Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

DELIVERED VIA EMAIL

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Re: Industrial Emission Performance Standards, ERO #013-4551

The Canadian Environmental Law Association ("CELA") welcomes the opportunity to comment on the development of Ontario Emission Performance Standards in response to Environmental Registry Ontario posting #013-4551. Climate change is the most serious environmental and public health threat to Ontarians, and we are encouraged that the provincial government has proposed a carbon pricing mechanism to address industrial emissions. However, the proposal must be significantly improved to increase its stringency and ambition. We look forward to reviewing further details of the program as it is developed.

A. Background on Climate Change and Low-Income and Vulnerable Communities

Ontario needs to take a lead in combating climate change and its adverse effects. The landmark report released by the Intergovernmental Panel on Climate Change on October 8, 2018 found that humanity has at most 12 years to drastically reduce GHG emissions ("GHGe") to avert a climate crisis.[1] All of Ontario's climate change programs must be designed to allow Canada, and the global community, to meet that goal.

The impetus on Ontario to act resolutely should recognize the three dimensions of climate change equity: intergenerational (fairness between generations), international (fairness between states), and national (fairness between individuals).[2] The negative impacts of climate change are most severely felt by low-income people and communities, and climate change will increasingly affect the poor by exacerbating already existing vulnerabilities.[3]

[1] "Global Warming of 1.5 °C", Intergovernmental Panel on Climate Change, 6 October 2018, online: <http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf>.
[2] Marc Fleurbaey et al. Fifth Assessment Report (AR5), IPCC, 2014 online: <http://www.ipcc.ch/activities/activities.shtml#.UMzUkuB2MiA>.
[3] Agnes van Ardenne-van der Hoeven et al. "Poverty and Climate Change: Reducing the Vulnerability of the Poor through Adaptation," (2009), online: <http://www.oecd.org/env/cc/2502872.pdf>, p I [Poverty and Climate Change].

B. Industrial Emission Performance Standards

Q1. How can the Emission Performance Standards be designed to optimize GHG emission reductions while minimizing carbon leakage?

The Ministry of Environment, Conservation and Parks' ("MECP") Environment Plan proposes to achieve 15% of its proposed emissions reduction of 18 mT by 2030 from the Emission Performance Standards regime. This amounts to only 2.7 mT of emission reductions by 2030. In light of the scope of the problem, the ambition of this program should be radically increased.[4] Neither the current federal output-based pricing system nor the proposed Ontario emission performance standards system sets industrial emission standards that will reduce emissions enough to adequately address climate change and contribute to maintaining a total overall level of climate change at 1.5℃.

Optimizing GHG Emissions Reductions

In 2015, 138 facilities in Ontario accounted for 16% of Canada's GHGe. As Canada's second highest emitting province,[5] Ontario needs to implement strong climate change measures. The province's Emission Performance Standards proposal provides an opportunity for Ontario to be a leader in reducing GHGe by putting in place higher compliance prices, rather than only meeting the federal standard of $20 per compliance unit in 2019 and increasing $10 per year to 2022.

Furthermore, Ontario's system needs to provide more certainty to industry by projecting price levels and stringency factors beyond 2022, allowing industry to make long-term plans and ensuring that Ontario is on track to meet its 2030 GHGe reduction targets.

We also encourage the government to include as broad a spectrum of emitters as possible under the program, including institutional emitters such as universities.

