

# Torys on Environmental Health and Safety

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## Canada

### Federal government launches Early Action Program

Environment Canada has launched the first phase of its Credit for Early Action Program, which is part of its proposed intensity-based cap-and-trade regime for large industrial emitters of greenhouse gas (GHG) emissions. The program is designed to offer a one-time allocation of credits to eligible entities that invested in measures to reduce their GHG emissions between 1992 and 2006. Eligible entities will be able to use credits earned through the program to meet their compliance obligations under the proposed federal regime. Although the federal government will not issue Early Action Credits until 2009, entities wishing to apply for credits must have submitted a Notice of Interest to Environment Canada by July 28, 2008, and must submit more detailed information by September 5, 2008. The federal government will issue Early Action Credits worth only the equivalent of 15 megatonnes of carbon dioxide, which will be allocated to eligible entities, pro rata (assuming that the reduction claimed exceeds the equivalent of 15 megatonnes of carbon dioxide), between 2010 and 2012.

For further information, please see Torys' Climate Change Bulletin at <http://www.torys.com/Publications/Documents/Publication%20PDFs/CC2008-10.pdf>.

### Environment Canada issues PBDE regulations

Environment Canada recently issued the Polybrominated Diphenyl Ethers (PBDE) Regulations under the *Canadian Environmental Protection Act, 1999*, placing restrictions on PBDEs, which are used in a wide variety of plastics, fabrics, glues, sealants and foams to slow the spread of fire. In particular, the regulations prohibit the manufacture of a wide variety of PBDEs in Canada and prohibit the use, sale, offer for sale in Canada and import into Canada of certain PBDEs (including tetraBDE, pentaBDE and hexaBDE congeners, as well as mixtures, polymers and resins containing these substances). The regulations do not apply to manufactured articles or final products containing PBDEs that are imported or already in use in Canada.

For further information, please see [canadagazette.gc.ca/partII/2008/20080709/html/sor218-e.html](http://canadagazette.gc.ca/partII/2008/20080709/html/sor218-e.html).

## Ontario

### Ontario establishes expedited public transit environmental assessment process

On June 24, 2008, the Ontario government filed O. Reg. 231/08 (Transit Projects and Greater Toronto Transportation Authority Undertakings) under the *Environmental Assessment Act*. This regulation exempts designated classes of public transit projects – including certain dedicated bus lanes, certain rail lines and subways, and ancillary facilities associated with such projects – from the requirements to conduct an individual

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or a class environmental assessment if such projects comply with the regulation's new, streamlined "transit project assessment process." Under the regulation, this process must be completed within six months of being initiated by the project proponent. However, the six-month period may be extended if issues or concerns arise relating to (i) a matter of provincial importance regarding the natural environment or cultural heritage, or (ii) a constitutionally protected aboriginal or treaty right. During the 30-day comment period, anyone can apply to the Environment Minister for a review of the project. If the Minister believes the project may have a negative impact on a matter of provincial importance or on aboriginal or treaty rights, the minister may require further study.

For further information, please see [www.ene.gov.on.ca/en/news/2008/062501mb.php](http://www.ene.gov.on.ca/en/news/2008/062501mb.php).

### **Ontario plans to protect Northern Ontario forests**

On July 14, 2008, the Ontario government announced its Far North Planning Process, which is designed to produce a plan over the next 10–15 years to permanently protect over 225,000 square kilometres of Ontario's northern boreal forest through a network of conservation lands. According to the announcement, the plan would permit only tourism and traditional aboriginal uses in these conservation lands and the government will carefully manage sustainable development in other areas of the northern boreal forest. The government will initiate the process by consulting the resource sector, scientists, aboriginal communities and other Northern Ontario residents to prepare a framework for the formal plan by the spring 2009.

In conjunction with Far North Planning Process, the government plans to review Ontario's *Mining Act* with a view to ensuring that mining companies are required to consult with and, where appropriate, accommodate affected aboriginal peoples before undertaking exploration and development. The government has indicated that it expects to begin consultations on these legislative changes in late summer 2008, with new requirements being in place by "later next year."

For further information, please see [www.premier.gov.on.ca/news/Product.asp?ProductID=2353&Lang=EN](http://www.premier.gov.on.ca/news/Product.asp?ProductID=2353&Lang=EN).

### **Ontario issues endangered species regulation**

O. Reg. 242/08, issued under the *Endangered Species Act, 2007* (the Act), came into force on June 30, 2008. Among other things, the regulation contains various exemptions to the prohibitions in the Act against harming a member of a species listed as extirpated, endangered or threatened on the Species at Risk in Ontario List. For example, the regulation provides that, in certain circumstances, the Act's prohibitions against harming listed species and damaging their habitat do not apply to the operator of a hydroelectric generator station; this exemption is conditional on the operator, within three years of the listed species being present at the station, making an agreement with the Minister of Natural Resources to take reasonable steps to mitigate and monitor the impact on the listed species or its habitat.

For further information, please see [www.e-laws.gov.on.ca/html/source/regs/english/2008/elaws\\_src\\_regs\\_r08242\\_e.htm](http://www.e-laws.gov.on.ca/html/source/regs/english/2008/elaws_src_regs_r08242_e.htm).

### **Ontario to join Western Climate Initiative**

On July 18, 2008, the Western Climate Initiative (WCI) announced its intention to recognize Ontario as its newest member one day after the province formally submitted its membership request. With Ontario, the WCI comprises seven U.S. states and four Canadian provinces that have undertaken to establish a regional cap-and-trade program for reducing GHG emissions. Ontario has been participating in the WCI

as an observer since August 2007 and will become the WCI's fourth Canadian member alongside British Columbia, Quebec and Manitoba. The proposed WCI regime would initially establish an absolute cap on GHG emissions from electricity generation and industrial combustion and process sources, with certain residential, commercial, small industrial and transportation sources being capped at a later date. The proposed cap for regional emissions would be lowered over time, but would initially be designed to achieve regional GHG reductions of 15% below 2005 levels by 2020.

For further information, please see

<http://www.westernclimateinitiative.org/ewebeditpro/items/O104F18782.PDF>.

### **Ontario proposes amendments to *Mining Act* regulations**

The Ontario government has proposed amendments to O. Reg. 240/00 (Mine Development and Closure under Part VII of the [Mining] Act), which would outline administrative procedures for those persons undertaking voluntary rehabilitation of abandoned mines. The *Mining Act* was recently amended to protect such persons from certain regulatory orders under the *Environmental Protection Act* and *Ontario Water Resources Act* relating to historical conditions at the abandoned mine for which these persons are not responsible. According to the government, industry was concerned that orders could be issued against these persons by virtue of their management or control of the property they were rehabilitating or had rehabilitated. To obtain the proposed protection, they would have to meet specific requirements when submitting voluntary rehabilitation applications. The amendments would also specify the lands, apart from Crown land (as defined by the *Mining Act*), to which the voluntary rehabilitation protections of the Act would apply.

For further information, please see [www.ebr.gov.on.ca/ERS-WEB-](http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTAzNzIy&statusId=MTU1MDM0&language=en)

[External/displaynoticecontent.do?noticeId=MTAzNzIy&statusId=MTU1MDM0&language=en](http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTAzNzIy&statusId=MTU1MDM0&language=en). 