



BILL NO. 208

Government Bill

*1st Session, 64th General Assembly
Nova Scotia
1 Charles III, 2022*

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

CHAPTER 46
ACTS OF 2022

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
NOVEMBER 9, 2022**

The Honourable Tim Halman
Minister of Environment and Climate Change

*Halifax, Nova Scotia
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**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 Subsection 8A(1) of Chapter 1 of the Acts of 1994-95, the *Environment Act*, as enacted by Chapter 61 of the Acts of 2011 and amended by Chapter 10 of the Acts of 2017, is further amended by striking out subclause (a)(iv).

2 (1) Part XIA of Chapter 1, other than Section 112B and subsection 112P(1), is repealed.

(2) Section 112B of Chapter 1 is repealed.

(3) Subsection 112P(1) of Chapter 1 is repealed.

3 Chapter 1 is further amended by adding immediately after Part XIA the following Part:

PART XIB

OUTPUT-BASED PRICING SYSTEM

112R In this Part,

(a) “carbon dioxide equivalent” means in reference to a quantity of greenhouse gas, the carbon dioxide equivalent as calculated and prescribed by the regulations;

(b) “Climate Change Fund Manager” means the Nova Scotia Climate Change Fund Manager designated by the regulations;

(c) “compliance obligation” means any action including compliance options that a regulated facility is required to take under this Act and the regulations if the regulated facility has failed to reduce its emissions of greenhouse gases under subsection 112W(1);

(d) “compliance option” means

(i) a fund credit,

(ii) a performance credit, and

(iii) any other type of credit, prescribed by the regulations;

(e) “compliance period” means a period prescribed as a compliance period by the regulations;

(f) “electricity generation” means the operation of electric utilities that generate, transmit, store, control and distribute electric power;

(g) “facility” means an integrated facility or a pipeline transmission system;

(h) “Fund” means the Nova Scotia Climate Change Fund established under Section 112ZC;

(i) “fund credit” means a credit obtained by a regulated facility by paying money to the Province in accordance with this Part and the regulations;

(j) “greenhouse gas emitter” means a person who meets the criteria prescribed by the regulations for being a greenhouse gas emitter, but does not include a regulated facility;

(k) “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, and
- (viii) a gas prescribed by the regulations;

(l) “industrial facility” means a facility in the Province engaged in

- (i) manufacturing and processing,
- (ii) mining, quarrying and oil and gas extraction,
- (iii) electricity generation, or
- (iv) any other activity prescribed by the regulations;

(m) “integrated facility” means all buildings, equipment, structures, on-site transportation machinery and stationary items that are located on a single site, on multiple sites or between multiple sites that are owned or operated by the same person or persons and that function as a single integrated site but does not include vehicles or equipment when being transported between sites on public roads;

(n) “manufacturing and processing” means the chemical, mechanical or physical transformation of materials or substances into finished or semi-finished products;

(o) “mining, quarrying and oil and gas extraction” means the extraction of minerals, solid materials, liquids and gases;

(p) “opted-in facility” means an industrial facility designated as an opted-in facility under Section 112U whose designation remains in effect;

(q) “output-based pricing system” means the system established under Section 112S;

(r) “owner or operator” means

(i) the person who is responsible for an industrial facility's operations as of December 31st of a year, or

(ii) where an industrial facility closed during a year, the person who last operated the industrial facility in that year;

(s) "performance credit" means, subject to the regulations, a credit expressed in carbon dioxide equivalent awarded by the Minister to a regulated facility for reaching or surpassing the greenhouse gas emissions reductions threshold set in accordance with the regulations for a given compliance period;

(t) "pipeline transmission system" means the portion of a transmission pipeline system within the province, used to transmit carbon dioxide or natural gas, of which the pipelines and associated installations or equipment, including compressor stations, storage installations and compressors, are operated in an integrated way, but excludes straddle plants or other processing installations and pipelines, installations or equipment that are used in the local distribution of natural gas and that are downstream of a metering station;

(u) "regulated facility" means any industrial facility that meets the following criteria:

(i) an industrial facility that emits fifty thousand tonnes or more of carbon dioxide equivalent of greenhouse gases in any of the three years immediately preceding January 1, 2023, and in any year thereafter, or

(ii) an industrial facility that is designated under Section 112U as an opted-in facility;

(v) "registry" means the output-based pricing system registry established pursuant to Section 112ZA;

(w) "standard" means a standard made by the Minister under subsection 112ZH(1).

