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Application for Review
to the
Ministry of the Environment,
Conservation and Parks

Date: July 18, 2018

Application for Review Form

(also accessible online on the ECO's website)



**Environmental
Commissioner
of Ontario**

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**Environmental
Commissioner
of Ontario**

Application for Review Part IV, *Environmental Bill of Rights*

General Information About This Application

Under section 67 of the *Environmental Bill of Rights, 1993 (EBR)*, the minister must consider each Application for Review in a preliminary way to determine whether the public interest warrants a Review of the issues raised in your Application. Among other factors, the minister must consider:

1. The ministry Statement of Environmental Values;
2. The potential for harm to the environment if the Review applied for is not undertaken;
3. The fact that matters sought to be reviewed are otherwise subject to periodic review;
4. Any social, scientific or other evidence that the minister considers relevant;
5. Any submission from a person who may be directly interested in the Review who has been notified about the Review;
6. The resources required to conduct the Review; and
7. Any other matter the minister considers relevant.

If the decision asked to be reviewed was made within the last five years with public participation consistent with the *EBR*, the minister will not determine that the public interest warrants a Review. This provision does not apply where it appears to the minister that there is other evidence that failure to review the decision could result in significant harm to the environment and that this evidence was not considered when the decision sought to be reviewed was made.

The personal information requested in this Application is gathered under the legislative authority of the *EBR*. All the information on this form is required by the *EBR* for the minister to determine whether an existing policy, act, regulation or instrument of Ontario should be reviewed, or to decide whether there is a need for a new policy, act or regulation.

The *EBR* does not allow the Environmental Commissioner of Ontario or the ministry to disclose personal information about applicants. The *EBR* protects the personal information provided by applicants. Applicants' personal information may be disclosed if the Review results in further government action outside of the *EBR* such as:

- A prosecution, or
- Other administrative action

For more information on the requirements of this Application and how to use the EBR please contact:

Public Information and Outreach Officer
Environmental Commissioner of Ontario
1075 Bay Street, Suite 605
Toronto, ON, M5S 2B1

Phone: 416-325-3377
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e-mail: commissioner@eco.on.ca

APPLICATION FOR REVIEW
Filed pursuant to Section 61 of the *Environmental Bill of Rights*
RE: ONTARIO REGULATION 386/18
PROHIBITION ON THE PURCHASE, SALE AND OTHER DEALINGS WITH
EMISSION ALLOWANCES AND CREDITS

APPLICANT NUMBER ONE

NAME: Jacqueline Wilson
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TELEPHONE: 416-960-2284, ext.7213

Declaration of Ontario Residency:

I, Jacqueline Wilson, hereby certify that I am an Ontario resident.

July 18, 2018



DATE

JACQUELINE WILSON

APPLICANT NUMBER TWO

NAME: Richard D. Lindgren
TITLE: Counsel
ORGANIZATION: Canadian Environmental Law Association
ADDRESS: 55 University Avenue, 15th Floor
CITY: Toronto
PROVINCE: Ontario
POSTAL CODE: M5J 2H7
TELEPHONE: 416-960-2284, ext. 7214

Declaration of Ontario Residency:

I, Richard D. Lindgren, hereby certify that I am an Ontario resident.

July 18, 2018



DATE

RICHARD D. LINDGREN

SUBJECT-MATTER OF REQUESTED REVIEW

The Applicants request a review of an **existing** regulation, namely:

Ontario Regulation 386/18: Prohibition against the Purchase, Sale and other Dealings with Emission Allowances and Credits

This regulation was recently made under the *Climate Change Mitigation and Low-Carbon Economy Act, 2016* (“the Act”), which is prescribed for the purposes of Parts II and IV of the *Environmental Bill of Rights* (“EBR”): see sections 3, 6 and 7 of O.Reg.73/94, as amended.

REASONS FOR REQUESTED REVIEW

The Applicants submit that O.Reg.386/18 (“the Regulation”) should be immediately reviewed and revoked on the grounds that:

1. The Regulation was not subject to public notice and comment under the EBR and the Minister did not consider the public’s comments prior to its passage, which is in direct contravention of the mandatory duties imposed under Part II of the EBR in relation to public participation.
2. As a matter of law, the Minister’s decision not to post the Regulation on the Environmental Registry for public comment cannot be justified under any of the statutory exceptions to public participation under the EBR.
3. The Regulation’s immediate termination of the province’s cap-and-trade program is contrary to the public interest and may cause or contribute to significant harm to the environment and human health and safety, particularly since the provincial government has not announced any alternative programs that will be undertaken in order to reduce greenhouse gas emissions and transition Ontario to a resilient low-carbon economy.

In order to comply with Part II of the EBR, the Ontario government must immediately revoke the Regulation, provide an appropriate opportunity for public comment by posting a notice on the Environmental Registry in relation to any future regulatory proposals under the Act, and consider the public’s comments before making any decision about the future of the cap-and-trade program.

(1) Background: The Act and Regulations

(a) The Climate Change Mitigation and Low-Carbon Economy Act, 2016 and its Regulations

The Act was passed by the Ontario Legislature in 2016. It established a climate change action plan and a cap-and-trade program.

