade system is up and running. Ontario is still working on a system for allocating CO₂ allowances among emitters and setting carbon prices.

The regulation proposes an annual reporting system for large emitters. The first report, covering their 2010 emissions, must be submitted by June 1, 2011. While smaller facilities (emitting between 10,000 and 25,000 tonnes per year) are not required to report, MOE is encouraging voluntary reporting so that they will be prepared to adapt to emerging North America-wide requirements.

The draft regulation provides a certain amount of flexibility in quantifying GHG emissions for the first reporting period. The accompanying Guideline outlines alternative quantification methods that may be used for calculating 2010 emissions, and the mandatory quantification methods that will be required thereafter. MOE has adopted methods from the Western Climate Initiative (WCI) and the U.S. Environmental Protection Agency.

Adding to the cost and complexity, starting with the 2011 emission summaries, each facility must obtain verification by an authorized third party. Verification reports will be due by September 1, starting in 2012. The one-year delay will provide time to assemble sufficient verification capacity, in accordance with the ISO 14064 and 14065 requirements. In the interim, MOE is encouraging emitters to have their reports verified on a voluntary basis.

The proposed regulation does not cover fuel suppliers for the transportation, residential, commercial and other industrial sectors. As WCI finalizes its GHG quantification methods for fuel suppliers, Ontario will consider incorporating them into the regulation. In addition, the province still needs to set benchmarks to allocate CO₂ allowances for participants, as well as address carbon cost scenarios for different sectors.

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Ontario continues to work with the federal government and other provinces to harmonize reporting requirements, quantification methods and verification processes. The province is continuing discussions with the federal government on a 'single-window' reporting system.

In a related development, Bill 185 has been referred to the Standing Committee on General Government. The Bill re-enacts s.176.1 of the *Environmental Protection Act* to authorize the making of regulations with respect to GHG emissions trading and other financial instruments. Hearings are scheduled for the beginning of November.

W+SEL will continue to track and report on developments in these key areas. For more information, call Paul Manning at (416) 862-4843.

Proposed revisions to *Mining Act* pass Third Reading

On October 21, 2009, an extensive package of amendments to the province's *Mining Act* passed Third Reading in the Legislature. The revisions contained in Bill 173 will formalize consultation with Aboriginal communities affected by exploration and mining activities. It will also require prospectors to undergo "awareness" training, and introduce a dispute resolution process to resolve problems when discussions over exploration permits and closure plans run into difficulty. The details of the required consultation, training and dispute resolution mechanisms won't be known until the draft regulations implementing those programs are released for comment.

Introduced on April 30, 2009, Bill 173 was subject to acrimonious hearings this summer before the Standing Committee on General Government. Delegations from Aboriginal groups said there had been insufficient pre-consultation on the revisions and that the amended Act still will not require "informed consent" before mining takes place on Aboriginal lands. There were also objections from other stakeholders about the retraining of long-time prospectors, the new map staking system, and protections for landowners in Northern Ontario who don't hold a property's mineral rights. Unfortunately, the committee's clause-by-clause review of the Bill was cut short by a time allocation motion, and the final version tabled in the Legislature contains few of the amendments recommended by the Aboriginal, mining industry, prospecting or environmental groups that appeared before the committee.

With the passage of the revised *Mining Act*, the Ministry of Northern Development, Mines and Forestry will immediately begin to develop regulations and policies to implement many of the new provisions. These will cover: the criteria for sites of Aboriginal cultural significance and the process for withdrawals; exploration plans and permits to ensure these activities are carried out with the appropriate Aboriginal consultation; closure plans for advanced exploration and mine development projects; the dispute resolution process for Aboriginal-related mining issues; the implementation of map staking; and a prospector awareness program to ensure they are aware of the new provisions. The Ministry says it will be "consulting broadly" to develop the regulations. "We



Upon receiving Royal Assent, the government said some provisions will come into effect immediately

- ◆ **A clause will be added to all new leases and lease renewals highlighting the protection for existing Aboriginal and treaty rights provided in section 35 of the *Constitution Act***
- ◆ **A lost or stolen prospector's licence can be replaced without requiring an affidavit**
- ◆ **Some provisions for streamlining administrative processes will take effect**
- ◆ **In Southern Ontario, the automatic withdrawal of Crown mineral rights under privately held surface rights will be proclaimed.**

are committed to providing more opportunity for input from stakeholder groups, aboriginal organizations and the public to make sure we get it right.”

