

INTRODUCING THE CCEMC

Alberta's Climate Change Regulatory Framework

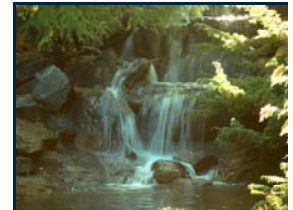
Alberta is one of the few jurisdictions in North America with a functional climate change regulatory system. In enacting the *Climate Change and Emissions Management Act* (the "Act"), Alberta was first in North America to pass climate change legislation requiring industry to reduce emissions below a set threshold.

The Act and the *Specified Gas Emitters Regulation* create an obligation on specified emitters to reduce their emissions 12% below a baseline threshold. Specified emitters that produce more than 100,000 tonnes of specified gases in a calendar year are subject to the legislation. These emitters have three methods for complying with the requirements under the Act.

1. Reduce emissions below the required threshold;
2. Purchase emissions offsets from third parties in the Alberta-based offset system (credits generated outside Alberta are not eligible);
3. Pay \$15.00 per tonne over the threshold into the Climate Change and Emissions Management Fund.

The Climate Change and Emissions Management Fund

The Climate Change and Emissions Management Fund (the "Fund") is established under Section 10(1) of the Act and is held and administered by the Alberta Minister of Environment (the "Minister") in accordance with the Act (s. 10(2)). The contribution amount of



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Robert A. Seidel, Q.C., and Jennifer Cleall, of Davis LLP, provided strategic and legal advice on the model for the CCEMC and the establishment of the regulatory funding framework.

\$15.00 per tonne credit is set by the *Specified Gas Emitters Regulation*.

The Fund is a critical element of Alberta's long-term Climate Change Strategy to achieve provincial and national greenhouse gas reductions. Its characteristic as a compliance mechanism under climate change legislation makes it unique in the world. Monies flowing into the Fund are targeted specifically to address climate change.

Section 10(3) of the Act provides that the Fund may only be used for "purposes related to reducing emissions of specified gases or improving Alberta's ability to adapt to climate change." The purposes include:

- (a) energy conservation and energy efficiency;
- (b) demonstration and use of new technologies that emphasize reductions in specified gas emissions in the discovery, recovery, processing, transportation and use of Alberta's energy resources;
- (c) demonstration and use of new technologies that emphasize reductions in specified gas emissions through the use of alternative energy and renewable energy sources;
- (d) demonstration and use of specified gas capture, use and storage technology;
- (e) development of opportunities for removal of specified gases from the atmosphere through sequestration by sinks;

- (f) measurement of the natural removal and storage of carbon;
- (g) climate change adaptation programs and measures;
- (h) paying salaries, fees, expenses, liabilities or other costs incurred by a delegated authority in carrying out a duty or function of or exercising a power of the Minister in respect of the Fund that has been delegated to the delegated authority, if authorized by the regulations.

The Importance Of The Fund

Under the Alberta system, the Ministry of Environment collects monies paid into the Fund from specified emitters. These monies do not form part of the general revenue of the province of Alberta and cannot be diverted for other objects. The fund may only be used for the purposes set out in the Act.

The Fund:

- allows Alberta to integrate greenhouse gas solutions with resource management and energy supply strategies;
- keeps compliance money where it is needed - available for application to face the challenge of developing and deploying transformative technology, for example, in the electricity and oil sands sectors to assist the advancement of technology;
- permits specified emitters to focus on reducing emissions in response to a clear, escalating price on emissions;

- acts as a regulatory safety valve, avoiding the distraction of worrying about the availability of offsets or being out of compliance.

In the first compliance period ending March 31, 2008, Alberta Environment collected approximately \$40 million into the Fund. In the second compliance period ending March 31, 2009, over \$82 million was collected. The current value of the Fund is \$122.4 million. It is estimated that future yearly contributions into the Fund could be as high at \$150,000,000.

Because the funds do not form part of General Revenue and are specifically allocated to climate change, money can flow back to Alberta to support and promote efforts for transformative technological change.

The Climate Change and Emissions Management Corporation

The Model

The model chosen by the Government of Alberta in consultation with industry, environmental groups and academia for the administration of the Fund is an arm's length, not-for-profit organization, which is independent from government.