In particular, the Act recognizes the serious risks posed by climate change impacts, and is intended to protect Ontario's households, communities, infrastructure, agricultural resources, natural areas and ecosystems. It promotes a broad effort to reduce greenhouse gas emissions and seeks to take advantage of the low-carbon economy through local job creation, an expanding low-carbon technology sector, and other global economic opportunities: see the preamble of the Act.

The Act also acknowledges the critical environmental and economic challenge of climate change facing the global community: see section 2 of the Act.

The cap-and-trade program under the Act set a limit on greenhouse gas emissions in covered sectors in Ontario. The cap was scheduled to decrease each year from 2017 – 2030: see section 54 of O. Reg. 144/16. Capped emitters either received free allowances for greenhouse gas emissions, purchased emissions allowances through auctions, or traded emissions allowances with other capped emitters.

The cap-and-trade program functioned first as an Ontario-only market in 2017, and was then linked with California and Quebec through the Western Climate Initiative on January 1, 2018. The auctions held under the program raised \$2,873,158,143.54. The revenue raised by the program must be spent on funds incurred by the Crown to administer and enforce the Act, initiatives which are reasonably likely to reduce or support the reduction of greenhouse gas emissions, or to reimburse the Crown for expenditures for initiatives to further reduce greenhouse gas emissions: see *Ontario Post-Joint Auction Public Proceeds Report*, Ontario Cap-and-Trade Program, May 2018, Joint Auction #15, p 4; and see subsection 71(2) of the Act.

(b) Passage of O.Reg.386/18 to end the cap-and-trade program

O.Reg.386/18 was made on June 29, 2018, and was filed and published on Ontario's e-laws website on July 3, 2018. The Regulation is scheduled to appear in the *Ontario Gazette* on July 21, 2018.

Section 1 of the Regulation prohibits "registered participants" from purchasing, selling, trading or otherwise dealing with emissions allowances and credits which had been available under the Act.

Section 2 repeals O.Reg.144/16, which was made under the Act in order to establish the cap-and-trade program.

Section 3 provides that the Regulation came into force on July 3rd, the day that it was filed.

(2) The EBR Registry Notice for O. Reg.386/18

The fundamental issue raised by this Application for Review is whether the Minister should have posted the proposed regulation on the Environmental Registry for public notice and comment before it was promulgated. For the reasons outlined below, the Applicants conclude that the subsection 30(1) exception in the EBR does not apply in this case, and that a public notice and comment period must be provided forthwith if the Ontario government intends to proceed with this regulatory proposal.

(a) Overview of Public Participation Rights under the EBR

i. The Minister must provide public notice and comment opportunities, and must consider the comments in his decision

The EBR provides robust public participation rights. There are two related elements within the public participation regime under the EBR: (a) the EBR requires that the public must be provided notice of, and an opportunity to comment on, environmentally significant proposals; and (b) the Minister must consider those comments as he makes his decision on such proposals: see subsection 35(1) of the EBR.

The Minister is responsible for both the Act and its regulations, and for ensuring compliance with EBR requirements regarding public notice and comment for any proposals to pass, revise or repeal regulations under the Act: see section 16 of the EBR; and see section 3 of O.Reg.73/94.

Since it is intended to revoke an existing regulation, O.Reg.386/18 is a proposal under the EBR: see subsection 1(3) of the EBR. Notice of regulatory proposals must be provided through a posting on the Environmental Registry and other appropriate means: see subsection 27(1) of the EBR.

In this regard, the Applicants note that previous regulations under the Act were duly posted on the Environmental Registry for public comment. In addition, the subsequent regulatory decisions by the Ontario government considered those comments.

For example, before O.Reg.144/16 was passed under the Act, the proposal was posted for public review and comment on the Environmental Registry. In response to this posting, CELA and numerous other interested parties submitted extensive comments, which were considered by the Ontario government as it finalized the proposed regulation: see Registry Notice No. 012-6837. Not only did this Registry Notice explain how public input influenced the final content of O.Reg.144/16, but it also responded to specific public concerns that had been raised about the regulatory proposal.

More generally, there have been several Registry postings with 30 to 45 day comment periods under the Act to seek public input on Ontario's cap-and-trade program, including:

- policy design options for the cap-and-trade program;
- the Act itself, which, in addition to an EBR comment period, also included public participation opportunities in committee hearings during the legislative process; and
- several regulations, and amendments to regulations, under the Act.

There has been significant public participation in the development of Ontario's cap-and-trade program. For example, there were 575 submissions received by the Ontario government regarding the program design options, 158 submissions regarding the cap-and-trade regulatory proposal and GHG reporting regulations, and 549 submissions regarding the offsets proposal. In the Applicants' view, this high level of civic engagement under the Act reflects the public importance and environmental significance of the cap-and-trade program.

However, the government did not post notice on the Registry of its intention to pass O.Reg.386/18, which immediately repeals O.Reg.144/16. Therefore, Ontarians were effectively deprived of their statutory right to review and comment on this environmentally significant regulation before it was passed.

ii. EBR Statement of Environmental Values supports public participation

In determining whether the public interest warrants the requested review of the Regulation, paragraph 67(2)(a) of the EBR directs the Minister to consider the Ministry's Statement of Environment Values ("SEV").

