

Overview of the Regulatory Landscape

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Overview

- Federal Environmental Enforcement
- Climate Change
- Renewable Energy
- Energy from Waste
- Waste
- Water
- Toxics
- Air
- Land

**Federal
Environmental
Enforcement**

Environmental Enforcement Act

- Federal package of updated enforcement measures and higher fines
 - Set new minimum fines, raised maximum fines and created new investigative powers
 - Specifically creates officer and director liability in federal environmental acts
 - Allows judges to order alternative remedies
- Applies to numerous federal environmental acts
 - Exception: *Species at Risk Act* and the *Fisheries Act*
- Extends limitation period for prosecution from 2 to 5 years
- Creates administrative monetary penalties for less serious offences
 - *Environmental Violations Administrative Monetary Penalties Act*, not yet in force

Penalties

- Raises maximum fines
 - First time offenders, most serious offences:
 - \$1 million for individuals
 - \$6 million for large corporations
 - Can be doubled for repeat offenders
 - Profits or benefits gained by an offence can be added to the total fine
- Judges must consider aggravating factors
- Mandatory minimum fines
 - \$1 million for indictable offences by reoffending large corporations

Additional Penalties

- Judges can order offenders to fund:
 - Scholarships for environmental studies, conservation and environmental protection research
 - Environmental groups in the affected community
- Publically traded companies required to notify shareholders of the offence
- Public registry to be created to list corporate offenders
- On conviction, environmental licenses, permits or authorizations can be cancelled or suspended

Climate Change

Federal Cap and Trade Initiatives Stalled

- Canada's *Turning the Corner Plan* has been shelved pending U.S. action
- U.S. legislative attempts have failed
 - August 2010, Senator Kerry introduces Clean Energy Technology Leadership Act of 2010 – would create tax incentives for clean energy manufacturing, renewable energy and conservation
- U.S. EPA undertaking certain initiatives including requiring reporting of GHGs, use of best available control technologies and energy efficiency measures
 - Powers derived under *Clean Air Act*, due to classification of GHGs as air pollutants that may reasonably be anticipated to endanger public health or welfare

Canada - US GHG Limits on Vehicle Emissions

- Announced April 1, 2010, coming into effect in 2011
- Common tailpipe standards to reduce GHG emissions by 25% by 2016 from new vehicles
 - Predicted to remove 92 megatonnes of GHGs over the lifetime of 2011-2016 models
 - Standards to become progressively more stringent between 2012 and 2016
- Fuel economy to improve by 40%
- Emissions trading built into scheme
 - Companies required to comply with fleet average
 - Offsets can be purchased in first year for \$20 per Mg GHG
 - Credits granted to companies below standard
 - Credits can be traded
 - Mandatory reporting requirements

Federal GHG Reporting and Standards

- CEPA Notice Re Annual GHG
 - Facilities emitting more than 50kt of GHGs (CO₂ equivalent)
 - Report for 2009 due June 1, 2010
 - Report for 2010 due June 1, 2011
 - Operator of facility must report
 - Information will be made public
 - Confidentiality may be requested where permitted by s. 51, 52 of CEPA
 - Some overlap with reporting requirements under NPRI

Western Climate Initiative (WCI)

- Collaborative of jurisdictions working to create a regional emissions trading system
 - Includes British Columbia, Manitoba, Ontario, Quebec, and several U.S. states as members
 - Saskatchewan, Nova Scotia, the Yukon and several U.S. states are observers
- July 27, 2010 – WCI releases detailed cap-and-trade program design
 - Comprehensive blueprint to reduce GHG emissions 15% below 2005 levels by 2020
 - Integrated, market based cap-and-trade to begin operation January 1, 2012
 - Applies to generators emitting at least 25,000 tonnes of GHGs per year
 - Ensures compatibility between jurisdictions
 - The number of allowances will be reduced over time

Ontario's GHG Reporting Requirements

- Greenhouse Gas Emissions Reporting Regulation (January 1, 2010)
 - All prescribed facilities must collect emissions data
 - All prescribed facilities emitting > 25 kt/yr of CO₂ equivalent required to report
 - Facilities that do not submit a report can be required to prove they did not emit > 25 kt in the relevant reporting period
 - Annual emission reporting by June of the subsequent year beginning with emissions from 2010
 - Facilities emitting > 10 kt/yr and <25 kt/yr are encouraged to report voluntarily
 - MOE will create an outreach program

