

ENERGY AND ENVIRONMENTAL BULLETIN*September 2005***IMPLEMENTING PROJECT GREEN: THE FORCE OF THE KYOTO PROTOCOL**

Canada's Minister of the Environment, the Honourable Stéphane Dion, recently announced significant progress in the implementation of Canada's Climate Change Plan, *Moving Forward on Climate Change: A Plan for Honouring our Kyoto Commitment* ("2005 Climate Change Plan"). A key component of Canada's commitment to a sustainable environment and competitive economy under the federal government's *Project Green*, the 2005 Climate Change Plan represents a markedly distinct change from the original 2002 Climate Change Plan for Canada. Announced on April 13th, 2005, two months after the February 2005 budget commitment to a green economy, the 2005 Climate Change Plan signals a new approach to Canada's Kyoto commitment to green house gas reduction. Of importance is the introduction of a new market mechanism and an important incentive structure for private sector innovation under the *Canadian Environmental Protection Act* (CEPA).

While the Kyoto Protocol was adopted in 1997 and was ratified by Canada in 1998, it did not come into force until February 16th, 2005 as a result of terms in the Kyoto Protocol which mandate its binding effect ninety-days after the Protocol is ratified, accepted, or approved by the 55th Party to the Convention. With Russia's recent ratification of the Protocol, the emission reduction and removal targets established under Kyoto are binding on Annex 1 Parties to the Convention. This bulletin highlights some of the recent developments that have occurred in light of Canada's new vision of a green economy and its binding Kyoto commitments.

A. RECENT DEVELOPMENTS – GREENHOUSE GASES ("GHGS") ADDED TO THE CEPA

The 2005 Climate Change Plan establishes a regulatory approach to green house gas emissions in Canada. The Plan addresses the need to reduce GHG emissions from a variety of sources, especially Large Final Emitters, and envisions the CEPA as the main vehicle for emission regulation.

The Climate Change Plan involves the regulation of GHG emissions under Part 5 of the CEPA. However, as a precondition to the proposed application of the CEPA, legislative amendments to Schedule 1 are required in order to add the GHGs in Annex A of the Kyoto Protocol to the current list of regulated substances under the CEPA. On September 3rd, 2005, the government took an important step in this direction by announcing in the *Canadian Gazette* the proposed addition of six GHGs to the toxic substances listed in Schedule 1 of the CEPA.

Under Section 90(1) of the Act, a substance that meets the criteria set out in Section 64 may be added to the list of regulated substances in Schedule 1 of the CEPA on the recommendation of the Ministers of Environment Canada and Health Canada. Specifically, the substance must enter the environment in a quantity or concentration, or under conditions, that: (a) have or may have an immediate or long-term effect on the environment or its biological diversity; (b) constitute or may constitute a danger to the environment on which life depends; or (c) constitute a danger in Canada to human life or health.

Based on the second criterion, the government intends to prove that the proposed GHGs pose a danger to the environment on which life depends and should be added to the list of toxic substances regulated under the CEPA. Members of the public have until November 2nd, 2005 to comment on this Order. All comments must

cite the *Canadian Gazette, Part 1*, and include the *Gazette's* September 3rd, 2005 notice publication date. If you are interested in commenting, submit your comments to:

The Director General
Strategic Policy Directorate
Environmental Protection Service
Department of the Environment
155 Queen Street
Ottawa, ON K1A 0H3

B. THE OFFSET PAPER - EMISSIONS TRADING AND THE MARKET FOR CREDITS

In June 2003, the Government of Canada distributed a Discussion Paper that outlined the key design elements of a Canadian offset system. After province-wide consultations and the announcement of the new *2005 Climate Change Plan*, the government has been working to devise a Canadian offset system for GHG emissions based on the new vision of a green economy.

On August 11, 2005, the government released the *Offset System for Greenhouse Gases Overview Paper* (the "Offset Paper") and Technical Background Document. The proposed Canadian offset system is designed to encourage a cost-effective domestic reduction or removal of GHG emissions not covered by federal regulations. Under the proposed system, the government would provide domestic offset credits for GHG reductions or removals beyond the level of emissions generally achieved under normal business activities. The key component of the offset system is that once these credits are issued, the credits can then be sold to either the government, under the 2005 Climate Fund, or alternatively to Large Final Emitters, to help Canada achieve its targets under the Kyoto Protocol.

Issuing Offset Credits

The Technical Background Document describes in detail the necessary steps required for the creation of an offset credit. The four stages involved in creation include: (a) the project validation stage; (b) the registration stage; (c) the verification of emission reduction stage; and (d) the issuance of offset credits.

In order to receive credits, the emitter must first register the GHG reduction or removal activity as an offset project and must meet the requirements under the offset system. An offset project must be a real, specific and identifiable action that results in actual reduction or removal of GHG emissions and involves more than simply moving emissions to other sites or sources. In addition, clear legal ownership of reductions or removals achieved from a project is required, and the gases in question must be those included in the list of GHGs under the Kyoto Protocol.

Once registered, the emission reduction or removals achieved by the project must be verified, and this requires that the reduction or removal of GHGs be both quantifiable and verifiable in accordance with government protocol. While the government is still working to establish this protocol, once met, offset credits are issued but are limited to systems that have not already received offset credits.

Trading Offset Credits

Once offset credits are issued, they can either be banked or sold to other emitters. The proposed offset credit system provides not only an incentive for Canadians to innovate and invest in environmentally friendly techniques, but more importantly allows Large Final Emitters to purchase and use domestic offset credits to meet the new emission reduction targets set under the *2005 Climate Change Plan*. The Large Final Emitter System,

which permits the trading of credits, is viewed as an important step in securing emission reductions from Canada's largest emitters. The federal government has determined that these reductions are best achieved through a market-based system in a manner that supports the continued competitiveness of Canadian industries while still complying with Kyoto.

Formal consultations on the offset system will be held during September 2005. Written submissions with respect to the offset system are welcome until September 30th, 2005 and should be submitted to:

Judith Hall
Project Manager, Offsets
Environment Canada
155 Queen Street Suite 200
Ottawa, ON K1A 0H3
Email: offsets-compensations@ec.gc.ca

C. THE FUTURE: COP 11 IN MONTREAL

Canada is hosting the Eleventh Conference of the Parties (CoP 11) to the United Nations Framework Convention on Climate Change in Montreal from November 28th, 2005 to December 9th, 2005. The meeting marks the beginning of discussions on the future of global action and the long-term approach to climate change after 2012. The CoP 11 is being held in conjunction with the first meetings of the Parties to the Kyoto Protocol making it an even more significant global event.

Hosting this event not only solidifies Canada's growing leadership role on the global stage, but also provides Canada with the opportunity to lead discussions on future efforts under Kyoto. These efforts include the development of Kyoto mechanisms aimed at the reduction or removal of emissions, the need to set targets for developing nations, and the desire to create an inclusive Kyoto agreement.

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The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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