The Ministry's SEV states that the overall goal of the Ministry is "an Ontario with clean and safe air, land and water that contributes to healthy communities, ecological protection, and environmentally sustainable development for present and future generations."

To achieve this goal, the SEV commits the Ministry to a number of important environmental principles, such as using the ecosystem approach, applying a "precautionary science-based approach in its decision-making to protect human health and the environment," utilizing the "polluter pays" principle, and ensuring consideration of cumulative effects.

In addition, the Ministry's SEV clearly guarantees public participation in environmental decision-making:

The Ministry will encourage increased transparency... and enhanced ongoing engagement with the public as part of environmental decision making...

The Ministry... believes that public consultation is vital to sound environmental decision-making. The Ministry will provide opportunities for an open and consultative process when making decisions that might significantly affect the environment (emphasis added).

Taken together, these SEV commitments represent a provincial promise to all Ontarians that the Ministry will: (a) take all necessary steps to safeguard the environment and public health and safety; (b) ensure environmentally sustainable decisions; and (c) involve the public in environmentally significant decision-making.

We further note that in 2017, the Ministry proposed an SEV amendment (Registry Notice No. 013-0644) that specifically commits to public participation when the Ontario government is addressing climate change:

CLIMATE CHANGE The Ministry of the Environment and Climate Change believes that the public interest requires a broad effort to reduce greenhouse gases and to build a cleaner and more resilient province. The Ministry will continue to involve and engage individuals, businesses, communities, municipalities, non-governmental organizations and First Nation and Métis communities in the ultimate goal of fostering a high-productivity, resilient, low-carbon economy and society in Ontario.

The Applicants concur with this proposed policy direction, but it is unclear when – or if – the Ministry’s SEV will be amended to include this new language.

In any event, the Applicants submit that the abolition of the cap-and-trade regime, via the Regulation made mere days after the government took power and without any public notice and comment opportunities under the EBR, is completely inconsistent with the above-noted SEV commitments.

iii. Part II of the EBR applies to environmentally significant decisions

The EBR sets out minimum levels of public participation on environmentally significant proposals for regulations. Terminating the cap-and-trade regime is an environmentally significant decision that warranted public review and comment under the EBR before it was made, especially since no proposals to replace the regime and address climate change mitigation have been put forward.

The Environmental Registry notice does not state that the Regulation is environmentally insignificant or inconsequential. Instead, it attempts to equate (or conflate) the provincial election process with the public participation process under Part II of the EBR, as discussed below.

iv. No regulatory impact statement

Subsection 27(4) of the EBR requires the Minister to provide a regulatory impact statement in order to better facilitate public participation. This statement must contain the following information:

- brief statement of the objectives of the proposal;
- preliminary assessment of the environmental, social or economic consequences of implementing the proposal; and
- explanation of why the environmental objectives of the proposal would be appropriately achieved by making, amending or revoking a regulation.

No regulatory impact statement accompanied O.Reg.386/18, nor was one contained in the Environmental Registry notice. It is impossible to determine, based on the information provided to the public, whether or to what extent the Ontario Cabinet deliberated upon the environmental or socio-economic pros and cons of the Regulation, or whether other potential options were duly considered (e.g. amending the cap-and-trade regime, adjusting the implementation timeframe, or adopting other alternative approaches for addressing GHG emissions and climate change mitigation measures).

v. Absence of periodic review

In determining whether the public interest warrants the requested review of the Regulation, paragraph 67(2)(c) of the EBR directs the Minister to consider whether “the matters sought to be reviewed are otherwise subject to periodic review.” Aside from using Part IV of the EBR, there is no other statutory mechanism for the formal public review of O.Reg.386/18.

It should be further noted that the regulation has no expiry date, and therefore permanently dismantles the cap-and-trade regime, at least until the current provincial government (or the next one) reconsiders this important initiative.

vi. Inapplicable presumption against reviewing recent decisions

Subsection 68(1) of the EBR provides a general presumption against reviewing decisions made within the past five years. However, this presumption specifically provides that it is only applicable where the decision was made in a manner that is “consistent with the intent and purpose of Part II” of the EBR. In this case, there was a fundamental failure by the Ontario government to comply with Part II of the EBR, as no Registry-based opportunities for public notice and comment on the Regulation were provided.

The Applicants therefore submit that the subsection 68(1) presumption is not applicable in this case, even though the regulatory decision is only two weeks old. In short, the

presumption cannot be relied upon by the Ontario government as a “shield” or statutory bar to the requested review and revocation of O.Reg.386/18.

(b) The provincial election was not a substantially equivalent process

i. Elections do not replicate EBR public participation rights

The Applicants have reviewed the *ex post facto* notice (Registry No. 013-3221) that was posted on the Environmental Registry three days after the Regulation was passed, and submit that it does not satisfy the requirements of Part II of the EBR.

This sparse Registry notice concedes that no public comment opportunity was provided in relation to the Regulation. However, the notice makes an unfounded and unpersuasive attempt to rationalize the non-posting on the basis of the recent provincial election:

A notice of proposal for the regulation that repeals the Cap and Trade Program regulation (O.Reg.144/16) and prohibits trading of allowances and credits was not posted on the Environmental Registry pursuant to the exception in section 30 of the EBR.

