

GHG REPORTING REGULATION POLICY INTENTIONS PAPER

– Comments

November 28, 2008

We welcome this opportunity to submit our comments on the Ministry of Environment’s (“Ministry”) Greenhouse Gas (“GHG”) Reporting Regulation policy intentions paper (intentions paper). The following comments are submitted on behalf of the BC Sustainable Energy Association, the David Suzuki Foundation, the Pembina Institute, and West Coast Environmental Law.

We support the objectives of the Greenhouse Gas Reduction Targets Act (“GGRTA”) and the use of a well-designed cap and trade system as one plank in a comprehensive strategy to reach the reduction targets. An essential element of a well-designed cap and trade system is accurate, standardized, and timely reporting of GHG emissions by each entity covered by the system.

Accurate reporting of emissions is also essential for determining progress toward the GGRTA reduction targets and for increased understanding of links between GHG emissions and activities of BC companies, governments and citizens. This second rationale for having accurate GHG emissions reporting is relevant whether or not a cap and trade approach is used in B.C.

Our submission is organized into four general comments, followed by specific comments using the same structure as the response form provided by the Ministry. While we do provide some recommendations that we believe will strengthen the regulations, our overall assessment of the intentions paper is positive. If the implementation of the regulations matches the spirit of the intentions paper, B.C.’s reporting requirements will ensure high quality information on GHG emissions is available in B.C. and provide a useful example for other jurisdictions developing similar legislation.

General comments

1. Minimize the potential for facilities that should be reporting to avoid those requirements.

- The focus of section 10.3 is on ensuring that companies reporting their emissions are doing so accurately. We could not find any mention of approaches to ensure that companies with reporting requirements actually report their emissions – including eligible companies that have not registered. Further, to be effective, the regulations must include provisions for the Ministry to perform random or with-cause audits of both registered and non-registered entities to check for compliance. In addition, the regulation must include penalties for non-compliance.

- The stakeholder discussions hosted by the Western Climate Initiative (WCI) stressed the importance of preventing or discouraging companies from splitting their emission sources to fit under the reporting thresholds (i.e. 10,000 and 20,000 tonnes of CO₂e). One possible approach to dealing with this concern is to give the Ministry the authority to impose reporting and compliance requirements on companies claiming to be below the proposed thresholds, if there are reasonable concerns about the manner in which the entity has disaggregated its emission sources to avoid these thresholds.

2. Ensure there are adequate resources for the Ministry to enforce these regulations.

- The success of the GGRTA is contingent upon sufficient resources being available to ensure that emissions are reported accurately and penalties for non-compliance are enforced in a fair and timely manner. We have made some suggestions throughout these comments on ways to ensure that these resources are available for the Ministry.

3. Strive for harmonization where appropriate.

- As much as possible, we encourage B.C. to put forward this regulation to other WCI partners as a model for harmonization so that reported emissions between jurisdictions are directly comparable. However, any efforts to harmonize regulations should not result in less stringent standards.

4. Review and update the regulation on a regular basis.

- The regulation should contain a provision that expressly requires a review of the regulation's effectiveness so that there is a built in timeline for continuous improvement. A good initial window for review would be after the 2011 data is reported so that any problems can be corrected in advance of the WCI's cap and trade system being operational, and possibly every three years thereafter.

Specific Comments

The following points follow the outline provided by the Ministry's GHG Reporting Regulations Response Form.

1.1 Design principles

- We support the principles as stated, and in particular we agree with the focus of the reporting requirements on areas where there is substantial data uncertainty.

2.1 Definitions

- We recommend expanding the definition of facility so that it is expanded from “under common operational control” to “under common operational or corporate control”.

3. Reporting

3.3 Level of emissions reporting required

- We support both using a starting year of 2009 and requiring the entities to also report for years 2006, 2007 and 2008.
- We disagree with the special consideration provided for non-CO₂ biomass – exclusions based on these emissions should not be allowed in the regulations. Burning biomass is not a zero-emission activity in the timeframe of a 2020 target, because it will take many decades (at least) for replanted forests to recapture the same amount of carbon that was released to the atmosphere from the harvested biomass. We urge the Ministry to continue assessing how to best treat the life-cycle emissions from bio-energy opportunities. Appropriate life-cycle emissions analysis and environmental standards should be utilized to ensure that the development and use of biomass for energy or fuel is sustainable, avoids perverse environmental impacts, and provides real net climate benefits.
- The intentions paper talks about “ensuring that a sufficient proportion of upstream oil and gas emissions are reported”, but it does not define sufficient. We encourage the Ministry to set out an explicit performance standard in terms of the percentage of total emissions within capped sectors that the reporting requirements are intended to capture. The Ministry should also provide itself with the flexibility to adjust these thresholds on an ongoing basis if the thresholds used are too high to achieve this performance standard at any point in the future. We support the WCI’s stated goal of attempting to capture 90% of emissions, and suggest that this be used as the performance standard for the regulation.

