Compliance Framework under the *Greenhouse Gas Industrial Reporting and Control Act*

Policy Intentions Paper

Consultation Period: July 22 to August 21, 2015

BRITISH COLUMBIA | Ministry of Environment

1. Introduction

The Climate Action Secretariat, Ministry of Environment ("CAS") is in the process of developing regulations respecting the compliance-related elements under the *Greenhouse Gas Industrial Reporting and Control Act* (GGIRCA or the *Act)*. The purpose of this consultation paper is to seek feedback and comments from stakeholders, First Nations and the public on the intended changes.

The *Act* received Royal Assent on November 27, 2014. The main intent of the *Act* is to enable greenhouse gas (GHG) emission performance standards to be set for industrial facilities or sectors by listing them in the Schedule to the *Act*. The *Act* also streamlines several aspects of existing GHG legislation and regulations into a single legislative and regulatory system, including:

- *Greenhouse Gas Reduction (Cap and Trade) Act* (to be repealed)
- *Greenhouse Gas Reduction Targets Act*, *Reporting Regulation* (to be repealed and replaced by a new proposed Reporting Regulation under the *Greenhouse Gas Industrial Reporting and Control Act)*
- *Greenhouse Gas Reduction Targets Act*, Emission Offsets Regulation (to be repealed and replaced by the proposed Offsets Regulation under the *Greenhouse Gas Industrial Reporting and Control Act)*
- *Environmental Management Act* section 6.1 (repealed and replaced by the requirement for coal fired electricity generation facilities in the Schedule to the *Greenhouse Gas Industrial Reporting and Control Act)*

Liquefied natural gas (LNG) operations are regulated under the new *Act* and an annual GHG emission limit of 0.16 carbon dioxide equivalent tonnes per tonne of liquefied natural gas produced (tCO_2e/tLNG) has been listed in the Schedule. Regulated operations comply with the emission limit "benchmark" by submitting a compliance report that identifies their emissions relative to the benchmark. Operations that have greater emissions than the limit must submit to a compliance account one compliance unit for every tonne of GHG emissions in excess of the emission limit. There are three types of compliance units that are equivalent for compliance purposes: offset units (emission offsets), funded units (financial contributions to a technology fund) and earned credits (units issued to regulated operations with emissions less than the annual emission limit).

The purpose of this intentions paper is to communicate the policy intentions of the Ministry of Environment (the Ministry), and to seek responses and comments from stakeholders and the public on the proposed regulations related to compliance obligations of regulated operations and to the compliance of reporting and regulated operations in general. These elements include: setting the compliance reporting requirements, establishing the price for a funded unit, and the administrative penalty framework for regulated and reporting operations that do not comply with requirements set out in the *Act* or Regulations.

The development process for the proposed compliance framework consists of five phases:

1. **Scoping** – Ministry staff development of policy intent and an assessment of issues and alternatives.

2. **Ministry Consultation Papers** – outlining the Ministry's proposed approach for compliance under the *Greenhouse Gas Industrial Reporting and Control Act.*
3. **Consultation** – with affected stakeholders and the general public, using this intentions paper posted on the Ministry website, as well as through ongoing activities of CAS.
4. **Drafting** – preparation of legal language for consideration by the Minister and Lieutenant Governor-in-Council.
5. **Implementation** – informing Ministry staff and external stakeholders, and developing guidelines and/or best management practices.

This intentions paper provides a summary of government goals and objectives for the proposed compliance framework. This is followed by a discussion of the Ministry's intentions regarding the contents of the proposed regulations. The paper invites stakeholders, First Nations and the public to provide feedback on the proposed regulation prior to it being drafted and implemented.

2. Government Goals and Objectives

The Ministry has four distinct objectives related to compliance under *Greenhouse Gas Industrial Reporting and Control Act*:

1) Ensure compliance obligations of regulated operations are met through a robust and timely compliance framework;
2) Establish effective and flexible compliance mechanisms, such as funded units, for a regulated operation to use to meet their compliance obligations under the *Act*;
3) Establish a fair administrative penalty regime for non-compliance under the *Act* which encourages compliance through transparency and appropriately set penalty amounts which remove any economic benefit gained through non-compliance; and
4) Ensure consistency with the Ministry's Compliance and Enforcement Policy and Procedure manual that ensures consistent and risk-based assessment and response to non-compliance.