This is because the Minister was of the opinion that the recent Ontario election was a process of public participation that was substantially equivalent to the process required under the EBR and that the environmentally significant aspects of the regulation were considered during that process because the government made a clear election platform commitment to end the cap and trade program...

The government made a clear election platform commitment to end the cap and trade program; the regulation effectively ends the program.

The Applicants do not agree with the erroneous claim in the Registry notice that the recent provincial election was a “substantially equivalent” public participation process which warrants the application of the exception provisions in section 30 of the EBR.

On this point, we note that the Registry notice does not provide any reasons that explain how or why the Minister opined that the provincial election was substantially equivalent, or that describe how the environmentally significant aspects of the Regulation were specifically considered during the election process.

More importantly, the Applicants submit that there is no merit to the Minister’s assertion that a general election campaign is substantially equivalent to the robust process that must be followed under Part II of the EBR:

1. While political parties are free to pronounce any platform commitments they wish during election campaigns, there is no evidence that such commitments are developed by party policy-makers in an open and participatory manner that fully engages all interested Ontarians before the commitments are formulated. This stands in contrast to Part II of the EBR, which ensures that every Ontarian is

entitled to be consulted on regulatory proposals through Environmental Registry postings before they are finalized and implemented by governmental decision-makers.

2. When privately developing policy positions or publicly making campaign promises, there is no legal obligation upon political parties to apply the important principles and commitments contained within the SEVs issued under the EBR. In contrast, when making regulatory decisions, the Minister is expressly required by law to consider the SEV: see sections 7 and 11 of the EBR.
3. Unlike the EBR notice and comment regime, political parties are not required to explain how public input influenced the final content of the platform commitments being advanced by the parties during elections.
4. Throughout the recent election, there was no regulatory impact statement or detailed discussion of the specific environmental impacts of terminating the cap-and-trade regime. This type of meaningful public participation is required by law under the EBR for regulatory proposals.

The Applicants acknowledge that it is open to any party or political leader to make diverse election promises during a campaign. Moreover, a party's election platform may contain numerous planks setting out a myriad of commitments, and it is often difficult to ascertain which ones were specifically assented to by the electorate, and which ones were not.

However, once a political party is elected to form the next government, the rule of law requires that it comply with the EBR provisions regarding public notice and comment in fulfilling its campaign promises.

ii. Characterization of the cap-and-trade program during the election

For the foregoing reasons, the Applicants submit that provincial election campaigns cannot be considered as substantially equivalent to the EBR notice and comment regime. This is particularly true in the context of the 2018 election campaign, when the cap-and-trade program was repeatedly characterized as a "carbon tax" even though it is not a tax. In our view, this characterization did not facilitate meaningful engagement on the policy decision of whether to maintain the cap-and-trade program under the Act.

The purpose of the EBR public notice and comment process is to allow the public to meaningfully engage with the details of environmentally significant proposals. The 2018 election process cannot be understood to have provided such an opportunity.

(3) Conclusion

The Applicants conclude that the refusal or failure to post O.Reg.386/18 on the Environmental Registry for public review and comment, and the Minister's subsequent

attempt to invoke section 30 of the EBR to rationalize this omission, is unprecedented, unjustified and unacceptable. Accordingly, O.Reg.386/18 should immediately be reviewed and revoked.

More generally, the Applicants submit that the Regulation was made in a manner that thwarts the environmental protection, public participation and governmental accountability objectives of the EBR: see subsections 2(2) and 2(3) of the EBR.

In our view, Ontarians are entitled under the EBR to a notice and comment opportunity before a regulatory decision is made by the Ontario government to cancel the cap-and-trade program. Had such an opportunity been provided, interested persons, groups, industrial sectors, municipalities and Indigenous communities could have made submissions not only on whether the proposed regulation should be passed at all, but also on the discrete matters that should be addressed by the Regulation, including an implementation timetable, transitional issues, and compensation of existing holders of emissions allowances or credits.

EVIDENCE SUPPORTING THE REQUESTED REVIEW

The documentary evidence supporting the requested review of the Regulation is attached hereto as follows:

1. O.Reg.386/18;
2. Registry Notice No. 013-3221;
3. Registry Notice No. 012-6837; and
4. Ministry of the Environment, Conservation and Parks, Statement of Environmental Values.

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/ O. REG. 386/18: PROHIBITION AGAINST THE PURCHASE, SALE AND OTHER DEALINGS WITH EMISSION ALLOWANCES AND CREDITS



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ONTARIO REGULATION 386/18

made under the

CLIMATE CHANGE MITIGATION AND LOW-CARBON ECONOMY ACT, 2016

Made: June 29, 2018

Filed: July 3, 2018

Published on e-Laws: July 3, 2018

Printed in The Ontario Gazette: July 21, 2018

PROHIBITION AGAINST THE PURCHASE, SALE AND OTHER DEALINGS WITH EMISSION ALLOWANCES AND CREDITS

Prohibition

1. For the purposes of subsection 21 (3) of the Act, no registered participant shall, on and after the day this Regulation comes into force, purchase, sell, trade or otherwise deal with emission allowances and credits.

