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GREENHOUSE GAS REDUCTION (CAP AND TRADE) ACT

[SBC 2008] CHAPTER 32

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Part 1 — Introductory Provisions

Definitions

1 In this Act:

"accepted emission reduction project" means an emission reduction project that has been accepted by the director in accordance with section 9 [*emission reduction projects: proposal, acceptance, verification and BCERU issuance*] as a project in relation to which BCERUs may be issued;

"administrative authority" means, as applicable,

(a) for a compliance unit tracking system established under this Act, the administrative authority under section 15 [*administrative authority for established system*], or

(b) for a compliance unit tracking system designated under this Act, the authority responsible for administering the system;

"administrative penalty" means an administrative penalty under Part 6 [*Administrative Penalties*];

"appeal board" means the Environmental Appeal Board under the *Environmental Management Act*;

"attributable", in relation to greenhouse gas emissions, means attributable under the regulations

(a) to a regulated operation or reporting operation, or

(b) for the purposes of determining whether an operation is a regulated operation or reporting operation;

"BC Allowance Unit" or "BCAU" means a compliance unit issued under section 6 [*BC Allowance Units*];

"BC Emission Reduction Unit" or "BCERU" means a compliance unit issued under section 8 [*BC Emission Reduction Units*];

"cap" means the maximum number of BCAUs that may be made available for a particular compliance period, as prescribed under section 5 [*cap on BCAUs for compliance period*];

"carbon dioxide equivalent" means the mass of carbon dioxide that would produce the same global warming impact as a given mass of another greenhouse gas, as determined in accordance with the regulations;

"compliance period" means the period prescribed for the purposes of section 2 [*compliance obligations in relation to regulated operations*];

"compliance report" means a report under section 3 [*compliance reports*];

"compliance unit" means

(a) a BCAAU,

(b) a BCERU, or

(c) an RCU;

"compliance unit tracking system" means the compliance unit tracking system under section 14 [*compliance unit tracking system*];

"director" means the government employee designated in writing by the minister as the director for the purposes of this Act;

"emissions report" means a report required under section 4 [*emissions reports*];

"greenhouse gas" has the same meaning as in the *Greenhouse Gas Reduction Targets Act*;

"inspector" means

(a) a person designated as an inspector under the regulations or a person in a class designated as inspectors under the regulations, or

(b) a conservation officer as defined in the *Environmental Management Act*;

"operator", in relation to a regulated operation or reporting operation, means the person considered under the regulations to be the operator in relation to the operation;

"Recognized Compliance Unit" or "RCU" means a Recognized Compliance Unit under section 11 [*Recognized Compliance Units*];

"regulated operation" means an operation that is a regulated operation under the regulations;

"reporting operation" means an operation that is a reporting operation under the regulations;

"reporting period" means the period prescribed for the purposes of section 4 [*emissions reports*];

"retire" means,

(a) in relation to a BCAU or BCERU, the final transfer of the compliance unit into a retirement account in the compliance unit tracking system from which it may not be transferred, and

(b) in relation to an RCU, retirement of the compliance unit in accordance with the regulations.

Part 2

Not in Force

2–3 [Not in force.]

Part 3 — Emissions Reporting

Emissions reports

4 (1) For each reporting period, the operator of a regulated operation or reporting operation must, in accordance with the regulations, submit a report respecting

(a) the greenhouse gas emissions attributable to the operation for the reporting period, and

(b) any other matter prescribed for the purposes of this Act.

(2) Subject to subsection (2.1), the operator of a regulated operation or reporting operation must submit a supplementary report within the prescribed period after the operator becomes aware that

(a) information in a previous report under this section did not completely and accurately disclose the required information, or

(b) information required to be reported in a previous report has changed.

(2.1) Subsection (2) does not apply in relation to inaccuracies, omissions or changes that are considered to be immaterial under the regulations.

