

## **BILL 37**

2003

### **CLIMATE CHANGE AND EMISSIONS MANAGEMENT ACT**

*(Assented to , 2003)*

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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 residents;

WHEREAS the Government of Alberta recognizes that the management of emissions of carbon dioxide, methane and other specified gases will serve to protect the Alberta environment;

WHEREAS the Government of Alberta will work co-operatively with other jurisdictions to harmonize efforts to reduce emissions of carbon dioxide, methane and other specified gases without impairing economic growth;

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

WHEREAS atmospheric carbon dioxide and methane are not toxic and are inextricably linked with the management of 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) “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 (e)(ii);
- (e) “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;
- (f) “sink right” means the legal interest, and any commercial or other interest, in a sink;
- (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 by December 31, 2020 of specified gas emissions relative to Gross Domestic Product to an amount that is equal to or less than 50% of 1990 levels.

**(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 for Alberta referred to in subsection (1).

#### **Sectoral agreements**

**4** 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 sectors of the Alberta economy and for operations and undertakings within such sectors for the purpose of meeting emission targets;
- (b) the establishment of minimum energy efficiency levels for operations and undertakings within sectors of the Alberta economy;
- (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 sectors of the Alberta economy;
- (d) schedules for achieving emission targets;
- (e) the baselines to be used in conjunction with the establishment of an emission target for a sector of the Alberta economy;
- (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, analyses, tests, measurements, verification 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) options for meeting emission targets;
- (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.

#### **Emission offsets**

**5** The Lieutenant Governor in Council may make regulations respecting emission offsets, credits and sink rights for the purpose of achieving reductions in specified gas emissions consistent with specified gas 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 emission offsets, credits and sink rights;
- (b) the manner in which and the terms and conditions subject to which emission offsets, credits and sink rights may be created, distributed, exchanged, traded, sold, used, varied and cancelled;
- (c) the creation, operation and management of one or more public registries for the purposes of regulations under this section;
- (d) maximum prices and penalty prices and compliance options at the maximum or penalty price;
- (e) compatibility of regulations under this section with similar regulatory schemes in other jurisdictions;

- (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 regulations under this section.

#### **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.

#### **Agreements re interjurisdictional co-operation**

**8(1)** The Minister may, with the approval of the Lieutenant Governor in Council, enter into agreements with the Government of Canada or the government of a province or territory, any agency

of the Government of Canada or of the government of a province or territory or any other person for the purposes of undertaking co-operative, complementary or compatible actions to reduce specified gas emissions.

(2) The Minister may not enter into any agreement under subsection (1) unless the Minister is satisfied that the agreement will be consistent with this Act and with the specified gas emission target for Alberta established by section 3(1).

#### **Sink right is property right**

**9** A sink right is a property right.

#### **Climate Change and Emissions Management Fund**

**10(1)** The Climate Change and Emissions Management Fund is established.

(2) The Fund shall be held and administered by the Minister of Finance in accordance with this Act.

(3) The Fund may be used only 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.

(4) The Minister of Finance shall, on the requisition of the Minister, make payments out of the Fund for the purposes of the Fund.

(5) 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) money from a supply vote appropriated for the purposes of the Fund;
- (d) gifts, donations, bequests and other contributions to the Fund.

(6) The income earned by the Fund accrues to and becomes part of the Fund.

#### **Notice of administrative penalty**

**11(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.

#### **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.

### **Confidentiality of information**

**17(1)** In this section, "prescribed information" means information that

- (a) is provided to the Government under this Act,

- (b) is commercial, financial, scientific or technical information that would reveal proprietary business, competitive or trade secret information about a specific facility, technology or corporate initiative, and
- (c) is of a class or type of information prescribed in the regulations under section 18(1)(h).

(2) No person shall communicate or allow to be communicated any prescribed information to any person who is not legally entitled to it, or allow any such person to have access to such information.

(3) Subsection (2) does not prohibit the publishing of prescribed information in summarized or statistical form in such a manner that it is not possible to relate the information to a particular facility, technology or corporate initiative.

(4) With respect to any record or information that would reveal prescribed information, subsection (2) prevails, despite the *Freedom of Information and Protection of Privacy Act*, for the period of time specified in the regulations under section 18(1)(h) in respect of that prescribed information.

### **Regulations**

**18(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) governing 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) prescribing classes and types of information as prescribed information for the purposes of section 17 and prescribing periods of time for the purposes of section 17;
- (i) governing the confidentiality of information provided to the Government in the course of the administration of this Act;
- (j) governing methods and procedures for conducting sampling, analyses, tests, measurements, verification and monitoring for any purposes related to this Act;
- (k) governing standards and other requirements respecting the construction, development, operation, measurement and validation of sinks and emission offsets to meet specified gas emission targets;
- (l) governing the allocation of physical and legal risks associated with emission offsets, credits and sink rights;
- (m) 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;
- (n) 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;
- (o) 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;

- (p) respecting the use of economic and financial instruments and market-based approaches directed to specified gas emission reduction and the sequestration of specified gas;
- (q) respecting the manner in which specified gas emission targets are established for the purposes of section 3;
- (r) establishing or providing for the establishment of sectors of the Alberta economy for the purposes of any provision of this Act or the regulations;
- (s) 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;
- (t) 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;
- (u) defining terms for the purposes of this Act or a regulation that are not defined in this Act;
- (v) respecting the form and contents of a notice of administrative penalty issued under section 11;
- (w) prescribing contraventions of this Act and the regulations in respect of which an administrative penalty under section 11 may be imposed and prescribing the amounts, or the manner of determining the amounts, and prescribing maximum amounts of the administrative penalties that may be imposed;

- (x) respecting appeals from notices of administrative penalty issued under section 11, 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;
- (y) respecting any other matter necessary for the administration of the system of administrative penalties;
- (z) 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;
- (aa) generally in furtherance of this Act.

**(2)** A regulation under subsection (1)(n) 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.

**(3)** Where regulations are made in respect of a sector under subsection (1)(o), the regulations may provide that they constitute a sectoral agreement for the purposes of this Act.

#### **Paramountcy of enactments**

**19** In the event of a conflict between a term in a sectoral agreement referred to in section 4 and an enactment of Alberta, the enactment of Alberta is paramount.

#### **Adoption by reference**

**20(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**

**21** This Act comes into force on Proclamation.