Revocation

2. Ontario Regulation 144/16 is revoked.

Commencement

3. This Regulation comes into force on the day it is filed.

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Regulation Exception Notice:

Title:

Repeal of cap and trade program regulation and prohibition on trading of allowances and credits

EBR Registry Number: 013-3221

Ministry:

Ministry of the Environment and Climate Change

Date Exception loaded to the Registry:

July 06, 2018

Keyword(s): Air

Related Act(s): Climate Change Mitigation and Low-Carbon Economy Act

No comment period has been provided.

Rationale for Exemption to Public Comment:

The Ministry has used EBR section 30(1) of the EBR to post notice of this Exception as the environmentally significant aspects of the proposal have already been considered in a process of public participation under the EBR or any other Act that was substantially equivalent to the process required under the EBR.

The ministry is posting this notice pursuant to section 30(2) of the Environmental Bill of Rights (EBR) which requires notice of the use of the exception in section 30(1).

A notice of proposal for the regulation that repeals the Cap and Trade Program regulation (O.Reg. 144/16) and prohibits trading of allowances and credits was not posted on the Environmental Registry pursuant to the exception in section 30 of the EBR.

This is because the Minister was of the opinion that the recent Ontario election was a process of public participation that was substantially equivalent to the process required under the EBR and that the environmentally significant aspects of the regulation were considered during that process because the government made a clear election platform commitment to end the cap and trade program.

Description of Regulation:

The regulation repeals the Cap and Trade Program regulation (O. Reg. 144/16) and prohibits trading of allowances and credits.

Purpose of Regulation:

The government made a clear election platform commitment to end the cap and trade program; the regulation effectively ends the program.

The government will provide clear rules for the orderly wind down of the program.

Decision on Regulation:

[O. Reg. 386/18: Prohibition against the Purchase, Sale and Other Dealings with Emission Allowances and Credits](#) was filed on July 3, 2018.

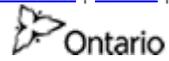
Contact:

Cap and Trade
 HELP DESK
 Ministry of the Environment and Climate Change
 Climate Change Directorate
 Cap and Trade Branch
 135 St Clair Avenue West
 Toronto ON
 M4V 1P5
 Phone: (888) 217-3326

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Regulation Decision Notice:

Title:

Cap and Trade Regulatory Proposal and Revised Guideline for Greenhouse Gas Emissions Reporting

EBR Registry Number: 012-6837

Ministry:

Ministry of the Environment and Climate Change

Date Decision loaded to the Registry:

May 19, 2016

Date Proposal loaded to the Registry:

February 25, 2016

Due to technical issues, the Ministry has provided an extra 2 days to submit comments on this proposal.

Keyword(s): Air

Decision on Regulation:

A decision has been made to proceed with a greenhouse gas Cap and Trade Program Regulation and incorporated allocation methodology and new Quantification, Reporting and Verification of Greenhouse Gas Emissions Regulation and incorporated Guideline under the Climate Change Mitigation and Low-carbon Economy Act, 2016.

The Cap and Trade Program Regulation is a key initiative for the government to tackle climate change. A cap and trade program will reduce the amount of greenhouse gas pollution going into our atmosphere by setting a limit on emissions, rewarding innovative companies, providing certainty for industries, and creating more opportunities for investment. The Cap and Trade Program Regulation and allocation methodology will take effect July 1, 2016.

The new Quantification, Reporting and Verification of Greenhouse Gas Emissions Regulation and incorporated Guideline will take effect January 1, 2017 and applies to activities by persons on and after January 1, 2017. It includes a number of changes that will support the implementation of Ontario's cap and trade program. Ontario Regulation 452/02 under the Environmental Protection Act, R.S.O. 1990, will be revoked after all reporting under it is complete.

The Cap and Trade Program Regulation and new Quantification, Reporting and Verification of greenhouse Gas Emissions Regulation were filed with the Registrar of Regulations on May 19, 2016.

The following aspects of the cap and trade program have changed through consideration of the comments provided through the EBR posting:

- Treatment of the electricity component of cogeneration: Facilities that generate electricity and steam via cogeneration for use on-site will receive allowances free of charge for emissions attributable to the electricity generation and the steam generation, to remove disincentives for cogeneration and simplify implementation.
- Allocation changes for some industries subject to energy use benchmarks: To encourage energy efficiency improvements, some industries and facilities will be subject to historical or product-output benchmarks instead of energy-use based allocations.
- Biomass use: A factor was added to the allowance allocation formula that would lower the cap adjustment factor in proportion to any facility's biomass use, so that facilities using more biomass would see more moderate rate of decline.
- Reporting of biomass: Biomass continues to be treated as carbon neutral however the Quantification, Verification and Reporting regulation and Guideline

Contact:

Melissa Ollevier
Senior Policy Advisor
Ministry of the Environment and Climate Change
Climate Change and Environmental Policy Division
Air Policy Instruments and Programs Design Branch
77 Wellesley Street West
Floor 10
Ferguson Block
Toronto Ontario
M7A2T5
Phone: (416) 212-4552

Additional Information:

The following government offices have additional information regarding this Decision. To arrange a viewing of these documents please call the Ministry Contact or the Office listed below.

