Goodmans LLP Update

# Environmental Law and Cleantech

January 23, 2018

## Feds Announce Proposed Carbon Pricing System as Part of Pan-Canadian Clean Growth Plan

On January 15, 2018, the Minister of Environment and Climate Change and the Minister of Finance released for public comment the draft *Greenhouse Gas Pollution Pricing Act* (the "**Proposed Act**"), setting out the mechanics to be used to backstop the federal government's pan-Canadian approach to carbon pricing, originally announced in October 2016.[1]

The Proposed Act sets out the federal backstop regime for carbon pricing which will apply in provinces that have not implemented, by January 1, 2019, a carbon pricing system that the federal government has determined complies with its carbon price requirements. The federal backstop regime requires a minimum $20/tonne of carbon dioxide equivalent ("**tCO2e**") carbon price by January 1, 2019, increased by $10 increments each following year to 2022 (the "**Federal Carbon Pricing Standard**"). Alberta, British Columbia, Ontario and Québec already have compliant carbon pricing systems in place and are therefore unlikely to be affected. Other provinces and territories have until the end of March 2018 to decide if they want to implement a provincial scheme or to fall under the federal system.

#### Purpose of the Proposed Act

If enacted, the Proposed Act would further implement the federal government's commitment to addressing climate change and would support the advancement of cleantech as a promising area for growth, innovation and investment. As Catherine McKenna, Minister of Environment and Climate Change, explained:

> The environment and the economy go hand in hand. Four out of five Canadians live in jurisdictions that already have a price on carbon—and right now, those provinces are leading Canada in job creation. Today, we're following through on our commitment to put a price on carbon pollution across Canada, with federal legislation and a practical approach to protect competitiveness for large industry.

Further, the Proposed Act would bring Canada closer to meeting its Paris Agreement commitment to an economy-wide target of reducing greenhouse gas ("**GHG**") emissions by 30% below 2005 levels by 2030.

#### Principal Elements of the Proposed Act

The Proposed Act includes two principal elements:

- A carbon levy applicable to fossil fuels, including liquid fuels (like gasoline, diesel fuel and aviation fuel), gaseous fuels (like natural gas) and solid fuels (like coal and coke), which are used in the province.
- An output-based pricing system ("**OBPS**") for industrial facilities that emit 50 kilotonnes of carbon dioxide equivalent ("**ktCO2e**") or more per year, under which OBPS facilities will purchase fuel levy-free, but will be required to pay a carbon price or to procure emissions credits for their emissions in excess of an annual emissions limit.

As stated above, the carbon price is to be set at levels equivalent to $20/tCO2e for 2019, increasing by $10 each year to $50/tCO2e for 2022.

***Fuel Levies***

The Proposed Act sets out a tariff schedule for fuel levies from 2018 to 2022, based on the Federal Carbon Pricing Standard. The fuel levy applies to fuels used in a jurisdiction, regardless of whether they were produced inside or outside of the jurisdiction, and will be payable in most cases by the producer or distributor.

[1] For further background information, see our January 24, 2017 Update, *Cleantech and Climate Action January 2017 – Looking Back at an Eventful 2016 and Looking Ahead to Opportunities in 2017 and Beyond.*

***Industrial Mechanism for GHG Emissions***

The Proposed Act outlines an OBPS model for industrial facilities emitting 50 ktCO2e or more and for which an output-based standard is specified, or smaller facilities emitting between 10-50 ktCO2e per year for eligible facilities that opt in.  An output-based standard is specified for a number of industrial sectors including, but not limited to, oil and gas, mining, pulp and paper, chemicals, nitrogen-fertilizers and food processing. Additional sectors will be included over time.

Industrial facilities whose emissions fall below the emissions limit as determined under the Proposed Act will receive emissions credits that can be sold or saved for future compliance years, whereas industrial facilities whose emissions exceed the emissions limit will be required to pay a carbon levy on emissions exceeding the emissions limit.  Alternatively, such a facility could rely on surplus credits accumulated in prior compliance years or submit eligible offset credits to cover excess emissions.

**What this Means for Industry**

The Proposed Act affects industrial operations located in Manitoba, Saskatchewan, the Atlantic provinces and territories. Alberta, British Columbia, Ontario and Québec have existing carbon pricing systems that align with the Federal Carbon Pricing Standard and are likely unaffected. The Federal Carbon Pricing Standard provides for incremental increases in the per tonne carbon price which are intended to give industry an opportunity adapt to the carbon pricing system and make necessary adjustments and investments in cleantech or otherwise over time.

A formal schedule of per tonne carbon price increases after 2022 is not yet available, as the federal government plans to conduct a review in 2022.

**Next Steps**

The federal government is accepting comments to the draft legislative proposals to implement the federal carbon pricing system until February 12, 2018, and to the regulatory framework for OBPS until April 9, 2018.

For further information on carbon pricing in Canada and the Proposed Act, please contact any member of our Environmental Law and Cleantech Practice Groups.