

Summary of Comments Received on the Notice of Intent to Regulate Greenhouse Gas Emissions by Large Final Emitters

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Introduction

The Notice of Intent to Regulate Large Final Emitters was published in the *Canada Gazette, Part I* on July 16, 2005. It outlines how the federal government plans to implement its climate change policy with respect to greenhouse gas emission reductions by Large Final Emitters (LFEs).

The working assumption is that the proposed regulation would be developed under Parts 5 and 11 of the Canadian Environmental Protection Act, 1999 (CEPA 1999). The Minister of the Environment would be the responsible Minister, and the proposed regulations would be administered by Environment Canada.

The publication of the Notice of Intent was followed by a 60-day comment period. A total of 37 submissions were received. Responses came from various industry organizations, companies, provincial governments, environmental organizations, traders and interested members of the public. The following is a summary of the comments received.

1. Regulatory Development Under CEPA 1999

1.1 Development of LFE Regulations

Comments included:

- All six greenhouse gases meet the criteria set out in Section 64 of CEPA 1999 and should be added to Schedule 1 of CEPA 1999.
- It is inappropriate to regulate carbon dioxide and other greenhouse gases as toxic substances under CEPA 1999.
- The government should remove the toxic references as it relates to Schedule 1 and instead make reference to controlled or potentially harmful substances.
- A different section of CEPA 1999, such as the International Air Pollution provisions in Part 7, Division 6, should be used to regulate greenhouse gases.
- It is reasonable to use CEPA 1999 as a legislative authority to regulate greenhouse gas emissions provided that CEPA 1999 can backstop the LFE system.

Overall, there was strong support from environmental organizations for the government's proposal to regulate greenhouse gases using CEPA 1999. Comments received from

industrial sectors reflected mixed opinions regarding regulatory development under CEPA 1999. The majority of industry respondents had strong concerns regarding the designation of carbon dioxide as a toxic substance.

1.2 Partnerships with Provinces and Territories

Comments included:

- There is a need for increased partnership and cooperation between federal, provincial and territorial governments.
- The federal government should make an effort to accommodate regional diversity.
- Since it is the federal government that has the legal obligation to comply with Kyoto Protocol, it should retain the final say in setting the policy outcomes and objectives of the LFE system.

Overall, industry was supportive of a harmonized approach to regulation, highlighting the importance of cooperation between federal, provincial, and territorial governments. Industry respondents also supported the development of a single national emissions reporting system. Environmental organizations expressed a desire for federal authorities to retain final decision-making authority in implementing the Large Final Emitters system.

2. Emissions Intensity Targets

Comments included:

- Equivalency agreements must ensure that all entities within a sector are treated equally.
- The development of targets should be based on sectoral emissions intensity.
- Using emissions intensity to control greenhouse gas tends to favour those sectors that are increasing overall production.
- Using emissions intensity targets rather than absolute emissions reductions targets results in an unacceptable transfer of liability for higher-than-expected production to government and taxpayers.

Overall, industry responses reflected a generally positive attitude toward emissions intensity targets. Certain sectors pointed out the potential challenges in setting and meeting proposed emissions intensity targets. Environmental organizations were opposed to the use of intensity, rather than absolute, emissions targets.

2.1 Targets for Existing Facilities

Comments included:

- Facilities or sectors should be able to choose whether emissions intensity reduction targets should be set at 12% below total emissions intensity or 15% below thermal combustion intensity only.
- Emissions intensity targets should take into account available technologies and the market conditions facing companies.
- The arbitrary limit of a 12% reduction target for industries with no fixed process emissions will have a negative impact on the competitiveness of those industries with fixed process emissions for which there are no known technologies to reduce emissions.
- Emission intensity targets should be calculated on a facility basis because operating profiles are different across facilities, and as a result, emission intensity values are different.
- Targets should be based on consistent data sets, taking into account that most facilities within a sub-sector will vary, particularly given the variable boundaries of integrated facilities.
- Targets should be based on sectoral emissions intensity, but adjustments need to be made in setting the sector target for process emissions at individual facilities.
- The government should recognize measures already taken in certain sectors to reduce greenhouse gas emissions.
- A zero percent target for fixed process emissions is unnecessary given that overall targets for LFEs have already been reduced from 15% reduction to 12% reduction.
- A number of sector-specific concerns were raised.

Overall, there was strong support expressed by industry for facility-specific emissions intensity targets. Certain sectors raised sector-specific concerns that are being dealt with through the development of the sector-specific regulations. Environmental organizations expressed the belief that the exclusion of fixed process emissions from the emissions intensity targets for LFEs is inadvisable.