Minimizing Carbon Leakage

When attempting to minimize carbon leakage, there are two factors that Ontario needs to consider. Firstly, transparent, detailed calculations regarding competitiveness pressures are essential. If the province is to provide any form of subsidy for emissions intense and trade exposed (EITE) sectors, this must be justified by data and analysis that is accessible to the

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[4] Ministry of the Environment, Conservation and Parks, *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan*, Toronto: Queen's Printer for Ontario, 2018) at 18

[5] Environment and Climate Change Canada, *Overview of 2015 Reported Emissions: April 2017, Facility Greenhouse Gas Emissions Reporting*, (Gatineau, QC: Her Majesty the Queen in Right of Canada, 2016), online: <http://www.ec.gc.ca/ges-ghg/82BA1E22-9653-45F1-8EC2-9BF8A2151555/ECCC_GHGRP_OverviewOfReported2015Emissions.pdf> at 10. *See also* Environment and Climate Change Canada (2018) *Canadian Environmental Sustainability Indicators: Greenhouse gas emissions*, (Gatineau, QC: Her Majesty in Right of Canada, 2018), online: <https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/greenhouse-gas-emissions.html> at 11.

public.[6] Secondly, stringency factors need to decrease predictably over time. If these factors remain static, EITE sectors are not incented to make reductions in GHGe.

The issue of carbon leakage in Ontario is often overstated. There is only a small subset of the Canadian economy that will likely experience competitiveness pressures from carbon pricing.[7] In particular, most of Ontario's industries are not heavily trade exposed. While manufacturing sectors concerned with steel, chemicals, petrochemicals, fertilizer, and refining are exposed to competitiveness pressures, these sectors make up less than 1% of Ontario's GDP, yet are responsible for approximately 25% of Ontario's industrial GHGe.[8] Overall, only about 2% of Ontario's GDP is derived from sectors that are more exposed to competitiveness pressures from carbon pricing.[9] It is also important to note that carbon pricing initiatives are widely being adopted, such that an assessment metric that only looks at imports and exports does not recognize those industries trading heavily with other jurisdictions with carbon pricing.

Ontario should set emissions performance standards using industrial best practices as the base level rather than relying on industry averages. If there are facilities in an industry category with no comparators in Ontario, the province should compare emission levels at similar industries across the country or other similar international jurisdictions to establish a best practices standard, only relying on a facility specific standard when absolutely necessary.

Recommendation 1: The ambition of the Emission Performance Standards should be increased to achieve more than 2.7 mT of GHG emissions reductions by 2030.

Recommendation 2: The price of GHG emissions should be higher than currently proposed.

Recommendation 3: The price of GHG emissions and the stringency factors to be applied to industry should be projected until 2030.

Recommendation 4: Stringency factors should be applied to industry only as necessary. The government should provide transparent, detailed calculations to demonstrate why they are appropriate for different industrial sectors, and should be reduced over time.

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[6] Isabelle Turcotte &Robin Edger, "The Pan Canadian Framework on Clean Growth and Climate Change: Exploring Canada's Energy Transition", (Pembina Institute, March 23, 2018), online: <https://cleaneconomyalliance.ca/webinars/> at slide 7.

[7] Elizabeth Beale et al., "Provincial Carbon Pricing and Competitiveness Pressures: Guidelines for Business and Policymakers" (Canada's Ecofiscal Commission, November 2015), online: <https://ecofiscal.ca/wp-content/uploads/2015/11/Ecofiscal-Commission-Carbon-Pricing-Competitiveness-Report-November-2015.pdf> at 3.

[8] *Ibid* at p 10.

[9] *Ibid* at p 14.

Q2. What compliance options should industrial facilities have under the program (e.g. use of compliance units for payments for excess emissions that go into a fund that could be used to support greenhouse gas emissions projects in industry, voluntary emission reductions or removals or overachieving the EPS, other)?

CELA is in support of using funds raised by compliance units for excess emissions to fund further GHGe reductions. Because pricing levels are set quite low, complimentary measures to further reduce emissions are necessary.

CELA is not opposed to the province establishing an offsets program, however it is difficult to design a system that ensures that offsets are truly capturing additional and permanent GHGe reductions. There should also be a low limit on the percentage of compliance units that can be purchased as offsets.