3.6 Sources and activities that are exempt

Table 3 recommends that a number of emissions sources be excluded from the reporting requirements – largely because they would not be covered by a cap and trade system in B.C. Because good emissions reporting is valuable regardless of whether or not it is needed for a cap and trade system, we would recommend including the majority of these sources. In particular:

- We recommend including air and marine transportation in the initial phase of reporting. The data will provide valuable information for policy design for these sectors, which will

be valuable given the challenges involved in designing effective policy for these sources that move between jurisdictions.

- We recommend that the regulation require emissions from residential and commercial heating fuels, and from all transportation fuels to be reported. While we support these emissions sources being excluded from the cap and trade system given they are covered by B.C.'s carbon tax, we see their inclusion under the reporting regulation as valuable because it will ensure that B.C. has high quality data on all emission sources.
- We recommend including emissions from wastewater treatment and landfills under the regulation. Although emissions estimates from landfills are uncertain, the recently passed landfill gas regulations will only serve to increase the focus on these emissions sources, so consistent reporting can only benefit these initiatives.

4. Quantification methods

4.4 Use of *de minimis* quantification methods

- We support these methods being used, provided that: 1) the methods used are expected to lead to conservative estimates, and 2) *de minimis* quantification be limited to both a small fraction of a facility's estimated emissions and by an absolute threshold.

4.5 General

- We support the use of conservative estimates for cases where data gaps are unavoidable.
- We recommend that facilities be responsible for the costs of collecting and reporting data, including the costs of Continuous Emissions Monitoring Systems (CEMS) or other equipments. We recommend that the government provide support by facilitating (but not funding) training in measurement techniques and other aspects of compliance with the regulation for regulated emitters. This would allow for economies of scale in training, thereby reducing costs to regulated emitters.

5. Verification

- We support the intention to require third party verification of emissions reporting because it will help ensure accuracy and build public support for any emissions trading program.
- We recommend that all verification providers be subject to a time-limited relationship with any single facility or company. The intentions paper currently states that such limits may be imposed, but it does not articulate clear reasons why time limits on any verifier-

facility relationships would be imposed. If there are concerns about the capacity of verifiers to meet the new reporting demands, the regulation could include a clause that would allow facilities to be temporarily exempted from the time limits if a clear need can be demonstrated to the Ministry. Additionally, facilities could re-engage with the same verifier after a minimum time period (e.g. six years).

- We also recommend that the time limit should be placed on the individual verifier and the verification firm.
- We agree that facilities associated with more complex and/or variable operations and/or emission calculations should be subject to more detailed verification process
- The regulation should include provisions for setting up or drawing upon a professional body to accredit, license, and discipline verifiers and verification firms.

6. Reporting Process

A. Obligations to Register and Report (6.2)

- We recommend that facilities also be required to report the name of verifier and duration of relationship.
- We recommend that the regulations explicitly required facilities to report for a calendar year even where they have gone out of business.

D. Reporting Fees and Costs (6.9)

- We recommend that the government consider applying a mandatory reporting fee or other method of revenue collection in order to help cover the auditing and compliance costs that the Ministry will incur in running an effective regulatory program. These fees would be distinct from any financial penalties imposed as a result of non-compliance.

7. Public Disclosure

We support the provisions in this section but only if all summary reports include data on emissions from all gases and source category for each facility. The intentions paper does not indicate the amount of information intended in summary reports; it is essential that emissions data disaggregated by type of gas and source activity (as defined in the intentions paper) be provided to the public.

Cap and trade systems represent a new concept for most Canadians and they will require a high level of transparency to allay public suspicion surrounding emissions trading. For this reason

companies must be required to disclose publicly sufficient information to maintain public confidence in the emissions trading system. Resistance to such transparency will only further heighten public suspicions that the use of emissions trading is fraudulent and does not lead to real environmental improvements.

There is a compelling public interest in the public disclosure of company-specific GHG emissions and related compliance information. This interest is not dissimilar to the public interest in financial information on publicly traded companies, and goes beyond the public interest in general information held by government.

The burden of proof that certain information should be kept confidential should be placed on those who wish it to be so. Blanket assertions, without convincing justifications, that certain categories of information should be kept confidential are not credible and not acceptable. The norm of the system should be to make all relevant information available to the public, and if there are exceptions, compelling justification must be provided, demonstrating that the public interest does not outweigh in importance the needs of the entity requesting confidentiality.

8. Compliance and Enforcement

- We are strong supporters of compliance promotion and enforcement as key aspects for these reporting regulations. We do not have a specific structure of fines to recommend, but the penalties should be set at a level that is high enough to ensure that no facility would purposely choose to pay the fine rather than comply with the regulations. Repeat offenders should also be subject to escalating penalties.
- We recommend that facilities that are found to have willfully or negligently misreported emissions should be subject to more stringent reporting requirements going forward for a period of time (e.g. quarterly or semi-annually).
- We recommend that the regulation include protection for whistleblowers that report acts of non-compliance from their companies.

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