



BILL NO. 15

Government Bill

*1st Session, 63rd General Assembly
Nova Scotia
66 Elizabeth II, 2017*

An Act to Amend Chapter 1 of the Acts of 1994-95, the Environment Act

CHAPTER 10
ACTS OF 2017

**AS ASSENTED TO BY THE ADMINISTRATOR OF THE PROVINCE
OCTOBER 26, 2017**

The Honourable Iain Rankin
Minister of Environment

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

This page is intentionally blank.

**An Act to Amend Chapter 1
of the Acts of 1994-95,
the Environment Act**

Be it enacted by the Governor and Assembly as follows:

1 Clause 8A(1)(a) of Chapter 1 of the Acts of 1994-95, the *Environment Act*, as enacted by Chapter 61 of the Acts of 2011, is repealed and the following clause substituted:

(a) respecting fees, including the manner of payment of fees and the penalties and interest payable in respect of unpaid fees, in relation to anything done or required to be done pursuant to this Act or the regulations, including fees in relation to

- (i) emission and effluent discharge levels,
- (ii) the provision or filing of any information, documents, notifications, returns or reports,
- (iii) the registration of any person,
- (iv) the administration of the cap-and-trade program as defined in subsection 112(1),
- (v) the application for, or processing, issuance or renewal of, an approval or certificate,
- (vi) any inspection or investigation,
- (vii) any services or material provided, and
- (viii) any other matter respecting the administration of this Act;

2 Chapter 1 is further amended by adding immediately after Section 112 the following heading and Sections:

PART XIA

GREENHOUSE GAS MITIGATION
AND CAP-AND-TRADE PROGRAM

112A (1) In this Part,

- (a) “cap-and-trade program” means the program established pursuant to subsection 112C(1);
- (b) “compliance period” means a period prescribed by the regulations as a compliance period;
- (c) “emission allowance or credit” means an emission allowance, an offset credit, an early-reduction credit or any allowance or credit prescribed by the regulations;

(d) “emitter” means a person to whom the emission of a greenhouse gas is attributable but does not include a person prescribed by the regulations as not being an emitter;

(e) “GHG Registry” means the registry established or prescribed pursuant to subsection 112L(1);

(f) “Green Fund” means the fund established pursuant to subsection 112O(1);

(g) “Green Fund Manager” means the person designated by the regulations to manage and administer the Green Fund;

(h) “greenhouse gas” means any of the following gases:

(i) carbon dioxide,

(ii) methane,

(iii) nitrous oxide,

(iv) hydrofluorocarbons,

(v) perfluorocarbons,

(vi) sulphur hexafluoride,

(vii) nitrogen trifluoride,

(viii) a gas prescribed by the regulations;

(i) “participant” means an emitter or other person who is registered in the GHG Registry.

(2) For the purpose of this Part and subject to the regulations, the emission of a greenhouse gas is attributable to an emitter

(a) if the emission is released in the course of the carrying on or operation by the emitter of a business, facility or other establishment;

(b) if the emission is released in the course of the production or use of a product distributed by the emitter; or

(c) in any circumstance prescribed by the regulations.

112B (1) The Governor in Council shall by regulation prescribe such Provincial greenhouse gas emission-reduction targets for such periods as the Governor in Council considers appropriate.

(2) The targets prescribed pursuant to subsection (1) may include specific greenhouse gas emission-reduction or emission-limitation targets for such classes of activities as the Governor in Council considers appropriate.

(3) When establishing targets pursuant to subsection (1), the Governor in Council may consider

(a) the characteristics of the greenhouse gases to which the targets relate;

(b) advances in climate-change science and technology;

(c) the economic, social and environmental consequences of climate change, and the likely impact of the greenhouse gas emission reductions or limitations needed to achieve the targets; and

(d) greenhouse gas emission-reduction goals established pursuant to any program, policy or strategy to mitigate climate change or any intergovernmental agreement or international agreement applicable to the Province and made for the purpose of mitigating climate change.

112C (1) The Governor in Council shall by regulation establish a greenhouse gas emissions cap-and-trade program pursuant to which emission allowances and credits may be created and granted for the purpose of contributing to the achievement of the targets referred to in subsection 112B(1) and the mitigation of the costs and impact of reducing or limiting greenhouse gas emissions.

(2) One emission allowance or credit is equivalent to one metric ton of carbon dioxide equivalent.

112D (1) Unless exempted by the regulations, an emitter shall, for each compliance period and in the manner prescribed by the regulations, submit to the Minister an amount of emission allowances and credits equal to the amount of greenhouse gas emissions, measured in metric tons of carbon dioxide equivalents, released during the compliance period and attributable to the emitter.

(2) Where the Minister determines that an emitter has submitted an amount of emission allowances and credits greater than the amount required to satisfy the emitter's obligation pursuant to subsection (1), the Minister may, in accordance with the regulations, return the surplus emissions allowances and credits to the emitter.

