



Friday, July 24, 2009

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Ministry of the Environment
Integrated Environmental Policy Division
Air Policy Instruments and Programs Design Branch
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Via fax to (416) 314-4128

Dear Mr. Borg:

Re: Comments on Proposal for GHG Emission Cap and Trade – EBR Registry Number EBR Registry Numbers 010-6740 and 010-6467

Introduction

The Ontario Bar Association (“OBA”) and its Environmental, International and Municipal Law Sections welcome the opportunity to comment on your Ministry’s Consultation on the Proposed *Environmental Protection Amendment Act, Greenhouse Gas Emissions Trading, 2009, and Discussion Paper: Moving Forward: A Greenhouse Gas Cap-and-Trade System for Ontario.*

The OBA supports the Ministry’s proposal to use the cost of carbon to facilitate Ontario’s move into a green economy, and to keep Ontario’s economy integrated with that of neighbouring jurisdictions.

Background

The OBA consists of 17,000 lawyers from a broad range of sectors, including those working in private practice, government, non-governmental organizations and in-house counsel. Our members have, over the years, analyzed and provided comments to the Ontario government on numerous legislation and policy initiatives. More than 1,000 of these lawyers belong to our very active Environmental and Municipal Law Sections. Our members have considerable expertise and experience in how environmental laws and policy are interpreted and applied, and represent many points of view. The views expressed herein are the views of the OBA and its Environmental,

International and Municipal Law sections as a whole, and are not necessarily the views of each individual member or other organizations with which they may be involved.

Key principles:

In our view, the most important objectives of Ontario's energy and GHG emissions policy must be:

To promote a rapid movement into the green economy, without excessive harm to existing industries;

To support the conservation and renewable energy objectives of the recently adopted *Green Energy Act*, and

To keep Ontario's economy integrated with those of neighbouring jurisdictions. We applaud Ontario for joining multi-jurisdictional agreements, such as the Western Climate Initiative and the cooperative agreement with Quebec.

We recognize that the North American policy context for climate change has changed dramatically since your ministry issued the original discussion paper in December, 2008. In particular, it is more clear than ever that Ontario must have a GHG policy consistent with that of our American neighbours. This is challenging, since their GHG policy is evolving rapidly.

To achieve these objectives, Ontario's cap and trade program must therefore:
have a broad scope of coverage;
provide offsets and credit for early action;
enhance competitiveness of Ontario industry and infrastructure;
harmonize and avoid duplication with other programs;
ensure flexible compliance options; and
be transparent and easy to enforce.

In particular, we support the following proposals:

- **Threshold:** The threshold should be consistent with neighboring jurisdictions and the WCI. It should begin at 25,000 tonnes CO₂e for both reporting and reduction obligations, and should not drop until neighbouring jurisdictions and the WCI do the same.
- **Point of Regulation:** The point of regulation may be either the corporate or facility level as long as there are no restrictions on intra-corporate trading. The point of regulation for imports must be within the Province's jurisdiction, or regulated by the federal government.
- **Setting the Cap:** Entity level caps should not be set on the basis of historical emissions, as this rewards inefficiency, use of dirty fuels and shrinking markets. Caps should be designed to achieve the objectives described above.

- **Renewables:** The Government must ensure that Ontario renewable generators are not prejudiced and that extra-territorial generators are not permitted to double count their environmental and emission reduction benefits. Imported renewable power should not be assigned zero emission attribution unless it is imported with all related environmental attributes (and Renewable Energy Certificates). Ontario-based generators that produce power from methane (landfill gas, biomass, biogas) should have the ability to earn and use offsets from the direct reductions of methane (which are distinct from indirect offsets from system supply mix) in order to support compliance flexibility. Ontario should not destroy additionality through unnecessary regulation.
- **Distribution of Allowances:** Allowances should be auctioned to the greatest extent possible, consistent with the objectives set out above.
- **Offsets:** Ontario should encourage growth of the new green economy through domestic offsets. There should be no limit on the use of domestic offsets as the quantity is already controlled by government approval and restricted due to limited supply.
- **Compliance and Reporting:** compliance and reporting requirements should be simple, effective and transparent, and must harmonize with the U.S. and WCI.
- **Credit for Early Action:** We support a robust credit for early action program.
- **Banking and Borrowing:** We support banking, but not borrowing. Borrowing can create substantial compliance and enforcement problems, and delays action that is urgently needed. The objectives of borrowing can be achieved through a multiple year compliance period.

Conclusions

Thank you for this opportunity to provide our comments on your Ministry's consultation re greenhouse gas emission trading.

Yours truly,



Jamie Trimble
President
Ontario Bar Association