

REGULATION OF AIR EMISSIONS IN ALBERTA

General Statutory Prohibition and the Multi-Sector Air Pollutants Regulations

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May 9, 2017

OVERVIEW

1. Regulation of Air Emissions
 - a) Alberta *Environmental Protection and Enhancement Act*
 - b) *Canadian Environmental Protection Act, 1999*
2. Background to the *Multi-Sector Air Pollutants Regulations*, SOR/2016-151 (“MSAPR” or “Regulations”)
3. Analysis of Contentious Issues

ENVIRONMENT AND THE *CONSTITUTION ACT, 1867*

- Regulation of the environment is shared between the provinces and the federal government
- Primary Alberta environmental statute for regulatory air emissions is the *Environmental Protection and Enhancement Act* (“EPEA”)
- Primary federal environmental statute for regulatory air emissions is the *Canadian Environmental Protection Act, 1999* (“CEPA”)

ALBERTA EPEA

- The EPEA makes it an offence to:
 - Knowingly or otherwise release or permit the release of a substance into the environment in an amount, concentration or level or at a rate of release that is in excess of that expressly prescribed by an approval, a code of practice or the regulations (s. 108(1) and (2))
 - Knowingly or otherwise release or permit the release into the environment of a substance in an amount, concentration, or level or at a rate of release that causes or may cause a significant adverse effect (s. 109(1) and (2))

ALBERTA EPEA

- Approvals are required for certain “activities” including for many of the activities regulated by the *MSAPR* such as the construction, operation or reclamation of a chemical manufacturing plant, fertilizer manufacturing plant, a cement plant, an oil refinery, an oil sands processing plant, an enhanced recovery in-situ oil sands or heavy oil processing plant, a power plant, and a pulp and paper manufacturing plant
- Approvals typically set emissions limits, monitoring requirements and emissions limits for oxides of nitrogen and SO₂
- Codes of Practice include:
 - Code of Practice for Compressor and Pump Stations and Sweet Gas Processing Plants
- Regulations concerning air emissions include:
 - *Emissions Trading Regulation*
 - *Substance Release Regulation*
- Alberta Ambient Air Quality Objectives and Guidelines/Regional Plans/Policies

ALBERTA EPEA – KEY DEFINITIONS FOR SECTION 109(1) and (2)

- “release” includes to spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place and exhaust
- “environment” means the components of the earth and includes: (i) air, land and water, (ii) all layers of the atmosphere, (iii) all organic and inorganic matter and living organisms, and (iv) the interacting natural systems that include components referred to in subclauses (i) to (iii)
- “substance” means: (i) any matter that (A) is capable of becoming dispersed in the environment, or (B) is capable of becoming transformed in the environment into matter referred to in paragraph (A), (ii) any sound, vibration, heat, radiation or other form of energy, and (iii) any combination of things referred to in subclauses (i) and (ii); (*R. v. Colt Engineering Corporation*, 1999 ABPC 126 – Is an “odour a substance”)
- “adverse affect” means impairment of or damage to the environment, human health or safety or property (*R. v. Edmonton (City of)*, 2006 ABPC 56)

CEPA, 1999

- Equivalency Agreements (s. 10) – federal law will not apply in a jurisdiction where there is an equivalency agreement
- Part 5, section 93 – Controlling Toxic Substances (includes NO, NO₂, SO₂) forms that statutory basis for *MSAPR*
- “Toxic Substances” are listed in Schedule 1 to CEPA and are substances that: (a) have or may have intermediate or long-term harmful effects on the environment or its biological diversity; (b) constitute or may constitute a danger to the environment on which life depends; or (c) constitute or may constitute a danger in Canada to human life or health

CEPA, 1999

- Section 93 – GIC may make regulations in respect of toxic substances providing for, among other things:
 - The quantity or concentration of a substance that may be released
 - The commercial, manufacturing or processing activity in the course of which the substance may be released
 - The manner in which and conditions under which the substance may be released
 - The conduct of sampling, analysis, tests, measurements or monitoring of the substances
- Section 95 – if there is a release contrary to a s. 93 regulation the “person responsible (s. 95(2))” shall:
 - Notify an enforcement officer and provide a written report
 - Take all reasonable measures consistent with the protection of the environment and public safety to prevent, reduce or mitigate the release
 - Notify any member of the public who may be adversely affected

Fines and Penalties

- EPEA
 - Offence not to comply with s. 108 and 109
 - Fines up to \$500,000/\$1,000,000
- CEPA, 1999
 - Offence not to comply with s. 95 or not to comply with a regulation
 - Minimum fines set by statute of \$100,000 may apply in some cases
 - Maximum fines up to \$6,000,000 for a first offence and up to \$12,000,000 for a second offence
- Continuing offences

BACKGROUND TO *MSAPR*

- The *MSAPR* came into force on June 17, 2016.
 - Specific requirements will be phased in from January 1, 2018 to January 1, 2036.
- The *Regulations* are part of the federal government's contribution to the implementation of the Air Quality Management System ("AQMS"), under the auspices of the Canadian Council of Ministers of the Environment.
- The AQMS provides a harmonized approach for governments to work collaboratively to improve air quality in Canada, and includes four elements:
 - the Canadian Ambient Air Quality Standards ("CAAQS"), which are meant to drive air quality improvements across Canada;
 - a framework for managing regional and local air quality through air zones and regional air sheds;
 - Base-level Industrial Emission Requirements ("BLIERS") that set a base-level of performance for major industrial sectors and equipment types; and
 - an intergovernmental working group to improve collaboration and reduce emissions from mobile sources, such as in-use cars and trucks.