Ontario should ensure, at the very least, that offset initiatives do not burden low-income and vulnerable communities. For instance, California's offset program has been criticized because facilities subject to its cap-and-trade program were located in neighbourhoods with higher proportions of residents of colour and residents living in poverty, and facilities that emit the highest levels of greenhouse gases were also more likely to be located in those communities.[10] In Ontario, the Aamjiwnaang First Nations in Sarnia is one of the most polluted places in Ontario, and houses 40% of Canada's chemical industry.[11] Offsets allow big emitters, such as those around Aamjiwnaang First Nations, to continue to emit at current levels by purchasing cheap offsets and maintaining their GHGe and other emissions at the same level, or even to increase emissions. There should be clear requirements that there will be no adverse environmental and health impacts from any offset initiative before they are approved.

Recommendation 5: CELA supports the use of funds raised by the program for GHG emission reduction programs.

Recommendation 6: Any offset program should be carefully designed to ensure only additional and permanent GHG emission reductions are recognized.

Recommendation 7: Any offset program should ensure that initiatives do not burden low-income and vulnerable communities.

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[10] Lara J. Cushing et al, "A Preliminary Environmental Equity Assessment of California's Cap-and-Trade Program" (Los Angeles: University of Southern California, 2016) at p 2, online: <https://dornsife.usc.edu/assets/sites/242/docs/Climate_Equity_Brief_CA_Cap_and_Trade_Sept2016_FINAL2.pdf.>.

[11] Environmental Commissioner of Ontario, *Good Choices, Bad Choices: Environmental Rights and Environmental Protection in Ontario* (Toronto: Office of the Environmental Commissioner of Ontario, 2017) at 121.

Q3. If facilities receive compliance units for GHG emission reductions beyond the standard for the facility, should they be eligible to trade or bank them indefinitely?

Facilities should not be able to trade or bank compliance units indefinitely. Allowing industries to indefinitely bank their compliance units could eventually flood the system, reducing the effectiveness of pricing carbon. There should also be a limit on the number of compliance units that an industry can hold in reserve at any one time. When an industry is able to bank compliance units for an indefinite period of time, the reductions in GHGe may stall with reductions that require minimal effort. In order to meet the 1.5°C global target, GHGe need to be drastically reduced by 2030.

Recommendation 8: Facilities should not be able to bank compliance units indefinitely.

Q4. Which industrial facilities should be covered by the program (e.g. industrial facilities with GHG emissions greater than 10,000 or 25,000 or 50,000 tonnes CO2e per year)?

To improve the stringency of the program, we encourage the government to include all emitters over 10,000 tonnes of CO_2e per year in the system, including institutional emitters. Based on 2016 GHG reporting data, there are thirteen facilities that emit between 10,000 – 50,000 tonnes of CO_2e per year in Ontario, emitting a total of 472,610.48 tonnes of CO_2e per year.[12] These emissions would not otherwise be covered under a provincial emissions reduction program.

Recommendation 9: All emitters over 10,000 tonnes of CO_2e per year should be included in the program.

Q5. Should Ontario harmonize with the federal reporting under the federal Production Order (which sets out reporting and verification requirements) and the federal OBPS (output based pricing system) (e.g., methods, threshold, verification)?

CELA relies on its submissions on GHG reporting in response to ERO Posting #013-4595, attached as Appendix A to this submission. <http://www.cela.ca/sites/cela.ca/files/1251-SubmissionOnERO013-4595.pdf>

Q6. Should different stringency factors apply to fixed process and non-fixed process emissions?

The logic of carbon pricing is that it creates a flexible market incentive for emitters to change their behaviour and reduce emissions. The incentive to change behaviour is already going to be minimal under the current design of the program because of the very high stringency factors that are proposed and the low prices. We therefore recommend not distinguishing between fixed

[12] Environment and Climate Change Canada, Greenhouse Gas Reporting Program, 2016, online: <https://climate-change.canada.ca/facility-emissions/>.

process and non-fixed process emissions, which will create further disincentives to reducing fixed process emissions in Ontario.

