

Torys on Environmental, Health and Safety

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Canada

Federal budget released

The Canadian government's 2009 budget, released on January 27, contains several measures designed to promote a sustainable environment and help to green Canada's economy. These measures include a \$1 billion Clean Energy Fund to support, over the next five years, the research, development and demonstration of clean energy technologies, most notably carbon capture and storage projects; a \$10 million investment in 2009–10 to sustain the government's collection of environmental data on water quality, air quality and greenhouse gas emissions, among other things; consultation with stakeholders regarding a potential accelerated capital cost allowance for assets used in carbon capture and storage projects; and a \$351 million investment in 2009–10 in the operations of Atomic Energy of Canada Limited (AECL), a Crown corporation, including for AECL's maintenance of safe and reliable operations at the Chalk River Laboratories.

In addition, the 2009 budget indicates that the federal government will streamline federal approval processes, including by implementing administrative changes to the application of the *Fisheries Act* and by pursuing regulatory efficiencies for projects subject to the *Canadian Environmental Assessment Act*.

For further information, please see
www.budget.gc.ca/2009/pdf/budget-planbudgetaire-eng.pdf.

Ontario

Compelled interrogation not authorized by environmental statute

In a very important enforcement-related decision, on January 7, 2009, the Ontario Superior Court ruled that Ontario's *Environmental Protection Act* (EPA) does not authorize a justice of the peace to order a witness to submit to interrogation or to produce documents, which is contrary to the position that Ontario's Ministry of the Environment (MOE) has been advancing for several years. At issue in the *Branch v. Ontario (Minister of the Environment)* case was the EPA's subsection 163.1(2), which provides, essentially, that justices may issue an order authorizing a provincial officer of the MOE to use any device, investigative technique or procedure to do anything described in the order. In *Branch*, a justice had issued an order allowing a MOE investigator to compel the manager of a hazardous waste warehouse, where a fire had occurred, to submit to an interview and to produce documents. The Court held that subsection 163.1(2), although designed to enhance the authority of MOE investigators, is meant only to authorize the MOE itself to carry out certain investigative activities (such as using electronic devices to track vehicles suspected of illegally dumping waste), not to compel action by a third party (such as their submitting to an interview or producing documents).

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Cap-and-trade discussion paper

The Ontario government recently described, in a discussion paper, the core design principles for the province's proposed cap-and-trade system, which may take effect as early as January 1, 2010, and is being designed to be compatible with the Western Climate Initiative (WCI), a regional cap-and-trade initiative of several U.S. states and Canadian provinces. The paper highlights various issues for discussion, including the province's current plans to cap, at least in 2010–11, the greenhouse gas (GHG) emissions of certain industrial facilities or corporations that emit over 100,000 tonnes of carbon dioxide equivalents (a unit of GHG emissions) annually. The paper suggests this threshold may be lowered to 25,000 tonnes/year in subsequent years. Other discussion points include the province's plans (i) to allow capped emitters to use offset credits (awarded for GHG reductions outside the capped sectors) to meet up to 49% of their compliance obligations; (ii) to auction, by 2012, at least 10% of the emissions allowances available to capped entities; and (iii) to issue credits for emitters that had taken early action to reduce their GHG emissions.

The MOE is accepting comments on this discussion paper, titled "A Greenhouse Gas Cap-and-Trade System for Ontario," for an unspecified time period.

For further information, please see www.ene.gov.on.ca/documents/ct-discussionPaper.pdf.

Draft plan for Lake Simcoe protection

On January 13, 2009, the MOE released the draft Lake Simcoe Protection Plan, which is intended to provide long-term protection to the Lake Simcoe watershed and its associated communities. The draft plan proposes various measures regarding water quality protection, including a ban on certain new sewage treatment plants, restrictions on septic systems in sensitive areas and amendments to municipal stormwater planning requirements. The draft plan also proposes measures for the protection of habitat, shorelines and aquatic life, and the promotion of sustainable recreation. The MOE is accepting comments on the draft plan until March 16, 2009.

For further information, please see Torys' [December 2008 Bulletin](#) and www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTAONTYO&statusId=MTU2NjEy&language=en.

North America

WCI reporting details

On January 6, 2009, the WCI released its "Background Document and Progress Report for Essential Requirements of Mandatory Reporting for the Western Climate Initiative, Third Draft." This draft report describes the current state of the WCI's proposed GHG reporting requirements, which all regulated emitters will be required to comply with when reporting their GHG emissions to a jurisdiction that is a WCI partner. The report already includes proposed reporting requirements for many emissions-intensive sectors, and it is expected to be further modified in 2009 to include such requirements for electricity importers, fuel distributors, natural gas transmitters and distributors, and oil and gas producers.

For further information, please see www.westernclimateinitiative.org/ewebeditpro/items/O104F20744.pdf. 