BACKGROUND

- The BLIERs are management instruments intended to ensure that all AQMS sectors in Canada meet a consistent, base-level of environmental performance.
- Environment and Climate Change Canada (“ECCC”) is implementing the BLIERs using a mix of regulatory and non-regulatory instruments.
- The *MSAPR* represent the first phase of BLIERS regulations, and are intended to address the following equipment types and industrial sectors:
 - boilers and heaters used to generate heat and steam for various purposes in industrial facilities;
 - stationary engine equipment used for compression, electric power generation and pumping in industrial facilities; and
 - grey cement manufacturing facilities.

OBJECTIVES

- The objectives of the *MSAPR* are as follows:
 - limit the amount of nitrogen oxides (“NO_x”) emitted from modern and pre-existing gaseous-fuel-fired non-utility boilers and heaters used in many industrial facilities;
 - limit the amount of NO_x emitted from modern and pre-existing stationary spark-ignition gaseous-fuel-fired engines used by many industrial facilities; and
 - limit the amount of NO_x and SO₂ emitted from cement kilns.

CONTENTIOUS ISSUES

- **Cost of Compliance**

- According to ECCC, the total estimated cost to industry to comply with the *MSAPR* is approximately \$479 million dollars between 2016-2035, broken down as follows:
 - **Part 1: Boilers and Heaters**
 - Approximately \$87 million
 - **Part 2: Stationary Spark-Ignition Engines**
 - Approximately \$385 million
 - **Part 3: Cement**
 - Approximately \$7 million

CONTENTIOUS ISSUES

- **Disproportionate Cost Burden**

- Boilers and Heaters

- 75% of the boilers and heaters that will be affected by the *MSAPR* in 2035 (approximately 934) will be located in Alberta.
 - The vast majority of these boilers and heaters operate in the oil sands and upstream oil and gas sectors.
 - Alberta companies will disproportionately bear the capital costs of complying with Part 1 of the *MSAPR*.
 - By way of comparison, of the approximately 75 existing boilers and heaters in Saskatchewan impacted by the *MSAPR*, only one unit emits above the 70 g/GJ threshold and will need to be modified or replaced by 2026/2036.
 - The remaining boilers and heaters will have minimal obligations after initially reporting their emissions.

CONTENTIOUS ISSUES

- **Disproportionate Cost Burden**

- Stationary Spark-Ignition Engines

- Alberta has more than 5,000 engines impacted by Part 2 of the *MSAPR*, the vast majority of which are located in the upstream oil and gas and natural gas transmission pipeline sectors.
 - Saskatchewan only has 150 engines impacted by the *Regulations*.
 - In 2014, ECCC estimated that Alberta companies will bear approximately 86% of the estimated costs of complying with Part 2 of the *MSAPR*, while the remainder of the costs will be distributed across Canada as follows:
 - Saskatchewan: 8%
 - Newfoundland and Labrador: 7%
 - Ontario: 3%
 - Manitoba and Nova Scotia: < 1%
 - British Columbia: -5% (due to fuel savings).

CONTENTIOUS ISSUES

- **Regulatory Alignment**

- Under the AQMS, provinces and territories are required at a bare minimum to ensure that their emissions standards meet the performance standards in the *Regulations*.
- The Government of Alberta's policy with respect to the *MSAPR* is that the *Regulations* represent bare minimum national standards and do not prevent the government from utilizing or maintaining more stringent requirements:
 - “[The] Alberta Government’s policy has been and is to supersede less stringent BLIERs in our regulatory and approval process. The BLIERs are not a means or justification for backsliding in environmental performance to comply with a less stringent standard. Under no circumstances do the BLIERs entitle an industrial plant/facility to meet less stringent requirements.”
 - [Alberta Government, Application and Use of the National Base-Level Industrial Emissions Requirements \(BLIERs\) Within the Alberta Regulatory and Policy System, June 18, 2013.](#)

CONTENTIOUS ISSUES

- **Regulatory Alignment Cont'd**

- It is our understanding that Alberta regulatory authorities are currently updating emissions requirements to ensure that they align with or, where appropriate and necessary, exceed the requirements in the *MSAPR*. These efforts could include the following:
 - working to modify the reciprocating engine NO_x emission requirement in section 7(1)(a) of the *Code of Practice for Compressor and Pumping Stations and Sweet Gas Processing Plants* to meet or exceed the requirement in Section 54 of the *MSAPR*; and
 - working to set in regulation emissions requirements for new industrial heaters and boilers that are more stringent than the standards found in Part 1 of the *MSAPR*.
- While more stringent emissions standards may be contentious with industry representatives, this is consistent with Government of Alberta policy.

CONTENTIOUS ISSUES

- **Equivalency Agreements**

- ECCC has expressed a willingness to enter into equivalency agreements with the provinces and territories.
- These equivalency agreements would theoretically ensure that there is one regulatory entity in each province and territory that has responsibility for implementing the requirements in the *MSAPR*.
- If a province or territory chooses to implement more stringent standards, it is not currently clear whether an equivalency agreement would be necessary, or how equivalency would be shown.
- It is our understanding that the Government of Alberta has not yet had discussions with ECCC regarding equivalency agreements.

QUESTIONS?

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