Growth Plan promotes development of Northern Ontario

Ontario has proposed a 25-year Growth Plan for the North to “guide future policy development and infrastructure investments by the province.” The province’s *Far North Act*, still being fine-tuned in a legislative standing committee, addresses the environmental protection of just the upper reaches of the region. The Growth Plan covers all 800,000 square kilometres of Northern Ontario and is designed to ensure its economic and employment growth. More a grab bag of proposed policies and programs than a coordinated strategy, the plan is intended to

- ◆ strengthen the “mineral industry cluster” and maximize the economic benefit of increased mineral exploration and production
- ◆ create regional economic zones to help communities plan for their economic, labour, infrastructure, land-use, cultural and population needs
- ◆ increase the participation of Aboriginal people in the future economic growth of Northern Ontario
- ◆ achieve better health status for Aboriginal communities
- ◆ improve the inter-regional transportation network and enhance broadband services
- ◆ develop a broader transmission network to increase capacity for renewable energy development
- ◆ educate and train northerners for careers in growing fields
- ◆ encourage the development and use of green technologies, green building, and water and energy conservation.

The Plan is being led jointly by the Ministry of Energy and Infrastructure and the Ministry of Northern Development, Mines and Forestry. Public meetings will be held through November and December to solicit feedback from residents, Aboriginal peoples, community leaders, business, industry and other stakeholders. The deadline for written comments on the Proposed Growth Plan is February 1, 2010. More information is available on the Places to Grow website at www.placestogrow.ca

Quebec-Ontario craft joint environment and energy initiatives

The Ministry of Economic Development and Trade has issued a backgrounder on the Ontario-Quebec Trade and Economic Agreement, signed by the two provinces on September 11, 2009. The Agreement is designed “to increase investment and trade between Ontario and Quebec, promote innovation and reduce long-standing barriers to business.” Ontario and Quebec have agreed to make developing an emissions trading system a priority. Both the agreement and the Ministry background statement are posted on-line at:

www.ontariocanada.com/ontcan/1med/en/about_spotlight_en.jsp



On October 23, 2009, the Government of Ontario released its “Proposed Growth Plan for Northern Ontario”, in accordance with s.7(1)(c) of the *Places to Grow Act, 2005*. The document is posted on the Environmental Registry under EBR Registry # 010-8128. The deadline for public for comment is February 1, 2010. Additional background information is available online at www.placestogrow.ca

This deal has been in the works since 2007 and covers a lot of ground, including high speed rail links, the mutual recognition of labour qualifications, vetting proposed regs that may affect interprovincial trade, developing harmonized rules for certain financial services and transportation standards, and ensuring equal access to public procurement opportunities. The two provinces have also agreed to cooperate on a series of joint environmental and energy-related measures to "support ecological protection and encourage sustainable development." These measures will address

- ◆ **Environmental Assessments:** The provinces will coordinate their approaches when conducting EAs for projects that may have significant transboundary environmental impacts
- ◆ **Heavy Duty Emission Standards:** Quebec will strengthen emissions standards for trucks and buses to match Ontario
- ◆ **Extended Producer Responsibility:** Both provinces will explore ways to reconcile waste management approaches for batteries, mercury lamps, and waste electronic equipment
- ◆ **Green Energy:** The provinces will improve knowledge on energy efficiency, conservation and demand management; work towards joint technological and policy development for emerging and renewable energy technologies; explore ways to enhance the region's interconnectedness for renewable energy; and develop principles for cooperation during energy emergencies.

Minister approves hazwaste and WEEE diversion plans

The Minister of the Environment has approved the revised list of Municipal Hazardous or Special Wastes (MHSWs) to be added to Waste Diversion Ontario's new, consolidated MHSW Program Plan. The plan, which would commence July 1, 2010, also contains more aggressive collection and recycling targets, operational improvements, and fee setting and costing details.