(3) A supplementary report under this section must be in accordance with the regulations or, if no specific direction is prescribed, in accordance with the regulations applicable to the report under subsection (1).

(4) Reports under this section may cover more than one regulated operation or reporting operation of the same operator, but the required information respecting greenhouse gas emissions must be provided separately for each operation covered by the report.

(5) The director may

(a) require a report under this section to be audited in accordance with the directions of the director, or conduct or authorize a person to conduct such an audit, and

(b) require an operator to provide additional information in support of a report under this section.

Part 4 to 6

Not in Force

5-21 [Not in force.]

Part 7 — Appeals to Environmental Appeal Board

What decisions may be appealed, who may appeal, the process of appeal

22 (1) For the purposes of this Part, "**decision**" means any of the following:

(a) the determination of non-compliance under section 18 [*imposed administrative penalties: failure to retire compliance units*] or of the extent of that non-compliance, as set out in an administrative penalty notice;

(b) the determination of non-compliance under section 19 [*administrative penalties in relation to other matters*], of the extent of that non-compliance or of the amount of the administrative penalty, as set out in an administrative penalty notice;

(c) a prescribed decision or a decision in a prescribed class.

(2) A person who is served with

(a) an administrative penalty notice referred to in subsection (1) (a) or (b), or

(b) a document evidencing a decision referred to in subsection (1) (c).

may appeal the applicable decision to the appeal board.

(3) Subject to this Act, Division 1 of Part 8 [Appeals] of the *Environmental Management Act* applies in relation to appeals under this Act.

Part 8 – Offences

Division 1 – Offences and Penalties

Offences against Act and corresponding penalties

23 (1) [Not in force.]

(2) An operator of a regulated operation or reporting operation who does any of the following commits an offence:

(a) contravenes section 3 (1), (2) or (3) [*compliance reports*];

(b) contravenes section 4 (1), (2) or (3) [*emissions reports*].

(3) A person who does either of the following commits an offence:

(a) obstructs or resists the director or an inspector exercising powers or performing duties under this Act;

(b) fails to comply with a direction given or requirement imposed under this Act by the director or an inspector.

(4) A person convicted of an offence under subsection (1), (2) or (3) is liable to a fine of not more than \$1 000 000 or imprisonment for a term of not more than 6 months, or both.

(5) A person who contravenes section 36 (2) commits an offence.

(6) A person convicted of an offence under subsection (5) is liable to a fine of not more than \$200 000 or imprisonment for a term of not more than 6 months, or both.

Offences of providing false or misleading information and penalties

24 (1) A person who knowingly provides false or misleading information when required under this Act to provide information commits an offence and is liable on conviction to a fine of not more than \$1 000 000 or imprisonment for a term of not more than 6 months, or both.

(2) A person who provides false or misleading information when required under this Act to provide information, other than a person described in subsection (1), commits an offence and is liable on conviction to a fine of not more than \$500 000 or imprisonment for a term of not more than 6 months, or both.

(3) A person is not guilty of an offence under subsection (2) if the person establishes that, at the time the information was provided, the person did not know that it was false or misleading and exercised reasonable care and diligence in providing the information.

Continuing offences

25 If an offence under section 23 [*offences against Act and corresponding penalties*] continues for more than one day, separate fines, each not exceeding the maximum fine for the offence, may be imposed for each day the offence continues.

Liability of directors, officers and agents

- 26** (1) If a corporation commits an offence under this Act, an officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence.
- (2) Subsection (1) applies whether or not the corporation is prosecuted for or convicted of the offence.

Not in Force

- 27** [Not in force.]

Other provisions relating to offences

- 28** (1) Section 5 of the *Offence Act* does not apply to this Act or the regulations.
- (2) The time limit for laying an information for an offence under this Act is
- (a) 3 years after the date that the facts on which the information is based arose, or
 - (b) if the minister completes a certificate described in subsection (3), 18 months after the date that the facts on which the information is based first came to the knowledge of the minister.
- (3) A document purporting to have been issued by the minister, certifying the date on which the minister became aware of the facts on which the information is based, is proof of the certified facts.