112S The Governor in Council may, by regulation, establish a greenhouse gas emissions output-based pricing system to which emission limits, compliance obligations and credits may be created, granted, cancelled or expired for the purpose of contributing to the achievement of provincial greenhouse gas emission targets and the mitigation of costs and impacts of reducing or limiting greenhouse gas emissions.

112T (1) Subject to the approval of the Governor in Council, the Minister may prescribe compliance periods, emission limits and compliance obligations for regulated facilities that the Minister considers appropriate in accordance with this Section and the regulations.

(2) The emission limits, compliance periods and compliance obligations prescribed pursuant to subsection (1) may include compliance options and credits that may be created, granted, cancelled or subject to an expiration date established by the Minister in accordance with this Act and the regulations.

(3) The Minister may, in accordance with the regulations, create, grant, cancel or establish expiration dates for

(a) a fund credit;

(b) a performance credit; and

- (c) any other type of credit prescribed by the regulations.

112U (1) The owner or operator of an industrial facility may apply to the Minister to have the facility designated as an opted-in facility in the manner prescribed by the regulations.

(2) The Minister may establish threshold criteria and times for designation as an opted-in facility in accordance with the regulations.

(3) The owner or operator seeking designation of an industrial facility pursuant to subsection (1) must

- (a) submit an application in the manner prescribed by the regulations; and

- (b) provide any other documents or information prescribed by the regulations.

112V (1) Unless exempted by the regulations, the owner or operator of a regulated facility shall register the regulated facility within the time and in the manner and form prescribed by the regulations.

(2) An owner or operator of a regulated facility who fails to register the regulated facility pursuant to subsection (1) is guilty of an offence.

(3) The owner or operator of a regulated facility that meets the criteria and requirements established in the regulations for removal of registration may apply to the Minister in accordance with the regulations requesting removal of its registration.

(4) The Minister may remove a regulated facility from registration pursuant to subsection (3) in accordance with the regulations and subject to such terms and conditions as the Minister considers appropriate.

112W(1) The owner or operator of a regulated facility shall reduce the facility's greenhouse gas emissions for each compliance period in accordance with the regulations.

(2) The Minister shall impose a compliance obligation, in accordance with the regulations, on the owner or operator of a regulated facility that does not reduce its greenhouse gas emissions as required under subsection (1).

(3) The owner or operator of a regulated facility upon which a compliance obligation is imposed shall, within the time prescribed by the regulations, fulfil its obligation in accordance with the regulations.

(4) An owner or operator of a regulated facility who fails to fulfil a compliance obligation imposed pursuant to subsection (3) is guilty of an offence.

112X (1) The owner or operator of a regulated facility shall submit to the Minister a greenhouse gas emissions report containing the information prescribed by the regulations.

(2) The report must be submitted in the manner and within the time prescribed by the regulations.

(3) The report must be verified in accordance with the regulations.

112Y (1) The Minister may require a greenhouse gas emitter to submit a greenhouse gas emissions report containing the information prescribed by the regulations.

(2) The report required under subsection (1) must be submitted in the manner and within the time prescribed by the regulations.

(3) The Minister may require verification of a report required under subsection (1).

112Z (1) This Section applies to a regulated facility and to a greenhouse gas emitter prescribed in the regulations.

(2) The owner or operator of a regulated facility or a greenhouse gas emitter referred to in subsection (1) shall calculate its greenhouse gas emissions using the method prescribed by the regulations.

