

Goodmans^{LLP} Update

Ontario Government Releases “Made-in-Ontario” Environment Plan

On November 29, 2018, the Government of Ontario released its proposed Made-in-Ontario Environment Plan (the “**Plan**”). This announcement follows in the wake of the government’s cancellation of the greenhouse gas cap and trade program and a number of the other climate action initiatives of the previous government.¹ The Plan acknowledges the serious threats and increasing costs of climate change, promises a province-wide impact assessment, and recognizes that Ontario has the largest and fastest-growing cleantech sector in Canada which could benefit from greater access to emerging global markets for low-carbon technologies. The Plan fulfils the government’s commitment to bring forward a climate action program not based on pricing carbon, but places a relatively lower priority on reducing greenhouse gas (GHG) emissions.²

The Plan introduces some new initiatives, including, performance standards for industrial GHG emitters and the creation of a carbon trust and reverse auction to incentivize private sector investment in clean technology solutions. The Plan also commits Ontario to parallel the federal Accelerated Capital Cost Allowance, to help attract investments in clean energy generation and conservation equipment. The initiatives proposed by the Plan (a number of which remain to be detailed), together with the federal initiatives we previously discussed,³ should create opportunities for the further development of cleantech businesses in the province.

Guiding Principles

The Government of Ontario identifies the following as its guiding principles for the Plan:

- **Clear Rules and Strong Enforcement.** The Plan seeks to increase the accountability of polluters, enforcing tougher penalties for breaking environmental laws, and advocates for corporate disclosure and information sharing, particularly among large industrial emitters, which will be required to regularly demonstrate compliance with the legislation.
- **Trust and Transparency.** The Plan seeks to increase transparency to the public by providing information about monitoring, incidents and enforcement, and to provide information and tools to help individuals and businesses better understand environmental challenges and their impacts.
- **Resilient Communities and Local Solutions.** The Plan seeks to leverage the resources, creativity and diversity of communities to develop customized solutions to the unique environmental challenges each community may face.

Main Components of the Plan

The Plan addresses the following four key environmental challenges in Ontario.

Addressing Climate Change

As discussed in our November 12, 2018 Update, *Cap and Trade Formally Cancelled in Ontario – Federal Carbon Pricing Regime Clarified*, the government formally repealed the Ontario cap and trade regime and promised to establish targets for reducing GHG emissions in the province. The Plan fulfils this commitment by specifying, as the new provincial target, a 30% reduction in Ontario’s GHG emissions (relative to 2005 levels) by 2030. This target aligns with Canada’s GHG reduction targets under the Paris Agreement but is substantially less ambitious than the previous government’s target of a 37% reduction, relative to the lower levels of emissions in 1990.⁴

The Plan includes increasing the ethanol content of gasoline to 15% as early as 2025, encouraging uptake of renewable natural gas and the use of lower carbon fuels, and creating an emissions performance standard that requires industrial facilities to meet certain emission

levels tied to their level of output or production (the “**Emissions Performance Standard**”). All large industrial emitters in the province will be required to demonstrate compliance with the Emissions Performance Standard on a regular basis, and the program may include compliance flexibility mechanisms such as offset credits and/or payment of an amount to achieve compliance, but will not enforce a blanket cap on emissions across Ontario. The final outcome of this program will depend on consultation with industry partners.

The Plan also includes the Ontario Carbon Trust, which will use financing techniques and market development tools in partnership with the private sector to speed up the deployment of low-carbon solutions (the “**Carbon Trust**”). Specifically, the Carbon Trust will utilize a commitment of \$400 million in public funding over four years to leverage over \$1 billion of private investment in clean technologies that are deemed commercially viable and will have a widespread presence. The estimated value of the Carbon Trust includes an Ontario Reverse Auction of \$50 million (the “**Reverse Auction**”). In the Reverse Auction, the provincial government will act as a “buyer” who will send out a request for proposals, services or contracts. Incoming “bids” are then assessed and the bid with the lowest cost per tonne of GHG emission reductions is selected. The “bidders” in the auction compete to win the project or contract, often underbidding each other, resulting in lower costs for the buyer. The Ontario government also announced it would parallel the federal Accelerated Capital Cost Allowance, which will make technology investments in clean energy generation and energy conservation equipment more attractive.