3. Compliance Obligation

The *Greenhouse Gas Industrial Reporting and Control Act* sets emission limits for liquidfied natural gas (LNG) and coal fired electricity generation operations using metric tonnes of carbon dioxide equivalent (CO_2e). Facilities can meet the limit by adopting energy efficient technology or using clean energy to power the operations. Facilities can also comply with the limit by purchasing offsets or buying funded units. Details of the compliance obligation specific to LNG operations are set out below.

3.1 Emissions Performance

The *Act* provides for an emission limit of 0.16 carbon dioxide equivalent tonnes for each tonne of liquefied natural gas produced (tCO_2e/t LNG) for an LNG operation. It is intended that the definition of LNG operation be consistent with the ordinary meaning of LNG

operation. For example, LNG operation is an industrial operation that produces liquid natural gas. It is intended that the definition capture facilities that produce LNG for sale or export and exclude facilities where there is no intention to sell or export, such as a university laboratory. The compliance obligation for LNG operations would only begin when the operation starts producing LNG.

A regulation will establish what GHG emissions from an LNG operation are attributable for compliance purposes. For the purposes of an LNG operation's compliance obligation the applicable GHG emissions are proposed to consist of:

- All emissions attributable to the LNG operation for the purpose of its reporting obligation. The regulation will provide exceptions to this requirement to address the scenario where the first compliance period may be a portion of the reporting period due to the start date of LNG production. The Reporting Regulation requirements can be found here;
- All emission associated with electricity generated elsewhere used by the LNG operation. The one exception is electricity purchased from BC Hydro from the grid and used for non-primary purposes[1] by the LNG operator. Emissions associated with this exception will be offset by BC Hydro; and
- Shares of or all emissions from other facilities if there is "facility splitting". For example, if an LNG operation does not include processing of pipeline natural gas, which is done instead by a different reporting operation servicing one or more LNG operations.

3.2 Evidence of Compliance

By May 31st, the regulated operation must submit a verified compliance report to the Director for the previous calendar year outlining the regulated operation's attributable emissions, production, and other required information of LNG operations. Each compliance report must be verified by an independent third party accredited by a recognized accreditation body (such as the Standards Council of Canada or the American Natural Standards Institute) and include a verification statement of whether the regulated operation has met their compliance obligation. The compliance report will be filed electronically and be in the form required by the Director. In practice it is expected that the compliance report will be filed in conjunction with the emissions report, therefore a regulated operation will only be required to make one submission for the purposes of both their compliance obligation and reporting requirements, and that both reports would be verified by the same verification body.

The compliance report will add an additional layer to the reporting obligation requirements[2]. The Act requires a compliance report to include the following information:

- LNG production (tLNG) made up of the sum of
    - LNG throughput at point of sale, and

[1] Non-primary purposes in relation to a LNG operation means any purposes that is not related to the purification, compression and liquefaction of natural gas.

[2] For more information on the reporting requirements, see the *Greenhouse Gas Industrial Reporting and Control Act* Reporting Regulation Intentions Paper found here: http://www2.gov.bc.ca/gov/content/environment/climate-change/policy-legislation-programs/legislation-regulations

    - Difference between LNG stored at end of compliance period and LNG stored at start of compliance period.

- amount of GHG emissions attributable to a regulated operation;
- amount of GHG emissions captured from the operation and stored;
- applicable emission limit for the operation (e.g. 0.16 tCO_2e/tLNG for LNG Operation);
- amount of GHG emissions that exceeds the limit; and
- if applicable, the number of compliance units in the operators account to meet the compliance obligation.

The proposed regulations will provide requirements for carbon capture and storage. The Ministry intends to require that any capture and storage of GHG used to lower the emissions attributable to a regulated operation must be captured and stored in a geological formation, authorized under the *Oil and Gas Activities Act* and have a Risk Assessment and Mitigation Plan prepared and certified by a professional engineer or geoscientist and approved by the Director. The Risk Assessment and Mitigation Plan is an assessment of the means and future probability of stored gases escaping into the atmosphere and include measures taken to mitigate the risk.