112E (1) The Minister may create and grant emission allowances and credits in accordance with this Section and the regulations.

(2) The Minister may grant emission allowances by any means the Minister considers appropriate, including by

(a) allocating them without charge to emitters; or

(b) selling them at auction or by agreement to emitters.

112F (1) The Governor in Council shall by regulation prescribe such limits on the total amount of emission allowances that may be created by the Minister for such periods as the Governor in Council consider appropriate.

(2) The limits prescribed pursuant to subsection (1) may include specific limits on the amount of emission allowances that may be created by the Minister for the purpose of being granted to emitters engaged in such classes of activities as the Governor in Council considers appropriate.

112G Where the Minister sells an emission allowance or credit, the Minister shall remit all money received from the sale to the Green Fund.

112H (1) A participant may, in accordance with and if permitted by the regulations, dispose of or acquire an emission allowance or credit.

(2) Unless cancelled by or submitted to the Minister, an emission allowance or credit does not expire except as provided by the regulations.

112I (1) The Minister may, in accordance with the regulations, cancel or suspend an emission allowance or credit

(a) if the emission allowance or credit was created, granted, disposed of, acquired or submitted to the Minister on the basis of false or inaccurate information;

(b) if the holder of the emission allowance or credit has contravened this Part or the regulations made pursuant to this Part; or

(c) under any other circumstances prescribed by the regulations.

(2) A suspended emission allowance or credit may not be disposed of, acquired or submitted to the Minister in compliance with subsection 112D(1).

112J (1) A person to whom the Minister has allocated an emission allowance or credit without charge shall notify the Minister in writing if the person ceases or is about to cease to be an emitter.

(2) Subject to the regulations, where a person notifies the Minister pursuant to subsection (1), the person shall surrender any emission allowances or credits that

(a) were allocated without charge to, and remain held by, the person;

(b) are not required to be submitted in compliance with subsection 112D(1); and

(c) are requested by the Minister to be surrendered.

112K (1) The Minister may, on behalf of Her Majesty in right of the Province and with the approval of the Governor in Council, enter into an agreement with the Government of Canada, the government of a province of Canada, the government of a foreign country or a state thereof, an international organization or an agency of any of the foregoing, for the purpose of harmonizing, integrating or linking the cap-and-trade program with any similar program established or carried on by another party to the agreement.

(2) Without limiting the generality of the foregoing, the agreement may provide for

(a) the reciprocal recognition of

(i) any emission allowances and credits created and granted, and

(ii) any other rights, privileges or obligations conferred or imposed,

pursuant to the programs;

(b) the consolidation of any registries established or prescribed pursuant to the programs; and

(c) the mutual recognition of decisions made by the competent authorities pursuant to the programs respecting the creation, granting, use, disposition, acquisition, cancellation or suspension of emission allowances and credits.

112L (1) A registry of participants must be established by the Minister or prescribed by the regulations.

(2) An emitter shall, in accordance with the regulations, register and remain registered in the GHG Registry unless exempted by the regulations.

(3) A person prescribed by the regulations may, in accordance with the regulations, register in the GHG Registry.

- (4) For each participant, the Minister shall record in the GHG Registry
- (a) where the participant is an emitter, the nature and reported amount of the greenhouse gas emissions attributable to the participant;
 - (b) the emission allowances and credits held by the participant; and
 - (c) any other information prescribed by the regulations.

(5) The Minister shall ensure that the GHG Registry is maintained in accordance with the regulations.

(6) The information recorded in the GHG Registry, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*, may be disclosed and published as authorized by the regulations.

112M (1) At such times and in such manner as the regulations may prescribe, a participant shall

- (a) where the participant is an emitter, report to the Minister the amount of any greenhouse gas emissions attributable to the participant;
- (b) provide to the Minister any records, and disclose to the Minister any information, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*, prescribed by the regulations; and
- (c) pay the fee prescribed by the regulations for registration in the GHG Registry.

(2) A participant shall maintain the records referred to in clause (1)(b) for the period prescribed by the regulations and allow the records to be audited in accordance with the regulations.

112N An emitter and any other person prescribed by the regulations shall, in accordance with the regulations,

- (a) quantify and report the nature and amount of greenhouse gases attributable to the emitter; and
- (b) verify or facilitate the verification of the nature and amount of greenhouse gases reported by the emitter as being attributable to the emitter.

112O (1) The Green Fund is established.

