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The New Clean Air and Climate Change Act: A Primer

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In March 2007, a House of Commons legislative committee undertook the task of re-drafting Bill C-30, the Government's proposed Clean Air Act. The Government referred the bill to the committee after first reading (rather than the more customary referral after second reading), with the understanding that the bill would be dramatically strengthened. The following is a summary of the changes made to the bill by the committee.

Targets for GHG emissions

When the government released its proposed Clean Air Act in October 2006, the only national target for GHG reductions was set for the far-off date of 2050. The redrafted bill includes short, medium and long-term national targets, beginning with Canada's Kyoto target of reducing greenhouse gas (GHG) emissions to 6 per cent below 1990 levels in the 2008-2012 period.

The bill would now require a medium-term reduction to 20% below 1990 levels by 2020, and to 60% below 1990 levels by 2050 in the longer term. While these fall short of the science-based targets recommended by environmental groups (25% below 1990 levels by 2020 and 80% below 1990 levels by 2050), the new targets are considerably stronger than those proposed by the government in October 2006.

The new bill also establishes a regulatory cap on greenhouse gas emissions from heavy industry, a sector that accounts for almost half of Canada's greenhouse gas emissions. Under the new regime, industrial facilities would face a "Kyoto-level" cap on emissions, meaning that their annual target would be to reduce emissions to 6% below 1990 levels starting in 2008. Companies will have three ways to reach their targets: reducing their emissions on site, investing in verifiable domestic emissions reductions off site, or purchasing project-based credits under the Kyoto Protocol that represent verifiable reductions in emissions overseas.

This new system makes several improvements on the government's original proposal, which was contained in the original draft of the Clean Air Act and in the accompanying Notice of Intent. The legislative committee has opted for absolute caps on GHG emissions instead of intensity-based targets that could permit GHG emissions to continue to grow. The new system would start in January 2008, almost three years earlier than the government's proposed "late 2010" compliance date. The proposed carbon price, which will be charged on companies that are in excess of their targets, is also set at a high enough level (\$30/tonne by 2011) to give companies an incentive to make significant investments in GHG-reduction technology.

Mandatory air pollution standards

The original Bill C-30 required the setting of ambient air objectives for just two air contaminants: ozone and particulate matter (10 microns or less). The bill was silent regarding standards for the other six important air pollutants (NO, NO₂, SO₂, PM_{2.5}, mercury and VOCs). Moreover, merely setting ambient air objectives does nothing to reduce pollution. Emission standards must also be set. The bill provided the discretion to establish emission standards, but set no requirement to do so. The Government has promised to develop such standards, but there is no legislative requirement, and no indication of whether those standards will be set at a meaningfully health protective level. Making the current voluntary federal standards ("Canada-Wide Standards") mandatory, for example, would only put in place standards that are considerably weaker than those in the U.S. and other jurisdictions.

The bill now requires the setting of ambient air quality standards for all eight air pollutants within six months, and within one year, emission standards for each will also be required. Both sets of standards are subject to review every five years, with a view to ensuring they are in line with globally leading standards. The model is comparable to the U.S. regime. If a particular region fails to meet its ambient air standard, all facilities in that region must adhere to the emission standards. The basic principle is that all Canadians, regardless of where they live in Canada, are entitled to a health protective standard of clean air.

There are special provisions to deal with transboundary air pollution and economic hardship issues, and exemptions may be provided in narrowly circumscribed situations, and in ways that encourage progress toward meeting the ambient air standards. The new system would still allow provinces and the federal government to set higher levels of air pollution protection.

Other New Provisions

- The bill allows the federal government to declare certain areas to be pollution "hot spots" if they are significant generators of, or especially vulnerable to, pollution.
- A new section introduces the principle of "substitution" into federal pollution laws, i.e. where safe substitutes exist for a toxic chemical, that chemical should be phased out of use.
- Provisions to regulate energy efficiency in appliances and other products were strengthened.
- The bill clarifies that automobile fuel efficiency shall come into effect by 2011, and shall be set in line with leading standards in other jurisdictions.
- References to our international obligations under the Kyoto Protocol and the United Nations Framework Convention on Climate Change were added to the bill's preamble.

It should be noted that some of the improvements of the bill came through Government-sponsored amendments (e.g. the "hot spots" and substitution amendments above).