

FEDERAL GOVERNMENT ACCEPTS ONTARIO'S EMISSIONS PERFORMANCE STANDARDS (EPS) PROGRAM FOR REGULATION OF GREENHOUSE GAS EMISSIONS – TRANSITION DATES TO COME

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On September 21, 2020, the Ontario Minister of Environment, Conservation and Parks announced that Ontario's Emissions Performance Standards (EPS) program has been accepted by the federal government as an alternative to the federal Output-Based Pricing System (OBPS) currently in effect in the province.^[1] Both the OBPS and EPS program regulate greenhouse gas (GHG) emissions from large industrial facilities and set standards for lowering emissions from those facilities.

Following the cancellation of Ontario's Cap and Trade program on July 3, 2018, the federal OBPS came into effect to regulate GHG emissions in Ontario. Ontario challenged the constitutionality of the federal government's regulation of GHG emissions in Ontario, but was most recently unsuccessful at the Ontario Court of Appeal. Ontario's appeal of this decision is set to be heard by the Supreme Court of Canada this week.

The Minister's announcement confirms that the EPS program will replace the federal OBPS. Dates for transitioning from the OBPS to the EPS program have not yet been announced, but the federal government and Ontario have confirmed their intention to work together to ensure a smooth transition between the regimes. There is currently no word on if Ontario intends to proceed with its Supreme Court challenge as scheduled.

While the EPS program covers the same polluters as in the federal OBPS, the program will be implemented in phases to give Ontario industries more time to meet their obligations. According to the Minister, the EPS program is tailored to Ontario's environment and economy and "balances our province's plan to fight climate change, as we work towards our 2030 greenhouse gas reduction targets under the Paris agreement, with economic growth as economies in Ontario and across Canada are struggling due to impacts of COVID-19".

Pending the transition to the EPS program, the federal OBPS remains in effect in Ontario. All requirements under that system continue to apply, including the requirement for covered facilities to submit their annual

and verification report for the 2019 compliance period by October 1, 2020.

by Talia Gordner

[1] Ontario Newsroom, "[Province Welcomes Federal Government's Decision to Accept Made-in-Ontario Emissions Performance Standards](#)" (21 September 2020. [ps2id id='1' target='"/]

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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