Ontario's Proposed Emissions Trading System

- *Environmental Protection Amendment Act, (Greenhouse Gas Emissions Trading) 2009*
 - Received Royal Assent December 15, 2009
 - Includes regulatory powers to create and monitor a cap and trade program that will link to other systems
 - Definition of GHGs adaptable over time
 - Sets out power for creation, use, distribution, and trading of allowances and offsets
 - Provides that allowances can be distributed by auction, free of charge or by other means
 - Creates rules and requirements for fair auctioning of allowances
 - Enactment means cap and trade system could be implemented 2012

Renewable Energy

Green Energy and Green Economy Act (GEA)

- Single Renewable Energy Approval replaces
 - Environmental Assessment (EA) with prescribed consultation obligations
 - Municipal approvals with prescribed setbacks for wind power and other projects prescribed by regulation
 - Multiple Certificates of Approval
- Third party appeal –
 - objector must now show that project will cause “serious harm to human health or serious and irreversible harm to plant life, animal life or the natural environment”

GEA: Implementing a Smart Grid

- OEB released filing requirements for distribution system plans March 2010
 - Requires all licensed electricity distributors to file system plans re connection of renewable energy generation
 - Distributors directed to include smart grid development activities and expenditures plans to be eligible to recover costs

Feed in Tariff (FIT)

- OPA FIT Program
 - For the procurement of green energy capacity
 - Long term, guaranteed prices for electricity from renewable sources
 - Standardized contracts and prices
 - Encourage investment and financing
- First phase of applications closed November 30, 2009
 - Save for small renewable and microfit
 - Further applications must await grid expansion
 - Other opportunities

Feed in Tariff (FIT)

- FIT Contract Deadlines
 - Completed Notice to Proceed Request, including a Renewable Energy Approval, at least 6 months before the Milestone Date for Commercial Operation
 - Milestone Date for Commercial Operation
 - 3 years after contract date for biogas, landfill gas, biomass, rooftop solar, ground mounted solar, onshore wind
 - 4 years after contract date for offshore wind
 - 5 years after contract date for waterpower
- Rates
 - Rates range from 10.3 cents per kWh for landfill gas to 80.2 cents per kWh for microfit rooftop solar
 - OPA recently reduced the tariff for microfit ground mounted solar from 80.2 cents to 58.8 cents per kWh

Energy from Waste (EFW)

Impacts of *GEA* on EFW

- EFW not eligible for REA and FIT unless it uses a renewable energy source
- Renewable Energy Source includes
 - Biomass
 - Organic matter, other than source separated organics, derived from a plant or animal, is available on a natural renewable basis
 - Includes plants grown for the purpose of being used to generate electricity, agricultural or forestry waste products, waste from food processing, sewage biosolids, hauled sewage
 - Biogas
 - Landfill gas, or gas made from anaerobic digestion of biomass, source separated organics, or organic matter derived from a plant or animal available at a farm operation
 - Biofuel
 - Fuel made solely from biomass; includes ethanol, methanol and biodiesel
 - SSO from municipal waste is not biomass
 - Gas from anaerobic digestion of SSO from municipal waste is biogas

Waste

Waste Diversion Act (WDA)

- Programs under *WDA* include:
 - Waste Electronic and Electrical Equipment Program (WEEE) launched April 2009
 - Municipal Hazardous or Special Waste Program (MHSW) launched in 2008, and expanded in July 2010
- Details for next phase set out in discussion paper “From Waste to Worth: The Role of Waste Diversion in the Green Economy”

MHSW Program and Eco-fees

- Operated by Stewardship Ontario
 - Industry funded organization, authorized to assess fees and accountable to Waste Diversion Ontario and the MOE
- MHSW program imposes fees on stewards to cover cost of collecting and disposing of hazardous household waste
 - Stewards are producers and brand owners
- Stewards may either absorb the fees or pass fees onto retailers by increasing the wholesale price of products
- Retailers then may choose to show the increase in price separately at the point of sale – resulting in “eco-fees”

MHSW Program and Eco-fees

- Initially imposed fees on 9 categories of products in 2008
- Expanded July 2010 to include 13 additional product categories
- Expansion resulted in controversy over new “eco-fees”, program suspended July 20, 2010
- Initial phase of program still in effect – fees still apply to 9 categories of products

From Waste to Worth: The Proposed Next Phase

- Targets diversion of:
 - Industrial, commercial and institutional (IC&I) paper and packaging
 - Construction and demolition materials
 - Specified electronic equipment
- Waste streams under already designated under *WDA* shifted to *EPR*
 - Blue Box materials, waste electronics, used tires, special wastes
- Proposes that energy from waste be treated the same as landfills