Regulations will set out further compliance report requirements. The Ministry intends to require the following:

- Specifying the compliance period to which the report relates (i.e., calendar year);
- The date the compliance report must be submitted;
- Information required to determine what emissions generated from electricity should be attributable to compliance emissions. This includes: amount of electricity purchased and used for primary and secondary purposes; and the amount of GHG emissions from electricity purchased and used for primary purposes in units of tonnes of CO_2e emissions.
- Information required to determine the eligibility of an operation for the LNG Environmental Incentive Program that was developed to address the cost implications of GHG compliance and incentivize investment in advanced technology. Required information includes:
    - amount of emergency emissions;
    - total emissions of carbon dioxide removed from transmission of pipeline quality natural gas by an LNG operation or a facility and amount of LNG produced, aggregated from daily amounts.

  Detailed information on the Environmental Incentive Program can be found here (http://www2.gov.bc.ca/gov/content/environment/climate-change/reports-data/liquefied-natural-gas-greenhouse-gas-information), and
- The number of compliance units by type (e.g. offset units, funded units or earned credits) surrendered to meet a compliance obligation (if applicable)

The proposed regulations will prescribe the means of calculating the amount of GHG emissions from electricity purchased as the amount of electricity (in KWh) multiplied by the applicable annual B.C. grid average electricity emissions factor provided by the Ministry. The Ministry intends to establish a standard factor for electricity based on the average greenhouse gas intensity of B.C.'s electricity grid calculated on an annual basis as an average from the previous three years and published on the Ministry's website by October 31st of each year. This electricity grid emission intensity factor will incorporate emissions from both B.C. produced electricity as well as electricity imported into B.C.

Similar to the emission report process set out in the Reporting Regulation, a regulated operation can submit a supplementary compliance report to correct or update information in a compliance report.

3.3 Meeting Compliance

The *Greenhouse Gas Industrial Reporting and Control Act* allows for compliance units to be used by regulated operations to meet their compliance obligation. A compliance unit can consist of either an offset unit, earned credit, or funded unit. Under the Act, each of these units is equivalent to one metric tonne of carbon dioxide equivalent emissions (tCO_2e) for the purposes of compliance obligation.

i. Offsets – The *Act* provides the ability for the Director to issue offset units for verified emission reduction or removal projects. The proposed offset framework is set out in detail in the following Offsets Regulation Intentions Paper found here: http://www2.gov.bc.ca/gov/content/environment/climate-change/policy-legislation-programs/legislation-regulations

ii. Funded unit – An operator may purchase a funded unit from government as a means of complying with the compliance obligation. Money collected by government will help to contribute to the development of clean technologies. The proposed regulations will set the funded unit price of $25 per unit.

iii. Earned credits – Under the *Act*, the Director may issue earned credits to operators achieving GHG emissions below the emission limit. The Director may reduce the earned credits after taking into consideration any greenhouse gas emissions that were captured and stored in order to achieve emissions below the emission limit to account for the risk that the stored greenhouse gas could be later released into the atmosphere.

It is proposed that a BC Carbon Registry be established in the proposed regulations to enable the issuance, transfer and retirement of compliance units. Under the *Act* a regulated operator may hold two types of accounts in the registry:

- a holding account into which compliance units are credited (e.g. offset units, funded units or earned credits); and
- a compliance account into which the operator transfers compliance units to meet the compliance obligation.

4. Administrative Penalties

4.1 Background

Under an administrative penalty framework financial penalties may be levied against parties that fail to comply with Statutory and Regulatory requirements. The primary goal of administrative penalties is to encourage regulatory compliance, not simply to punish wrongful activity. As an administrative (rather than prosecutorial) tool, the penalty is typically imposed by a statutory decision maker, which avoids the need to rely on recourse to the courts. The Director appointed under GGIRCA is the decision maker for determining administrative penalties.

There are two types of administrative penalties provided for in the *Greenhouse Gas Industrial Reporting and Control Act*:

i. Automatic administrative penalties, which are immediately issued once a contravention occurs, and are calculated by using a fixed formula. The automatic penalty provisions are established for operations that fail to meet the compliance obligation (e.g. emission limit) set out in the *Act* as evidenced by the compliance report, the supplementary report, or the associated verification statement. Not meeting the emission limit will result in a penalty of 3 funded units for each tonne of CO_2e emitted by a regulated operation that exceeds the emission limit. The penalty does not relieve the operator of their compliance obligation and the operator would still need to apply compliance units to meet the emission limit for that year;

ii. Discretionary administrative penalties in which the decision maker (i.e., Director) may make determinations as to whether a contravention has occurred and may impose penalties for contraventions.