Division 2

Not in Force

- 29–34** [Not in force.]

Part 9 – General

Notice and service under this Act

- 35** (1) Any notice under this Act may be given by registered mail sent to the last known address of the person.
- (2) Any notice or other thing that, under this Act, must be served on a person may be served by registered mail sent to the last known address of the person.
- (3) If a notice or other thing under this Act is sent by registered mail to the last known address of the person, the notice or other thing is deemed to be served on the person to whom it is addressed on the 14th day after deposit with Canada Post unless the person received actual service before that day.

Confidentiality

- 36** (1) In this section:
- "protected information"** means information that would reveal
- (a) trade secrets of a third party, or
 - (b) commercial, financial, labour relations, scientific or technical information of

or about a third party;

"third party" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

"trade secret" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*;

(2) Subject to this section, a person who has access to protected information that is in the custody or under the control of the government through

- (a) reports required to be provided by an operator under this Act,
- (b) the exercise of powers under section 44 [*regulations in relation to inspections*] in relation to a regulated operation or reporting operation, or
- (c) an information-sharing agreement under section 37 that provides that the information is to be kept confidential

must not disclose the protected information to any other person.

(3) The prohibition in subsection (2) does not apply to disclosure of the following information:

- (a) information that is publicly available;
- (b) determinations of greenhouse gas emissions attributable to a regulated operation or reporting operation, including determinations of emissions by major source category;
- (c) the application of compliance units for the purpose of section 2 (1) (b) [*retirement of compliance units to match emissions*];
- (d) information in the compliance unit tracking system;
- (e) information that is required or authorized to be made public under this Act.

(4) The prohibition in subsection (2) does not apply to disclosure in the following circumstances:

- (a) if required under Part 2 [*Freedom of Information*] of the *Freedom of Information and Protection of Privacy Act*;
- (b) in the course of administering or enforcing this Act or a prescribed enactment;
- (c) for the purpose of court proceedings;
- (d) in accordance with an information-sharing agreement under section 37;
- (e) with the consent of the person, group of persons or organization that is the third party in relation to the protected information.

Information-sharing and other agreements

37 (1) For the purposes of this section, **"information-sharing agreement"** means a data-matching or other agreement to provide or exchange information related to reducing concentrations of greenhouse gas in the atmosphere or reducing greenhouse gas emissions into the atmosphere.

(2) With the prior approval of the Lieutenant Governor in Council, the minister may enter into an information-sharing agreement with

- (a) the administrative authority,
- (b) an authority referred to in section 40 (c) [*units from other authorities*],
- (c) Canada, another province or another jurisdiction in or outside Canada, or with an agent of any of them,
- (d) an organization responsible for accrediting persons qualified to conduct validations or verifications under this Act, or
- (e) an organization that has been designated or established for the purposes of collecting information regarding greenhouse gas emissions within a cap and trade system.

(3) With the prior approval of the Lieutenant Governor in Council, the minister may enter into agreements

- (a) with Canada, another province or another jurisdiction in or outside Canada, or with an agent of any of them, respecting emission reduction projects carried out in other jurisdictions, including, without limitation, inspection and enforcement and accounting for reductions of emissions, or
- (b) with all or any of the following for the purposes of the requirements of this Act or the regulations relating to validations and verifications:
 - (i) the administrative authority;
 - (ii) an authority referred to in section 40 (c) [*units from other authorities*];
 - (iii) Canada, another province or another jurisdiction in or outside Canada, or with an agent of any of them;
 - (iv) an organization responsible for accrediting persons qualified to conduct validations or verifications under this Act;
 - (v) an organization referred to in subsection (2) (e).

