

## ***Ontario's Proposal to Address Greenhouse Gas Emissions: Industrial Emission Performance Standards***

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On February 12, 2019, the Government of Ontario posted its proposal for the Emissions Performance Standards (EPS).<sup>1</sup> The EPS proposal is Ontario's replacement for the Cap and Trade Program that was revoked on July 3, 2018, and provides an alternative to the Federal output based pricing system (OBPS) under Canada's *Greenhouse Gas Pollution Pricing Act*. The EPS proposal is posted on the Environmental Registry. Comments will be accepted until March 29, 2019.<sup>2</sup>

The proposed EPS are not an absolute cap on GHG emissions for Ontario. Instead, they are industry or facility-level GHG performance standards.<sup>3</sup>

The EPS proposal would apply to those facilities that are both on the list of regulated facilities and that exceed an annual emissions threshold. Under the EPS proposal, the emissions threshold will be set at either 25,000 or 50,000 tonnes of carbon dioxide equivalent (CO<sub>2</sub>e). The Ontario Government has yet to determine which value will be used for the threshold. The EPS proposal also proposes an opt-in provision for smaller facilities below the threshold but emitting more than 10,000 tonnes of CO<sub>2</sub>e.<sup>4</sup>

Regulated facilities would at minimum include the same sectors cited under the federal OBPS. Ontario's regulated facilities fall within the following sectors: cement, chemical, electricity generation, food, industrial, food and fuel ethanol, metal tubes and steel, lime, metal from mining or milling of ore, mineral products, natural gas liquids, natural gas transmission pipelines, non-ferrous metal smelting, refining, petroleum refineries, oilseeds processing, pulp and paper, upstream oil extraction and upgrading, and vehicle manufacturing.

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<sup>1</sup> Government of Ontario, "Making Polluters Accountable: Industrial Emissions Performance Standards" (February 2019) at 3; 8 [Making Polluters Accountable].

<sup>2</sup> Environmental Registry of Ontario, (February 12, 2019), online: < <https://ero.ontario.ca/notice/013-4551#comment>>.

<sup>3</sup> Government of Ontario, News Release, "Ontario Announces Next Stage in environment Plan Proposed Actions Fight climate Change, Protect Environment without a Carbon Tax" (12 February 2019), online: [https://news.ontario.ca/ene/en/2019/02/ontario-announces-next-stage-in-environment-plan.html?utm\\_source=ondemand&utm\\_medium=email&utm\\_campaign=p](https://news.ontario.ca/ene/en/2019/02/ontario-announces-next-stage-in-environment-plan.html?utm_source=ondemand&utm_medium=email&utm_campaign=p)>.

<sup>4</sup> Making Polluters Accountable, *supra* note 1 at 4.

The Ontario plan may also include additional sectors. These additional sectors under consideration include institutions, greenhouses, and thermal energy supply.

The EPS proposal requires regulated facilities to submit a compliance report annually in June, for GHG emissions from January 1<sup>st</sup> to December 31<sup>st</sup> of the previous year, and prove compliance.<sup>5</sup> The report must include GHG emissions, production data, annual emission limits, and the facility's compliance obligation limits for the year prior.<sup>6</sup>

A facility must conform to the EPS by reducing its GHG emissions or purchasing compliance units for GHG emissions that exceed the EPS. The Government proposes that money generated through this program will be directed to a GHG emission reduction fund, which could be used to finance GHG reduction activities.<sup>7</sup>

Based on the EPS Proposal, performance standards would be set for regulated facilities using different methods, depending on the particular sector and facility. Proposed methods for setting performance standards include sector-based performance, equipment based performance, facility specific emission intensity, energy use intensity, and historic facility averages.

The Government of Ontario has stated that it intends to have the program ready by summer of 2019, applying to emissions as of January 1, 2019.<sup>8</sup>

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<sup>5</sup> *Ibid* at 8.

<sup>6</sup> *Ibid*.

<sup>7</sup> *Ibid*.

<sup>8</sup> *Ibid*.