2.2 Best Available Technology Economically Achievable

Comments included:

- BATEA-based targets should draw on an appropriate set of national criteria.
- BATEA targets should be fuel-specific.
- Facility-based BATEA targets should be implemented.
- New facilities and existing facilities undergoing major transformations or expansions that outperform BATEA standards should be able to sell, bank, or use credits in other covered facilities of the company.
- Facilities operating at BATEA standards that were built or renovated prior to 2000 unfairly face a 12% reduction on their emissions intensity despite prior investments in emissions-reducing technology.

- BATEA-based targets will only be acceptable if, a) targets are set at a lower intensity level than targets for existing comparable facilities and b) they can be tightened after a reasonable amount of time has elapsed.
- It is imperative that BATEA standards reflect regional differences in capacity to generate clean power.

Overall, respondents expressed qualified support for the BATEA concept. Environmental organizations encouraged the federal government to interpret BATEA stringently.

Responses from industry expressed divergent opinions on whether BATEA targets should be applied on a sector or facility basis. Some companies and sector organizations raised sector-specific issues that are being dealt with through the development of sector-specific regulations.

2.3 Co-generation, Clean Energy and Demand-Side Management

Comments included:

- Appropriate incentives should be given to encourage the use and development of cogeneration.
- The government should recognize that what can be an incentive for cogeneration located at a mill or factory can be a disincentive to cogeneration located at a power plant if improperly structured.
- The inclusion of demand-side management in the Offset System could potentially stimulate the expansion of energy efficiency and demand-side management activities in Canada.
- Credits granted under the Offset System should not be counted under the Partnership Fund as well.

Overall, industry respondents expressed general support for the eligibility of clean energy, demand-side management, and non-LFE co-generation. A number of respondents, however, expressed concern about the difficulties involved in accounting for co-generation emissions. Environmental organizations are concerned that double-counting of credits under the Offset System and Partnership Fund will take place.

2.4 Minimum Emissions Thresholds

Comments included:

- Facility-based minimum emissions thresholds should be implemented to reduce the administrative burden associated with the LFE system.
- Minimum emissions thresholds should be established on a company-wide rather than a facility-to-facility basis.
- In determining minimum emissions thresholds, the federal government should give consideration not only to small companies, but also those companies with low emissions due to the use of carbon-neutral fuels.

- Firms that don't meet the minimum emissions threshold should be combined into a single large emitter for the purposes of the LFE system, thereby reducing the regulatory costs borne by each firm.
- The government should ensure that upstream oil and gas facilities that might fall below the minimum emissions threshold are not responsible for a major proportion of total emissions from the oil and gas sector.

Overall, industry respondents were supportive of the establishment of minimum emissions thresholds of annual greenhouse gas emissions that a company must exceed in order for the proposed LFE regulation to be applicable. Opinions were divided, however, on how the threshold should be implemented. Environmental organizations want the government to ensure that the exemption of smaller emitters does not significantly reduce the overall amount of industrial emissions.

3. Flexible Compliance Options

3.1 Emissions Trading System

Comments included:

- The federal government should consult with the Ontario Ministry of the Environment which has a registry for administering NO_x and SO₂ trading.
- Intra-company transfer of credits should be permitted with minimal transaction costs to encourage emission reductions at the lowest cost.
- In order to increase the liquidity of Canada's carbon market, the government should loan and/or auction off a significant volume of domestic credits to market players that they can then use for trading.
- The government should not just purchase international credits for use towards reaching Canada's Kyoto commitments, it should also grant certified credits within Canada that can be sold into the world market.
- The federal government should ensure that the emissions trading system is efficient, easy to use, readily verifiable and cost-effective.
- Concerns were expressed about the effect of the \$15 price assurance on the liquidity of the emissions trading system.
- A "baseline-and-credit" emission trading system sends the signal that companies have a right to emit. A permit system, on the other hand, sends a signal that every tonne of emissions must be covered by a permit issued by the government on behalf of the public.
- Any electronic credit tracking system must be made fully accessible to the public.

Overall, responses indicated that industry would like the transaction costs of a domestic emissions trading system to be minimized. Traders are concerned about the size of the domestic emission trading system and the impact of the \$15 dollar price assurance on

market liquidity. Some environmental organizations expressed a preference for a cap-and-trade system over a “baseline-and-credit” emissions trading model.