Air Policy Instruments and Programs Design Branch
77 Wellesley Street West
Floor 10
Ferguson Block
Toronto Ontario
M7A2T5
Phone: (416) 314-3923

The documents linked below are provided for information purposes only

do not include the changes that were proposed on measurement requirements and reporting of biomass at this time. The Ministry will continue discussions with partner jurisdictions and stakeholders on this subject

Proposed Amendments to the Cap and Trade Program Regulation and Quantification, Reporting and Verification of Greenhouse Gas Emissions Regulation

The Ministry of the Environment and Climate Change (the Ministry) will amend the Cap and Trade Program Regulation and where necessary, the Quantification, Reporting and Verification of Greenhouse Gas Emissions Regulation in 2016 to include provisions on:

- The treatment of indirect steam emissions. Facilities not emitting more than 10,000 tonnes of greenhouse gases per year will be able to opt-in to the program on the basis of deemed indirect emissions from steam purchases to maintain a level playing field between regulated facilities.
- Early reduction credits, outlining eligibility requirements and the number of credits that will be issued.
- Offsets, describing the requirements proponents must meet to be able to create, verify and register offset credits for use in Ontario's greenhouse gas cap and trade program.
- The management of allowances when facilities shut down, go bankrupt, or change ownership.

The Ministry consulted the treatment of indirect steam emissions and early reduction credits as part of the cap and trade regulatory proposal and revised Guideline for greenhouse gas emissions reporting that were posted on the Environmental and Regulatory Registries (EBR 012-6837) on February 25, 2016. As a result, the Ministry will not be consulting on these program design features again. An information notice will be posted once the amendments have been filed with the Registrar of Regulations.

The Ministry will consult on provisions for offsets and facility shutdowns.

Proposed Regulations Under the Climate Change Mitigation and Low-carbon Economy Act

The Ministry will be proposing two complementary regulations later in 2016 under the Climate Change Mitigation and Low-carbon Economy Act, 2016 on:

- Administrative monetary penalties, describing what particular types of contraventions attract which amounts of administrative monetary penalties.
- First Nations impact mitigation, exempting certain fuels delivered to reserves for use by First Nations from the cap and trade program.

Comment(s) Received on the Proposal: 158

Public Consultation on the proposal for this decision was provided for 47 Days, from February 25, 2016 to April 12, 2016.

As a result of public consultation on the proposal, the Ministry received a total of 158 comments: 107 comments were received in writing and 51 were received online.

Additionally, a copy of all comments are available for public viewing by contacting the Contact person listed in this notice.

A selection of these comments are available:

[View All Comments](#) (opens in new window)

Effect(s) of Consultation on this Decision:

On November 16, 2015 the Ministry of the Environment and Climate Change posted a policy paper to the Environmental Registry (EBR 012-5666) for 30 days to gather comments on the design options under consideration for Ontario's greenhouse gas cap and trade program. In addition, Ontario met extensively with stakeholders on cap and trade over the last year, including industries, associations, environmental organizations, and labour groups. These consultations helped to inform the cap and trade regulatory proposal and revised Guideline for greenhouse gas emissions reporting that were posted for comment on the Environmental and Regulatory Registries (EBR 012-6837) on February 25, 2016. The following subsections provide a summary of key comments

All links will open in a new window

1. [Final Cap and Trade Program Regulation](#)
2. [Methodology for Free Allowances Distribution May 2016](#)
3. [Final Quantification, Reporting and Verification Regulation for Greenhouse Gas Emissions](#)
4. [Guideline for Quantification, Reporting and Verification of Greenhouse Gas Emissions May 2016](#)

received and responses.

Impact on Energy Prices

Comment: Concern that the price of electricity, heating, and transportation will increase due to cap and trade.

Response: Electricity rates will not increase, on average, as a result of cap and trade. The government is committed to investing proceeds from the cap and trade program into initiatives that will reduce or support the reduction of greenhouse gas and that, as a result, will reduce energy costs for businesses and households.

Cogeneration

Comment: Having the electricity component of cogeneration ineligible for free allowances creates a disincentive for cogeneration.

Response: Allowances will be provided for both the steam and on-site electricity produced via cogeneration, where neither steam nor electricity are the primary products of the facility.

Caps and Start Date

Comment: The cap decline is too aggressive and the program should be delayed until 2018.

Response: The cap decline factor has been established based on the emission reductions needed to meet provincial reduction targets. Any delay in program implementation would result in more aggressive cap declines than are reflected in the current regulation.

Biomass Use

Comment: The regulatory proposal did not state that the use of biomass would be recognized through allocations. Exemptions should be made for biomass to reflect its carbon neutrality.

Response: A factor will be added to the allowance allocation formula that would lower the cap adjustment factor in proportion to a facility's biomass use.

Assistance Factor

Comment: Large final emitters should not receive an assistance factor of 100% in the first compliance period.

Response: Distributing allowances can help prevent carbon leakage which has negative impacts on the environment and economy. It ensures emissions decline rather than move outside Ontario with resultant job loss and effects on the economy. This is a transitional and time limited approach. As more jurisdictions put a price on carbon, the need to issue allowances free of charge will decline. An assistance factor of 100% does not mean that the facilities will receive all the allowances they need. The cap adjustment factor reduces the allowances that emitters will receive over time. So emitters that do not reduce their emissions below their allocation amount may still need to purchase allowances.