(2) The money and property in the Green Fund must be managed and used in accordance with the regulations for the following purposes:

- (a) financing measures to reduce, limit or avoid greenhouse gas emissions;

(b) financing the research and development of innovative technology to reduce, limit or avoid greenhouse gas emissions;

(c) financing measures to mitigate the economic and social impact of measures to reduce, limit or avoid greenhouse gas emissions;

(d) financing public awareness campaigns respecting climate change or measures to reduce, limit or avoid greenhouse gas emissions;

(e) financing adaptation to climate change;

(f) financing the development of, and the participation of the Government of the Province in, regional and international initiatives respecting climate change;

(g) a purpose prescribed by the regulations.

(3) The Green Fund must be managed by the Green Fund Manager in accordance with this Part and the regulations made pursuant to this Part.

(4) The Green Fund Manager may acquire and dispose of property on behalf of the Green Fund.

(5) The Green Fund consists of

(a) property acquired pursuant to subsection (4) and money from the distribution of such property;

(b) money received from the sale of emission allowances under clause 112E(2)(b) and the payment of administrative penalties imposed pursuant to Section 170A;

(c) money remitted to the Green Fund in accordance with the regulations from

(i) fees paid in relation to the administration of the cap-and-trade program, or

(ii) fines paid in relation to the contravention of subsection 112D(1); and

(d) income accruing to the Green Fund.

112P (1) No later than two years after the end of a period in respect of which Provincial greenhouse gas emission-reduction targets were prescribed pursuant to subsection 112B(1), the Minister shall table in the Assembly a report on the progress made in achieving the targets if the Assembly is then sitting or, where it is not then sitting, file the report with the Clerk of the Assembly.

(2) No later than July 31st in each year, the Minister shall table in the Assembly a report on the use of the Green Fund if the Assembly is then sitting or, where it is not then sitting, file the report with the Clerk of the Assembly.

112Q (1) The Governor in Council may make regulations

(a) prescribing periods as being compliance periods;

(b) prescribing allowances and credits as being emission allowances and credits;

- (c) prescribing persons as not being emitters;
- (d) designating a person as the Green Fund Manager;
- (e) prescribing a gas as being a greenhouse gas;
- (f) respecting the attribution of a greenhouse gas emission to an emitter;
- (g) prescribing the amount of emissions of a particular type of greenhouse gas that is represented by an emission allowance or credit;
- (h) prescribing Provincial greenhouse gas emission-reduction targets for specified periods, including specific greenhouse gas emission-reduction or emission-limitation targets for specific classes of activities;
- (i) establishing a greenhouse gas emissions cap-and-trade program;
- (j) respecting the requirement to submit emission allowances or credits to the Minister pursuant to subsection 112D(1), including
 - (i) prescribing the circumstances in which an emitter is not subject to the requirement,
 - (ii) prescribing the manner by which emission allowances and credits may be submitted to the Minister, and
 - (iii) respecting the return by the Minister of surplus emission allowances and credits submitted by an emitter in compliance with subsection 112D(1);
- (k) respecting the creation, granting, value, disposition, acquisition and use of emission allowances and credits;
- (l) prescribing limits on the total amount of emission allowances that may be created by the Minister for specified periods, including specific limits on the amount of emission allowances that may be created by the Minister for the purpose of being granted to emitters engaged in specific classes of activities;
- (m) respecting the disposition or acquisition of emission allowances and credits;
- (n) respecting the expiration of emissions allowances and credits;
- (o) respecting the cancellation or suspension of an emission allowance or credit, including prescribing the circumstances under which the Minister may cancel or suspend an emission allowance or credit;
- (p) respecting the surrender of unused emission allowances or credits that were allocated to an emitter without charge;
- (q) respecting agreements made pursuant to Section 112K and the harmonization, integration or linking of the cap-and-trade program with any similar program established or carried on by another party to such an agreement;
- (r) prescribing a registry as the GHG Registry;

- (s) respecting the registration of persons in the GHG Registry;
 - (t) exempting emitters and other persons who hold an emission allowance or credit from the requirement to register and remain registered in the GHG Registry;
 - (u) prescribing persons as eligible to register in the GHG Registry;
 - (v) prescribing information to be recorded by the Minister in the GHG Registry;
 - (w) respecting the GHG Registry and its maintenance;
 - (x) respecting the disclosure and publication of information, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*, recorded in the GHG Registry;
 - (y) prescribing the times and manner in which a participant is to comply with the obligations imposed by subsection 112M(1);
 - (z) prescribing records to be provided and information to be disclosed, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*, to the Minister and maintained by participants and the period during which any such records must be maintained;
 - (aa) respecting the auditing of records maintained by emitters;
 - (ab) respecting the quantification, reporting and verification of the nature and amount of greenhouse gas emissions attributable to an emitter;
 - (ac) respecting the management and use of money and property in the Green Fund, including prescribing purposes for which such money and property may be managed and used;
 - (ad) directing that some or all of any of the following be remitted to the Green Fund:
 - (i) fees paid in relation to the administration of the cap-and-trade program,
 - (ii) fines and settlement monies paid in relation to the contravention of subsection 112D(1),
 - (iii) contributions or donations made to the Government;
 - (ae) respecting the responsibilities of the Green Fund Manager;
 - (af) defining any word or expression used but not defined in this Part;
 - (ag) further defining any word or expression defined in this Part;
 - (ah) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Part.
- (2) A regulation made pursuant to subsection (1) may be of general application or may apply to such class or classes of matters or things as the Governor

in Council determines and there may be different regulations with respect to different classes of matters or things.