Phase 1 of the MHSW plan, which took effect July 1, 2008, covered the diversion of paints, solvents, single use batteries, antifreeze, oil filters, oil containers, pressurized containers, pesticides and fertilizers from residential and small quantity IC&I generators.

The consolidated plan fine tunes the current requirements and expands the MHSW list to include all other batteries (except lead acid batteries from vehicles), aerosol containers, pharmaceuticals, syringes ("sharps"), fluorescent lamps, portable fire extinguishers, mercury-containing measuring devices (such as thermometers and thermostats) and mercury switches, as well as flammables and corrosives. Pharmaceuticals and "sharps" would be collected from residential sources only.

Over the next five years, the plan would increase the number of permanent MHSW depots, mobile collection events, participating retailers/service centres that accept MHSWs, and specialty service channels (including diversion by

The consolidated MHSW program plan was submitted to the Minister on July 10, 2009, and posted to the Environmental Registry for comment from July 31 to August 30, 2009, under EBR Registry # 010-7325. The Minister approved the plan, as submitted, on September 22, 2009.

The proposed WEEE program was submitted to the Minister on July 10, 2009; the revised program was approved on August 14, 2009; and notice of the policy decision was posted to the Registry on August 28, 2009, under EBR Registry # 010-7162.

recyclers and contractors). Stewardship Ontario will also test an innovative “depot-in-a-box” approach.

The Minister has also approved the revised Waste Electrical and Electronic Equipment (WEEE) program, as submitted by Waste Diversion Ontario. When posted on the Registry back in July, the proposed program received a modest number of generally supportive comments from industry, municipalities and municipal associations. These provided specific implementation advice, sought clarification around program implementation details, and commented on the incentives offered to cover collection costs. No unsupportive comments were received.

NRTEE is critical of Ottawa’s greenhouse gas estimates and climate change reporting methodology

The National Roundtable on the Environment and the Economy (NRTEE) has submitted to the Minister of the Environment its advice on the federal government’s 2009 Climate Change Plan and Statement, in accordance with the Roundtables’s obligations under the *Kyoto Protocol Implementation Act*.

There was no Environment Canada press release, and the report was buried on the Environment Canada website. No wonder. The NRTEE document offers an unflattering assessment of Ottawa’s current climate change plans.

While the Roundtable says the “government continues to make improvements to its forecasting”, many of the greenhouse gas (GHG) emission reductions attributed to specific measures and policies are “overestimated” – by a factor of three or four-fold – due to methodological issues. For example, emission reductions related to contributions to the Technology Fund are counted the year the contributions are made rather than years down the road when the research might actually bear fruit. Credits for past action may be included in current year reduction estimates.

NRTEE also details examples of double counting (where the whole is actually less than the sum of the parts), additionality and “free-ridership” (counting reductions that would have occurred in any event) and rebounding (ignoring an increase in users and the resultant emissions due to the popularity of a new technology). NRTEE also says there are “deficiencies in relying exclusively on the annual assessment approach — with its short-term focus and unclear definition of emissions — as the formal accountability mechanism”.

NRTEE was not able to assess the likely effectiveness of the federal regulatory program for industrial GHG emissions, which will be responsible for the bulk (some 55%) of the forecast GHG reductions since the details of that program are not expected to be released before year’s end.

Notice was published in the *Canada Gazette, Part I* (Vol. 143, No. 32) on August 8, 2009. The NRTEE assessment and recommendations are posted on the Environment Canada website (www.ec.gc.ca): under “Topics” click on “Climate Change” and then on “Reports” to find the 2009 NRTEE document.

Ontario's list of species at risk gets longer and the status of the polar bear has deteriorated to "threatened"

The Ministry of Natural Resources has announced amendments to O. Reg. 230/08 (Species at Risk in Ontario List (SARO)) in response to the recent report of the Committee on the Status of Species at Risk in Ontario (COSSARO). A change in the status of species to "threatened" or "endangered" automatically triggers habitat protection provisions in the *Endangered Species Act, 2007* (ESA 2007) and requires the ministry to draft and implement a species recovery strategy.