Recommendation 10: The program should not distinguish between fixed process and non-fixed process emissions.

Other Comments

Inclusion of Natural Gas in Emissions Performance Standards Program

CELA supports the inclusion of natural gas-fired generators in the program. Emissions from natural gas-fired generators are predicted to increase between now and 2030.

The Independent Electricity System Operator ("IESO") released its planning outlook in September 2018. With the Pickering Nuclear Generating Station scheduled to go offline soon, and the Darlington Nuclear Generation Station being re-built, natural gas is slated to fill the gap in electricity production rather than conservation programs or renewable energy which would not produce GHG emissions. Accordingly, the IESO predicts that GHG emissions in the electricity sector will increase by an average of 14% for the higher demand scenarios. Its predictions show an increase in emissions of approximately 7 Mt of C02e by 2030.[13] The IESO should also provide its long-term predictions for GHG emissions in the electricity sector, so the Ministry's planning in the period after 2030 can be adjusted accordingly.

The increase in emissions from natural gas-fired generation is significant. The Province's GHG reduction target is only 18 Mt of C02e by 2030. An additional 7 Mt of C02e will significantly increase the need for reductions in GHG emissions from electricity generation and elsewhere in the economy, and is much more than the predicted 2.7 mT reductions from this program.

Recommendation 11: Natural gas emissions, which are predicted to increase until 2030, should be included in the program.

Independent Auditing and Enforceability

The current proposal includes no reference to independent auditing, government reporting on the success of the program, sanctions and penalties, enforcement provisions, Ministry investigations or enforcement officers. The program's success will be seriously compromised without strong enforcement provisions, and sufficient resources set aside by the MECP to enforce the program.

Recommendation 12: The current proposal should be updated to include provisions to ensure independent auditing, government reporting on the success of the program, sanctions and penalties, enforcement provisions, Ministry investigations, and enforcement officers.

[13] Independent Electricity System Operator, 2018 Technical Planning Conference, September 13, 2018, pp 78-79.

C. Conclusion

CELA has encouraged all jurisdictions in Canada, including both federal and provincial, to take strong action on climate change. CELA encourages the province of Ontario to proceed with this program, but recommends its improvement in accordance with the following recommendations:

Recommendation 1: The ambition of the Emission Performance Standards should be increased to achieve more than 2.7 mT of GHG emissions reductions by 2030.

Recommendation 2: The price on GHG emissions should be higher than $20 in 2019, rising to $50 in 2022.

Recommendation 3: The price on GHG emissions and the stringency factors to be applied to industry should be projected until 2030.

Recommendation 4: Stringency factors should be applied to industry only as necessary. The government should provide transparent, detailed calculations to demonstrate why they are appropriate for different industrial sectors, and should be reduced over time.

Recommendation 5: CELA supports the use of funds raised by the program for GHG emission reduction programs.

Recommendation 6: Any offset program should be carefully designed to ensure only additional and permanent GHG emissions reductions are recognized.

Recommendation 7: Any offset program should ensure that initiatives do not burden low-income and vulnerable communities.

Recommendation 8: Facilities should not be able to bank compliance units indefinitely.

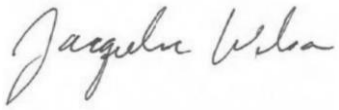
Recommendation 9: All emitters over 10,000 tonnes of CO_2e per year should be included in the program.

Recommendation 10: The program should not distinguish between fixed process and non-fixed process emissions.

Recommendation 11: Natural gas emissions, which are predicted to increase until 2030, should be included in the program.

Recommendation 12: The current proposal must be updated to include provisions to ensure independent auditing, government reporting on the success of the program, sanctions and penalties, enforcement provisions, Ministry investigations, and enforcement officers.

Yours truly,



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Encl. Appendix A – CELA Submissions on Streamlining and Updating Greenhouse Gas Reporting Requirements, March 8, 2019