

Tax

Provincial carbon regimes: Mixed bag to fight climate change

By P. Jason Kroft and Ghazal Hamedani



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(December 5, 2022, 10:36 AM EST) -- We are back ... with the next instalment in our carbon finance series

In our previous articles we discussed federal laws and regulations in the Canadian carbon market and provided an overview on the federal Output-Based Pricing System (OBPS). In this article, we will provide a high-level summary of key provincial carbon regimes. The goal of this article and the previous article on the federal carbon laws is to establish a baseline with our readers as to the key Canadian carbon pricing regimes. We will take a deeper dive in 2023.

As noted in our previous article, the government of Canada published the *Pan-Canadian Approach to Pricing Carbon Pollution* (the federal "Benchmark"). Additionally, it stated that the OBPS would be used as a backstop by any provinces or territories that so requested or failed to put in place a system that met the Benchmark. Below is a summary of what each province has done to implement the Benchmark.



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Quebec

Quebec has adopted a cap-and-trade system, which is set out in the *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances* (the C&T Regulation) under the *Environmental Quality Act* (the EQA) (the Quebec C&T System). Quebec's C&T System is administered by the Ministry of Environment and Climate Change and is linked to California's cap-and-trade system through the Western Climate Initiative (WCI).

The WCI is a group of American states and Canadian provinces that have decided to adopt a common approach toward addressing climate change, in particular by developing and implementing a North American system for capping and trading greenhouse gas (GHG) emission allowances. Ontario joined the WCI initiative in 2017 but withdrew one year later when it repealed its cap-and-trade regulation on July 3, 2018. To date, Quebec is the only Canadian province linked to the WCI.

Participation in the Quebec C&T System is open to "Emitters" and "Participants" as described in the C&T Regulation. All Emitters and Participants must register with the Quebec C&T System by submitting a Compliance Instrument Tracking System Service (CITSS) application to the minister. The reporting obligations are set out in Quebec's *Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere*. It is important to note that C&T Regulation makes use of various impact formulas based on the global warming potential of each GHG and so Quebec facilities must be careful to implement the appropriate quantification measurement technique to accurately report their emissions.

Ontario

In *Reference re: Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, the Supreme Court of Canada explicitly recognized the existential threat of climate change and the importance of carbon pricing in combating same. Following this decision, Ontario, once a backstop jurisdiction, began transitioning from the federal OBPS to Ontario's *Emissions Performance Standards* (EPS) program. The EPS program's concept is comparable to the federal OBPS in that a facility required to register with the program will need to calculate, document and verify its annual GHG emissions and pay the carbon price per tonne of CO₂ above its applicable limit. Such compensation can also come in the form of "emissions performance units," which are credits a facility earns for generating GHG emissions below the EPS program's annual cap.

Depending on the nature of its industrial operations and the volume of its annual GHG emissions, a facility may or may not be obliged to register with the EPS program. All establishments (including Ontario EPS facilities) that engage in a specified GHG activity within the program, as set out in Column 1 of Schedule 2 of the Ontario *Regulation 390/18 (Greenhouse Gas Emissions: Quantification, Reporting and Verification)*, are required to give a report to the director, if the reporting amount in respect of the facility for each calendar year is 10,000 tonnes of CO₂e (carbon dioxide equivalent) or more. Ontario EPS facilities have an additional obligation to get their reports verified by a third party. If by Dec. 15, 2022, an Ontario facility continues to have surplus credits issued to it under a federal OBPS, the surplus credits will not be eligible for remittance as compensation for the 2022 or subsequent compliance periods.

Alberta

In Alberta, emission offsets are generated by projects that have voluntarily reduced their GHG emissions. Emission offsets are quantified using Alberta-approved methodologies called quantification protocols and are verified by a qualified third-party assurance provider. Emission offset projects must meet the requirements in the *Technology Innovation and Emissions Reduction Regulation* (TIER), the *Standard for Greenhouse Gas Emission Offset Project Developers* and a relevant Alberta-approved quantification protocol (the Quantification Protocols). Alberta emission offset projects are registered and publicly listed. Alberta OBPS facilities are required to submit annual compliance reports. Those that emit more than 100,000 tonnes of CO₂e per year are also required to submit an annual forecasting report.

