

BILL 32

2002

CLIMATE CHANGE AND EMISSIONS MANAGEMENT ACT

(Assented to , 2002)

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Preamble

WHEREAS the Government of Alberta has a deep and well established commitment to protect Alberta's environment for future

generations through proactive and responsible stewardship of the environment;

WHEREAS the Government of Alberta owns natural resources in Alberta on behalf of all Albertans and manages the exploration, development and production of renewable and non-renewable resources in Alberta;

WHEREAS Alberta is recognized around the world for leading-edge innovation in environmentally sustainable technologies that maximize the value of Alberta's natural resources and the prosperity of its citizens;

WHEREAS the Government of Alberta is committed to realistic and workable solutions to climate change that reduce emissions of carbon dioxide and other specified gases without impairing economic growth;

WHEREAS the Government of Alberta, together with industry and research providers, is working to develop new and innovative approaches needed to successfully address the climate change challenge;

WHEREAS the Government of Alberta is committed to creating a framework that will enable Albertans to participate responsibly and do their fair share to limit emissions of carbon dioxide and other specified gases and to increase energy conservation and energy efficiency;

WHEREAS plans for the reduction of emissions of carbon dioxide and other specified gases must reflect the different circumstances of different provinces, territories and regions in Canada and sectors in the economy and must maintain or enhance competitiveness without creating an undue burden on those provinces, territories, regions or sectors;

WHEREAS the determination of undue burden must be made by the jurisdiction accepting the burden, as a fundamental matter of responsible government;

WHEREAS the Government of Alberta is committed to providing certainty to all sectors of the Alberta economy in pursuing sustainable development objectives through the establishment of clear emission reduction targets for carbon dioxide and other

specified gases and related objectives, frameworks, plans and measures; and

WHEREAS carbon dioxide and methane are natural resources, are not toxic under atmospheric conditions and are inextricably linked with the management of other renewable and non-renewable natural resources, including sinks;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “emission offset” means emission offset within the meaning of the regulations;
- (b) “Gross Domestic Product” means the market value of all goods and services produced in a year within Alberta’s borders, as determined under the regulations;
- (c) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (d) “owner” means
 - (i) in respect of unpatented land and unpatented mines and minerals, the Crown,
 - (ii) in respect of other land, the person who is registered under the *Land Titles Act* or the *Metis Settlements Act* as the owner of the fee simple estate in the land, and
 - (iii) in respect of freehold mines and minerals, the person who is registered under the *Land Titles Act* or the *Metis Settlements Act* as the owner of the fee simple estate in the mines and minerals;
- (e) “release”, in respect of a specified gas, includes spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place and exhaust, but does not include the capture and storage

of a specified gas in a sink within the meaning of clause (f)(ii);

- (f) “sink” means
 - (i) a component of the environment that removes or captures specified gases from the atmosphere through natural processes and includes, without limitation, plants and soil, and
 - (ii) a geological formation or any constructed facility, place or thing that is used to store specified gases;
- (g) “specified gas” means any gas that traps heat near the earth’s surface and includes, without limitation, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride.

Crown is bound

2 Except where this Act specifically provides to the contrary, the Crown is bound by this Act.

Specified gas emission targets

3(1) The specified gas emission target for Alberta is a reduction of specified gas emissions relative to Gross Domestic Product to an amount that is equal to or less than 50% of 1990 levels by December 31, 2020.

(2) The Lieutenant Governor in Council may make regulations

- (a) establishing interim specified gas emission targets for Alberta;
- (b) establishing specified gas emission targets and interim specified gas emission targets for different specified gases and for different sectors of the Alberta economy

for the purposes of meeting the specified gas emission target referred to in subsection (1).

(3) The specified gas emission targets established under this Act are the only specified gas emission targets in effect in Alberta.

Sectoral agreements

4(1) For the purposes of meeting the specified gas emission targets referred to in section 3 the Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements with representatives of different sectors of the Alberta economy respecting

- (a) the establishment of objectives for the sector and for operations and undertakings within the sector for the purpose of meeting emission targets;
- (b) the establishment of minimum energy efficiency levels for operations and undertakings within a sector;
- (c) the establishment of maximum levels of emissions of specified gases per unit of energy input or output or per unit of material input or product output for operations and undertakings within a sector;
- (d) schedules for achieving emission targets;
- (e) the baselines to be used in conjunction with the establishment of an emission target for a sector;
- (f) reporting requirements, including the methods and manner of reporting, to determine progress toward meeting emission targets;
- (g) the methods and procedures for conducting sampling, analysis, tests, measurements and monitoring of emissions, energy efficiency and energy conservation;
- (h) reforms of and improvements to sectoral infrastructure;
- (i) the creation of private or joint public and private funding pools to undertake or finance emission reduction projects;
- (j) the implementation of technological changes;
- (k) co-operation on technology development, demonstration and deployment;
- (l) sinks, emission offsets and emission trading;
- (m) enforcement of compliance with the terms of the agreements including, without limitation, the imposition of financial and non-financial penalties;

- (n) the payment of money into the Climate Change and Emissions Management Fund;
- (o) any other matters the Minister considers to be appropriate.