112ZA (1) The Minister may establish and maintain a registry that records the serial numbers of the compliance options issued by the Minister and the obtention, distribution, exchange, trading, sale, use, cancellation and expiration of compliance options, as applicable, and may include such requirements and information as the Minister deems appropriate for the purpose of this Part in accordance with the regulations.

(2) The Minister shall ensure that the registry is maintained in accordance with the regulations.

(3) The information recorded in the 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.

112ZB The Minister may, on behalf of His 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 or an international organization or an agency thereof for any purpose related to this Part.

112ZC (1) The Nova Scotia Climate Change Fund is hereby established.

(2) The money and property in the Fund must be managed and used, in accordance with the regulations and subject to the approval of the Treasury and Policy Board,

- (a) to reduce, limit, avoid or capture greenhouse gas emissions;
- (b) to mitigate the economic and social impacts of climate change and greenhouse gas emissions;
- (c) for the development, administration and implementation of equitable approaches to adapt to a changing climate;
- (d) for efforts to reduce, limit, avoid or capture greenhouse gas emissions;
- (e) to research, develop and demonstrate measures that may reduce, limit, avoid or capture greenhouse gas emissions or help adapt to current and future climate conditions;

(f) for public awareness, education, outreach, engagement or capacity building related to climate change;

(g) for adapting to the changing climate;

(h) for the development of and participation in regional and international initiatives respecting climate change;

(i) for the development of climate change policy and the measurement, tracking and reporting of climate change initiatives; and

(j) for such other purposes as prescribed by the regulations.

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

(4) The Climate Change Fund Manager may acquire and dispose of property on behalf of the Fund in accordance with this Part and the regulations.

(5) Except as may be directed by a court under subsection (f), the Fund may consist of and be credited with any amount from any of the following sources, as determined by the Treasury and Policy Board,

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

(b) income accruing to the Fund;

(c) money remitted to the Province by a regulated facility for the purchase of a fund credit in accordance with this Part and the regulations;

(d) money remitted to the Province in accordance with this Part and the regulations from

(i) fees paid in relation to the administration of the output-based pricing system program, or

(ii) fines paid in relation to the contravention of subsections 112V(2) and 112W(4);

(e) amounts paid as administrative penalties under this Part and the regulations;

(f) money remitted in accordance with clause 166(1)(hc) to fulfil a compliance obligation; and

(g) any other money directed into the Fund.

(6) Any amount that is required to be paid to the Province under clauses (5)(c) to (f) which remains unpaid is a debt due to His Majesty in right of the Province and may be recovered by an action in the name of His Majesty in right of the Province in a court of competent jurisdiction.

112ZD (1) The Governor in Council may, by regulation, prescribe such provincial greenhouse gas emission reduction targets for such periods as the Governor in Council considers appropriate.

(2) Targets prescribed under subsection (1) may include specific greenhouse gas emission reduction or emission limitation targets for such class of activities as the Governor in Council considers appropriate.

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

112ZE No later than two years after the end of the period in respect of which provincial greenhouse gas emission reduction targets are prescribed pursuant to subsection 112ZD(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.

112ZF(1) No later than one year following the end of the first compliance period prescribed by the regulations, the Minister shall release and publish a progress report on the output-based pricing system and thereafter, shall release an annual progress report on the system.

(2) The report under subsection (1) must include

- (a) the total greenhouse gas emissions from facilities and sectors covered under the output-based pricing system;
- (b) the total number of credits issued by category;
- (c) the total compliance obligation for all facilities covered under the output-based pricing system; and
- (d) any other information required for the report as prescribed by the regulations.

112ZG (1) At such times and in such manner as the regulations may prescribe, the Minister may require that the owner of a regulated facility submit any other information, records or reports required by the Minister in accordance with the regulations.

(2) The report must be submitted in the manner and within the time prescribed by the regulations.

