

# B.C.'s New Climate Change Legislation – A Help or Hindrance to Achieving Environmental Sustainability?

By Michelle Pockey

Never before have we been so aware of our environmental impact. Peers, politicians, special interest groups and – indeed – weather patterns and events remind us daily. While we make individual changes to our lifestyle to minimize our impact, levels of government are working to ensure that our partners and clients in industry take corresponding steps.

As Canadians, we are being introduced to a range of climate change-related legislation purporting to promote environmental sustainability. The Province of B.C., specifically, has implemented a “tool box” approach aimed at lowering greenhouse gas (GHG) emissions. This approach includes legislation that imposes a **carbon tax**, a **cap and trade system** for GHG emissions, and **carbon neutral** require-

ments. While some of this legislation is now in force, some is still under debate. Each enactment will profoundly impact decision-making by public sector organizations, private businesses, and individuals going forward.

In April 2008, Bill 37 was introduced to impose a **carbon tax** on GHG-emitting fuel sources. If passed, the tax will become effective July 1, 2008 on fuels such as gasoline, diesel, natural gas, propane, coal and home heating fuel purchased, imported or used in B.C. The tax rates will vary depending on the fuel type and the amount of GHGs released when the fuel is burned. Rates are expected to increase threefold over a five-year period. For most consumers, the tax will be collected by retailers and remitted to the government,

but certain classes of consumers (yet to be prescribed by regulation) will be responsible for paying the tax directly. Approximately \$1.85B is expected to be generated over three years. The Province is considering returning the proceeds to taxpayers in the form of income tax breaks.

In April 2008, the B.C. government introduced Bill 18 – the Greenhouse Gas Reduction (Cap and Trade) Act. Essentially a **cap and trade** system, government establishes a maximum level of GHG emissions and then distributes or auctions emission allowances up to but not exceeding the cap. Allowances decrease with time to meet government’s future target emission levels. For each compliance period, regulated emitters must remit allowances equal to their actual emissions. An emitter with



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## B.C.'s New Climate Change Legislation [cont'd]

excess allowances can sell them to emitters who need more to match their emissions. Bill 18 will require regulated operations to retire "compliance units" at least equal to their emissions during any compliance period. Compliance units may be allowance units issued by government, or emissions reduction units issued by government in connection with B.C.-based emission reduction projects. Units may be traded amongst regulated operators. It is unclear which sectors of the economy or specific operators will be subject to this legislation, however, it is likely that large stationary emitters will be regulated. Mobile sources of emissions (e.g. truck and rail operators) could also be regulated. Additionally, regulations may be enacted to attribute to a B.C. operator for emissions that occur outside of B.C. (e.g. emissions associated with the generation and transmission of electricity to the point where the electricity is received by the B.C. electricity grid). Failure to comply could result in a penalty (e.g. a fine or obligation to retire additional compliance units) or conviction for a regulatory (i.e. quasi-criminal) offence, or both.

Imposing a legislative obligation to become **carbon neutral** is similar to the cap and trade system in that organizations are required to track and report their emissions while working toward zero net emissions. The difference is that no allowances are distributed by government for permitted emissions. All actual emissions must be matched with an equal amount of recognized emissions offsets. *Under the Greenhouse Gas Reduction Targets Act*, all public sector organizations are required to become carbon neutral by 2010. Revisions to the *Environmental Management Act* proposed in the *Greenhouse Gas*

*Reduction (Emissions Standards) Statutes Amendment Act* introduced in April 2008, would require all existing electricity generators to be carbon neutral by 2016. New facilities and expansions to existing ones that exceed a prescribed threshold will be subject to the proposed amendments much sooner. Private sector organizations may be subject to administrative penalties or charged with an offence – or both – if they fail to comply.

While all of this legislation is, to a large degree, still in its infancy, British Columbians as well as those outside the province doing business here are faced with uncertainty as to how and to what extent they may be affected. This uncertainty poses significant challenges for industry.

**Developing a Carbon Strategy** – Those in carbon-intensive sectors must endeavour to "future-proof" current or imminent contractual arrangements (What is the most appropriate allocation of carbon-related benefits and burdens? Should operations be improved? How long will that take? Should offsets be obtained? If so, from where?) despite not knowing exactly what it will cost to offset carbon emissions.

**Assessing Future Competitiveness** – The government is contemplating which economic sectors and corresponding operators will be regulated by which scheme and how allowances will be allocated within each system. The outcome of these decisions could impact an operator's ability to remain competitive. Poor or uninformed decisions have the potential of adding differential costs for competing sectors within B.C., or imposing costs and economic disadvantage

on B.C. organizations that are competing with those in jurisdictions that have made different policy choices.

**GHG Emissions Reporting** – Most of the proposed legislation includes stringent GHG emissions reporting requirements. Mere non-compliance could attract regulatory enforcement action, and those who misreport or mislead or obstruct investigators could be exposed to substantial legal risk. This risk extends in certain circumstances to directors and officers of the reporting entity. It would be prudent to implement a system for tracking and reporting GHG emissions prior to legislation.

B.C. is the first of Canadian jurisdictions to propose such extensive, concrete regulatory legislation to address climate change concerns. The world will undoubtedly be watching how B.C.'s regime unfolds in practice. We, as professional advisors to industry in B.C., must make our own assessments of these issues. We should consider whether such legislation will be effective or a hindrance in achieving its stated goals; and how it operates in practice and the challenges it will pose not only for industry, but for individuals going forward. We should launch this inquiry now so that we are prepared for what is certain to be our new future.



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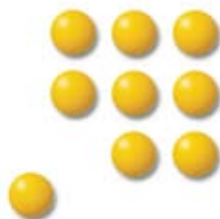
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