

## Ontario's Cap and Trade Update

By [John Georgakopoulos](#), Partner and Certified Environmental Law Specialist, and [Joanna Vince](#), Associate. © Willms & Shier Environmental Lawyers LLP.

March 21, 2016

### Introduction

Ontario has forged ahead with its plans to introduce a Cap and Trade System, with the announcement of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* (the “Act”) and the associated draft Cap and Trade Regulation (the “Regulation”).

The Act and Regulation outline the details of Ontario's proposed plan to reduce greenhouse gas (“GHG”) emissions.

The Cap and Trade System under the Act and Regulation is consistent with the Cap and Trade program design proposal posted on the Environmental Registry in November 2015.<sup>1</sup>

### Proposed Cap and Trade System

Facilities will be required to comply with the Cap and Trade System as of January 1, 2017. The first compliance period will run from 2017 to 2020. Emission allowances will be auctioned four times a year. Available emission allowances will decrease annually.

Large emitters will benefit from the distribution of free allowances to help initially offset the cost of the Cap and Trade System. The number of free allowances available for large emitters will decrease over time.

As previously suggested, the Cap and Trade System will apply to GHG emissions from:

- ♦ electricity generation and importation
- ♦ natural gas distribution
- ♦ petroleum product supply
- ♦ regulated industrial and large commercial facilities (e.g. manufacturing, base metal processing, steel, pulp and paper, food processing)<sup>2</sup> that emit greater than or equal to 25,000 tonnes of carbon dioxide equivalent (“CO<sub>2</sub>e”) per year.

The Cap and Trade System will align with the systems operating in California and Quebec.

---

<sup>1</sup> Our summary of the November 2015 design proposal can be found [here](#).

<sup>2</sup> O Reg 452/09, Table 2.

If a facility exceeds its cap and fails to purchase sufficient credits or offsets, the facility will be subject to a three-to-one allowance penalty. The facility will have to submit an additional three allowances for every one allowance over the cap in order to get into compliance.

Non-compliance can also result in prosecutions, administrative monetary penalties, and/or Ministry of the Environment and Climate Change (“MOECC”) Orders.

### **Greenhouse Gas Reduction Account**

All proceeds from the Cap and Trade System will go into a Greenhouse Gas Reduction Account. Funds from this Account will be used to exclusively support projects and initiatives to reduce GHG emissions in Ontario.

### **The Future of Offsets**

Ontario has not yet proposed an offset regulation. A separate offset regulation will be proposed once the Act is passed by the Ontario Legislature.

We expect that the use of offset credits will be limited to a maximum of 8% of a facility’s compliance obligations. The MOECC has previously suggested that offset projects may include:

- ♦ mine methane capture and destruction
- ♦ landfill gas capture and destruction
- ♦ ozone depleting substances capture and destruction.

### **Next Steps**

The MOECC is seeking input from stakeholders and the public on the proposed legislation. The public comment period is open until March 24, 2016 for the Act and April 10, 2016 for the Regulation.

*[John Georgakopoulos](#) is a partner, and Certified Environmental Law Specialist at Willms & Shier Environmental Lawyers LLP. He can be reached at 416-862-4826 or at [jgeorgakopoulos@willmsshier.com](mailto:jgeorgakopoulos@willmsshier.com).*

*[Joanna Vince](#), is an associate at Willms & Shier Environmental Lawyers LLP in Toronto. She can be reached at 416-862-4830 or by e-mail at [jvince@willmsshier.com](mailto:jvince@willmsshier.com).*

*The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.*