

CANADA ENACTS NEW REPORTING REQUIREMENTS UNDER THE GREENHOUSE GAS REPORTING PROGRAM

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Companies that operate facilities located in Canada that emit the equivalent of 10,000 tonnes or more in carbon dioxide equivalent of greenhouse gases (“**GHGs**”) per year are subject to new GHG reporting requirements for operating years 2022 and 2023 under the federal Greenhouse Gas Reporting Program (the “**GHGRP**”).^[1] These reporting requirements were enacted pursuant to a [Notice](#) published by Environment and Climate Change Canada (“**ECCC**”) under the [Canadian Environmental Protection Act](#) (“**CEPA**”) on January 28, 2023 (the “**Notice**”). This bulletin provides an overview of the additional federal GHG reporting requirements under the Notice for affected facilities.

These reporting requirements form part of the GHGRP, which allows ECCC to collect data on GHG emissions from facilities across the country with the view to inform the public, the National GHG Inventory (the official inventory submitted annually by ECCC to the United Nations Framework Convention on Climate Change to which Canada is a member) and federal regulatory initiatives. The program has collected data from facilities since 2004.

It is the first time ECCC has published a notice covering two calendar years, which aims at increasing predictability around the federal reporting requirements. In addition, to support companies navigating those changes, ECCC intends to publish updates to technical guidance available.^[2] As a reminder, reporting must be made using the Single Window reporting system, which is the same system used for current GHGRP reporting and reporting for the National Pollutant Release Inventory (NPRI).

These federal reporting requirements apply whether or not the company is also subject to provincial GHG reporting requirements. Reports are required to be submitted by June 1 of 2023 and 2024 for the 2022 and 2023 operating years, respectively. While these reporting requirements have applied to certain industry sectors for some time, the Notice confirms that it will no longer be possible for a company subject to both the federal and a provincial GHG reporting regimes to upload the provincial report for the purpose of the federal reporting regime. In particular, emissions will have to be disclosed, for each facility, by source category as defined in the Notice.

While some companies subject to the federal reporting requirements expressed concerns about the risk of releasing proprietary or business confidential information (e.g., production volumes) and asked ECCC to readily grant confidentiality over this data during the consultation phase,^[3] ECCC rejected this request. As a result, where a company has concerns over their reported information being publically available, it will have to engage the request process under sections 51 to 53 of CEPA to convince the ECCC to treat the information as confidential. Such a request is only available where the information constitutes a trade secret, its disclosure would likely cause material financial loss to, or prejudice to the competitive position of, the person providing the information or on whose behalf it is provided, or its disclosure would likely interfere with contractual or other negotiations being conducted by the person providing the information or on whose behalf it is provided. While ECCC has discretion to accept or reject such a request, parties have the option to seek a review of a rejection decision to the Federal Court.^[4]

Changes to the existing federal reporting requirements include the provision of certain global warming potential values to reflect the updated values adopted for use under the reporting guidelines of the United Nations Framework Convention on Climate Change (to which Canada is a member), as well as changes to the quantification of certain sources of emissions (natural gas combustion, industrial wastewater, nitric acid production and ammonia and hydrogen production).

Considering these changes to the nature and the scope of the information that must be reported, we recommend companies ensure they have engaged a qualified environmental consultant to assist with calculation and reporting of their facilities' annual GHGs. Companies that are not currently reporting under the GHGRP, should consider whether this notice creates additional registration and reporting requirements for their facilities. In addition, where such reporting may require the disclosure of sensitive information, companies should carefully consider whether it should engage in the confidential request process under CEPA to maintain its confidentiality.

Please consult our bulletins on the [Ontario Emissions Performance Standards Program](#) and the [federal GHG offset credit system](#) for more information on GHG emissions regulation in Canada.

[1] Environment Canada and Climate Change, [Notice with respect to reporting of greenhouse gases \(GHGs\) for 2022 and 2023](#), Canada Gazette, Part I, Volume 157, Number 4: SUPPLEMENT (28 January 2023).

[2] Environment Canada and Climate Change, [Consultations on changes to the Greenhouse Gas Reporting Program for 2022 and 2023: response document, 2023](#) ["Response Document"] (A consultation period ran from August 10, 2022 to September 9, 2022 further to the publication of a consultation document prepared by ECCC.).

[3] Response Document.

[4] [Response Document](#); [Canadian Environmental Protection Act](#), 1999, SC 1999, c. 33, ss 51-54.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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