The COSSARO report was submitted to the Minister of Natural Resources on June 11, 2009. A notice for "information purposes only" was posted to the Environmental Registry on August 11, 2009, under EBR Registry # 010-7360. MNR filed O. Reg. 332/09 to amend O. Reg. 230/08 (Species at Risk in Ontario List) on September 10, 2009, and the new list was published in the *Ontario Gazette* on September 26, 2009.

These amendments will result in the addition of 10 species to the SARO List, the removal of one species (the bigmouth buffalo fish which is a large sucker), and changes to the classifications of 13 other species on the list. On the positive side of the ledger, the status of the hooded warbler and that of the southern Ontario population of bald eagles were upgraded from "threatened" to species of "special concern". COSSARO also reviewed the status of 7 species whose classification on the SARO List will not change, and made some technical changes to the names of certain species.

COSSARO is an independent committee mandated under ESA 2007 to classify species according to risk-based criteria. When a report submitted to the Minister identifies the need to change the SARO List, O. Reg. 230/08 must be amended within three months. Once the regulation is changed, the habitat of a species deemed threatened or endangered is to be protected, and the ministry must prepare a recovery strategy within one year for an endangered species and within two years for a threatened species.

Ontario is revising the technical rules for preparing source protection area assessment reports

The province has proposed a mix of major, minor and administrative revisions to the technical rules for drafting the municipal drinking water source protection plans. As mandated under the *Clean Water Act, 2006*, communities are being required to systematically identify the risks to local drinking water sources and develop strategies to reduce or eliminate such risks. These assessment reports are to be submitted to the Ministry of Environment with 12 months of the Minister's approval of the terms of reference for a source protection area. However, source protection committees, municipalities and stakeholders are having trouble collecting all the information required to meet the current assessment requirements within the regulatory deadlines.

The newly-listed species or those whose status has deteriorated include:

- ◆ bent spike-rush (an endangered plant)
- ◆ fawnsfoot (an endangered mollusc)
- ◆ rapids clubtail (an endangered insect)
- ◆ the northwestern Ontario and Great Lakes populations of lake sturgeon (threatened)
- ◆ the Carolinian populations of the common five-lined skink, eastern foxsnake and gray ratsnake (all endangered reptiles)
- ◆ snapping turtle (a species of special concern)
- ◆ Canada warbler (special concern)
- ◆ chimney swift (threatened)
- ◆ common nighthawk (special concern)
- ◆ horned grebe (special concern)
- ◆ olive-sided flycatcher (special concern)
- ◆ whip-poor-will (threatened)
- ◆ polar bear (threatened)

The proposed revisions to the Directors Technical Rules were posted to the Environmental Registry for 30 days comment from August 24 to September 23, 2009, under EBR Registry # 010-7573.

The latest revisions would provide a more flexible approach for collecting additional data related to water budgets and groundwater wells after the assessment report is submitted. This would allow the ministry to review a draft report while the committee is still filling in any remaining gaps. It should also expedite financial assistance under the Ontario Drinking Water Stewardship Program to address significant drinking water threats. In addition, committees will be permitted to employ alternative methodologies for identifying threats and assessing local conditions. There would also be some leeway for dealing with problems that were not listed in the original terms of reference but that were subsequently identified.

Amendments would also address threats related to the storage and application of agricultural and non-agricultural source materials and commercial fertilizer, and the use of land for livestock grazing, pens or yards. Finally, the province is still wrestling with how to handle the threat that road salts pose to drinking water; they are asking for feedback on the proper way to prescreen vulnerable areas and whether salt application rates should vary in areas at low, medium or high risk.

Ontario updates its general waste management regulation

The Ministry of the Environment has adopted a package of proposed housekeeping, streamlining and administrative amendments to R.R.O. 1990 Regulation 347 (General – Waste Management), under the *Environmental Protection Act*. Certain names, definitions and references to other regulations and legislation are simply updated. Other revisions “clarify requirements in the regulation that have been identified over the years.”