From Waste to Worth: The Proposed Next Phase

- Producers 100% responsible for diversion of any wastes
 - Can comply by joining a materials management scheme or by developing individual waste diversion plan
- Producer is a manufacturer, brand owner, or first importer
- Producers required to:
 - Register with Waste Diversion Ontario
 - Submit a waste diversion plan 12 months before material must be actively diverted
 - Provide a performance bond
 - Report annually on sales into Ontario

Water

Clean Water Act, 2006

- MOE is moving forward with Stage 3 of implementation – Preparation of Source Protection Plans (SPP)
- Recent amendments to regulations facilitate the creation of SPPs
 - Outlines requirements for preparing SPPs, including content
 - Implements notice requirements to allow municipal and public involvement in the planning process
 - Creates interim authority for municipalities to manage significant drinking water threats

Water Opportunities Act

- Bill 72, *Water Opportunities and Water Conservation Act, 2010* – First reading May 18, 2010
- Establishes Water Technology Acceleration Project
 - Crown corporation to support water and wastewater services sectors
- Requires municipalities and ‘other entities’ to prepare water sustainability plans
- MOE required to prepare a public report at least once every three years

First Nations Drinking Water Standards

- Bill S-11, *Safe Drinking Water for First Nations Act* - Introduced May 26, 2010
- Will allow federal government to create legally enforceable drinking water standards for First Nations
 - Regulations will have “regional flexibility”

Toxics

Toxics Reduction Act (TRA): Overview

- In force January 1, 2010
- Aligned with federal NPRI
- Phased-in implementation
 - Phase I
 - 2010 monitoring year (report June 2011)
 - Applies to 47 priority substances
 - Reduction Plan (end of 2011)
 - Phase II
 - 2012 (monitoring year)
 - Applies to remaining toxic substances in NPRI, plus acetone

Toxic Substances Reduction Plan

- Due by December 31st of the following year
 - Phase I plans due Dec. 31, 2011
 - Phase II plans due Dec. 31, 2013
- Plans to include
 - process flow diagrams
 - basic facility information (consistent with NPRI)
 - detailed analysis of options considered
- Plans must be reviewed every 5 years or if there is a “significant process change”
 - A process is added that uses or creates a TS
 - A process is altered that results in 15% increase in TS
- Termination Notice
 - Submit notice if facility no longer using TS

Reporting Obligations : Government

- Annually, due June 1 of the following year
- Describe methods used to quantify TSs
- Year-to-year TS accounting comparison showing changes in numbers
- Objectives of TSR Plan and targets
- Steps taken, if any, to implement the plan and any progress made
- Assess effectiveness
- Whether facility intends to reduce TSs and if not, why
- Certified by highest ranking employee

Reporting Obligations: Public

- Available by June 1 of the following year
- TSR Plan Summaries
- Tracking and quantification summary: list of TSs and the amounts created, used, contained in product, released, disposed and/or transferred (can be in ranges)
- Comparison to previous reporting period, and a summary of the reason for any changes
- Progress in implementing the Plan
- Basic facility information only (limited)
- Certified by highest ranking employee
- Must post on Internet and make available to the public upon request

Air

O. Reg. 419/05

- Schedule 3 Standards and new dispersion models being phased in
- February 1, 2010
 - Schedule 4 sectors subject to Schedule 3
 - Major primary emitters including electric power generators, petroleum refiners, basic chemical manufacturers, resin, rubber, iron & steel mills, foundries, non-ferrous metal smelting
- February 1, 2013
 - Schedule 5 sectors subject to Schedule 3
 - Wide range of manufacturing sectors, waste treatment and disposal
 - Apply for alternative standards between February 1, 2010 and October 31, 2011
- February 1, 2020
 - All remaining sectors
 - Apply for alternative standards between February 1, 2013 and October 31, 2017

New sector based approach

- Recognition that industry sectors may require alternate standards
- Applies technical standards generically
- Covers foundries and forest product companies
- Foundries will have 4 years to make technical upgrades
- Forestry product companies will have 10 years

Land

Amendments to O. Reg. 153

- Standards
 - New tables for shallow soils and properties with or near water bodies
 - 1 to 3 orders of magnitude more stringent for contaminants frequently encountered
- Risk Assessment (RA)
 - New and more detailed rules
 - New type of RA – modified generic
 - Uses MOE template and risk management measures approved and published by MOE
- Qualified Person
 - Less independence, more work
 - Detailed rules for Phase I and II ESAs
 - MOE will now approve RSCs
 - New conflict of interest rule – direct or indirect interest in property

Transition

- Site Condition Standards – July 1, 2011
- New rules for Phase I and II ESAs – July 1, 2011 or earlier when RSC approval procedures proclaimed
- Ongoing remediation? Submit notice before January 1, 2011 and stay under the old rules up to January 1, 2013

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