General regulation powers

38 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing information that must or may be made public under this Act, other than information referred to in paragraph (a) of the definition of "protected information" in section 36 [*confidentiality*];
- (b) establishing criteria that must be applied by the director in making decisions under this Act;
- (c) defining words or expressions used but not defined in this Act;
- (d) respecting any other matter for which regulations are contemplated by this Act.

(3) A regulation under this Act may do any or all of the following:

- (a) delegate a matter to a person;
- (b) confer a discretion on a person;
- (c) make different regulations in relation to

- (i) different classes of regulated operations or reporting operations,
- (ii) different classes of emission reduction projects, and
- (iii) different classes of compliance units,

as established by regulation.

(4) A regulation under this Act may adopt by reference, in whole, in part or with any changes considered appropriate, a regulation, code, standard or rule

- (a) enacted as or under a law of another jurisdiction, including a foreign jurisdiction, or
- (b) set by a provincial, national or international body or any other code, standard or rule making body,

as the regulation, code, standard or rule stands at a specific date, as it stands at the time of adoption or as amended from time to time.

Regulations in relation to regulated operations and reporting operations

39 Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations as follows:

(a) establishing regulated operations and reporting operations for the purposes of this Act by

- (i) prescribing
 - (A) classes of activities,
 - (B) classes of activities that meet a prescribed level of activity or a prescribed level of attributable greenhouse gas emissions, or
 - (C) facilities where activities referred to in clause (A) or (B) occur, including facilities that are not limited to a single location,

as regulated operations or reporting operations, or

(ii) designating a particular set of activities or a particular facility, including a facility that is not limited to a single location, as a regulated operation or reporting operation;

(b) respecting who is to be considered the operator of a regulated operation or reporting operation;

(b.1) respecting operations that are regulated operations or may become regulated operations during a compliance period, including, without limitation,

- (i) requiring those operations to register with, or submit information to, the director, and
- (ii) respecting the timing, form, content and manner of registration and submission of the information;

(b.2) respecting operations that are reporting operations or may become reporting operations during a reporting period, including, without limitation,

- (i) requiring those operations to register with, or submit information to, the director,
- (ii) respecting the timing, form, content and manner of registration and submission of the information, and
- (iii) respecting the submission and approval of plans for the monitoring

and quantification of attributable greenhouse gas emissions by those operations;

(c) establishing the greenhouse gas emissions that are deemed to be attributable to a regulated operation or reporting operation, or to an operation for the purposes of determining whether it is a regulated operation or reporting operation, including, without limitation,

(i) deeming greenhouse gas emissions that occur outside British Columbia to be attributable, and

(ii) in relation to electricity, deeming greenhouse gas emissions associated with the generation and transmission of the electricity until the point at which the electricity is received by the British Columbia electricity grid to be attributable;

(d) respecting the methodology by which greenhouse gas emissions attributable to a regulated operation or reporting operation are to be determined;

(e) prescribing limits on

(i) the quantity or proportion of RCUs, or

(ii) the quantity or proportion of specified types of RCUs,

or both, that may be retired for the purposes of complying with section 2 (1) (b) [*retirement of compliance units to match emissions*] for a compliance period;

(f) providing authority for exceptions to the restriction under section 2 (4) [*compliance units that may be retired*] by

(i) authorizing the director, in prescribed circumstances, to permit the operator of a regulated operation who is subject to an administrative penalty for failure to comply with the obligation under section 2 (1) (b) to use more recent compliance units for the purposes of complying with that obligation, and

(ii) establishing conditions for the use of such a permission, including, without limitation, requiring operators to retire additional compliance units to achieve the compliance.

(g) respecting inaccuracies, omissions or changes that are considered to be immaterial for the purposes of section 4 (2.1) [*emissions reports*].

Not in Force

40–42 [Not in force.]