For example, the amendments “formalize an administrative exemption [for field operations] that has been in effect for over 24 years.” The wastes generated by prescribed “field operations” and transferred directly to local waste transfer facilities are exempt from subject waste requirements, including generator registration and manifesting. The amendments also exempt the local waste transfer facility – where field wastes are received, bulked, temporarily stored and transferred – from approvals requirements to receive the waste. Such transfer stations would still have to meet (revised) structural, operating and record keeping requirements in the regulation. The exemption does not apply to waste management facilities, to hazardous or liquid industrial wastes, or to wastes other than those from field operations.

Field operations include renovation, demolition and construction operations; mining; “servicing, maintaining or monitoring something” (presumably equipment of some kind); remote sites operated by power, pipeline or communications networks; environmental, geophysical or agricultural field testing; highway operations; mobile health care providers; trade shows, exhibitions or other such events; and spill clean-up or emergency response.

Among the changes, it is no longer permissible to establish, alter, enlarge or extend a “dump” anywhere in Ontario. Wastes from municipal facilities or

O. Reg. 287/07 sets out the requirements for preparing the terms of reference and the assessment report for a source protection area: two of the three documents that comprise the source protection planning process. Further details are contained in the Director's Technical Rules and associated Tables of Drinking Water Threats issued under section 107 of the *Clean Water Act, 2006*. These documents came into effect in November 2008 and were updated with minor corrections in December 2008.

The draft amendments were posted to the Environmental Registry for public comment from June 18 to July 18, 2009. All comments received were generally supportive and, as a result, no changes were made to the final draft. The final decision was posted to the Registry on September 18, 2009, under EBR Registry #010-6729. The amending regulation was filed as O. Reg. 337/09.

vehicles are subject to the “industrial waste” provisions. Generators have four weeks to confirm a waste transfer, and six weeks after that to report any missing transfer. And a receiver has 24 hours to accept or refuse a transfer of subject waste that arrives at the receiving facility.

Other “clarifications” cover the handling of mercury wastes, record keeping by waste generators, the deadline for generator registration, details of the manifest system, and certain provisions related to woodwaste combustors used for residential heating.

Proposed toxics reduction regs posted for public comment

The Ontario Ministry of the Environment has moved forward with draft regulations to implement the province’s new *Toxics Reduction Act, 2009*. Regulated facilities in the manufacturing and mineral processing sectors will have to undertake toxic substance accounting on an annual basis, submit reports on their toxic substance reduction plans on an annual basis, and update these plans at least every five years. These requirements will be rolled out in two phases, with the first phase covering the 47 priority substances and carcinogens listed in Table A of the draft regulation. Note, two additional substances – antimony and acetaldehyde – have been added to the list of priority chemicals circulated last fall. The second phase will cover the remaining substances on the National Pollutant Release Inventory (NPRI) list.

According to the proposed regulation, the first reports on toxic substance reduction plans must be submitted by June 1, 2011 (covering the calendar year 2010), and the toxics reduction plans are due by December 31, 2011. A summary of these plans must be made available to the public. Facilities that use or create substances listed in NPRI, but which are not listed in Table A, will have until June 1, 2013, to provide their first report to the ministry (covering the calendar year 2012). Facilities would then complete their plans and provide a summary plan to the public and the ministry by December 31, 2013.

Another draft regulation is expected next spring. It would define “substances of concern” for the purposes of the Act and requirements for certified planners and administrative penalties. Substances of concern are potentially toxic materials not currently tracked through NPRI, and facilities using these substances would be subject to a one-time reporting requirement. The information collected will assist Ontario in determining if any of these substances should be added to the list of prescribed substances in Table A of the regulation or if any other action is required.

A discussion paper “Creating Ontario’s Toxics Reduction Strategy” was posted to the Environmental Registry on August 27, 2008, under Registry # 010-4374. The draft regulation was posted to the Registry for public comment from September 18 to October 19, 2009, under EBR Registry #010-6729.

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