4.2 Administrative Penalty Framework under GGIRCA

i. Determination of Non-Compliance

The Director determines whether there has been a contravention that warrants the issuance of an administrative penalty. In the case of automatic administrative penalties where the operator has failed to meet a compliance obligation, there is no need for the Director to make this determination, as non-compliance is determined by the compliance report or verification statement. For discretionary penalties, including those set out in the *Act* (e.g. inaccurate compliance report or failure to report), the Director will issue an administrative penalty if satisfied that on the balance of the probabilities that a contravention has occurred. The requirements to which administrative penalties may be applied will be clear and specified in the regulation. The regulation will identify that contravention of these requirements may be remedied by the use of an administrative penalty.

ii. Calculating penalties

Discretionary administrative penalties would be calculated by the Director in accordance with the regulation. During a preliminary assessment of the penalty, the Director would consider the nature of the contravention. For example, whether a regulated operation

failed to comply with a compliance reporting requirement by failing to submit a verification statement. Other factors the Director may consider include: the real or potential adverse effect, if any, of the non-compliance; any economic benefit derived by the non-compliance; and whether the non-compliance was repeated or continuous.

The maximum administrative penalty amounts and formulas under GGIRCA will be consistent with other penalty amounts legislated in the natural resource sector (e.g., the *Oil and Gas Activities Act* and the *Forest and Range Practices Act*).

The regulation will establish maximum penalty amounts of $50,000 that may be imposed under GGIRCA section 25 for a contravention of specific sections of the *Act*.

iii. Notice of Intent

Before issuing an administrative penalty notice, the Director will issue a Notice of Intent to notify the party that they are in non-compliance with a specific provision of the *Act* or regulations. The Notice of Intent will state the name of the person subject to the notice, the provision of the *Act* or regulations the person is alleged to have contravened, a preliminary assessment of the amount of the administrative penalty, and information about the person's right to request an opportunity to be heard.

iv. Opportunity to Be Heard (OTBH)

Once the Notice of Intent has been served, the party has 30 days to request an OTBH. The OTBH provides the party with an opportunity to provide 'their side of the story'. There may be extenuating circumstances that staff are not aware of or have not taken into consideration prior to the imposition of the administrative penalty or there may be further information the Director should consider when establishing the final penalty amount. The form of the OTBH (written or oral) would be determined by the Director. An OTBH is not available to persons issued automatic administrative penalties under section 23 of the *Act*.

v. Administrative Penalty Notice (Final Determination)

Once the Director has reviewed the information supplied by the party during the OTBH or after 30 days without a request to be heard from the party the Director may:

- Decide not to impose the penalty;
- Confirm the penalty; or
- Recalculate the penalty.

The Director will send an Administrative Penalty Notice to the party which will include the final amount of the penalty, the reasons for the decision, and the date by which the penalty must be paid and information about the right to appeal.

vi. Appeal

A party that has been subject to a decision by the Director (i.e., not automatic penalties) may appeal the Director's decision to the Environmental Appeal Board within 30 days of the

delivery of the Administrative Penalty Notice. The Board would determine if the appeal has merit, and if so schedule a hearing and instruct participants on the process. The Board has the authority to confirm, cancel or vary a penalty.

vii. Payment

Payments must be satisfied within 30 days of either reporting non-compliance, being served with an Administrative Penalty Notice, or in the case of an appeal the date the appeal board confirms or varies the administrative penalty.

4.3 Public Reporting

As part of the Ministry's commitment to transparency, violations of legislative requirements will be reported publically in a Quarterly Environmental Enforcement Summary. Consistent with this practice the Ministry intends to publish the names and particulars of all contraventions under GGIRCA for which administrative penalties are issued.

5. Providing Comment

Written comments on the proposed intentions of the Ministry outlined in this paper are being solicited for a 30-day period. Following review of comments and submissions, the Ministry will complete legal drafting of the regulation for legislative review and implementation.

Comments received will be treated confidentially by Ministry staff and contractors. Please note that comments you provide and information that identifies you as the source of those comments may be publically available if a Freedom of Information (FOI) request is made under the *Freedom of Information and Protection of Privacy Act.*

Those interested are invited to submit comments in writing to: climateactionsecretariat@gov.bc.ca. Please include the following subject line "GGIRCA Compliance comments" in your email.

Comments to the Ministry should be made on or before August 21, 2015.