3.2 Technology Investment for Compliance Purposes

Comments included:

- The benefit to provinces from the technology investment fund should be relative to their contribution.
- The 9Mt/year or 45 Mt/year 2008-2012 should be allocated among LFEs that want to use Technology Investment Units for compliance either before the beginning of 2008, or early in 2008 in order to get the benefit of early investment in greenhouse gas reducing technology.
- The Technology Investment Fund should begin in 2006 in order to give Canadian companies time to gain a competitive edge in the field of sustainable technology.
- The Technology Investment Fund may benefit certain sectors more than others.
- Payments into a Technology Investment Fund should not be allowed because those payments are not expected to generate emission reductions within the Kyoto 2008-2012 timeframe. Alternately, incentives should be provided for technology development through the establishment of appropriate long-term LFE targets and complementary policies and measures.

Overall, industry was supportive of including contributions for technology investment as a compliance option. Questions were raised regarding the specifics of how the contributions to the Greenhouse Gas Technology Investment Fund and other eligible technology investment funds will be implemented. Environmental organizations raised concern that technology investment for compliance purposes allows Large Final Emitters to “buy” their way out of compliance rather than reduce their greenhouse gas emissions intensity.

3.3 Price Assurance

Comments included:

- A simple, effective and efficient approach to providing compliance options at \$15/tonne should be developed.
- The removal of the \$15 price assurance in the post-2012 period may cause rapid inflation of carbon credit prices which would have an overall negative impact on Canadian companies.
- Rebates should not be given on verified costs that exceed \$15 due to the administrative burden that would be required and the potential for abuse.
- To the extent that the price of greenhouse gas reductions exceeds \$15 per tonne during the implementation period, the taxpayer will be further subsidizing large polluters.

- If additional mechanisms beyond the Technology Investment Fund are required to meet the government's commitment to cap the cost of compliance, special credits might be the simplest form.
- \$15/tonne is too low to provide incentives for needed technology innovation by Canadian industry.

Strong support was expressed by the majority of respondents for a simple and practical mechanism to implement the \$15/tonne price assurance. Some suggestions were made on how this could be achieved. Traders raised concerns about the impact of the price assurance on the liquidity of the carbon market domestically, and how it will affect compatibility with international carbon markets. According to environmental organizations, the \$15/tonne price assurance is too low, and costs in excess of \$15 will be borne by taxpayers to subsidize LFE compliance.

4. Compliance Assessment and Infrastructure

4.1 True-up Provisions

Comments included:

- Respondents suggested implementing a rolling three-year compliance period with a ceiling on how far out of compliance a company should be allowed.
- The difference of timelines amongst the different emissions trading systems will introduce inefficiencies in the global market, as they will allow for arbitrage and gaming between the LFE system and other systems.
- The government should provide flexibility for companies that are planning to implement significant emission reductions later in the true-up period.

Overall, industry representatives and the provinces expressed support for flexibility in the true-up process. Traders would like to see harmonized timelines between Canadian and international carbon markets.

4.2 Mergers and Acquisitions

Comments included:

- New owner/operators should be responsible for compliance regardless of the time of acquisition or merger.
- The operator on record at the end of the year should take responsibility for reporting and compliance.
- It is more appropriate to assign reporting and compliance obligations to the responsible company based on the time it owned and operated the facility, rather than place the entire responsibility on the company operating the facility at the end of the year.

Overall, industry expressed support for the operator at the end of the year to be responsible for the compliance liability, although there were some divergent opinions. Environmental organizations did not comment.

4.3 Penalties

Comments included:

- A fee system which does not make non-compliance a criminal offence should be implemented.
- To ensure environmental integrity of the system, LFEs should be obligated to ensure that prior reductions targets that were not met are carried over into the next compliance period.
- There is no reason to guarantee a \$200 limit on penalties if that amount does not reflect the public disapproval of such violations.
- The \$200/per tonne penalty appears onerous given the uncertainties of the proposed regulatory and reporting framework.

Overall, industry respondents believe that the \$200/tonne penalty could have severe economic consequences for certain sectors. Environmental groups, on the other hand, feel that the penalty is too low and does not reflect the environmental and social impacts of non-compliance. Traders want to ensure that LFE reductions targets that are not met will be carried over into the next compliance period.

4.4 Quantification, Monitoring, and Reporting

Comments included:

- The design and implementation of a cost efficient single-window reporting system is critical to avoiding excessive administrative burden on governments and industry.
- The framework for quantification, monitoring and reporting should respect regional differences in emissions output.
- LFE production data should be fully open to public inspection. This transparency is essential for holding companies publicly accountable for their use of emission trading to meet targets.

Overall, strong support was expressed for a harmonized, one-window reporting system. Environmental organizations requested that all data reported be made available for public access.