(2) In the event of a conflict between a term in an agreement referred to in subsection (1) and an enactment of Alberta, the enactment of Alberta is paramount.

Emission trading system

5 The Lieutenant Governor in Council may make regulations establishing a system of emission trading for the purpose of achieving reductions in specified gas emissions consistent with emission targets established under section 3 and any sectoral agreements entered into under section 4, and the regulations may include, without limitation, provisions respecting

- (a) the description and nature of a tradable emission unit;
- (b) the manner in which and the terms and conditions subject to which tradable emission units may be created, distributed, exchanged, sold, used, varied and cancelled;
- (c) the creation, operation and management of a public registry related to the emission trading system;
- (d) the conditions for the use of and participation in the emission trading system, including conditions relating to environmental and temporal issues;
- (e) maximum prices and penalty prices for tradable emission units;
- (f) the payment into the Climate Change and Emissions Management Fund of any or all amounts payable to the Government through the operation of the emission trading system.

Mandatory reporting

6(1) Every person who releases or permits the release of a specified gas into the environment at or in excess of levels or in circumstances established in or pursuant to the regulations shall report the release to the person prescribed in the regulations in the manner and within the time prescribed in the regulations.

(2) The Minister may disclose information reported under subsection (1) to the persons and in the form and manner provided for in the regulations.

Programs

7(1) The Minister may establish or participate in programs and other measures to carry out the purposes of this Act including, without limitation,

- (a) programs and measures for the purpose of reducing specified gas emissions,
- (b) programs and measures related to the removal of specified gases from the atmosphere through the use of sinks,
- (c) programs and measures related to adaptation to the effects of climate change,
- (d) programs and measures related to energy conservation and energy efficiency, and
- (e) programs and measures to develop alternative energy and renewable energy sources.

(2) A program or measure under subsection (1) may be directed to any or all of industry, consumers and other persons.

Property rights in sinks

8(1) Subject to subsection (2), the title to a sink and to the benefit of a sink that forms part of or is affixed to land is a property right vested in the owner of the land.

(2) The ability of a mine or mineral or any pore space within a mine or mineral or surrounding the mine or mineral to act as a sink is a property right and is vested in the owner of the mine or mineral in the manner determined in the regulations.

(3) Any instrument for the trading of rights in respect of a sink is personal property.

Climate Change and Emissions Management Fund

9(1) The Climate Change and Emissions Management Fund is established.

(2) The Fund must be used for purposes related to reducing emissions of specified gases or improving Alberta's ability to adapt to climate change, including, without limitation, the following purposes:

- (a) energy conservation and energy efficiency;
- (b) demonstration and use of new technologies that emphasize reductions in specified gas emissions in the discovery, recovery, processing, transportation and use of Alberta's energy resources;
- (c) demonstration and use of new technologies that emphasize reductions in specified gas emissions through the use of alternative energy and renewable energy sources;
- (d) demonstration and use of specified gas capture, use and storage technology;
- (e) development of opportunities for removal of specified gases from the atmosphere through sequestration by sinks;
- (f) measurement of the natural removal and storage of carbon;
- (g) climate change adaptation programs and measures.

(3) The Minister may make payments out of the Fund for the purposes of the Fund to the Minister's department, another Government department, a government of another jurisdiction, an agency of the Government or of the government of another jurisdiction, another regulated fund within the meaning of the *Financial Administration Act* or any person.

(4) The following shall be paid into the Fund:

- (a) money required to be paid into the Fund pursuant to the terms of a sectoral agreement entered into pursuant to section 4 or pursuant to regulations under section 5(f);
- (b) money received by the Government as a result of enforcement activities under this Act;
- (c) payments made for the purposes of the Fund by any person, the Government or the government of another jurisdiction;

- (d) gifts, donations, bequests and transfers to the Fund.

Notice of administrative penalty

10(1) Where the Minister is of the opinion that a person has contravened a provision of this Act or the regulations prescribed for the purposes of this section in the regulations, the Minister may, subject to the regulations, by notice in writing served on the person personally or by mail require that person to pay to the Government by the date specified in the notice an administrative penalty in the amount set out in the notice for each contravention.

(2) The notice of administrative penalty must state the grounds on which the penalty was assessed.

Daily penalty

11 A person is liable for an administrative penalty for each day or part of a day on which the contravention occurs and continues.

Protection from prosecution

12 A person who pays an administrative penalty in respect of a contravention may not be charged under this Act with an offence in respect of that contravention.

Limitation period

13 A notice of administrative penalty may not be issued more than 2 years after the later of

- (a) the date on which the contravention to which the notice relates occurred, and
- (b) the date on which evidence of the contravention first came to the notice of the Minister.

Enforcement in Court of Queen's Bench

14 Subject to the right to appeal a notice of administrative penalty, where a person fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the Minister may file a copy of the notice of administrative penalty with the clerk of the Court of Queen's Bench and, on being filed, the notice has the same force and effect and may be enforced as if it were a judgment of the Court.