(3) The owner or operator of a regulated facility shall maintain any information, records or reports referred to in subsection (1) for the period prescribed by the regulations and allow the records to be audited in accordance with the regulations.

112ZH (1) The Minister may make regulations establishing standards in respect of all matters under this Part in which the Governor in Council has authority to make a regulation, excluding those matters referred to in clauses 112ZJ(1)(c) and (y).

(2) A standard made under this Section may be retroactive to any date, including a date before the coming into force of this Section.

(3) A standard authorized by this Section may incorporate by reference, in whole or in part, any regulatory instrument, code, other standard, procedure or guideline as it is amended from time to time before or after the making of the standard or as it read at a fixed time, and may require compliance with the regulatory instrument, code, standard, procedure or guideline so incorporated.

(4) Regulations or a standard made under this Section may vary in respect of different processes, greenhouse gases, facilities, businesses, sectors or products in respect of different categories of processes, greenhouse gases, facilities, businesses, sectors or products.

(5) Where there is a conflict or inconsistency between a regulation made by the Governor in Council under this Part and a standard made by the Minister under this Part, the regulation made by the Governor in Council prevails.

(6) The Minister may in accordance with the regulations made under Section 112ZJ prescribe the criteria, conditions and circumstances for when an exemption from a requirement or provision under this Part, the regulations or standards may apply.

(7) The exercise by the Minister of the authority contained in subsection (1) or (6) is a regulation within the meaning of the *Regulations Act*.

112ZI Where a standard is made under subsection 112ZH(1), the Minister shall as soon as the circumstances permit after the standard is made

(a) publish the standard on the website of the Department of Environment and Climate Change; and

(b) make a copy available to the public at the head office of the Department during normal business hours.

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

(a) prescribing the manner of determining the carbon dioxide equivalent and prescribing the value of the global warming potential;

(b) establishing compliance obligations for regulated facilities that do not reduce their greenhouse gas emissions under Section 112W;

(c) prescribing a gas as being a greenhouse gas for the purpose of subclause 112R(k)(viii);

(d) prescribing the criteria under which a person that is not a regulated facility is considered a greenhouse gas emitter;

(e) further defining or prescribing other activities related to industrial facilities for the purpose of this Part;

(f) respecting the issuance of performance credits, including the setting of greenhouse gas emission reductions thresholds that must be reached by a regulated facility in order to be awarded a performance credit;

(g) prescribing the manner of determining the performance credit threshold;

(h) respecting the registration of regulated facilities including the information, dates, manner and procedures to be followed and the terms and conditions and deadlines by which regulated facilities must register;

(i) respecting the establishment of an output-based pricing system;

(j) prescribing compliance periods and emission limits for regulated facilities;

(k) respecting compliance options and prescribing other types of credits;

(l) respecting the imposition of requirements, terms, conditions, limits or prohibitions in respect of the creation, registration, obtention, distribution, exchange, trading, sale, use, variation, cancellation and expiration dates of compliance options and credits;

(m) establishing the criteria for the issuance of fund credits and performance credits;

(n) prescribing other credits and the activities required to obtain those credits;

(o) prescribing the means, date and manner by which regulated facilities are required to reduce greenhouse gas emissions;

(p) respecting the designation of an industrial facility as an opted-in facility, including the threshold criteria for designation under Section 112U, the manner and form of application, deadlines, term and revocation of that designation;

(q) respecting the reduction of greenhouse gas emissions by regulated facilities including establishing the bases on which regulated facilities are required to reduce their greenhouse gas emissions including on an absolute basis or an emissions-intensity basis;

(r) respecting compliance obligations including the reporting of compliance obligations and the provision of compliance reports;

(s) respecting the monitoring of greenhouse gas emissions, the submission of greenhouse gas emission reports and the verification of these reports including the time, content and means by which the report must be submitted;

(t) prescribing the method of calculating greenhouse gas emissions for the purpose of subsection 112Z(2);

