September 2019

Carbon and Greenhouse Gas Legislation in Ontario

The Cap and Trade Cancellation Act, 2018 cancelled Ontario’s cap-and-trade program.

The federal carbon pollution pricing system applies, pricing pollution at a rate of

$20/tonne in 2019

rising to

$50/tonne in 2022

In Reference re Greenhouse Gas Pollution Pricing Act, the Ontario Court of Appeal upheld the constitutionality of the federal carbon pollution pricing system.

FEDERAL CARBON POLLUTION PRICING SYSTEM

In 2018, Ontario’s Cap and Trade Cancellation Act, 2018 (the Act) cancelled the province’s cap-and-trade program. The Act allows certain companies to receive compensation for instruments that were not used
while the program was active based on a mathematical formula.

As a result of the termination of Ontario’s cap-and-trade program, the federal carbon pricing system applies in the province. As per the federal Greenhouse Gas Pollution Pricing Act, the following features apply in Ontario:

- As of January 2019, the federal output-based pricing system applies to electricity generation and natural gas transmission pipelines. It covers facilities from sectors that emit 50,000 tonnes or more of carbon dioxide (CO₂) equivalent annually;
- Smaller facilities that emit 10,000 tonnes of CO₂ equivalent per year or more may voluntarily opt in to the system over time; and
- As of April 2019, a charge applies to fossil fuels, generally paid by registered distributors (fuel producers and distributors).

The federal system prices pollution at a rate of $20 per tonne of CO₂ equivalent emissions in 2019. This amount will gradually rise to $50 per tonne by 2022.

**CONSTITUTIONAL CHALLENGE**

Ontario challenged the constitutionality of the federal Greenhouse Gas Pollution Pricing Act. In Reference re Greenhouse Gas Pollution Pricing Act, the Ontario Court of Appeal upheld the constitutionality of the federal pollution pricing system. The Court noted that “[t]he need for a collective approach to a matter of national concern, and the risk of non-participation by one or more provinces, permits Canada to adopt minimum national standards to reduce GHG emissions.”

This is the second decision by an appellate court upholding the constitutionality of the federal pollution pricing system, following a decision in May 2019 by the Saskatchewan Court of Appeal.

**MADE-IN-ONTARIO ENVIRONMENT PLAN**

On November 29, 2018, Ontario released its Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan (the Plan). Under the Plan, Ontario commits to reducing its CO₂ equivalent emissions by 30% below 2005 levels by 2030. This target aligns Ontario with Canada’s 2030 target under the Paris Agreement.

The Plan proposes, amongst other things, the following actions:

- **Performance standards** – Create emission performance standards to achieve greenhouse gas (GHG) emissions reductions from large emitters. Each large industrial emitter will be required to demonstrate compliance on a regular basis. The program may include compliance flexibility mechanisms such as offset credits and/or payment of an amount to achieve compliance. This approach does not enforce a blanket cap on emissions across Ontario and takes into consideration specific industry and facility conditions.
- **Ontario Carbon Trust** – Launch an emission reduction fund to encourage private investment in clean technology solutions. This fund will use public funds to leverage private investment in clean technologies that are commercially viable.
- **Ontario Reverse Auction** – Establish an auction system that allows bidders to send proposals for emissions reduction projects and compete for contracts based on the lowest-cost GHG emission reductions.
- **Greener Gasoline** – Increase the renewable content requirement in gasoline to 15% as early as 2025
through the *Greener Gasoline Regulation*.

**COAL AND FUEL**

Ontario closed its last remaining coal-fired energy generating plant in 2014, positioning the province as the first jurisdiction in North America to completely phase out coal as a source of electricity generation.

In 2017, approximately 96% of the electricity generated in Ontario was emissions-free.

**GREEN ENERGY ACT REPEAL**

On January 1, 2019, the province’s *Green Energy Act* (the Act) was repealed. The Act was part a series of initiatives associated with the *Green Energy and Green Economy Act, 2009*, intended to facilitate and incentivize the development of renewable energy such as wind, solar and biomass, including the creation of a feed-in tariff program.

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