Certainty Post-2020

Comment: There should be greater certainty regarding the post-2020 period. Without this certainty, branch plants may have difficulty attracting head office capital investments for abatement.

Response: The program is designed out to 2020. The government will begin consulting on the post-2020 design including caps, assistance factors and allocation methods well before 2020 as part of linking discussions later this year.

Carbon Leakage

Comment: A cap and trade program could inadvertently cause production to leave the province for other jurisdictions that do not have equivalent carbon pricing policies, thereby increasing global emissions.

Response: An assistance factor of 100% for all sectors in the first compliance period will ease transition into the cap and trade program and help prevent carbon leakage. The rate of decline for allowances distributed in respect of process emissions will also minimize leakage risks for industries. Ontario will continue to work with stakeholders to refine the approach to the assessment of emissions intensity and trade exposure, as the basis for leakage risk, prior to a second compliance period (2021-2023). Other measures to mitigate carbon leakage include offset credits, market design features that contribute to compliance flexibility, and covering electricity and fuels consumed in Ontario in the program.

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View Ministry Statements of Environmental Values

Ministry of Aboriginal Affairs

Ministry of Agriculture, Food and Rural Affairs

Ministry of Tourism, Culture and Sport

Ministry of Economic Development, Employment and Infrastructure

Ministry of Education

Ministry of Energy

Ministry of Government and Consumer Services

Ministry of Health and Long-Term Care

Ministry of Labour

Ministry of Municipal Affairs and Housing

Ministry of Natural Resources and Forestry

Ministry of Northern Development and Mines

Ministry of Transportation

Ministry of the Environment and Climate Change

Treasury Board Secretariat

Statement of Environmental Values : Ministry of the Environment and Climate Change

1. INTRODUCTION

The Ontario Environmental Bill of Rights (EBR) was proclaimed in February 1994. The founding principles of the EBR are stated in its Preamble:

- The people of Ontario recognize the inherent value of the natural environment.
- The people of Ontario have a right to a healthful environment.
- The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.

While the government has the primary responsibility for achieving this goal, Ontarians should have the means to ensure that it is achieved in an effective, timely, open and fair manner.

The purposes of the Act are:

- To protect, conserve and where reasonable, restore the integrity of the environment;
- To provide sustainability of the environment by the means provided in the Act; and
- To protect the right to a healthful environment by the means provided in the Act.

These purposes include the following:

- The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.
- The protection and conservation of biological, ecological and genetic diversity.
- The protection and conservation of natural resources, including plant life, animal life and ecological systems.
- The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
- The identification, protection and conservation of ecologically sensitive areas or processes.

To assist in fulfilling these purposes, the Act provides:

- The means by which Ontarians may participate in the making of environmentally significant decisions by the Government of Ontario;
- Increased accountability of the Government of Ontario for its environmental decision-making;
- Increased access to the courts by residents of Ontario for the protection of the environment; and
- Enhanced protection for employees who take action in respect of environmental harm.

The EBR requires a Statement of Environmental Values from all designated ministries. The designated ministries are listed at:

http://www.ebr.gov.on.ca/ERS-WEB-External/content/index2.jsp?f0=aboutTheRegistry.statement&f1=aboutTheRegistry.statement.value&menuIndex=0_3

Statements of Environmental Values (SEV) are a means for designated government ministries to record their commitment to the environment and be accountable for ensuring consideration of the environment in their decisions. A SEV explains:

- How the purposes of the EBR will be applied when decisions that might significantly affect the environment are made in the Ministry; and
- How consideration of the purposes of the EBR will be integrated with other considerations, including social, economic and scientific considerations, which are part of decision-making in the Ministry.

It is each Minister's responsibility to take every reasonable step to ensure that the SEV is considered whenever decisions that might significantly affect the environment are made in the Ministry.

The Ministry will examine the SEV on a periodic basis to ensure the Statements are current.

2. MINISTRY VISION, MANDATE AND BUSINESS

The Ministry of the Environment and Climate Change's vision is an Ontario with clean and safe air, land and water that contributes to healthy communities, ecological protection, and environmentally sustainable development for present and future generations.

The Ministry of the Environment and Climate Change develops and implements environmental legislation, regulations, standards, policies, guidelines and programs. The Ministry's research, monitoring, inspection, investigations and enforcement activities are integral to achieving Ontario's environmental goals.

Specific details on the responsibilities of the Ministry of the Environment and Climate Change can be found on the Ministry website www.ene.gov.on.ca.