Amendments to the Act in 2008 provided that the Minister could make payments out of the Fund to a delegated authority to enable the delegated authority to make payments for the purposes of the Fund.

In committing his support to this model, Environment Minister Renner stated:

- “The proposed amendment supports an administration model that would divide the responsibility between the Minister of Environment and an arm's length not-for-profit organization.”
- “Under this model, the ministry would collect money going into the

Fund as part of its compliance system and the not-for-profit organization would allocate money from the fund for projects that would result in reductions in greenhouse gas emissions.”

(Alberta Legislative Assembly, *Hansard* (May 26, 2008), page 958)

The Climate Change and Emissions Management (CCEMC) Corporation is a not-for-profit, arm's length corporation, independent from government. Alberta Environment announced on May 6 that the CCEMC will manage and administer the Fund.

Climate Change and Emissions Management Fund Administration Regulation

The *Climate Change and Emissions Management Fund Administration Regulation* (the “Regulation”) is made pursuant to the Climate Change and Emissions Management Act, which permits the Lieutenant Governor in Council to make regulations “respecting the establishment or designation of delegated authorities” (s. 60(1)(u) and “respecting the delegation to one or more delegated authorities of the performance of any of the Minister's duties or functions, or the exercise of any of the Minister's powers, under this Act or the regulations, other than a power to make regulations and a power to delegate” (s. 60(1)(v)(ii)).

Section 1 of the Regulation designates the CCEMC as a delegated authority. Section 3 of the Regulation delegates the “performance of the Minister's duties and functions and the exercise of the Minister's powers in respect of holding, administering and making payments of the money paid to the Corporation from the Fund under section 4(1) to the CCEMC. The Regulation also permits the Minister to pay all or some of the Fund to the CCEMC and states that

the money paid to the CCEMC from the Fund “belongs to the Corporation” (s. 4(2)).

Other provisions of the Regulation address reporting requirements, compliance with FOIPP and the inspection and audit abilities of the crown.

The Importance of the CCEMC

The CCEMC is not an agency of the government, is not controlled by the government and is not a government reporting entity. The independence of the CCEMC means that its financial statements are not consolidated with those of the Government of Alberta and after Fund monies are transferred to the CCEMC by Alberta Environment, do not form part of the government’s budget process. It means that multi-year funding for projects is possible. It “streamlines the involvement of [the government of Alberta] and engages stakeholders in developing and implementing innovative solutions for reducing emissions” (Environment Minister Rob Renner, Alberta Legislative Assembly, *Hansard* (May 26, 2008), page 958).

The Minister of Environment will maintain responsibility for receiving payments from industry and transferring dollars to the CCEMC. The CCEMC will invest money collected from industry into initiatives and projects that support technologies to reduce greenhouse gas emissions and improve the ability to adapt to climate change (*Alberta Environment News Release*, May 6, 2009). It is expected that the CCEMC will begin accepting funding proposals in the second half of fiscal 2009/2010.

Mr. Eric Newell, O.C., has been named Chair of the CCEMC. Mr. Newell is the recipient of the Order of Canada and has extensive experience in industry and public service.

What Does This Mean?

Industry has been contributing to the Fund for approximately two years. Two compliance periods have passed and the Government of Alberta has collected over \$122.4 million into the Fund. The establishment of the CCEMC means that monies in the Fund can start being used to fund projects which meet the purposes of the Fund set out in Section 10(3) of the Act (and outlined above). The Fund and the CCEMC, being the first of their kind, demonstrate the commitment of Alberta to take action and a leadership role in climate change initiatives.

Questions

If you have any questions relating to the CCEMC, the Fund Model or the Act, please contact us. Davis lawyers Robert A. Seidel, Q.C., and Jennifer Cleall provided strategic and legal advice on the model for the CCEMC and the establishment of the regulatory funding framework.

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Climate Change Law Practice Group

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The group advises greenhouse gas emitters about regulatory compliance, risk management and environmental disclosure. We also advise emissions reduction project developers and cleantech companies about carbon finance, project structuring, corporate governance, IP protection, government relations and regulatory affairs. We have significant expertise in areas of renewable energy including wind energy, run of river hydro, biomass and fuel cell industries



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