(u) respecting the creation, operation, information and management for the registry created for the purpose of Section 112ZA;

(v) designating a person as the Nova Scotia Climate Change Fund Manager;

(w) respecting responsibilities of the Climate Change Fund Manager;

(x) respecting the management and use of money and property in the Fund, including prescribing the purpose for which such money and property may be managed and used;

(y) directing that some or all of any of the following be remitted to the Province:

(i) fees paid in relation to the administration of the output-based pricing system,

(ii) fines and settlement money paid in relation to a contravention under subsection 112V(2) or 112W(4),

(iii) contributions or donations made to the Government;

(z) prescribing Provincial greenhouse gas emission-reduction targets for specified periods;

(za) prescribing the manner and dates by which compliance obligations must be fulfilled;

(zb) prescribing penalties for the non-fulfilment of a compliance obligations;

(zc) prescribing registration fees;

(zd) respecting the recognition of similar credits granted under similar regulatory schemes for credits in other jurisdictions;

(ze) prescribing the information and documents that must be retained by regulated facilities and the period for which the information must be retained;

(zf) respecting the payments to the Province of any or all amounts payable to His Majesty in right of the Province through the operation of the regulations made under this Part;

(zg) respecting exemptions from any requirement of this Part and the regulations or the standards or from any provision under this Part and the regulations;

(zh) respecting the circumstances under which and the conditions upon which exemptions provided under this Part apply;

(zi) prescribing any other information to be included in reports required under Section 112ZG;

(zj) respecting fees for the purpose of this Part and the regulations;

(zk) defining any word or expression used by not defined in this Part;

(zl) further defining any word or expression defined in this Part;

(zm) 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 under 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) A regulation made under subsection (1) may be retroactive to any date, including a date before the coming into force of this Section.

(4) A regulation made under subsection (1) may incorporate by reference, in whole or in part, any regulatory instrument, any code, any standard established by the Minister or other standard, any procedure or any guideline as it is amended from time to time before or after the making of the regulation or as it read at a fixed time and may require compliance with the regulatory instrument, code, standard, procedure or guideline so incorporated.

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

4 (1) Section 158 of Chapter 1, as amended by Chapter 30 of the Acts of 2006, Chapter 61 of the Acts of 2011 and Chapter 10 of the Acts of 2017, is further amended by striking out “, 68(1) or 112D(1)” in the second line of clause (hb) and substituting “or 68(1)”.

(2) Section 158 of Chapter 1, as amended by Chapter 30 of the Acts of 2006, Chapter 61 of the Acts of 2011 and Chapter 10 of the Acts of 2017, is further amended by adding immediately after clause (hb) the following clause:

(hc) contravenes subsection 112V(2) or 112W(4);

5 Subsection 166(1) of Chapter 1, as amended by Chapter 30 of the Acts of 2006, is further amended by adding immediately after clause (hb) the following clause:

(hc) directing an offender who has an unfulfilled compliance obligation under Part XIB to fulfil the compliance obligation by making a payment to the Province or to the Nova Scotia Climate Change Fund, as defined in Part XIB, of the amount of the compliance obligation, including any additional amounts imposed pursuant to Section 161;

6 Section 170A of Chapter 1 is repealed.

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

170B (1) Where the Minister is satisfied on reasonable grounds that a person has contravened Part XIB or the regulations made under 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 XIB and the regulations made under that Part; and

(b) prevent any person from deriving, directly or indirectly, an economic benefit as a result of contravening Part XIB or the regulations made under 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 XIB or the regulations made under 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 an agreement entered into under subsection (8),

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 His Majesty in Right of the Province, the amount received may be paid to the Nova Scotia Climate Fund established under Part XIB.

8 (1) Section 1, subsections 2(1) and 4(1) and Section 6 come into force on such day as the Governor in Council orders and declares by proclamation.

(2) Subsections 2(2) and (3), Section 3, subsection 4(2) and Sections 5 and 7 have effect on and after January 1, 2023.