3. APPLICATION OF THE SEV

The Ministry of the Environment and Climate Change is committed to applying the purposes of the EBR when decisions that might significantly affect the environment are made in the Ministry. As it develops Acts, regulations and policies, the Ministry will apply the following principles:

- The Ministry adopts an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.
- The Ministry considers the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society.
- The Ministry considers the effects of its decisions on current and future generations, consistent with sustainable development principles.
- The Ministry uses a precautionary, science-based approach in its decision-making to protect human health and the environment.
- The Ministry's environmental protection strategy will place priority on preventing pollution and minimizing the creation of pollutants that can adversely affect the environment.
- The Ministry endeavours to have the perpetrator of pollution pay for the cost of clean up and rehabilitation consistent with the polluter pays principle.
- In the event that significant environmental harm is caused, the Ministry will work to ensure that the environment is rehabilitated to the extent feasible.
- Planning and management for environmental protection should strive for continuous improvement and effectiveness through adaptive management.
- The Ministry supports and promotes a range of tools that encourage environmental protection and sustainability (e.g. stewardship, outreach, education).
- The Ministry will encourage increased transparency, timely reporting and enhanced ongoing engagement with the public as part of environmental decision making.

Decisions on proposed Acts, regulations and policies reflect the above principles. The ministry works to protect, restore and enhance the natural environment by:

- Developing policies, legislation, regulations and standards to protect the environment and human health,
- Using science and research to support policy development, environmental solutions and reporting,
- Ensuring that planning, which aims to identify and evaluate environmental benefits and risks, takes place at the earliest stages in the decision-making process;
- Undertaking compliance and enforcement actions to ensure consistency with environmental laws, and
- Environmental monitoring and reporting to track progress over time and inform the public on environmental quality.

In addition, the Ministry of the Environment and Climate Change uses a range of innovative programs and initiatives, including strong partnerships, public engagement, strategic knowledge management, and economic incentives and disincentives to carry out its responsibilities.

4. INTEGRATION WITH OTHER CONSIDERATIONS

The Ministry of the Environment and Climate Change will take into account social, economic and other considerations; these will be integrated with the purposes of the EBR when decisions that might significantly affect the environment need to be made. In making decisions, the Ministry will use the best science available. It will support scientific research, the development and application of technologies, processes and services.

The Ministry will encourage energy conservation in those sectors where it provides policy direction or programs.

5. MONITORING USE OF THE SEV

The Ministry of the Environment and Climate Change will document how the SEV was considered each time a decision on an Act, regulation or policy is posted on the Environmental Registry. The Ministry will ensure that staff involved in decisions that might significantly affect the environment is aware of the Ministry's Environmental Bill of Rights obligations.

The Ministry of the Environment and Climate Change monitors and assesses changes in the environment. The Ministry reviews and reports, both internally and to the Environmental Commissioner's Office, on its progress in implementing the SEV.

6. CONSULTATION

The Ministry of the Environment and Climate Change believes that public consultation is vital to sound environmental decision-making. The Ministry will provide opportunities for an open and consultative process when making decisions that might significantly affect the environment.

7. CONSIDERATION OF ABORIGINAL PEOPLES

The Ministry of the Environment and Climate Change recognizes the value that Aboriginal peoples place on the environment. When making decisions that might significantly affect the environment, the Ministry will provide opportunities for involvement of Aboriginal peoples whose interests may be affected by such decisions so that Aboriginal interests can be appropriately considered. This commitment is not intended to alter or detract from any constitutional obligation the province may have to consult with Aboriginal peoples.

8. GREENING INTERNAL OPERATIONS

The Ministry of the Environment and Climate Change believes in the wise use and conservation of natural resources. The Ministry will support Government of Ontario initiatives to conserve energy and water, and to wisely use our air, water and land resources in order to generate sustainable environmental, health and economic benefits for present and future generations.

The Ministry of the Environment and Climate Change is committed to reducing its environmental footprint by greening its internal operations, and supporting environmentally sustainable practices for its partners, stakeholders and suppliers. A range of activities is being undertaken to reduce the Ministry's air emissions, energy use, water consumption, and waste generation. These include: monitoring and reducing the Ministry's carbon footprint, promoting energy and water conservation in ministry outreach and educational activities, and supporting government-wide greening and sustainability initiatives.

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Application for Review Checklist

Before you send your Application for Review and supporting documents to the Environmental Commissioner of Ontario, make sure you have:

- Completed the forms for Applicant Number One **AND** Applicant Number Two, including the signatures of both applicants
- If you are a corporate applicant, provided the proper legal name of the corporation **AND** completed the declaration of incorporation in Ontario
- Made it clear what *existing* policy, act, regulation or instrument you want reviewed
 - **AND/OR** -
 - Made it clear that you want the Minister to review the need for a *new* policy, act, or regulation
- If you are seeking a review of an *existing* policy, act, regulation or instrument:
 - a. included the section number(s) or parts of the policy, act, regulation or instrument that you would like to be reviewed; **AND**
 - b. double checked that the section(s) or parts of the policy, act, regulation or instrument that you seek to have reviewed is/are subject to an *EBR* Application for Review
- If you are seeking a review of the need for a *new* policy, act or regulation, double checked that the ministry that would be responsible for such a policy, act or regulation is subject to an *EBR* Application for Review
- Explained why the review that you are requesting is necessary to protect the environment
- Provided a summary of the evidence that supports your belief that the review you are requesting should be undertaken in order to protect the environment
- Addressed your original Application for Review to:
 - The Environmental Commissioner of Ontario**
1075 Bay Street, Suite 605
Toronto, ON M5S 2B1
- Retained a copy of your Application for Review and supporting documents for your own records

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