Regulations in relation to appeals

43 (1) Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations respecting appeals under Part 7 [*Appeals to Environmental Appeal Board*], including, without limitation, regulations as follows:

(a) prescribing decisions or classes of decisions as being appealable under that Part;

(b) prescribing

(i) time limits and procedures in relation to appeals,

(ii) the powers of the appeal board in conducting, hearing and deciding appeals, and

(iii) whether an appeal operates as a stay in relation to a decision or a class of decisions;

(c) exercising authority equivalent to that under section 105 of the *Environmental Management Act* or adopting regulations under that section.

(2) Regulations under subsection (1) may provide that specified provisions of the *Environmental Management Act* in relation to appeals apply in relation to appeals under this Act with the changes the Lieutenant Governor in Council considers necessary or advisable.

Regulations in relation to inspections

44 (1) Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations respecting inspections for the purposes of ensuring compliance with this Act and the regulations, including, without limitation, regulations as follows:

- (a) authorizing the director to designate persons or classes of persons as inspectors and issue identification to those inspectors;
- (b) prescribing inspection and seizure powers, including, without limitation, and as is necessary for the purposes of inspection, the authority to
 - (i) enter land or premises,
 - (ii) inspect, analyze, measure, sample or test anything,
 - (iii) use or operate anything or require the use or operation of anything, under conditions specified by the inspector,
 - (iv) take away samples,
 - (v) make or take away copies of records, photographs or audio or video records,
 - (vi) take, with the inspector, other persons or equipment, and
 - (vii) require a person who is the subject of an inspection or who is or was a director, receiver, receiver manager, officer, employee, banker or agent of such a person to produce records for examination or copying or to provide information;
- (c) limiting inspection and seizure powers of an inspector who is not an employee under the *Public Service Act* and requiring that the limitations be set out in identification provided by the director;
- (d) requiring that an inspector exercising powers under this Act provide identification on request.

(2) Regulations under subsection (1) may provide that specified provisions of the *Environmental Management Act* in relation to inspections or seizures apply in relation to inspections or seizures under this Act with the changes the Lieutenant Governor in Council considers necessary or advisable.

Regulations in relation to other matters

45 (1) Without limiting any other provision of this Act, the Lieutenant Governor in Council may make regulations as follows:

(a) respecting reports under this Act, including, without limitation, prescribing requirements respecting to whom the reports are to be submitted and the timing, form, content, supporting evidence, verification, certification and manner of submission of the reports;

(b) establishing requirements and standards respecting quality assurance of the information provided in the reports under this Act and the data that support the reports, including, without limitation, requirements and standards respecting

- (i) monitoring protocols and equipment,
- (ii) sampling protocols and equipment, and
- (iii) analytical protocols and equipment

that must be used for the purposes of reports under this Act;

(c) establishing requirements respecting the retention of records supporting reports and information required to be provided to the director under this Act;

(c.1) requiring validation of proposals referred to in section 9 (2) (a) [*emission reduction projects*];

(c.2) respecting the conduct of validations and verifications under this Act;

(c.3) establishing requirements and standards respecting qualifications, accreditation, conflict of interest and other matters relating to persons who perform validations or verifications under this Act;

(d) establishing fees and charges that are to be paid in respect of any matter for which the government provides a service or performs a duty under this Act;

(e) prescribing for the contravention of a regulation a fine not exceeding \$200 000;

(f) respecting the chief conservation officer's obligation under section 31 [*investigation by chief conservation officer*] to acknowledge receipt of applications or that official's reporting obligation under section 32 [*progress reports*] or 34 (2) [*discontinuation of investigation*], including, without limitation, regulations limiting or modifying those obligations if the chief conservation officer receives more than the prescribed number of applications in respect of the same alleged offence.

(2) [Not in force.]

Consequential Amendment

[*Note: See Table of Legislative Changes for the status of section 46.*]

Section(s)	Affected Act
46	<i>Hydro and Power Authority Act</i>

Commencement

47 This Act comes into force by regulation of the Lieutenant Governor in Council.