(3) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

3 Subsection 138(1) of Chapter 1 is amended by

(a) striking out “or” at the end of clause (f); and

(b) adding the following clause immediately after clause (f):

(fa) a decision of the Minister respecting the cancellation or suspension of an emission allowance or credit as defined in subsection 112A(1); or

4 Section 144 of Chapter 1 is amended by adding “or upon whom is imposed an administrative penalty” immediately after “offence” in the third line.

5 Chapter 1 is further amended by adding immediately after Section 144 the following Section:

144A An administrative penalty due and payable under this Act or the regulations is a debt due to the Government and may be recovered by the Government in an action in debt or as prescribed in this Act or the regulations.

6 Clauses 158(hb) and (i) of Chapter 1 are repealed and the following clauses substituted:

(hb) contravenes subsections 50(1), 61A(1), 61C(1), 67(1), 68(1) or 112D(1);

(i) contravenes Section 32, subsection 50(2), Sections 55, 59 or 60, subsections 61A(2) or 61C(2), Section 62, subsection 67(2) or 68(2), Sections 69, 71, 75, 76, 79, 83 or 132 or a regulation made pursuant to subsection 106(6);

7 Section 159 of Chapter 1 is repealed and the following Section substituted:

159 (1) A person who commits an offence referred to in clause 158(a), (e), (g), (ga) or (hb) is liable on summary conviction to a fine of not less than one thousand dollars and not more than one million dollars or to imprisonment for not more than two years, or to both a fine and imprisonment.

(2) A person who commits an offence referred to in Section 89, 115 or 124 or clause 158(b), (c), (d), (f), (h), (ha) or (i) is liable on summary conviction to a fine of not more than one million dollars.

(3) A person who commits an offence referred to in clause 158(j) is liable on summary conviction to a fine of not more than five hundred thousand dollars.

8 Chapter 1 is further amended by adding immediately after Section 170 the following Section:

170A (1) Where the Minister is satisfied on reasonable grounds that a person has contravened Part XIA or the regulations made pursuant to that Part, the Minister may order the person to pay an administrative penalty.

(2) The purpose of an administrative penalty is to

(a) ensure compliance with Part XIA and the regulations made pursuant to that Part; and

(b) prevent any person from deriving, directly or indirectly, an economic benefit as a result of contravening Part XIA or the regulations made pursuant to that Part.

(3) An order to pay an administrative penalty must be served on the person to whom it is addressed in accordance with, and must contain the information prescribed by, the regulations and, upon being served, becomes due and payable.

(4) The amount of an administrative penalty must be determined in accordance with the regulations, but may not exceed one million dollars.

(5) Where a person contravenes Part XIA or the regulations made pursuant to that Part on more than one day, the person is liable to be ordered to pay an additional administrative penalty for each day on which the person continues the contravention.

(6) An order to pay an administrative penalty applies to the person to whom it is addressed even if

(a) the person took all reasonable steps to prevent the contravention; or

(b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

(7) An order to pay an administrative penalty may be filed with the Supreme Court in accordance with the *Nova Scotia Civil Procedure Rules* and, upon being filed, is enforceable in the same manner as a judgment of the Supreme Court.

(8) The Minister and a person who may be or has been ordered to pay an administrative penalty may enter into an agreement that

(a) identifies the contravention in respect of which the order has been made;

(b) requires the person against whom the order may be or has been made to take measures specified in the agreement within the period specified in the agreement; and

(c) provides that, in accordance with the regulations and the terms of the agreement, the obligation to pay the administrative penalty may be cancelled or the amount of the penalty may be reduced.

(9) A person who

(a) pays an administrative penalty in respect of a contravention of Part XIA or the regulations made pursuant to that Part and has remedied the contravention; or

(b) satisfies the terms of a settlement agreement entered into under subsection (7),

may not be convicted of an offence under this Act in respect of the same contravention.

(10) For the purpose of Sections 137 and 138, the only person who is aggrieved by an order to pay an administrative penalty is the person to whom the order is addressed.

(11) Where an administrative penalty is paid to the Government, the amount received must be remitted to the Green Fund.

9 Subsection 171(1) of Chapter 1 is amended by adding immediately after clause (b) the following clauses:

(ba) respecting agreements entered into in respect of an administrative penalty;

(bb) respecting the collection of administrative penalties;

10 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
