



Greenhouse Gas Emissions Reductions in Ontario: A Discussion Paper - EBR Registry Number 011-7940

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Submitted by: Ontario Bar Association,
Environmental Law Section



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Table of Contents

The OBA.....	2
Comments on Discussion Paper:.....	2
Responses to Questions Raised	3
Question 1:.....	3
Question 2:.....	3
Questions 3 through 7:	4
Question 8:.....	4
Conclusion:.....	4



The Ontario Bar Association's (the "OBA") Environmental Law Section (the "Section") welcomes the opportunity to provide input to the Ministry of the Environment (the "Ministry") on "Greenhouse Gas Emissions Reductions in Ontario: A Discussion Paper" released January 21, 2013. The OBA supports the Ministry in its efforts to move forward the much-anticipated greenhouse gas ("GHG") emissions reduction regime. This regime should support the Province's environmental goals as laid out in the 2007 Climate Change Action Plan while providing clarity for industry and facilitate the transition to the low-carbon economy.

The OBA

As the largest voluntary legal organization in the province, the OBA represents approximately 18,000 lawyers, judges, law professors and students in Ontario. OBA members are on the frontlines of our justice system in no fewer than 38 different sectors and in every region of the province. In addition to providing legal education for its members, the OBA has assisted government and other policy makers with countless policy initiatives - both in the interest of the legal profession and in the interest of the public.

Approximately 400 of these lawyers belong to our very active Environmental Law section. 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 Environmental Law section as a whole and are not necessarily the views of each individual member or other organizations with which they may be involved.

Comments on Discussion Paper:

The Section supports the development of a GHG reduction strategy that is fair across all affected sectors and provides regulatory clarity, consistency and transparency.

Many of these comments echo our previous comments related to EBR registry Numbers 010-6740 and 010-6467 submitted in 2009.

The most important objectives of Ontario's GHG emissions policy are:

- To provide a consistent, fair and streamlined regulatory environment, ensuring equivalency with the federal government,
- To keep Ontario's economy integrated with those of neighbouring jurisdictions and create a system that will allow for regional linkages, and
- To ensure broad coverage across industrial sectors to promote fairness, consistency and system efficiency.

We encourage the Ministry to continue to consider developments in neighbouring jurisdictions, in particular other provinces and the United States. Regional, federal and international regimes to



which Ontario is already subject or influenced by should be considered. As well, the Ministry may look to Europe, Australasia and China for useful examples.

As a minimum, the Province should ensure that equivalency with federal legislation can be reached. However, the Ministry should not be limited to regulating the sectors as chosen by the federal government, but instead should ensure regulated sectors are those that create the most fair, efficient and effective GHG reduction regime. The Ministry should consider the efficiencies that arise with broader coverage across sectors.

Clarity on how GHG reductions will be mandated across sectors is crucial to allow industry to move forward with planned investment and support innovation that will move Ontario towards a low-carbon economy. Regard should be given to other jurisdictions to ensure that Ontario is providing a range of compliance options and competitive incentives.

Ontario's program should harmonize and avoid duplication with other programs. It should be both clear to regulated parties and transparent to the public. It should also be designed to facilitate effective and fair enforcement.

Responses to Questions Raised

Question 1:

1. *What sectors should be covered under a greenhouse gas emissions reduction program?*

The program should capture a broad scope of emitters and not be limited by the federal priority sectors. The Ministry should design a system that allows for the most effective, efficient and fair reductions across the economy. We agree that including emissions from the electricity sector in the province's program is appropriate.

Question 2:

2. *What emissions threshold should be used for covering facilities in the program?*
 - a. *Ontario's reporting threshold of 25,000 tonnes of greenhouse gases per year*
 - b. *A higher threshold such as the federal reporting threshold of 50,000 tonnes per year*

As stated in our 2009 comments,¹ the regulatory threshold should be consistent with neighbouring jurisdictions and similar programs, such as the Western Climate Initiative ("WCI"). As the current reporting regulation threshold in Ontario is set at 25,000 tonnes of GHG per year and this is

¹ OBA Comments on Proposal for GHG Emission Cap and Trade – EBR Registry Numbers 010-6740 and 010-6467. Submitted Friday July 24, 2009. A copy can be found at: http://www.oba.org/En/publicaffairs_en/PDF/OBA_Cap_&_Trade.pdf



consistent with WCI recommendations, the lower threshold supports regulatory clarity across jurisdictions.

Questions 3 through 7:

3. *What are the barriers to achieving significant reductions?*
4. *How could a program be designed to encourage investment in cleaner production?*
5. *How could a program be designed to address competitiveness concerns within and across sectors?*
6. *How can a program be designed to integrate with Ontario's approach to reducing air contaminants?*
7. *How can facilities achieve an emissions reduction of five per cent over five years?*

We encourage clear regulatory standards and streamlining of regime participation requirements to ensure that cost effective and environmentally sound technologies can be implemented efficiently. We encourage the Ministry to amend corresponding environmental legislation as needed, to ensure consistency, transparency and ease of enforcement. Regard should be given to other jurisdictions to ensure that Ontario is providing a range of compliance options and competitive incentives.

With respect to allocation and benchmarking, reduction requirements should not be set on the basis of historical emissions, as this rewards inefficiency, use of inefficient fuels and shrinking markets. Caps should be designed to achieve the objectives of encouraging early action and ensuring effective and fair reductions that encourage efficiency and innovation. Allowances should be auctioned to the greatest extent possible, consistent with the objectives of fairness and transparency set out above and consistent with international trade obligations.

The use of flexible compliance mechanisms is crucial. Clear rules are required to ensure tradable allowances and offsets are reliable and effective for compliance purposes, while keeping administrative costs to a minimum.

Question 8:

8. *What is your perspective on the importance of equivalency and ensuring industry is not subject to duplicate regulation?*

The approach put forward by the discussion paper would be preferred over a piece-meal and performance-based approach to GHG emissions regulation being implemented by the federal government. Ensuring equivalency with federal requirements and preventing duplication within Ontario is of the utmost importance.

Conclusion:

The Ontario Bar Association appreciates the opportunity to provide input to the Ministry of the



Environment on “Greenhouse Gas Emissions Reductions in Ontario: A Discussion Paper” and looks forward to providing specific comments on regulatory proposals once released.