Liability of directors and officers

15 Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

Vicarious responsibility

16 For the purposes of this Act, an act or thing done or omitted to be done by a director, officer, official, employee or agent of a corporation in the course of that person's employment or in the exercise of that person's powers or the performance of that person's duties is deemed also to be an act or thing done or omitted to be done by the corporation.

Regulations

17(1) The Lieutenant Governor in Council may make regulations

- (a) governing the manner in which Gross Domestic Product is determined for the purposes of this Act;
- (b) establishing limits on the levels of specified gases that may be released into the environment from any source or type of source;
- (c) establishing minimum energy efficiency levels for operations and undertakings in Alberta;
- (d) respecting the maximum levels of emissions of specified gases per unit of energy input or output or per unit of material input or product output for operations and undertakings in Alberta;
- (e) establishing operating, technological and performance standards for operations and undertakings in Alberta for the purpose of reducing or limiting specified gas emissions or for the purpose of increasing energy efficiency or energy conservation;
- (f) governing the reporting of releases and the disclosure of information for the purposes of section 6;

- (g) governing reporting and record-keeping requirements generally for any purpose related to this Act;
- (h) governing access to any information provided to the Government in the course of the administration of this Act;
- (i) governing methods and procedures for conducting sampling, analysis, tests, measurements, monitoring and verification for any purposes related to this Act;
- (j) governing standards and other requirements respecting the construction, development, operation, measurement and validation of sinks and emission offsets;
- (k) determining how property rights in a sink are vested in the owner or owners for the purposes of section 8(2);
- (l) for the purposes of enabling, implementing and carrying out sectoral agreements entered into under section 4, including regulations respecting the enforcement of rights, obligations and liabilities under a sectoral agreement;
- (m) making the terms of a sectoral agreement entered into under section 4 apply, with necessary modifications, to persons who are not parties to the agreement or otherwise bound by it, and deeming those persons to be bound by the agreement;
- (n) where there is no sectoral agreement in effect in respect of a sector, governing, in respect of the sector, any matter in respect of which a sectoral agreement may be entered into under section 4;
- (o) respecting the use of economic and financial instruments and market-based approaches directed to specified gas emissions reduction and the sequestration of specified gas;
- (p) respecting the manner in which specified gas emission targets are established for the purposes of section 3;
- (q) establishing or providing for the establishment of sectors of the Alberta economy for the purposes of any provision of this Act or the regulations;
- (r) providing with respect to any provision of this Act or the regulations that its contravention constitutes an offence

and prescribing penalties, including imprisonment, in respect of those offences;

- (s) governing the issuing of compliance orders in respect of contraventions of this Act, the regulations or a sectoral agreement entered into pursuant to section 4, including, without limitation, regulations governing
 - (i) who may issue a compliance order;
 - (ii) the things that a compliance order may order to be done for the purpose of addressing the contravention and the consequences of it and ensuring compliance with the provision that was contravened;
 - (iii) the consequences of non-compliance with a compliance order;
 - (iv) appeals of compliance orders;
- (t) defining terms for the purposes of this Act or a regulation that are not defined in this Act;
- (u) respecting the form and contents of a notice of administrative penalty issued under section 10;
- (v) prescribing contraventions of this Act and the regulations in respect of which an administrative penalty under section 10 may be imposed and prescribing the amounts, or the manner of determining the amounts, of the administrative penalties that may be imposed;
- (w) respecting appeals from notices of administrative penalty issued under section 10, including, without limitation, regulations respecting
 - (i) the composition and manner of appointment of the appeal body;
 - (ii) the evidence to be considered by the appeal body and the factors that the appeal body is to consider in reaching its decision;
 - (iii) the powers of the appeal body to confirm or reverse a notice of administrative penalty and to vary the amount of an administrative penalty;

- (iv) the procedure to be followed in an appeal and the procedure before the appeal body;
- (x) respecting any other matter necessary for the administration of the system of administrative penalties;
- (y) governing the charging of fees for the provision of any service, material or program, the performance of any function or the doing of anything under this Act;
- (z) generally in furtherance of addressing climate change management.

(2) A regulation under subsection (1)(h) prevails despite the *Freedom of Information and Protection of Privacy Act*.

(3) A regulation under subsection (1)(m) may, with respect to persons to whom it applies, impose requirements and obligations that are more stringent than those provided for in the sectoral agreement.

(4) Where regulations are made in respect of a sector under subsection (1)(n), the regulations constitute a sectoral agreement for the purposes of this Act.

Adoption by reference

18(1) A regulation under this Act may adopt or incorporate in whole or in part or with modifications documents that set out standards, codes, guidelines or other rules relating to any matter in respect of which a regulation may be made under this Act.

(2) Where a standard, code, guideline or other rule is adopted or incorporated by regulation under this Act, the Minister shall ensure that a copy of the standard, code, guideline or other rule is made available to a person on request.

Coming into force

19 This Act comes into force on Proclamation.