Government approved Quantification Protocols have been developed to support the Alberta offset system. These protocols provide standardized quantification methodologies for specific greenhouse gas emission reduction opportunities in Alberta. The protocols have been developed using the best available science tailored to Alberta conditions, good practice guidance from other jurisdictions, provincial/national expertise and experience gained through similar international projects. While quantification protocols serve as a guide for setting up a project and quantifying associated emission reductions/removals, it remains the responsibility of the project developer to demonstrate how the project meets the requirements outlined in the protocol, and that the activity continues to comply with all applicable regulatory requirements.

On Dec. 1, 2021, the Alberta Minister of Environment and Parks issued *Ministerial Order 87/2021* confirming the increase of the cost to obtain Technology, Innovation and Emissions Reduction Fund (Fund) credits under the TIER from \$40 per credit in 2021 to \$50 per credit in 2022 (1 tonne of CO₂e reduced = 1 Carbon Offset = \$50/tonne in 2022). This price increase aligns with the carbon pricing requirements under the federal OBPS.

British Columbia

British Columbia's carbon pricing system has two key parts: (1) a carbon tax for fuel emissions, which is set out in the *Carbon Tax Act* and the *Carbon Tax Regulation* (Collectively the B.C. Carbon Tax); and (2) an OBPS for industrial emissions, which is set out in the *Greenhouse Gas Industrial Reporting and Control Act* and its regulations (the B.C. OBPS).

The B.C. Carbon Tax is collected at the point of retail consumption (for example, at the pump for gasoline and diesel). All individuals and businesses must pay the B.C. Carbon Tax on all uses of fuel, even if the fuel isn't combusted, unless a specific exemption applies. Exemptions are available for, among other things, fuel that is purchased by a Registered Consumer, Registered Air Service or Registered Marine Service (as defined by the *Carbon Tax Act*).

The B.C. OBPS applies to facilities that operate in the Liquefied Natural Gas (LNG) sector only and have an annual emissions output that is equal to or greater than 10,000 tonnes of CO₂e. The director of the B.C. OBPS must receive a report from every establishment (including B.C. OBPS facilities) that emits 10,000 tonnes of CO₂e or more for each compliance period (calendar year). This report must include information about the facility's annual GHG emissions and, if applicable, the amount of GHG emissions that were captured and stored from the facility. Reporting facilities that emit over 25,000 tonnes of CO₂e per year have an additional obligation to get their emissions report independently verified by a recognized verification body.

Other provinces

Similar to Ontario, New Brunswick began its transition to its own provincial OBPS as an accepted alternative to the federal system in 2021. It applies to the same gases as the federal system and applies the same pricing scale of \$50 per tonne in 2022.

As of November 2022, the federal OBPS and fuel charge shall continue to apply in Manitoba, Nova Scotia, Prince Edward Island, Yukon and Nunavut.

Based on the 2022 result of the assessment of provincial and territorial systems against the updated federal Benchmark:

1. As of Nov. 22, 2022, the federal fuel charge will continue to apply in Alberta, Saskatchewan and Ontario.
2. As of Jan. 1, 2023, a provincial plan in Saskatchewan shall replace the federally imposed carbon tax on industrial emitters in the province.
3. As of July 1, 2023, the federal OBPS will be imposed in Newfoundland and Labrador repealing its provincial carbon tax system in place since January 2019.

Conclusion

Carbon pricing is gaining momentum globally. In Canada, the federal government implemented a coordinated nationwide carbon price, beginning at \$20 per tonne of carbon dioxide equivalent emissions (tCO₂e) in 2019 and rising to \$50 per tonne as of April 1, 2022. This price will increase to \$65 per tCO₂e in 2023, and shall continue to increase by \$15 annually, until it reaches \$170 per tonne of CO₂e in 2030.

All provinces and territories must maintain a carbon price of at least \$50 per tCO₂e. As of 2019, over 70 jurisdictions, representing about 20 per cent of global GHG emissions, have put a price on carbon.

We will continue to explore topics of interest relating to carbon finance and markets in future articles. We look forward to exchanging with interested parties on topics of common interest. Stay in touch.

This is the third article in a series. Read the first two articles: Sustainable finance and the carbon market: An overview; Regulating the carbon market: Canada's federal carbon pricing regime.

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