Further, the Plan includes a commitment to green infrastructure projects that lower GHG emissions and reduce pollution, including improvements to transit and transportation infrastructure and improved local water, wastewater and storm water systems. Through the Investing in Canada Infrastructure Program, the Government of Ontario will work with federal and municipal governments to invest up to \$7 billion in federal, provincial and municipal funding over the next 10 years.

Protecting Air, Lakes and Rivers

The Plan seeks to improve air quality through collaboration with municipalities, industry, public health units, other community stakeholders and Indigenous communities. This will be done largely by continuing to implement initiatives already in place and, in part, by introducing new initiatives, including redesigning the emissions testing program for heavy-duty vehicles such as commercial transport trucks and strengthening on-road enforcement of emissions standards.

Reducing Litter and Waste; Keeping Land and Soil Clean

The Plan focuses on solutions that increase participation and involvement of Ontarians while trying to leverage technologies to recover valuable resources in waste, and endeavours to improve the management of soil, including cleaning up contaminated lands and reusing excess soil.

Conserving Land and Greenspace

The Plan reaffirms the Government of Ontario’s commitment and aims to continue efforts to conserve at-risk species, develop adaptation strategies, and promote the importance of natural spaces for future generations.

What This Means For Industry

Ontario is home to 35% of Canada’s innovative cleantech companies and has the largest and fastest-growing cleantech sector in Canada, with over 5,000 companies employing 130,000 people and \$19.8 billion in annual revenues. The Plan recognizes the capital, capability and know-how of the private sector and supports increased growth and innovation in the cleantech industry, helping to position Ontario’s private cleantech sector to lead in developing global solutions and transition Ontario to a low-carbon economy.

Next Steps

The Province of Ontario is soliciting input from the public on the Plan until January 28, 2019. Those wishing to provide comments or suggestions regarding the Plan are encouraged to do so on [the Environmental Registry of Ontario](#).

For further information on the Plan or the consultation process, please contact any member of our [Cleantech Practice Group](#).

Goodmans Cleantech Practice Group

Goodmans Cleantech Group consists of lawyers who understand the connection between business, technology and energy innovation. Our cleantech practice focuses on entrepreneurs, operating companies, and investors who are looking for value-added legal advice regarding clean technology transactions.

Successful cleantech ventures often bring together different industry and professional sectors. We collaborate in interdisciplinary teams to provide more cost-efficient and extraordinarily effective counsel. Our internal team assists clients with private equity financing transactions and to secure their valuable intellectual property rights. We guide clients through M&A transactions and other financing transactions. We also assist clients with joint ventures and financings of clean technology manufacturing facilities and renewable energy power generation projects.

Goodmans is a leader in working with investors and entrepreneurs who are developing new materials and technologies, partnering with them to bring their ideas to market. We are committed to addressing our clients' needs at every stage: from the earliest discovery or concept; through development, funding, partnerships, and large-scale utility operations; to public offerings and other capital events.

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¹ See our previous Updates: [Cap and Trade Formally Cancelled in Ontario – Federal Carbon Pricing Regime Clarified](#), [Ontario's Environmental Commissioner Calls for Strong Replacement Climate Law](#), and [Going, Going, Gone – Ontario Premier-Designate Announces Cancellation of Cap and Trade; Pulls Ontario Out of August GHG Auction](#).

² The change in approach to climate change is reflected in the substantially lower targets for GHG emissions reductions set out in the Plan and in the government's proposed descoping of the role of the Environmental Commissioner. (Under Schedule 15 of [Bill 57](#), the role of the Environmental Commissioner, whose Office was created by and who is appointed as an independent officer of the legislature under the Environmental Bill of Rights to monitor the government's compliance with provincial environmental laws, is to be substantially descoped with a subset of her duties being delegated to an employee of the Office of the Auditor General.)

³ See our previous Update: [Ontario Introduces Bill to Cancel Cap and Trade and Launches Carbon Tax Case](#).

⁴ The previous government's climate change action plan would have required a 30% reduction in GHG emissions from 2016 to 2030 while the Plan requires only a 10.9% reduction in GHG emissions over that same period.

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