



Friday, November 6, 2009

Craig Golding
Manager, Ministry of the Environment
Integrated Environmental Policy Division
Air Policy and Climate Change Branch
77 Wellesley Street West, Floor 10
Toronto, ON M7A 2T5

Dear Mr. Golding:

Comments on draft Greenhouse Gas ("GHG") Emissions Reporting Regulation and Guideline
– EBR Registry Number 010-7889

Introduction

The Ontario Bar Association ("OBA") welcomes the opportunity to comment on your Ministry's draft Greenhouse Gas Emissions Reporting Regulation and Guideline. Reporting of GHG emissions is a critical first step in the implementation of Ontario's proposed cap and trade program and we congratulate the Ministry for taking this important step. The OBA also strongly supports Ontario's efforts to work with other jurisdictions to pursue a common approach to GHG reporting and cap-and-trade. Ontario's regime must be designed in the context of harmonized Canadian, North American and international approaches to ensure that Ontario can link to broader carbon markets. Further, given Ontario's extensive trade with the United States, being aligned with the emerging U.S. carbon regime is important so as to minimize the potential risk of future border measures for Ontario industry.

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 323 of these lawyers belong to our active Environmental section. Our members have considerable expertise and experience in how environmental laws and policy are interpreted and applied and represent many points of view. In particular, our members include many of Ontario's foremost climate change legal specialists. The views expressed herein are the views of the OBA and its Environmental section as a whole and are not necessarily the views of each individual member or other organizations with which they may be involved.

Harmonization of Reporting Regimes

We understand that Ontario is working with the Canadian federal government, the Canadian Council of Ministers of the Environment ("CCME"), the Western Climate Initiative and other jurisdictions to harmonize Ontario's GHG reporting process and avoid duplicate regulatory requirements. We fully support Ontario's efforts to harmonize GHG reporting regimes. Further, given the current lack of clarity regarding the Canadian federal carbon regime, we believe that it is particularly important for CCME to work diligently to minimize duplication and reduce the reporting burden for industry and government through the development of a single-window GHG reporting system in Canada.

That said – while harmonization from the outset would be ideal – we do not recommend further delay as Ontario waits for other jurisdictions to finalize their GHG reporting regimes. We therefore support moving forward now with a provincial GHG reporting regime, with flexibility to accommodate necessary harmonization measures in the future. Among other things, this will allow Ontario businesses to develop the expertise necessary to compete in what is expected to become a multi trillion dollar global carbon market.

We also ask that your Ministry be as transparent as possible about all material differences between Ontario's GHG reporting program and those of our trading partners, and the reasons for these differences.

Third Party Verification

It is important that regulated facilities accurately report their GHG emissions so that market participants and regulatory agencies have confidence that the allowances traded and submitted for compliance purposes represent real emission reductions and can be considered equivalent across a broad trading area.

Consistent with the Western Climate Initiatives' Final Essential Requirements of Mandatory Reporting (July 2009), Ontario proposes to require third party verification of emissions reports. Starting in 2012, therefore, this means that a verification statement prepared by an accredited verification body must be submitted to the Ministry. At present, however, the U.S. EPA is taking a different approach and will not require third party verification. Instead, federally regulated facilities in the U.S. will be required to self-certify the data they submit.

In our view, credible verification will ultimately be a key component of any effective North American cap-and-trade program. However, even with the Ministry's proposed phased-in approach, there may still be a scarcity of accredited verification service-providers in the early years. This could cause difficulties in retaining qualified verifiers within required timeframes and at reasonable costs. Further information to address this concern would be appreciated. Provided there is access to verification by regulators (based on U.S.

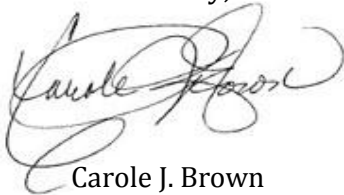
experience with the acid rain cap-and-trade program), there is no need for third party verification where a regulated facility has continuous emissions monitoring systems.

Measuring and reporting GHG emissions is a complex, labour-intensive process. We encourage your Ministry to work closely and cooperatively with regulated facilities to ensure that Ontario's verification process is as cost-effective and efficient as possible and does not impose an unreasonable reporting burden on regulated facilities.

Conclusion

Again, we congratulate your Ministry for moving forward to implement GHG reporting requirements. It is an important first step in laying the foundation for Ontario's future controls of carbon emissions.

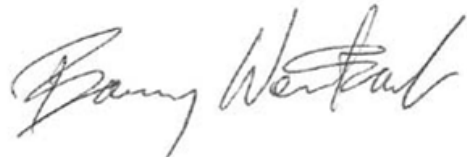
Yours truly,



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